

Case File Numbers: ER 04-0009, GP 06-009, RZ 04-384, PUD 06-010,
TTM 7621, CP 06-051, T 06-0001, DA 06-011

January 25, 2006

#1.	Location:	Oak Street to Ninth Avenue Approximately 64.2 acres bounded by Embarcadero Road, the Oakland Estuary, Fallon Street, and Tenth Avenue Assessor Parcel Numbers: various
	Proposal:	Public Hearing on a proposal to develop a new mixed use development on 64.2 acres which includes up to 3,100 residential units, 200,000 square feet of ground-floor commercial space, a minimum of 3,950 parking spaces, 29.9 acres of parks and public open space, two renovated marinas (total 170 boat slips), and a wetlands restoration area. The existing buildings on the site will be demolished with the exception of a portion of the Ninth Avenue Terminal shed building and the Jack London Aquatic Center. The project does not include approximately six acres of privately-held property along and east of 5 th Avenue that contain a mix of commercial and industrial uses, as well as a small community of work/live facilities.
	Applicant:	Oakland Harbor Partners (Signature Properties & Reynolds and Brown)
	Contact Person/Phone Number:	Michael Ghielmetti, Signature Properties (925) 463-1122 Dana Parry, Reynolds and Brown (925) 674-8400
	Owner:	Port of Oakland
	Case File Numbers:	ER 04-0009, GP 06-009, RZ 04-384, PUD 06-010, TTM 7621, CP 06-051, T 06-0001, DA 06-011
	Planning Permits Required:	General Plan Amendment (Estuary Policy Plan text and land use map); Central City East Redevelopment Plan Amendment; Central District Urban Renewal Plan Amendment; New Waterfront Planned Development Zoning District and Zoning Map Designation; Vesting Tentative Subdivision Map; Preliminary Development Plan; Design Review; Creek Protection Permit; and Tree Removal Permit. OHP is also requesting a Development Agreement.
	General Plan:	Estuary Policy Plan Designations: Planned Waterfront Development-1 and Park, Open Space, and Promenades
	Zoning:	M-40, Heavy Industrial and S-2/S-4 Civic Center/Design Review Combining Zone
	Environmental Determination:	The Final Environmental Impact Report is near completion and is expected to be available by January 30, 2006 at the Community and Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California 94612, Monday through Friday, 8:30 a.m. to 5:00 p.m. Certification of the FEIR will be considered at a future meeting. Major findings and information from the Draft Environmental Impact Report have been reviewed in relation to the key issues in the staff report.
	Historic Status:	Ninth Avenue Terminal – Oakland Cultural Heritage Survey (OCHS) Rating A; City of Oakland Landmark Status Pending.
	Service Delivery District:	Downtown Metro and San Antonio 3
	City Council District:	2 – Pat Kernighan, 3 - Nancy Nadel
	Action to be Taken:	Open the public hearing to discuss the major policy, project, and environmental issues pertaining to the proposed development. In addition, provide direction to staff regarding how issues should be addressed and what other information and analyses may be warranted as part of the Commission's review. No formal action on the project is contemplated or requested at this meeting.
	For Further Information:	Contact Margaret Stanzione , Project Planner, Major Projects (510) 238-4932 or mstanzione@oaklandnet.com

SUMMARY

The purpose of this public hearing is to review the merits of the proposed project, proposed policy changes and other key issues for the Oak to Ninth Mixed Use development. The Planning Commission is requested to consider these issues and provide direction to staff about how to address them. No formal action is contemplated or requested at this meeting.

Upon release of the Final Environmental Impact Report (FEIR), public hearings will be scheduled with the Parks and Recreation Advisory Commission (PRAC) and the Landmarks Preservation and Advisory Board (LPAB). Recommendations from the PRAC and the LPAB will be forwarded to the Planning Commission at a meeting scheduled in late February or early March so that the Planning Commission can review and consider these comments and recommendations prior to taking action on the proposed project.

