

IV. TEXT REVISIONS

Section A of this chapter presents specific revisions to the text of the Draft EIR that are being made in response to comments, or to amplify and clarify material in the Draft EIR. Where revisions to the main text are called for, the page and paragraph are set forth, followed by the appropriate revision. Added text is indicated with underlined text. Deletions to text in the Draft EIR are shown with ~~strikeout~~. Page numbers correspond to the page numbers of the Draft EIR. Section B presents revisions initiated by the City to the cumulative traffic analysis. The cumulative analysis for traffic is being revised because the City's significance criterion for cumulative traffic impacts was invalidated by the Superior Court of California subsequent to the publication of the Draft EIR.

None of the changes or clarifications presented in this chapter significantly alters the conclusions or findings of the Draft EIR.

A. REVISIONS MADE IN RESPONSE TO COMMENTS ON THE DRAFT EIR

Page 23 of the Draft EIR is revised as follows:

In June 2002, prior to the passage of Measure DD, the City analyzed the measure's potential environmental effects in an Initial Study that relied upon previous environmental documents prepared by the City. The previous environmental documents included the Oakland General Plan Open Space, Conservation and Recreation (OSCAR) Element Mitigated Negative Declaration, the General Plan Land Use and Transportation Element (LUTE) EIR, the Estuary Policy Plan EIR, and the Coliseum Redevelopment Plan Area EIR. Based on the environmental analysis, the City found that all potentially significant effects would be avoided or mitigated by mitigation measures required by ~~in~~ previously prepared CEQA documents. As a result, because none of the circumstances calling for preparation of a subsequent or supplemental EIR were present, and thus the City prepared an Addendum to the previous environmental documents.

Page 24 of the Draft EIR is revised as follows:

~~As of this writing, there is a pending lawsuit that challenges the granting of three permits for tree removal around Lake Merritt, and another CEQA document, the 2006 Lake Merritt Channel Wetlands and Widening Project EIR. The City has not implemented these approvals during the pendency of the lawsuit. At the time the Draft EIR was published in July 2007, a lawsuit was pending that challenged the granting of three permits for tree removal around Lake Merritt, and another CEQA document, the 2006 Lake Merritt Channel Wetlands and Widening Project EIR. On October 10, 2007 subsequent to the close of the public review period for the Draft EIR, the Superior Court of California, County of Alameda, upheld the tree permits and the City's CEQA determination for the tree permits ruling that "substantial evidence does not exist in the record to support a fair argument that the issuance of the tree permits may have a significant effect on the environment requiring an EIR be prepared." The~~

court also dismissed the challenge to the Channel Wetlands and Widening Project EIR and entered judgment in favor of the City. Thereafter, the City removed some trees around Lake Merritt, including those along Lakeshore Avenue and Lakeside Drive near the Municipal Boathouse pursuant to the permits. None of these removals (nor any other circumstances occurring subsequent to circulation of the Draft EIR) alter the EIR's analysis or conclusions. The EIR acknowledges that the tree removals will occur and new trees will be planted in accordance with the previously issued permits.

Page 30 of the Draft EIR is revised as follows:

The City is proposing to renovate existing plantings and irrigation around the 12th Street component site. This includes removing approximately 157 existing trees from the median strip along 12th Street, the Kaiser Convention Center parking lot and some areas along the banks of the Lake Merritt Channel and replanting these areas with approximately 321 new trees and other landscaping. The final numbers of trees removed or planted may differ slightly from these counts. Some trees ~~will~~ would be removed because they are in conflict with the new construction, are diseased, have severe structural defects or are fast-growing, short-lived trees reaching the end of their life expectancy. Figure III-3 shows the area where trees are ~~proposed~~ to be removed as part of this project component. As part of the project design process the City hired a certified arborist to evaluate the trees ~~to be removed~~ proposed for removal around Lake Merritt and the Lake Merritt Channel. The arborist recommended preserving four trees in this area by redesigning the project or by relocating some of the trees. The City has incorporated these recommendations into the project. The arborist's report is provided in Appendix I.

Pages 35 and 36 of the Draft EIR are revised as follows:

As part of the Measure DD Implementation Project, the City proposes to widen the Channel, streambed, stream banks and upland areas between Lake Merritt and the Estuary by removing the 10th Street culvert and 12th Street culvert (discussed above) and grading the Channel's banks, thus creating additional areas of open water and tidal marsh as shown in Figure III-4. The bottom of the channel at 12th Street would be lowered. Shoreline improvements (e.g., pedestrian pathways and tidal marsh) along the channel between 12th Street and I-880 would be similar in design to those to the designs proposed for the 12th Street project component. The existing pedestrian bridge below 10th Street would be refurbished or replaced. At 7th Street, the pedestrian tunnel on the east side of the trail would be refurbished and the pedestrian tunnel on the west side would be relocated to allow construction of the new bypass channel. A new traffic signal and crosswalk across 7th Street is proposed. The 7th Street project component proposes the creation of a bypass channel to improve recreational access, as well as to allow large fish to once again enter the upper Lake Merritt Channel and Lake Merritt. The trail south of 7th Street would be refurbished but would otherwise remain unchanged. On the east side of the Channel the trail merges into the parking lot south of Peralta College District offices; on the west, the trail passes under I-880 and connects to the dead end of 4th Street.

The City ~~will~~ is proposing to remove some existing trees (approximately 58) along the channel as shown in Figure III-5. Invasive exotic plants, such as *Spartina*, would be removed

if present along the shoreline and new intertidal and upland plantings consisting of native plants such as pickleweed (lower marsh areas), marsh gumplant, and salt grass (upper marsh areas and transitional zones characterized by native grasses), and shrubs and trees would be planted to restore the natural ecosystem of the Channel. Control measures for *Spartina* would include those approved by the San Francisco Estuary Invasive *Spartina* Project. The City also is proposing to install biofiltration basins to improve water quality. Typical construction activities would include clearing, grading, excavating, pile driving, and replanting of landscaping using various pieces of construction equipment and by hand labor. ~~This reconfiguration would include the continuation of pathways established as part of the 12th Street and 10th Street project components, the improvement of pedestrian tunnels under 7th Street, and the installation of a new traffic signal and crosswalk across 7th Street. The 7th Street project component proposes the creation of a bypass channel to improve recreational access, as well as to allow large fish to once again enter the upper Lake Merritt Channel and Lake Merritt.~~

Page 36 of the Draft EIR is revised as follows:

This reconfiguration would include the continuation of pathways established as part of the 12th Street and 10th Street project components, the improvement of pedestrian tunnels under 7th Street, and the installation of a new traffic signal and crosswalk across 7th Street. The 7th Street project component proposes the creation of a bypass channel to improve recreational access, as well as to allow large fish to once again enter the upper Lake Merritt Channel and Lake Merritt. The bypass channel would be designed and managed to retain the tidal and flood control functions of the pump station. To ensure that the flood control function of the 7th Street Pump Station is not compromised, the new bypass channel would include a hydraulic gate that would be closed when operation of the pumps is required to lower the water level in the lake.

Page 41 of the Draft EIR is revised as follows:

(2) **Lakeshore Avenue Variant B.** Lakeshore Avenue Variant B proposes to re-stripe the street to create one travel lane in each direction, a Class 2 bike lane in each direction, a continuous left-turn lane down Lakeshore Avenue, and parking lanes along both curbs. A planting strip, including street trees, would be included along the park border. A multi-use path would be installed between the planting strip and the park landscaped area. As with Variant A, park landscaping would be renovated ~~and the removal of with~~ some trees ~~removed is proposed.~~ The surface of the lakeside path would be resurfaced with stabilized decomposed granite and would be widened at the narrow spots. The pedestrian crossing at Cleveland Cascade would be improved and mid-street pedestrian islands would be included at intersections as appropriate. Typical construction activities would include paving, grading, path resurfacing and replanting of landscaping.

(7) **Landscaping Improvements.** Approximately 9 acres of existing planting and irrigation are proposed to be renovated along Lakeshore Avenue. This renovation ~~would~~ includes removing approximately 24 existing trees and planting approximately 135 new trees. The final numbers of trees removed or planted may differ slightly from these counts. As part of the project design process the City hired a certified arborist to evaluate the trees to be

~~removed proposed for removal~~ around Lakeshore Avenue. The arborist recommended preserving one tree in this area by relocating it. The City has incorporated this recommendation into the project. The arborist's report is provided in Appendix I. The trees ~~were identified for removal would be removed~~ because they are diseased, have severe structural defects, are crowding buildings, conflict with the new construction or are fast-growing, short-lived trees reaching the end of their life expectancy. Landscaped areas with shrubs and ground cover would replace the existing lawn in narrower parts of the park corridor. This substitution would reduce maintenance and water use and reduce the attractiveness of the area to Canada geese. Hardscape development, including benches and patios, would be added at creek nodes and areas where small peninsulas jut out into the Lake. Figure III-7 shows a proposed landscaping plan, which indicates where trees would be removed and new trees would be planted.