Oakland Harbor Partners (OHP) submitted a preliminary application for environmental review for the Oak to Ninth development project, consisting of a mix of residential, commercial, public open space, parks, and civic uses, in May 2004. The Development Director determined that an Environmental Impact Report (EIR) would be required for the project. A Draft Environmental Impact Report (DEIR) was circulated for review from September 1, 2005 to October 24, 2005. Responses to comments are currently being prepared and the Final EIR is expected to be published and available on January 30, 2006.

OHP submitted a series of development applications for the proposed project on December 20, 2005. The applications consist of a request for a General Plan Amendment to the Estuary Policy Plan (EPP) text and land use map; an amendment to the land use maps for the Central City East Redevelopment Plan and the Central District Urban Renewal Plan; a new Planned Waterfront Zoning District and Zoning Map Designation (PWD-1); Vesting Tentative Subdivision Map; Preliminary Development Plan, Design Review; Creek Protection Permit; and Tree Removal Permit. OHP is also requesting a Development Agreement with the City.

This report presents the results of the environmental review process to date, describes the proposed project in detail, and discusses major policy and project issues pertaining to the proposed development. The report discusses the proposed General Plan and Redevelopment Plan Amendments; introduces the Planned Waterfront Zoning District (PWD-1) and Oak to Ninth Design Guidelines, discusses the vesting tentative subdivision map; the preliminary development plan; and summarizes the major "deal points" in the proposed Development Agreement. Preliminary recommendations for addressing key issues are also identified.

Staff is recommending that the Planning Commission (1) take public testimony; (2) review the information and the major issues identified by staff; (3) identify any other issues or any other information or analyses that may be pertinent prior to taking final action on the project; and (4) provide comments and direction regarding the major issues related to the proposed project.

PROJECT SITE

The 64.2 acre project site adjoins the Oakland Estuary to the south, the Embarcadero and I-880 to the north, 10th Avenue to the east, and Fallon Street to the west. The project area does not include approximately six acres of privately-held property along and east of 5th Avenue that contain a mix of commercial and industrial uses, as well as a small community of work/live facilities. The eastern part of the project site contains commercial and industrial uses (the Ninth Avenue Terminal, a retail furniture store, a metal recycling facility, and outdoor storage of shipping containers). The central portion of the project site contains commercial and industrial uses, a concrete batch operation, and a mix of manufacturing and outdoor storage uses. The western part of the site contains public open space and industry (Estuary Park and Jack London Aquatic Center, and an East Bay Municipal Utility District dechlorination facility).

Access to the site is directly from The Embarcadero. In addition, 5th Avenue extends in a north-south direction from the waterfront to East 18th Street and also provides direct access to the site. The nearest southbound I-880 on-ramp is at 10th Avenue and the Embarcadero, and the nearest northbound I-880 on-ramp is at 6th and Jackson Streets. Southbound and northbound I-880 off-ramps nearest to the project site are located at Oak Street, on 5th and 6th Streets, respectively.

PROJECT DESCRIPTION

A detailed description of the project was presented in the Planning Commission staff report dated September 28, 2005 and is contained in Chapter 3, Project Description, pages III-1 to III-29 in the Draft Environmental Impact Report (DEIR). Following is a summary of the project description.

OHP is proposing to redevelop 64.2 acres of waterfront property by converting an underutilized, maritime and industrial area into a mixed-use neighborhood with residential, retail/commercial, open space, and marina uses. The majority of existing uses and structures on the project site would be demolished. Approximately 29.9 acres (or 46%) of the site would be developed with parks and open spaces, including the existing Estuary Park and Jack London Aquatic Center.

The project would consist of approximately 3,100 residential dwelling units (a mix of flats, townhomes, and lofts) on 13 separate development parcels. Approximately 200,000 square feet of ground-floor retail/commercial space would be distributed throughout each of the 13 development parcels and would be designed to provide a variety of active retail, restaurant, service, and small office uses to support the new residential neighborhood and serve visitors to the site.

A maximum of 165,000 square feet of the existing 180,000 square-foot Ninth Avenue Terminal building and a portion of its existing wharf would be demolished to create the largest (9.7 acres) of a series of interconnected parks and waterfront space. The project would retain a minimum of 15,000 square feet of the Terminal's Bulkhead Building envisioned to contain a variety of uses consistent with the Tidelands Trust. A continuous public pedestrian trail and Class I bicycle facility along the entirety of the project's waterfront would also be created as a segment of the Bay Trail.

Building heights would range from 86 feet in height (approximately six to eight stories) with high rise tower elements of up to 240 feet (approximately 24 stories) on select parcels. A variant to the project allows consideration of increased maximum building heights from 86 feet to 120 feet on development parcels B, C, D and H (see DEIR, Figures III-5 and III-6).

The project would rebuild and expand the existing Fifth Avenue Marina and Clinton Basin Marina, to 52 and 118 slips respectively, and would entail dredging activities and straightening the existing undulating and unprotected condition of Clinton Basin’s shoreline. The project would improve the existing shoreline along the project site with varying treatments, including marsh habitats, the riprap, and bulkhead walls. Major site remediation to address existing soil contamination will also occur as part of the project.

The project would provide a minimum of 3,950 onsite parking spaces: about 3,500 in enclosed parking structures, about 375 spaces along public streets within the project area, and about 75 spaces in surface lots in proximity to the proposed open space areas, primarily for use by park and marina users.

City land use approvals requested by OHP, and the City approving authority, include the following:

Entitlements	Review and Approval Required			
	Administrative Review and Approval	Planning Commission Approval	Planning Commission Recommendation	City Council* Redevelopment Agency Approval
General Plan Amendment			X	X*
Redevelopment Plan Amendments			X	X
Rezoning and Zoning Code Amendments			X	X*
Preliminary Development Plan (PDP) Final Development Plan (FDP)		X		
Vesting Tentative Subdivision Map		X		
Final Subdivision Map			X	X*
Development Agreement			X	X
Tree Removal Permit	X			
Creek Protection Permit	X			
Encroachment, Demolition Permits, and other Building Permits	X			

* City Council approval only

General Plan and Zoning Amendments

The project application includes a request to amend the *Estuary Policy Plan* (EPP) to allow residential uses in this location and to rezone the property from M-40 Heavy Industrial uses to a new zone consistent with the EPP Planned Waterfront Development-1 designation. The General Plan amendment and rezoning are discussed further in this report under the section “Consistency with Land Use Plans and Regulations.”

Vesting Tentative Tract Map No. 7621

The five existing parcels constituting the 64.2 acre site will be aggregated and re-subdivided into 13 developable parcels. The subdivision map covers approximately 34 acres of developable land with 9.18 acres set aside for public roadways and the remaining 24.65 acres for development. The remaining land designated for future parks and open space (29.9 acres) will remain under the ownership of the City of Oakland or the Port of Oakland and are presently not included in the vesting tentative subdivision map.

A vesting tentative subdivision map is a type of subdivision map permitted by the State Subdivision Map Act, that expressly confers a vested right to implement a development under the rules and requirements in effect at the time of map approval.

Below is a description of the subdivision and the proposed development expected to occur on each parcel.

Parcel A – Parcel A is directly adjacent to the Embarcadero and is surrounded by the Embarcadero, 9th Avenue, 8th Avenue, and Brooklyn Way. The project proposes to construct 365 units in one or more structures ranging in height from 86 to 240 feet for the tower. One parking space for each unit will be provided in a parking structure with spaces for public parking on the surrounding streets. Development of this parcel is expected to occur in Phase I.