Page 47 of the Draft EIR is revised as follows:

Approximately 4 acres of existing planting and irrigation are proposed to be renovated along Lakeside Drive and around the Boathouse. This renovation ~~would include~~ removing approximately 20 existing trees and planting approximately 65 new trees. The final numbers of trees removed or planted may differ slightly from these counts. The trees ~~were identified for removal would be removed~~ because they are in conflict with the new construction, are diseased, have severe structural defects or are fast-growing, short-lived trees that have reached the end of their life expectancy. Figure III-9 shows the proposed landscape plan, which indicates ~~the locations of where tree removals would be removed~~ and new tree ~~plantings would be planted~~.

Page 52 of the Draft EIR is revised as follows:

a. General Trail Characteristics. Most of the 6.6 miles of trail would be paved with asphalt or concrete, with minimal grading so as to minimize disturbance of the ground surface. At some locations, invasive exotic plants, such as *Spartina*, would be removed if present along the shoreline. Control measures for *Spartina* would include those approved by the San Francisco Estuary Invasive Spartina Project. Some portions of the existing Bay Trail between Jack London Square and 66th Avenue may be repaired to fix broken pavement, lighting, or signage. The trail would vary from a minimum 12-foot-wide combined use trail where space is constrained to a pair of bike and pedestrian trails separated by a landscaped median, with a total width of up to 40 feet. At points of interest, additional landscaping would be planted. Various types of decorative and informational wayfaring signage would be installed along the trail.

Some segments of the trail are already complete or will be completed as part of other projects. These segments include:

- Lake Merritt Channel to 10th Avenue Marina – segment will be completed as part of the Oak to 9th Project.
- Livingston Pier to Cryer Site – trail segment is complete
- Park Street Bridge to Derby Avenue – trail segment is complete

- U.S. Audio Technologies to High Street – trail segment is complete
- Gallagher & Burk/Hanson Aggregate to 66th Avenue Gateway – trail segment is complete, except for the northern-most portion

Figures III-10a and III-10b on pages 53 and 54 of the Draft EIR are revised as shown in Chapter 3 (pages 59 and 61) of this Response to Comments document.

Page 57 of the Draft EIR is revised as follows:

(14) Gallagher & Burk/Hanson Aggregate Trail Connection. The proposed segment of the trail adjacent to the Gallagher & Burk asphalt plant would be a concrete pier supported walkway. As the Hanson Aggregate facility uses water access for delivery of materials, the trail would be designed to allow materials to be transferred from barges to the site while allowing for shoreline trail access. This would include the construction of a steel canopy over a portion of the trail. Property easements are being sought for this segment of the trail, but operational constraints may preclude completing this segment of the trail while the facility is in operation. An interim route may include a connection to Tidewater Avenue, which is analyzed in the Section V, Alternatives.

Page 93 of the Draft EIR is revised as follows:

<p><u>Policy Rec-4.1</u></p>	<p>Systematic Maintenance Provisions. Provide for ongoing, systematic maintenance of all parks and recreational facilities to prevent deterioration, ensure public safety, and permit continued public use and enjoyment. Routine maintenance needs should be evaluate on a regular basis. Parks which receive very heavy use should receive more frequent maintenance than those with less use.</p>	<p><u>Lake Merritt and Lake Merritt Channel:</u> The project provides funding to renovate the Boathouse, Pergola, 18th Street Pie, which are consistent with the long-term upkeep of parks and recreational facilities. <u>Waterfront Trail:</u> The project provides funding to renovate existing trails as well as to construct new trails. <u>Recreational Facilities:</u> The project provides funding to renovate Studio One. <u>City-wide Creeks:</u> N.A.</p>
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Page 95 of the Draft EIR is revised as follows:

e. **San Francisco Bay Plan.** The San Francisco Bay Plan⁹ (Bay Plan) is a policy tool that, under the provisions of the McAteer-Petris Act, allows the San Francisco Bay Conservation and Development Commission (BCDC) to “exercise its authority to issue or deny permit applications for placing fill, extracting materials, or changing the use of any land, water, or structure within the area of its jurisdiction,” an area that includes all of the San Francisco Bay, a shoreline band of 100 feet from the water, and salt ponds, managed wetlands and certain waterways associated with the Bay. The Bay Plan stipulates: “Any public agency or private owner holding shoreline land is required to obtain a permit from the Commission before proceeding with (shoreline) development.” The Bay Plan contains findings and policies that will apply in BCDC permits for Measure DD project components within the commission’s jurisdiction. Examples of applicable policies include those related to public access, the placement and removal of fill in the Bay, sea level rise and the safety of fills, the protection of fish, other aquatic organisms and wildlife, and tidal marshes and tidal flats, among others. Implementation of the proposed project would require BCDC permit

approval for development within the 100-foot shoreline band. Measure DD includes waterfront improvements within 100 feet of the shoreline, including areas along the Oakland Estuary and the southern portion of the Lake Merritt Channel, downstream of the 7th Street Pump Station.

Page 121 of the Draft EIR is revised as follows:

City of Oakland General Plan. The Land Use and Transportation Element (LUTE) of the General Plan has numerous policies related to transportation issues. The primary LUTE policies relevant to transportation, circulation and parking, including those provided in the City's Bicycle Master Plan and Pedestrian Master Plan (which are part of the LUTE), include the following:

Page 122 of the Draft EIR is revised as follows:

- Policy D13.2: An adequate quantity of car, bicycle, and truck parking, which has been designed to enhance the pedestrian environment, should be provided to encourage housing development and the economic vitality of commercial, office, entertainment, and mixed use areas.
- BMP Policy 1: Create, enhance and maintain the recommended bikeway network.
- BMP Policy 2: Establish design and maintenance standards for all streets that recognize the needs of bicyclists.
- BMP Policy 4: Include provisions for safe and direct bicycle access to special development areas and key corridors.
- BMP Policy 8: Ensure that the needs of bicyclists are considered in the design of new development and redevelopment projects.
- PMP Policy 2.1: Route Network: Create and maintain a pedestrian route network that provides direct connections between activity centers.

Page 130 of the Draft EIR is revised as follows:

Pedestrians and bicyclists would cross the UPRR tracks along 5th Avenue and Oak Street when traveling between project elements in the Lake Merritt area and the Waterfront Trail. Currently, the crossings have safety equipment including crossing gates and warning lights. These facilities control access by pedestrians as well as vehicles. There is also a chain link fence along Embarcadero, which prevents crossings by pedestrians at other locations. With the implementation of the Measure DD improvements, these existing safety features would remain in place. Thus, the project would not increase hazards to vehicles, pedestrians, or bicyclists. The impact would be less than significant.

Page 133 of the Draft EIR is revised as follows:

Transit Recommendations

- The City should provide active and/or passive transit signal priority to reduce travel times along 12th Street and Harrison Street. This action would reduce delays for AC Transit but not completely eliminate increases in travel time along 12th Street and Harrison Street.

- The City should provide an eastbound bus lane along the right side of 11th Street with the bus lane continuing through the signal at the 11th-12th/14th Street intersection.

Page 139 of the Draft EIR is revised as follows:

Pedestrians and bicyclists would cross the UPRR tracks along 5th Avenue and Oak Street when traveling between project elements in the Lake Merritt area and the Waterfront Trail. Currently, the crossings have safety equipment including crossing gates and warning lights. These facilities control access by pedestrians as well as vehicles. There is also a chain link fence along Embarcadero, which prevents crossings by pedestrians at other locations. With the implementation of the Measure DD improvements, these existing facilities would remain in place. Thus, the project would not increase hazards to vehicles, pedestrians, or bicyclists. The impact would be less than significant.

Pages 139-140 of the Draft EIR is revised as follows:

Transit Recommendations

- Implementation of active and/or passive transit signal priority as described in the previous recommendations for transit service would reduce delays for AC Transit. Nevertheless, the implementation of transit signal priority is not expected to completely eliminate increases in travel time along the 12th Street and Harrison Street. ~~While adding bus-only lanes or queue jump lanes, or eliminating pedestrian crosswalks are feasible, they are not recommended because they would have substantial impacts on traffic operations or pedestrian mobility, and in most cases have additional costs.~~
- The City should provide an eastbound bus lane along the right side of 11th Street with the bus lane continuing through the signal at the 11th-12th/14th Street intersection.