Parcel B – Parcel B is surrounded by 8th Avenue, 9th Avenue, Brooklyn Way and the mews separating Parcels B and C. The 40-foot wide “mews” forms the extension of 7th Avenue. The parcel fronts 9th Avenue separating the residential development from Shoreline Park. The remaining portion of the 9th Avenue Terminal is across from this parcel. Approximately 160 residential units are proposed in this location in structures ranging in height from 86 to 120¹ feet. Public parking spaces are proposed along the streets surrounding the parcel. Development of this parcel is expected to occur in Phase I.

Parcel C – This parcel is situated between 8th Avenue, 9th Avenue, Main Street, and the mews between Parcels B and C. The parcel fronts 9th Avenue which separates the residential development from Shoreline Park. Approximately 160 residential units are proposed to be constructed in buildings ranging from 86 to 120 feet in height (with a transfer of density). One parking space for each unit will be provided in a parking structure, with public parking spaces provided along the public streets. Development of this parcel is expected to occur in Phase I.

Parcel D – This parcel is situated between 8th Avenue, 9th Avenue, Main Street, and the mews between Parcels D and E. The 40-foot wide “mews” forms the extension of Harbor Lane East.

¹ An increased building height variant to the project allows consideration of increased maximum building heights on Parcels, B, C, D, and H, as shown in Figure III-6 in the DEIR. This would allow a building to increase in height only with the transfer of residential units. The variant would increase only the building podium heights by 34 feet (from 86 feet to 120 feet maximum). The maximum height of the overall structure including the highrise towers would remain 240 feet. All other project characteristics would remain unchanged, including the total number of dwelling units on the project site. The potential view and shadow impacts of the project variant are analyzed in the DEIR.

The parcel fronts 9th Avenue which separates the residential development from Shoreline Park. Approximately 160 residential units are proposed to be constructed in buildings ranging from 86 to 120 feet in height (with a transfer of density). One parking space for each unit will be provided in a parking structure, with public parking spaces provided along the public streets. Development of this parcel is expected to occur in Phase II.

Parcel E – This triangular-shaped parcel is located directly behind Shoreline Park and is surrounded by 8th and 9th Avenues, which form a loop road through the site. There is also the mews between Parcels E and D. Approximately 100 residential units are proposed in structures up to 86 feet in height. Public parking spaces are provided along 8th and 9th Avenues. Development of this parcel is expected to occur in Phase II.

Parcel F – This parcel is adjacent to the Embarcadero and is surrounded by 8th Avenue and 7th Avenue. Approximately 160-180 affordable senior housing units are proposed in this location in structures likely to be lower than 86 feet. A reduced amount of parking is proposed because it is a senior housing project. Public parking will be provided along surrounding public streets. Development of this parcel is expected to occur in Phase I.

Parcel G – This parcel fronts the Embarcadero and is surrounded by a segment of Main Street, 8th Avenue and 7th Avenue. The proposed Gateway Park is across from the site. Approximately 280 residential units are proposed to be constructed in buildings up to 86 feet in height. The height map also shows a corner of the parcel with a maximum height of 100 feet. The increased height will allow for a decorative feature of the building in this important gateway location. Parking for residents is proposed in structures and public parking spaces will be provided in the parking structure as well as along the public roadways. Development of this parcel is expected to occur in Phase I.

Parcel H – Parcel H, located to the east of Clinton Basin, is proposed for ground-floor commercial development with 350 residential units above in one or two structures ranging in heights from 86 to 240. One of the two towers flanking the entrance to Clinton Basin will be constructed in this location. Three new roadways surround this parcel: Main Street, Harbor Lane East, and 8th Avenue. The on-site parking structures will include one space for each unit as well as additional spaces for patrons of the commercial businesses and visitors to the parks and open spaces. Development of this parcel is expected to occur in Phase II.

Parcel J – Parcel J, located to the east of Clinton Basin, is proposed for ground-floor commercial development with 295 residential units above in one or two structures ranging in heights from 65 to 240 feet. One of the towers is proposed in this location. Surrounding streets include Harbor Lane East and 8th Avenue. This parcel is adjacent to Shoreline Park. Development of this parcel is expected to occur in Phase II.