Page 142 of the Draft EIR is revised as follows:

Traffic and Maritime Hazards. Implementation of the proposed project would result in the Bay Trail passing under the bridges. Therefore, the project would not result in any significant impacts related to traffic hazards as the trail would not conflict with vehicular circulation. To the extent feasible the proposed trail segments that would pass beneath the Park Street and High Street bridges would not extend further into the channel than the existing bridge fenders. At all bridges, trail segments would be kept as close to the shoreline as necessary to ensure public safety and not impede navigation. However, the U.S. Coast Guard and others have raised concerns about the potential safety and feasibility of a trail being constructed under the bridges, particularly the High Street and Park Street bridges. Recognizing that the U.S. Coast Guard has permitting authority in these areas, the City includes street-level crossings in these areas as part of the alternative for the Waterfront Trail Group, described in Section V.F, Waterfront Trail Surface Street Connection Alternative.

Page 155 of the Draft EIR is revised as follows:

(4) **Odors.** Odors are also an important element of local air quality conditions. Specific activities can raise concerns on the part of nearby neighbors. Major sources of odors include restaurants, manufacturing plants, and agricultural operations. Other odor producers include the industrial and transportation facilities within the region, such as railroads that may produce mechanical odors. While sources that generate objectionable odors must comply with air quality regulations, the public's sensitivity to locally produced odors often exceeds regulatory thresholds.

Page 159 of the Draft EIR is revised as follows:

(5) **Objectionable Odors.** The operation of the project components of Measure DD would not generate objectionable odors. Typically, major sources of odors include restaurants, manufacturing plants, and landfills. Other odor producers include industrial and transportation facilities within the region, such as railroads that may produce mechanical odors. The proposed project components include physical improvements to existing parks; acquisition of land for new parks; development of new parks and recreation facilities; clean water measures; restoration and rehabilitation of recreation buildings; and implementation of creek and waterway protection and restoration projects which are not expected to generate objectionable odors. The project may briefly bring people into proximity with industrial or transportation facilities that produce odors along the Waterfront Trail, but exposures would be brief and affect a relatively small number of people on an occasional basis. Therefore, the project would not frequently create substantial objectionable odors affecting a substantial number of people. The information provided in the comment does not change the analysis or conclusions of the Draft EIR. This potential impact would be less than significant.

Page 181 of the Draft EIR is revised as follows:

(4) **Vibration.** None of the four project groups contain components that would generate ground-borne vibration levels that would be perceptible to the average person. ~~There would be no impact during the project's operational phase.~~ The project may briefly bring people into proximity with transportation facilities along the Waterfront Trail, such as railroad tracks, that produce ground-borne vibration. But the project would not frequently expose a substantial number of people to ground-borne vibration. Construction activities associated with implementation of the project, including proposed pile driving activities, could temporarily expose persons in the vicinity of the proposed project construction areas to ground-borne vibration or ground-borne noise levels. However, the project would comply with the construction hours specified in the City's Noise Ordinance and the City's standard Conditions of Approval would be applied. Implementation of the Conditions of Approval would ensure potential ground-borne vibration would be avoided or reduced to a less-than-significant level.

Page 204 of the Draft EIR is revised as follows:

(4) **McAteer-Petris Act.** The McAteer-Petris Act and Suisun Marsh Preservation Act were adopted to protect San Francisco Bay and Suisun Marsh as natural resources for the benefit of the public and to encourage development compatible with this protection. The San Francisco Bay Conservation and Development Commission (BCDC) was established to

enforce this Act. The two primary goals of the BCDC are: (1) to prevent the unnecessary filling of San Francisco Bay; and (2) to increase public access to and along the Bay shoreline. BCDC approval is required for all projects within 100 feet of the Bay shoreline, as well as projects that propose any filling or dredging within Bay waters. In reviewing permit applications, BCDC relies on findings and policies on fish, other aquatic organisms and wildlife in the Bay Plan to ensure protection of biological resources.

Page 211 of the Draft EIR is revised as follows:

(1) Candidate, Sensitive, or Special-status Species. The only special-status species potentially occurring within all component groups is Cooper's hawk, a California Species of Special Concern. The numerous tall trees throughout the Measure DD Implementation Project area provide nesting habitat for a variety of native bird species, potentially including Cooper's hawk. In addition, some of the creek restoration sites in the upper Oakland watershed may contain suitable nest trees for sharp-shinned hawk. Both these species are California Species of Special Concern. ~~Proposed tree~~ removal within the Lake Merritt and the Lake Merritt Channel group area and potential tree removal within other group sites could directly impact nesting Cooper's and sharp-shinned hawks by removing trees that support active nests. Prolonged loud construction noise could also disturb nesting birds, resulting in nesting failure and/or nest abandonment.

Implementation of the City's Standard Conditions of Approval (Condition 32) will reduce potential impacts to nesting Cooper's and sharp-shinned hawks to a less-than-significant level. The pre-construction survey shall be conducted within 15 days prior to the start of work from March 15 through May (since there is higher potential for birds to initiate nesting during this period), and within 30 days prior to the start of work from June through August 15.

Page 213 of the Draft EIR is revised as follows:

(6) Protected Trees. Based on current plans, the Lake Merritt and Lake Merritt Channel group includes removal of ~~proposes to remove~~ a number of ~~protected trees protected under the City's Tree Ordinance~~. Protected trees might also be removed as part of the Waterfront Trail, Recreational Facilities, and City-wide Creeks groups. This impact is discussed in Section IV.F2c.

The following text is inserted on page 216 of the Draft EIR at the end of subsection IV.F.2.c(3):

The increased tidal flows that would occur as a result of the proposed modifications to the Lake Merritt Channel are not expected to cause adverse changes to the open water habitat in Lake Merritt or the Lake Merritt Channel. Increased tidal flows would not adversely affect the relevant water quality characteristics of the open water habitat such as salinity, temperature, and dissolved oxygen. Water quality, especially dissolved oxygen, would be improved by the greater exchange rate between Lake Merritt and the estuary and by newly created tidal wetlands in the channel, which would benefit wildlife.

Page 216 of the Draft EIR is revised as follows:

(4) Native Resident or Migratory Wildlife Movement, Wildlife Corridors, or Nursery Sites. As the channel is not a corridor for the movement of migratory fish, the proposed changes to Lake Merritt and Lake Merritt Channel would not have an adverse effect on migratory fish species. Several species of migratory waterbirds have been observed using the Lake Merritt Channel during the winter (approximately October through March), often in flocks of 40 to 70 birds (e.g., scaup, common goldeneye). A 2004 study of waterbird use and disturbance response within Berkeley’s Aquatic Park found that disturbance sensitivity was positively related to flock size, with large flocks flushing more readily than smaller ones.³⁷ Although no such studies have been conducted at the Lake Merritt Channel, LSA observed a flock of approximately 50 common goldeneyes swimming away from a group of schoolchildren crossing the pedestrian bridge during the January 19 site visit, indicating sensitivity to disturbance. Human-caused disturbance negatively affects wintering ducks by causing the expenditure of energy (i.e., flying or moving away from the source of disturbance) that would otherwise be used for behaviors necessary for survival, such as resting or feeding.³⁸ Repeated or periodic disturbance would cause a greater expenditure of energy and thus have a greater effect on wintering birds than singular events.

Page 218 of the Draft EIR is revised as follows:

(6) Protected Trees. In order to create additional parkland along the south shore of Lake Merritt and make other improvements around the Lake, approximately 259 trees, including 129 protected trees, are to ~~would~~ be removed and 521 new trees and other landscaping are to ~~would~~ be installed to replace them. Approximately 510 existing trees will ~~would~~ be retained. Overall, the trees will ~~would~~ be replaced at about a 2:1 ratio, that is, two trees will ~~would~~ be planted for each tree removed. Table IV.F-3 summarizes the proposed tree removals and new plantings by project component within the Lake Merritt and Lake Merritt Channel project group. As part of the project design process the City engaged a certified arborist to evaluate the trees to be removed ~~proposed for removal~~ in this group. The arborist recommended preserving five trees by redesigning the project or by relocating some of the trees. The City has incorporated these recommendations into the project and the numbers in Table IV.F-3 reflect the preservation of these trees. The arborist’s report is provided in Appendix I.

Table IV.F-3: ~~Proposed~~ Tree Removals for the Lake Merritt and Lake Merritt Channel Project Group

Project Component	Trees to be Retained^a	Trees to be <u>Removed</u> Proposed for Removal	Protected Trees to be <u>Removed</u> Proposed for Removal	New Trees to be Planted	Ratio of Trees Planted to Trees Removed
Lakeside Drive/Municipal Boathouse	30	20	17	65	3.25
Lakeshore Avenue/El Embarcadero	90	24	6	135	5.4
12 th Street Reconstruction	50	157	90	321	2.0
Lake Merritt Channel	340	58	16	0 ^b	0
TOTAL	510	259	129^c	521	2.0

^a Numbers of trees are approximate. Totals include trees recommended for preservation or relocation by the certified arborist.