Parcel K – Adjacent to Clinton Basin to the west, this parcel is proposed to be developed with ground-floor commercial uses with up to 300 residential units above. The maximum height of structures on this parcel ranges from 86 to 240 for a tower building. A portion of the new “5th Avenue” roadway is included as well as a new street, “Harbor Lane West” between Parcel K and Parcel L. In addition to one space per unit structured parking, there will be public parking

spaces available in the parking structure and along the public streets. Gateway Park, situated at the prominent entry to the site, is immediately to the east of Parcel K and north of Parcel H. Development of this parcel is expected to occur in Phase III.

Parcel L – This parcel is also adjacent to Clinton Basin, South Park and the existing wetlands restoration area. Approximately 160 residential units will be constructed above ground floor retail in buildings up to 86 feet in height. This parcel also contains a portion of the new “5th Avenue” street that runs along the boundary of the private property not included in the project site. Public parking is available in the small parking lot adjacent to the structures and along the public street. Development of this parcel is expected to occur in Phase III.

Parcel M – Situated between Channel Park and the Fifth Avenue community (not in the project), this parcel will be developed with approximately 310 residential units in one or two structures ranging in height from 86 to 240 feet for the tower. A new roadway, “4th Avenue,” will provide access to the development. One parking space will be provided for each of the units in a parking garage and public parking will be available on surface streets. Development of this parcel is expected to occur in Phase IV.

Parcel N – This parcel, to the west of the Lake Merritt Channel and behind Estuary Park, will be developed with 300 residential units in structures up to 86 feet in height. The residential development will replace the Cash and Carry wholesale grocery store which currently exists on the site. The existing Estuary Park will also be expanded into a portion of this parcel. One parking space will be provided for each of the units, as well as public parking for visitors to nearby Estuary Park and the Jack London Aquatic Center. Development of this parcel is expected to occur in Phase V.

The site layout for this parcel has been altered from the original proposal based on public comments and recommendations from the urban design consultants. It was suggested that the building be oriented differently on the site to maximize views of the waterfront, that the public parking be redesigned so that the building is not entirely surrounded by parking and the public parking for Estuary Park is clearly identified. The revisions to this parcel resulted in a slight expansion of Estuary Park as illustrated on the Preliminary Development Plan (Brooklyn Basin ~ Oak to 9th Development Plan) dated December 2005.

Preliminary Development Plan (PDP)

OHP is requesting approval of a Preliminary Development Plan (PDP) as the “master plan” for the entire site (see PDP dated December 2005). The PDP is a visual representation of the project description. Each subsequent individual project will require approval of a Final Development Plan (FDP) which will need to be substantially in compliance with the approved PDP. Once approved as part of the Development Agreement, the PDP will serve as the master framework for the project throughout the proposed Development Agreement 20-year timeframe. A similar process was approved for the Jack London District project in 2004.

The PDP contains six major sections. The first is the **Overview of the Master Development Plan** and shows an axonometric view of the entire site showing the proposed heights of

buildings, illustrations depicting the anticipated character of the development, context and linkages (trails, bikeways, transit facilities, rail routes) throughout the site, the illustrative development plan, and the development program and parcelization plan.

The second section of the PDP focuses on the **Shoreline Improvements**. There are detailed drawings for improvements along the waterfront showing where the shoreline will be cut and filled, where rip-rap, retaining walls, and vegetated shoreline embankments will be installed, and the 9th Avenue pier retrofit. The plans also show the proposed cross-section of the Bay Trail in various locations throughout the site. While the City can render a decision about these improvements, they are within the jurisdiction of the Bay Conservation Development Commission (BCDC) and, potentially, the Army Corps of Engineers (ACE). In order to implement these measures, formal permits are first required from these agencies.

In addition, the PDP describes the improvements that will be made surrounding the Clinton Basin (Clinton Basin Quay). A 50-foot promenade is proposed surrounding Clinton Basin which is part of the public open space. A segment of the Bay Trail will be included within this area, as well as other public spaces for more passive activities. The plans show the promenade on two levels connected by stairs placed at intervals along the promenade.

The third section of the PDP includes the plans for the **Parks and Open Spaces**. Sheet No. 3.1 shows the layout of the parks and open spaces, including the wetlands restoration area. Sheet No. 3.2 is the pedestrian and bicycle circulation plan. The plan shows a gap in the Bay Trail and bicycle alignments along the shoreline. Because this property is privately owned, and is not part of the proposed project, the project sponsor is unable to continue the trail along the shoreline. The trail loops inland around the perimeter of the property and adjoins the shoreline at South Park. In addition to the Bay Trail, the plan shows other bicycle trails and pedestrian ways throughout the site.

The remaining sheets in this section are enlargements of the illustrative plan and show development around Clinton Basin, proposed landscaping, park activities, site furnishings, and lighting designs.

The following table is a summary of the proposed parks and park activity. The project proposes approximately 29 acres of parks, of which 21.21 acres are *new* parks. (This figure has increased due to the smaller footprint of the building proposed on Parcel N and the expansion of Estuary Park.) OHP is proposing to operate and maintain the park and open space areas for a minimum of 20 years, concurrent with the Development Agreement.

Park	No. Acres	Proposed Activities	Notes
Estuary Park	8.27		Already Exists, includes Jack London Aquatic Center
Channel Park	5.97	Bocce courts	
South Park	2.30	Children’s play area	
Gateway Park	3.20		
Shoreline Park	9.74		
Wetlands Restoration			Already Exists (0.92 acres)
TOTAL	29.48		

The fourth section of the PDP shows the **Streets and Pedestrian** ways. The Embarcadero will be widened in specific locations and improved along the project frontage. Improvements include undergrounding utilities from 5th Avenue to 10th Avenue on both sides of the Embarcadero and along the south side of the project’s Embarcadero frontage from 5th Avenue to the Cash and Carry site. A median and landscaping will also be installed along the Embarcadero.

Seven new streets will be constructed which intersect with the Embarcadero, with 5th Avenue being the only street that continues north under the freeway. The major street within the project is “Main Street” which includes a 90-foot right-of-way. Most other streets have a 60-foot wide right-of-way cross section. There are other smaller streets within the site which improve access and circulation to and through the project. All streets are proposed to be dedicated to the City as public streets and provide public access to the parks, open space and shoreline. The table below summarizes the street sections proposed in this plan.

This section of the PDP also includes the street sections, intersections, streetscape standards for various right-of-way widths, a landscape concept plan, and street lighting standards.

Street Cross Sections (feet)

Street	ROW	Sidewalk	Land-Scaping	Parking	Travel Lane	Travel Lane	Parking	Land-scaping	Sidewalk
9 th Ave West	60	6	6	8	10	10	8	6	6
9 th Ave East	54	6	6	8	10	10	8	6	13 ^{1/}
8 th Ave	60	6	6	8	10	10	8	6	6
7 th Ave	60	6	6	8	10	10	8	6	6
Brooklyn Way	60	6	6	8	10	10	8	6	6
Main Street/6 th Ave N	90	16		15	14	14	15		16
Main Street/6 th Ave S	90	9	9 ^{2/}	8	10	10	8	9 ^{2/}	9
5 th Ave North	50		2	8	10	10	8	6	6
5 th Ave South	60			8	12	12	18	2	8
4 th Ave	60	6	6	8	10	10	8	6	6
Estuary Park Drive East	60	6	6		12	12	18		6
Estuary Park Drive West	70		8	18	12	12	18	2	
Harbor Lane East/West	40	5	5		10	10		5	5

1/ Sidewalk/Bikeway along Shoreline Park – width varies

2/ Additional 9-feet of landscaping between sidewalk and developable area

The fifth section of the PDP shows the **Ground Level Building Plan and Building Sections**. The plans illustrate where the commercial development is proposed to be located and what is proposed for the ground floor of the residential buildings. All new buildings will be constructed above podium parking, so the plans show the first level of the parking structure.