^b No new trees ~~will would~~ be planted along the Channel because the habitat type would be converted from landscaped urban parkland to wetlands and open water.

^c Includes eight protected oak trees.

Source: HortScience, 2007.

The City of Oakland's Tree Preservation and Removal Ordinance (OMC Chapter 12.36) requires a permit for removal of protected trees. A permit is also required if work might damage or destroy protected trees. The project ~~will would~~ comply with the Tree Preservation and Removal Ordinance and ~~would~~ obtain permits for the removal of any protected trees. In addition, the City considers other factors in determining significance for purposes of CEQA including: the number, type, size, location and condition of the protected trees to be removed and/or impacted by construction and the protected trees to remain, with special consideration given to native trees, as discussed below.

The majority of protected trees to be removed are located in the 12th Street reconstruction area. Although protected trees are present in this area many of the trees are in poor or fair condition (see Appendix D); are in the landscaped median strip for 12th Street that is accessible only via rarely used pedestrian underpasses; or are in small planting strips within the parking lot for the Kaiser Convention Center (see Figure III-3). Most of the trees are non-native ornamental species. When the project components around Lake Merritt are looked at as a whole, about twice as many trees are retained in the project area as ~~are to would~~ be removed and approximately two trees ~~will would~~ be planted for each tree removed. The new trees in the 12th Street reconstruction area ~~will would~~ be part of proposed landscaped areas that would have direct pedestrian access to Lake Merritt and surrounding civic buildings. The four components of Group 1 (Lakeside Drive/Municipal Boathouse, Lakeshore Avenue/El Embarcadero, and Lake Merritt Channel) either retain more trees than they ~~would~~ remove and/or plant at least twice as many new trees as ~~are would be~~ removed (Lakeside Drive/Municipal Boathouse, Lakeshore Avenue/El Embarcadero, and 12th Street Reconstruction). Eight trees to be removed are protected native oak trees.

The project would not fundamentally conflict with the City of Oakland's Tree Preservation and Removal Ordinance and would therefore be a less-than-significant impact for the following reasons: approximately twice as many trees ~~will would~~ be retained as ~~will would~~ be removed; removed trees ~~will would~~ be replaced at approximately a 2:1 ratio; the majority of trees to be removed are in poor or fair condition; and many are located in a parking lot or an inaccessible median strip. In addition, because trees are being replaced at approximately a 2:1 ratio many benefits lost by the removal of trees, such as aesthetics, energy conservation, reductions in stormwater runoff, improvements in air quality, and capture of carbon dioxide (a greenhouse gas) ~~will would~~ be compensated for in a few years because of the large number of new trees being planted. The impacts of removing trees and the benefits of planting new trees in the Lake Merritt and Lake Merritt Channel group were estimated quantitatively using a computer application developed by scientists at the United States Department of Agriculture (USDA) Forest Service's Pacific Southwest Research Station to assess populations of street trees.¹ The results of this study are provided in Appendix I. Because the City would comply with the Tree Preservation and Removal Ordinance, the Lake Merritt and

¹ USDA Forest Service. http://www.itreetools.org/street_trees/introduction_step1.shtm.

Lake Merritt Channel project components would have a less-than-significant impact. To reach this conclusion, the City considered the number, type, size, location and condition of the protected trees to be removed and/or impacted by construction and the protected trees to remain, including native trees.

A small number of protected trees may require removal as part of the Waterfront Trail, Recreational Facilities, City-wide Creeks groups or other components of the Lake Merritt group (e.g., the Cleveland Cascade). The trees would be replaced in accordance with the City's Tree Protection Ordinance and Standard Conditions of Approval (Condition 32), which would reduce the impact to a less-than-significant level.

Page 261 of the Draft EIR is revised as follows:

- As with many facilities built near the shore of San Francisco Bay, rising sea levels associated with global climate change could, in the long-term, affect project facilities and existing infrastructure such as the 7th Street Pump Station that are designed to protect them from flooding. The pump station's function would be compromised if, for example, tidal levels overtopped the facility. However, the flood control components and operation of the 7th Street Pump Station itself would not be altered by the project. New trails are being located above the current reach of tidal action, with additional freeboard which will accommodate some future sea level rise. In addition, the project is not constructing housing, high occupancy, or sensitive facilities within the zone that could be affected by flooding or rising sea levels.

Substantial quantities of new impervious surfaces, which could increase runoff rates and velocities (and potentially flooding), would not be created by Measure DD project components. The integrity and function of existing flood control and stormwater conveyance facilities operated by the Alameda County Flood Control and Water Conservation District, such as stormwater outfalls at Lake Merritt, would be ensured by obtaining permits and authorizations from the District prior to construction as required by Condition of Approval 75. ~~Construction of housing is not a proposed element of the project, and no new residential development would be subject to flooding.~~ Therefore, no substantial impact related flood hazard or redirection of flood water would occur with the proposed Measure DD components.

Pages 263 and 264 of the Draft EIR are revised as follows:

These three components are designed to improve tidal exchange between Lake Merritt and San Francisco Bay by clearing and broadening the channel to approximately 100 feet at the outlet from Lake Merritt and at 10th Street. New clear-span bridges would be constructed after removal of existing culverts under 12th and 10th streets, ~~and by reconfiguring the channel at 7th Street.~~ The proposed changes would result in approximately doubling the flow rate through the Lake Merritt Channel in this area.^{50, 51} These components are also intended to improve pedestrian and bicycle circulation in the area of the Channel, and along with other components, enhance and improve the environment of Lake Merritt and surrounding parks. Redesign of the Channel at the Lake Merritt Flood Control Station at 7th Street is at the conceptual design stage. As noted previously, hydraulic studies conducted at this stage of project development indicate that the proposed changes to the Lake Merritt Channel would help alleviate flooding conditions. Nevertheless, as required by Condition of Approval 75 this

project component would be required to obtain all necessary permits and authorizations from the Alameda County Flood Control and Water Conservation District prior to construction to ensure that the operation of the flood control facilities at 7th Street would not be adversely affected by the proposed action. Topics of wildlife, aquatic life, vegetation, landscaping, creek restoration, U.S. Army Corps of Engineers Section 404 (filling and grading in wetlands) permitting, California Department of Fish and Game Section 1604 – Streambed Alteration Agreements, and San Francisco Bay Conservation and Development Commission (BCDC) requirements are addressed in the Biological Resources section of this DEIR.

Page 311 of the Draft EIR is revised as follows:

Adams Park and the Veterans Memorial Building are located at the northwest corner of Lake Merritt at Harrison Street and Grand Avenue and provide space for private events and senior activities. Lakeside Park at Grand Avenue and Bellevue Avenue includes a Lawn Bowling Clubhouse and Greens, non-programmed open space, Children’s Fairyland, McElroy Fountain and Specimen Groves, ~~Edhoff Band Stand~~ Edhoff Memorial Bandstand, a beach, amphitheater, Garden Center, Junior Center of Art & Science, the Sailboat house, the Rotary Nature Center, OPD horse stables, and wildlife areas.

Page 325 of the Draft EIR is revised as follows:

Wastewater generated by the Measure DD Implementation Project components represents less than 0.1 percent of the MWWTP’s secondary treatment capacity. ~~This wastewater would be accommodated by the MWWTP, which is currently operating at 48 percent of its secondary treatment capacity. The increase in wastewater generated by these projects is not substantial in the context of the entire volume of wastewater processed by EBMUD’s Main Wastewater Treatment Plant.~~ EBMUD has sufficient capacity to treat wastewater flows from the projects during dry weather¹⁹ and would not require or result in construction of new wastewater treatment facilities or expansion of existing facilities, construction of which could cause significant environmental effects.

Page 336 of the Draft EIR is revised as follows:

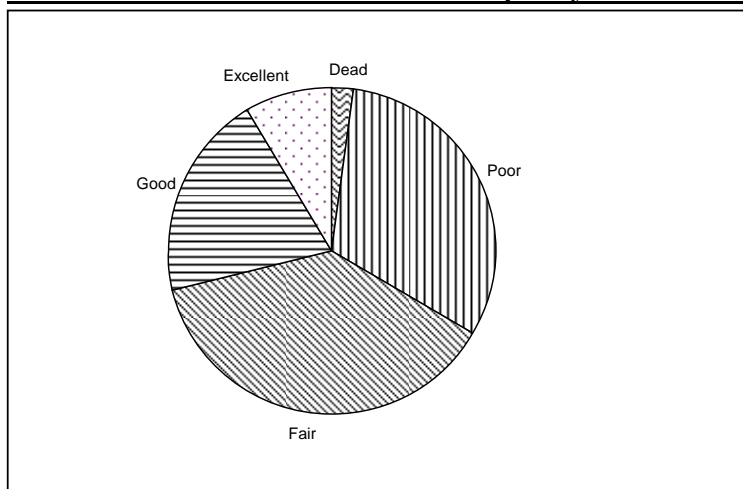
Lake Merritt and Lake Merritt Channel (Group 1). Lake Merritt and the Lake Merritt Channel are resources that are part of scenic vistas seen from numerous locations in Oakland, including the City’s Downtown and hillside areas. The proposed project would result in beneficial impacts to the visual quality of the Lake through water quality control measures, the restoration of historic buildings and monuments around the perimeter of the Lake, and enhanced landscaping. These changes to the Lake and the Channel would result in small but beneficial improvements to scenic vistas encompassing these waterways. ~~The project would result in the r~~Removal of certain diseased trees from the vicinity of the Lake is consistent with and in furtherance of the project.; ~~The removal of these trees will enhance the visual character of the Lake and;~~ however, the removal of these trees will ~~would not~~ substantially adversely change scenic vistas. New trees ~~will~~ would be planted to replace the trees that are removed, and these trees will not substantially block scenic vistas. No structures would be built that would block surroundings and would not block scenic views of the

Estuary. Therefore, this group of project components would have a less-than-significant impact on scenic vistas.

Page 341 of the Draft EIR is revised as follows:

Lake Merritt and Lake Merritt Channel (Group 1). A key component of this group is the various proposed water quality control measures, including the installation of devices and features to clean and circulate water, and the creation of an open channel to allow for increased tidal flow into and out of the Lake. These measures, by improving water quality in the Lake, would enhance the scenic qualities of the waterway (including portions of the Lake visible from I-580), which suffers from algal blooms and stagnation associated with a surplus of nutrient-rich pollution. In addition, this group would involve the renovation of existing landscaping, which would improve the landscape context of the Lake. ~~As part of the project, certain trees would be removed (and replaced with healthy individuals).~~ Based on the Tree Assessment prepared by HortScience, Inc. (Appendix I), of the 269 trees that will be removed as part of the project, 6 are dead, 84 are in poor condition, 101 are in fair condition, 55 trees are in good condition, and 23 trees are in excellent condition (see Chart IV.M-1). As shown in Chart IV.M-1, many of the trees considered for removal that would be removed are diseased, short-lived, or are not stable (i.e., they are dead, or in poor to fair condition). Although some of the trees ~~subject to removal may that would be removed~~ contribute or may have contributed to the scenic quality or overall visual character of the Lake, this contribution is not significant either individually or cumulatively. In context, approximately 500 trees will be retained in the project area and the 521 trees will be planted as part of the project (a replacement ratio of almost two trees for every removed tree). These replacement trees will fill in any visual “gaps” created by the removed trees. As shown in Figures IV.M-1 through IV.M-4, the removal of trees from the site will not adversely affect scenic resources or visual character as seen from key viewpoints around Lake Merritt.

Chart IV.M-1: Tree Condition and Frequency of Occurrence



Source: HortScience, Inc., 2007.

This conclusion is also supported by a cost/benefits analysis of tree removal/replacement conducted by HortScience as part of the Tree Assessment. Using a model that takes into

account the environmental and economic benefits of trees (including improvement of visual quality, reductions in storm water runoff, improvements in air quality, and sequestration of carbon dioxide), HortScience determined that the trees subject to removal from the site provide an estimated \$29,438 in annual benefits, approximately 77 percent of which (\$22,866) is associated with aesthetic value. At planting, the 521 replacement trees will provide an estimated \$22,986 in annual benefits, “almost entirely due to aesthetic and other benefits.” As the trees mature, the value of their annual benefits will increase to \$33,193 at 5 years and \$40,700 at 20 years. Therefore, based on the model, within only 5 years of planting, the replacement trees will be more valuable in terms of aesthetics and other environmental/economic benefits than the existing trees that will be removed as part of the project. Although there are limitations with assigning monetary values to resources like trees (i.e., resource valuation generally lacks a reliable way to estimate the value of ecological damage), the data produced by HortScience suggest that the aesthetic costs of tree removal do not outweigh the benefits of tree replacement. Based on the HortScience analysis, and an understanding of tree removal in the context of trees that will be preserved and trees that will be replaced as part of the project, ~~Therefore,~~ the removal of select trees and the replacement with new individuals would not be considered a significant impact to scenic resources or the visual character of the project site.

Page 342 of the Draft EIR is revised as follows:

Lake Merritt and Lake Merritt Channel (Group 1). Lake Merritt and its surroundings are characterized by a semi-formal landscape of rolling lawns and walkways, all oriented around the water body itself. While the area has high visual quality, the aesthetics of the area are diminished primarily by low water quality in the Lake, landscaping and trees that are in poor condition, and roadways surrounding the Lake that are disproportionately wide and emphasize automobile traffic at the expense of the pedestrian environment. The proposed project would substantially improve these adverse conditions. First, the removal of the 12th Street culvert and the implementation of the various water quality control measures would improve the water quality of the Lake, and enhance the potential for the growth of native vegetation and use of the water body by native wildlife (besides Canada geese). Second, landscaping and trees in poor condition will ~~would~~ be removed and replaced with new plants that would enhance the visual environment. Third, several roadways (including 12th Street, Lakeshore Avenue, and Lakeside Drive) would be reconfigured and/or narrowed to include bike lanes and pedestrian paths. These changes would reduce the visual intrusion of motor vehicles and would improve the visual environment for the bikers and walkers that comprise the key users of Lake Merritt. Lastly, historic buildings around the Lake, some of which are in poor condition, would be rehabilitated. At the Municipal Boathouse, two parking lots next to the Lake and Boathouse would be removed and replaced with landscaping, terraces, and pathways. A smaller parking lot would be constructed closer to the road and the remaining parking would be relocated along Lakeside Drive itself. The improvement and preservation of historic structures, and the modification of parking areas would benefit the visual quality of the area, including the lakeshore itself. Therefore, the project group would have a less-than-significant impact on the existing visual character of the area surrounding the Lake and Lake Merritt Channel.

Page 352 of the Draft EIR is revised as follows:

For Group 1, the No Project alternative would include completion of the Pergola, Children’s Fairyland, the E. 18th Street Pier, and Municipal Boathouse renovations. However, paths, landscape improvements and additional patron parking (for the Boathouse) that would provide improved access to the facilities would generally not be constructed. The land around Lake Merritt would continue to be used as park land. Landscape maintenance, including the removal and replacement old or diseased trees, would continue as needed. Trees will be removed along Lakeshore Avenue, Lakeside Drive and the 12th Street reconstruction area in accordance with the permits for the removal of trees previously issued by the City. ~~The tree replacement process would generally maintain the current appearance of the park, but no substantial increase in landscaped area or number of trees is likely to occur because there would be no net increase in parkland as would occur if the project were constructed as proposed.~~ The creation of bike lanes by restriping Lakeside Drive and Lakeshore Avenue might occur as part of other projects, but associated landscaping and pedestrian path improvements would not be constructed.

Table V-1 on page 353 of the Draft EIR, is revised as follows:

Table V-1: No Project Alternative (Groups 1 and 2): Components Completed or In Progress and Components Unbuilt

<p>Lake Merritt and Lake Merritt Channel (Group 1)</p> <p>Components Completed or In-Progress</p> <ul style="list-style-type: none"> • Pergola Renovation (complete) • Installation of a Fire Protection Main (complete) • Water Quality Improvements, including storm drain filters at Bellevue/Staten, 27th/Valdez, and 22nd/Valley; pilot air diffuser project; new aeration fountain; Pergola fountain (complete) • Children’s Fairyland Renovations (in-progress) • Municipal Boathouse Renovation (in-progress) • <u>E. 18th Street Pier Improvements (in-progress)</u> • <u>Tree removals along Lakeshore Avenue and Lakeside Drive</u> <p>Unbuilt Components</p> <ul style="list-style-type: none"> • 12th Street Improvements • Lake Merritt Channel • Lakeshore Avenue, and El Embarcadero, and E. 18th Street Pier Improvements • Lakeside Drive • Snow Park and Lakeside-Harrison-20th Street Intersection • Bellevue Avenue Redesign • Sailboat House • All water quality improvements except those noted above
<p>Oakland Waterfront Trail (Group 2)</p> <p>Components Completed or In-Progress</p> <ul style="list-style-type: none"> • Union Point Park • Park Street Triangle traffic study • <u>Alameda Avenue south of Fruitvale Avenue</u> • <u>66th Avenue Gateway</u> <p>Unbuilt Components</p>

Lake Merritt and Lake Merritt Channel (Group 1)
<ul style="list-style-type: none">• Estuary Park• 10th Avenue Marina• Brooklyn Basin• Brooklyn Basin to Embarcadero Cove• Livingston Pier• Cryer Site• ConAgra to Park Street Bridge• Bridge boardwalks at Park Street, Fruitvale Avenue and High Street• Derby Avenue to Lancaster Street (Oakland Museum Women's Board warehouse)• Alameda Avenue south of Fruitvale Avenue• US Audio/Capture Technologies and friendly Transportation Trail Connection• Gallagher & Burk/Hanson Aggregate Trail Connection• 66th Avenue Gateway

Page 356 of the Draft EIR is revised as follows:

Although the City has a permit for tree removals in the 12th Street reconstruction area, as of this writing, none has been removed. The alternative would reduce the number of trees that will need to ~~would~~ be removed to allow the reconstruction and realignment of 12th Street. In this scenario, the Kaiser Convention Center parking lot would not be reconfigured and therefore the trees located in this area would be preserved. Approximately 59 trees would be preserved, including 12 protected trees (all flowering cherries), in and around the parking area. Trees along the median of the existing 12th Street alignment would still be removed ~~require removal~~ in order to accommodate the new roadway and modified grade of the park land.

Page 357 of the Draft EIR is revised as follows:

1. Project Objectives

This alternative would meet most project objectives, but to a lesser degree than the proposed project. All objectives for the Lake Merritt and Lake Merritt Channel, the Recreational Facilities, and the City-Wide Creeks Groups would be met. It is being considered, in part, because the U.S. Coast Guard and the marine shipping community have concerns about the potential safety and feasibility of the proposed under-bridge segments of the Waterfront Trail and because the U.S. Coast Guard has permitting authority in this area. The alternative would complete the missing segments of the San Francisco Bay Trail along the Oakland Estuary, albeit with segments that would not be constructed on the waterfront but rather on nearby streets. Because the trail would avoid contaminated properties, hazardous waste impacts associated with these properties would not occur but the properties would also not be remediated, one of the objectives of this project group. The alternative would support some of the objectives of OSCAR and the Estuary Policy Plan by completing a linear trail along the waterfront; however because the segments would be completed away from the shoreline in some cases, the alternative would not create as much physical and visual access to the Oakland shoreline as the proposed project.

Page 363 of the Draft EIR is revised as follows:

1. Methodology

When evaluating cumulative impacts, CEQA allows the use of either a list of past, present and reasonably foreseeable future projects ~~or reasonably anticipated relevant projects~~ (including projects outside the control of the lead agency) or a summary of the projections in an adopted General Plan or related planning document. This cumulative impacts analysis considered development projections that are contained in is likely to occur under the build-out of the various elements of the City of Oakland General Plan, including the Land Use and Transportation Element (LUTE), and the Open Space, Conservation, and Recreation Element (OSCAR), and their related environmental review documentation. The projections account for past and present projects as well as reasonably foreseeable future development. In addition, the cumulative analysis considered specific projects, including the Oakland Whole Foods Market, the Jack London Square Redevelopment, and the Oak to Ninth Avenue Projects. As a result, the analysis is based on a projections approach, which has been refined by including additional information regarding specific existing and anticipated future projects.

Pages 363 to 364 of the Draft EIR are revised as follows:

a. Land Use. The majority of the Measure DD components would renovate or improve existing structures, recreational facilities, roadways, and creeks within the City of Oakland and would not change land use. New land uses would include roadway and park changes associated with Lake Merritt, and the creation of new parks and installation of the new trail connections associated with the Waterfront Trail, and the construction of the East Oakland Sports Complex. ~~With one exception, the~~ The proposed land uses associated with the project would be compatible with the surrounding land use and zoning of the project site and surrounding neighborhood, which is the geographic area of potential cumulative effect for land use impacts. One ~~The potential land use conflict, a potential safety hazard that would be created by constructing the trail across an operating industrial facility, was identified for the Waterfront Trail group, which~~ This impact would be reduced to a less-than-significant level with implementation of the identified mitigation measure. The EIR analysis shows that the impact would not be cumulatively considerable for two reasons: 1) there are no other similar safety impacts to which the impact would contribute and 2) the residual effect would be eliminated by the proposed mitigation measure. Thus, the project ~~This site-specific impact~~ would not have a cumulative effect when considered with other projects and implementation of Measure DD would not result in any cumulatively significant land use impacts.

b. Transportation, Circulation and Parking. A detailed analysis was conducted for the purposes of assessing cumulative environmental impacts to the transportation system as described in Section IV.C. As described therein (see pages 133 to 134), the cumulative analysis analyzed the project in combination with past, present and reasonably foreseeable future projects. The cumulative analysis identified five significant cumulative impacts related to transportation (TRAF-5 through TRAF-9), three of which are identified as significant and unavoidable because they may not be reduced to less-than-significant levels. The impacts and mitigation are discussed in detail in Section IV.C. No significant impacts were identified for alternative modes of transportation. The project would not fundamentally conflict with adopted policies, plans, or programs supporting pedestrian and bicycle transportation or

transit use. The project would improve both pedestrian mobility and bicycle transportation. Although travel times would increase as a result of the project and affect some transit routes, travel times for other motor vehicles would increase by a similar amount, and travelers would not be discouraged from using transit as a result of the project. Thus, the project would not fundamentally conflict with adopted policies, plans, or programs supporting transit use and would not have a significant cumulative impact.

c. Air Quality. As noted in the air quality impact analysis in Section IV.D, the air basin within which the City of Oakland and the project components lie is non-attainment for ozone, PM₁₀ and PM_{2.5}. As such, the project and other past, present and reasonably foreseeable future projects could result in an impact that is cumulatively significant for air quality related to these pollutants. However, the City finds that the project's contribution to the impact would not be cumulatively considerable and thus the impact is less than significant. According to the Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines, any proposed project that would individually have a less-than-significant air quality impact and is consistent with the General Plan, where the General Plan is consistent with the Clean Air Plan, would be considered to have a less-than-significant cumulative air quality impact. The Measure DD components would not have significant operational air quality impacts, therefore a determination of the cumulative impacts would be based on an evaluation of the consistency of the project with the City of Oakland's General Plan and of the General Plan with the regional air quality plan. As discussed in Section IV.D, the City of Oakland's General Plan is consistent with the 2005 Ozone Attainment Plan, the fourth triennial update of the Clean Air Plan, and the project is consistent with the General Plan. In addition, the project would not generate objectionable odors, expose sensitive receptors to substantial air pollutant concentrations, or emit toxics that would contribute to a cumulative impact. Likewise, the project would not contribute to an impact associated with CO concentrations because CO concentrations would not increase as a result of the project. Therefore the project would not have a significant cumulative impact.

d. Noise. As noted in the noise analysis in Section IV.E, the project components are primarily recreational facilities and water quality improvements that would not produce substantial noise during their operation and would not contribute substantially to the cumulative noise environment, which would generally include the project site and surrounding properties. Further, the noise impact analysis in Section IV.E notes that the primary source of noise in the project area is and would be motor vehicle noise. The analysis of cumulative traffic noise impacts for all project components, as shown in Tables IV.E-12 and IV.E-13 and in the discussion under Section IV.E.2.b, was based on the cumulative traffic volumes (i.e., cumulative plus project scenario) generated for the traffic analysis in Section IV.C, which included the project and other past, present, and reasonably foreseeable future planned projects within the City of Oakland. The analysis demonstrates that the cumulative noise impacts from traffic would be less than significant for noise sensitive receptors within the City of Oakland.

There would be temporary construction noise impacts and one of these (i.e., pile driving) that would be significant if noise-reducing measures specified in the City's Standard and Uniformly Applied Development Standard Conditions of Approval are not feasible (as noted in Section IV.E). However, if they occur, these impacts would be limited to sites around Lake

Merritt, namely the E. 18th Street Pier, the 12th Street reconstruction area and Lake Merritt Channel, and a few segments of the Waterfront Trail site-specific and limited to the duration of construction period. Except as noted with respect to pile driving, there is no evidence that noise levels would be cumulatively significant. The noise levels in the project area are within the City's standards for noise and because construction projects in the cumulative scenario within the City of Oakland are required to comply with the City's Noise Ordinance and Conditions of Approval. Thus, The requirements will render cumulative construction noise and operational noise impacts would be less than significant.

e. Biological Resources. Project activities are not anticipated to make a cumulatively considerable contribution to have a cumulative significant impact on biological resources. The project would generally be conducted in an urbanized area and would increase open space and improve water quality, which would benefit wildlife. Other benefits include establishing foraging and refuge areas by restoring native vegetation, restoring wetlands, and removing exotic invasive vegetation, providing greater diversity of habitat, and improving connectivity between Lake Merritt and similar habitat areas within the area. Potential temporary impacts to wildlife, such as nesting raptors and songbirds, during construction, injury to fish during pile driving, or disturbance of wildlife in the Channel by small boats, and impacts to waters of the U.S. and State of some project components were identified, but these would be mitigated would be avoided (impacts to wildlife and fish) or fully compensated for (impacts to waters of the U.S. and State) by the City's Conditions of Approval or by the mitigation measures recommended in this EIR. It is anticipated that other cumulative projects within the City of Oakland would be required to undergo the same protective measures for biological resources and would not result in cumulative adverse impacts to wildlife. With implementation of the mitigation measuresBecause the potential impacts to biological resources would be beneficial, avoided, or fully compensated for, the project's incremental contribution would not be cumulatively considerable and the impact would be less than significant. fully mitigated and no cumulative effects to biological resources would result from this project.

Pages 365 to 366 of the Draft EIR are revised as follows:

g. Hydrology and Water Quality. The majority of Measure DD components would be constructed in an urbanized area of Oakland and would not significantly increase impervious surface coverage or result in flood hazards within the component sites. In fact, several Measure DD Project components would include measures to improve water quality.

Construction and operational-period impacts to stormwater that would result from implementation of the Measure DD Project would be minimized through compliance with the Water Board's regulations and implementation of the City's Standard Conditions of Approval. Nevertheless, as noted on page 260 of the Draft EIR, Lake Merritt is an impaired water body due to organic enrichment, low dissolved oxygen, and trash and the Estuary and San Francisco Bay, to which Oakland's creeks flow, are impaired for pesticides, dioxins, furans, PCBs, selenium, mercury, and exotic species. However, the EIR analysis shows that the project's contribution to the impact would not be cumulatively considerable for two reasons: 1) the project would not generate the chemical contaminants for which the water bodies are impaired and 2) the project would likely reduce organic nutrients due to the net

decrease in impervious surface around Lake Merritt and the Best Management Practices (BMPs) that are included in the project (e.g., grassy swales, porous pavements, and stormwater planters). Thus, the cumulative impact of the project is less than significant. It is anticipated that other cumulative projects within the City of Oakland would be required to undergo the same water quality maintenance measures and would not result in cumulative adverse impacts to water quality. Therefore, implementation of the proposed project would not result in significant cumulative hydrology and water quality impacts.

h. Geology, Soils and Seismicity. The area of cumulative effects for geology, soils and seismicity issues, such as liquefaction, landslides, lateral spreading, expansive soils, landfills, and septic systems, is the project site. The geologic, seismicity, and soils conditions of this site are specific to the individual component sites. Other sites in the vicinity may have similar issues and concerns regarding geological conditions and hazards. For geologic, seismicity, and soils issues, the proposed development does not influence or degrade conditions in the area of cumulative effects, because among other reasons, as long as the impacts of the individual components are reduced to a less than significant level by the California Building Standards Code and the City's Uniformly Applied Development Standard Conditions of Approval with which the project will be required to comply. In addition, many features of the project, such as improvements to trails, creeks, landscaping, and water quality, do not create any hazards. Others, such as renovations of the Studio One Art Center, the Municipal Boathouse and the Pergola, would reduce existing hazards by strengthening existing structures. These actions would not contribute to a cumulative impact and, in the case of renovations would have net beneficial effects. New structures associated with past, present and reasonably foreseeable future projects as well as the current project, such as the East Oakland Sports Complex, would be built to current seismic codes ensuring that potential seismic hazards are less than significant. Thus, the project would not make a cumulatively considerable contribution to a cumulative significant impact related to geology, soils or seismicity.

i. Hazards and Hazardous Materials. The hazards and hazardous materials issues for the proposed project are specific to the individual component sites and would not lead to any cumulative impacts related to hazards. Most components of Measure DD would not store or use substantial quantities of hazardous materials and would, at some sites, help ensure that potential chemical hazards in soil or groundwater are remediated and the risk from these hazards is reduced. ~~Some hazardous materials would be stored for maintenance and disinfection purposes at the proposed East Oakland Sport Complex. As all such storage and use in the City of Oakland must comply with State and local regulations for hazardous materials, this would not have a significant cumulative impact.~~

Hazardous materials transport, storage and use would be cumulatively significant if the project and cumulative projects created a significant hazard to the public or the environment within the area of cumulative effect (i.e., the project construction sites, the East Oakland Sports Complex site, or roadways to these sites). The cumulative effect would create a significant hazard to the public if the hazardous materials in the cumulative scenario exceeded regulated quantities or resulted in the improper use or storage of hazardous materials. The City finds that storage of common hazardous materials in accordance with

State and federal regulations and the City's Best Management Practices by the project in combination with past, present, and reasonably foreseeable future projects would not create a significant cumulative hazard to the public or the environment. Thus, the impact would be less than significant.

For emergency evacuation routes, the area of impact would be the areas served by 12th Street, the evacuation route that would be temporarily closed during construction. During the period of project construction, other projects in the cumulative scenario could have street closures that would affect the same areas, which could constitute a cumulative impact. However, the proposed mitigation requires the review and approval of the temporary detour plans by the City's Office of Emergency Services, which would be aware of other closures in the City, and would ensure that the project's contribution is less than cumulatively considerable because it requires that alternative routes are identified and available during project construction. Because the project's contribution to the cumulative impact is not cumulatively considerable the impact is less than significant.

j. Public Services and Recreation. ~~Development of the proposed Measure DD Implementation Project, in conjunction with planned future development as anticipated by the City's General Plan, would incrementally increase demand for police and fire services as noted in Section IV.K, which finds that the project sites are currently adequately served and the impacts on demand would be less than significant. For recreation, the analysis finds that service is currently inadequate, as the City does not meet its goals of 10 acres of total and 4 acres of urban parkland per 1,000 residents. However, the project would improve recreational facilities and increase the current ratios by constructing new facilities in East Oakland and by increasing the acres of parkland around the south end of Lake Merritt. Thus the project would have a beneficial effect on recreation. Therefore, the cumulative analysis focuses on police and fire services, public facilities and services. However, none of the public facilities or services analyzed would experience significant impacts or create demand beyond that anticipated in the General Plan.~~

There is no evidence that the demand for police and fire services would be cumulatively significant because adequate fire and police service is provided to the project area and development under cumulative conditions would be addressed by the service providers prior to completion of development to ensure that service demand can be reasonably be accommodated at that time. Build-out of the cumulative projects would not result in cumulative impacts related to physical capacities, service levels or funding availability, particularly because the increased demand for services has, in many cases, been anticipated in planning and policy documents and would be shared across service areas within the City. In addition, given the acceptable levels of service as described in Section IV.K, the demand by the project when combined with past, present, and reasonably foreseeable future projects would not be cumulatively considerable because the facilities that are part of the project, such as new trails, new landscaping, creek restoration activities, renovations of buildings and other historic structures, creation of bike lanes, and water quality improvements do not create demand for services, have a demand for services that is the same as the existing project sites, or have very low demand for services. As a result, no significant cumulative impacts would result.

k. Utilities and Infrastructure. The proposed Measure DD Implementation Project is located in areas already served by utilities and the incremental increase in demand for services would not require the expansion or construction of new facilities. The cumulative increase in demand on the utility providers and infrastructure in the City resulting from implementation of Measure DD, in combination with past, present and other reasonably foreseeable projects in Oakland, is anticipated within the General Plan as well as within plans prepared by each of the utility providers to address projected growth.

There is no evidence that the demand for utilities and infrastructure would be cumulatively significant because adequate service is provided to the project area and development under cumulative conditions would be addressed by the utility providers prior to completion of development to ensure that service demand can be reasonably be accommodated at that time. In addition, given the acceptable levels of service as described in Section IV.L, the demand by the project when combined with past, present and reasonably foreseeable future projects would not be cumulatively considerable because the facilities that are part of the project, such as new trails, new landscaping, creek restoration activities, renovations of buildings and other historic structures, creation of bike lanes, and water quality improvements do not create demand for services, have a demand for services that is the same as the existing project sites, or have very low demand for services. Therefore, no significant cumulative impacts would result.

B. REVISIONS TO THE DRAFT EIR INITIATED BY THE CITY

Clarification regarding Compliance of the Project with the City's Uniformly Applied Development Standard Conditions of Approval

Page 64 is revised as follows:

The City's Uniformly Applied Development Standard Conditions of Approval are incorporated into projects as Conditions of Approval regardless of a project's environmental determination. As applicable, the Conditions of Approval are adopted as requirements of an individual project when it is approved by the City and are designed to, and will, substantially mitigate environmental effects. For the Measure DD Project the City's Conditions of Approval have been incorporated as part of the project. As such, the project will comply with all applicable Uniformly Applied Development Standard Conditions of Approval.

In reviewing project applications, the City determines which of the standard conditions are applied, based upon the zoning district, community plan, and the type(s) of permit(s)/approval(s) required for the project. Depending on the specific characteristics of the project type and/or project site, the City will determine which Development Standards apply to each project; for example, Development Standards related to creek protection permits will only be applied projects on creekside properties.

The Development Standards incorporate development policies and standards from various adopted plans, policies, and ordinances (such as the Oakland Planning and Municipal Codes, Oakland Creek Protection, Stormwater Water Management and Discharge Control

Ordinance, Oakland Tree Protection Ordinance, Oakland Grading Regulations, National Pollutant Discharge Elimination System (NPDES) permit requirements, Housing Element-related mitigation measures, California Building Code, and Uniform Fire Code, among others), which have been found to substantially mitigate environmental effects. Where there are peculiar circumstances associated with a project or project site that will result in significant environmental impacts despite implementation of the Development Standards, the City will determine whether there are feasible mitigation measures to reduce the impact to less than significant levels. The project will comply with all applicable Uniformly Applied Development Standard Conditions of Approval and mitigation measures discussed in the EIR.

Clarification regarding Criterion of Significance for Cumulative Traffic Impacts

Questions have been raised regarding the use on pages 122-123 in the Draft EIR of the significance criterion 1)h., which states, “A project’s contribution to cumulative impacts is considered “considerable” when the project contributes five (5) percent or more of the cumulative traffic increase as measured by the difference between existing and future cumulative (with project) conditions.”

For example, page 134 of the Draft EIR states that “If the Measure DD Implementation Project contributes less than 5 percent of the cumulative traffic increase at an intersection as measured by the difference between existing and future cumulative (with project conditions) the impact is considered less than significant.” The Draft EIR text then continues by identifying four intersections where the impacts “were found to be less than significant for this reason.” For purposes of clarification, however, the Draft EIR’s use of the referenced 5% contribution criterion merely provides information and context for this project and is not the sole basis for determining that cumulative impacts would (or would not) occur at these (or any other) locations. These intersections would not have significant cumulative effects under any other of the significance criteria identified in the Draft EIR. No impact or intersection was omitted from consideration, nor the potential significance of any impact understated by application of this criterion.

A summary of traffic operations is provided in Table IV-1 for the four intersections found to have less than significant impacts because the project would contribute less than 5 percent of the cumulative impact. Detailed capacity analysis worksheets are provided in Appendix A.

At the first three intersections listed in the table, the project in combination with past, other current and probable near term projects scheduled to be complete by Year 2025 would cause significant impacts. However, the project would not make a considerable contribution to those cumulative impacts because either the project would not contribute to the impact or a mitigation measure would reduce the project’s contribution to less than significant.

At the MacArthur Boulevard/Lakeshore Avenue intersection, Mitigation Measure TRANS-3 would reduce project impacts to a less-than-significant level as described on page 127 of the Draft EIR. Similarly, this mitigation measure would reduce delays and improve the LOS to an extent that would eliminate the project’s contribution to the cumulative impact.

Table IV-1: Intersection Levels of Service – Cumulative (2025) Conditions

Intersection	Traffic Control		Peak Hour	Existing		Cumulative No Project		Cumulative Plus Project		Cumulative Plus Project With Mitigation	
	(Existing)	(Future)		LOS ^a	Delay ^b	LOS ^a	Delay ^b	LOS ^a	Delay ^b	LOS ^a	Delay ^b
6. MacArthur Blvd/Lakeshore Ave	Signal	Signal	AM	D	36.0	D	49.2	E	68.7	D	35.3
			PM	F	89.3	F	168.4	F	225.7	F	166.9
29. Embarcadero /5 th Ave	Minor Stop	Signal	AM	B	12.5	C	28.5	C	29.1	C	29.1
			PM	E	39.0	F	200.5	F	200.5	F	200.5
30. 27 th St/Bay Pl/Harrison St	Signal	Signal	AM	F	146.3	F	88.2	E	67.1	E	67.1
			PM	C	31.8	F	93.8	E	70.7	E	70.7
31. Grand Ave/Harrison St ^c	Signal	Signal	AM	D	39.4	F	82.5	D	54.4	D	54.4
			PM	C	34.8	E	64.3	E	64.5	E	64.5

Notes:

Shaded values indicate a potential significant impact.

^a LOS = Level of Service

^b Average control delay in seconds per vehicle

^c Defined as a downtown intersection

Source: Dowling and Associates, 2008.

At the Embarcadero/5th Avenue intersection, a cumulative impact would occur during the PM peak hour, but the project would not contribute to the impact. At the 27th Street/Bay Place/Harrison Street intersection and at the Grand Avenue/Harrison Street intersection, the project would reduce significant cumulative impacts to a less-than-significant level because the project would divert traffic from those intersections.

Page 134 is revised as follows:

~~Some intersections degrade under cumulative conditions due primarily to other projects that would be constructed in the future. If the Measure DD Implementation Project contributes less than 5 percent of the cumulative traffic increase at an intersection as measured by the difference between existing and future cumulative (with project conditions) the impact is considered less than significant. The impacts at the following four intersections were found to be less than significant for this reason:~~

- MacArthur Boulevard/Lakeshore Avenue
- Embarcadero/5th Avenue
- 27th Street/Bay Place/Harrison Street
- Grand Avenue/Harrison Street

The Measure DD Implementation Project would add traffic to some of the movements at the MacArthur Boulevard/ Lakeshore Avenue intersection; however, implementation of Mitigation Measure TRANS-3 would result in LOS D (35.3 seconds delay) traffic operations during the AM peak hour and at LOS F (166.9 seconds delay) during the PM peak hour, which would be less delay than for cumulative conditions without the Project. Therefore, the Project would not cause any of the thresholds listed in section C.1.b.(1)1) to be exceeded at the MacArthur Boulevard/ Lakeshore Avenue intersection. The Project would not add traffic to the Embarcadero/5th Avenue intersection and would decrease traffic volumes at the 27th Street/Bay Place/Harrison Street and Grand Avenue/Harrison Street intersections.

Clarifications regarding Mitigation Measures for Biological Resources

Page 211 is revised as follows:

b. Impacts Applicable to All Project Groups. Several of the impacts to biological resources that may result from the implementation of Measure DD would essentially be the same for each or most of the four project groups. These impacts are defined below for each criterion of significance listed above. Where applicable, the City's specific Standard Conditions of Approval that will reduce potential impacts to a less-than-significant level are identified in the text after the discussion of the impact. As with all impacts discussed in this EIR, when specific Standard Conditions of Approval do not reduce potential impacts to a less-than-significant level, the EIR identifies feasible mitigation measures, when available, to reduce the impact to less-than-significant. In some instances, the mitigation measures call for development of site-specific plans, for which the City lacks sufficient project detail to develop at this time. The plans identified in these mitigation measures will be implemented prior to any activities that could result in the identified potentially significant impacts.

Page 214 is revised as follows:

Mitigation Measure BIO-1b (Group 2): Prior to ground disturbance, a qualified biologist experienced with SMHM exclusion procedures shall prepare a site-specific SMHM avoidance plan. The plan shall be implemented during construction at each specific site. At a minimum, the plan shall include (1) the installation of silt fencing around the entire portion of the work area (that is within 100 feet from the edge of the marsh) to exclude SMHM from entering, (2) the clearing of all ground vegetation within the fenced area, and (3) the relocation to Damon Marsh of any SMHM found during the vegetation removal effort. Construction work shall start as soon as possible (and no longer than one week) after vegetation has been cleared. All exclusion measures and initial ground disturbance activities shall be monitored by a biologist, who has the necessary state and federal permits to handle and relocate SMHM. (LTS)

Page 216 is revised as follows:

Mitigation Measure BIO-3b (Groups 1, 2, and 4): Impacts to jurisdictional wetlands shall be mitigated at a minimum replacement ratio of 1:1 (i.e., one acre created [and preserved] for every acre impacted). If feasible, replacement habitat shall be created/preserved in the same general area as the original impact. Off-site mitigation may be approved if the amount of required replacement habitat exceeds that which is available near a given impact site. A wetland mitigation and monitoring plan (MMP) shall be developed and implemented for each mitigation site, detailing the mitigation design, wetland planting design, adaptive management, maintenance and monitoring requirements, reporting requirements, and success criteria for the created wetland(s). (LTS)