Upper level building plans show units above the parking with courtyards in the center of the buildings providing private open space for the residents. The parking and building sections are further delineated within the PDP and show the proposed structures in relation to streets, other buildings, and the shoreline.

The final section of the PDP includes the **Civil Engineering** plans such as the existing topography and utilities and the preliminary grading and utility concept plans.

Project Phasing

OHP has proposed that the project be constructed in five phases over a period of approximately 17 years: 2008 to 2025. Refer to Phasing Plan, **Attachment A**.

Phase I, Parcels A, B, C, F, G (2008 to 2013). This phase will involve soil remediation; demolition of approximately 88,000 square foot of manufacturing, storage, retail, and service uses; demolition of 165,000 square feet of the Ninth Avenue Terminal; pier demolition and pile stabilization; construction of approximately 1,125 units and 69,000 square feet of retail/commercial uses; and the installation of the portion of Shoreline Park that is south of parcels A, B, C and D. The segment of the Bay Trail will be installed within this portion of Shoreline Park. (OHP has also expressed willingness to construct the gap in the Bay Trail missing to the south of the project.) Shoreline improvements will be installed concurrent with adjacent development; that is, the portion of Shoreline Park to the east of the site as shown on Attachment A. Street improvements include improvements to the Embarcadero from 10th to 5th Streets and construction of surrounding streets (Main Street, 7th Avenue, a portion of 8th Avenue and a portion of 9th Avenue).

Phase II, Parcels D, E, H, J (completed by 2016). This phase will involve soil remediation; construction of approximately 905 units and 79,000 square feet of retail/commercial uses, improvements to Clinton Basin marina; development of the Clinton Basin Quay; and construction of project streets (Harbor Lane East and the remaining portions of 8th Avenue and 9th Avenue). The remaining portion of Shoreline Park would be developed along with Gateway Park and the Bay Trail connection to east of Clinton Basin. Shoreline improvements adjacent to the new construction will take place within this phase as shown on Attachment A.

Phase III, Parcels K, L (completed by 2019). This phase will involve soil remediation; demolition of approximately 46,000 square feet of marine, storage, service, manufacturing, and industrial uses; and construction of approximately 460 units and 25,000 square feet of retail and project street rights-of-way (5th Avenue). South Park would be developed by 2015 as would the Bay Trail segment west of Clinton Basin. Shoreline improvements will be made concurrent with adjacent development. It is anticipated that improvements to the Fifth Avenue Marina will be constructed within this Phase.

Phase IV, Parcel M (completed by 2022). This phase will involve soil remediation and construction of approximately 310 units and 15,000 square feet of retail uses. The Embarcadero from 5th Avenue to the Embarcadero Bridge will be improved and project streets, including 4th Avenue, will be constructed within this phase. Channel Park would be developed by 2017, as would the Bay Trail segment east of Clinton Basin. Shoreline improvements and the adjacent Bay Trail segment will be made along the east side of Lake Merritt Channel and Channel Park.

Phase V, Parcel N (completed by 2025). This phase includes soil remediation; demolition of 78,400 square feet of a wholesale grocery store; and construction of approximately 300 units. The Embarcadero will be improved from the Embarcadero Bridge to the project boundary and the remaining projects streets will be constructed. Improvements (re-vegetation) of Estuary Park and the adjacent Bay trail segment would occur by 2018. Shoreline improvements will be made along the west side of Lake Merritt Channel and Estuary Park to the project boundary.

Development Agreement

The project sponsor has requested that the City enter into a Development Agreement (DA) that will 1) provide for a 20-year vested entitlement period, 2) specify requirements for phasing of project development, 3) stipulate what City regulations and fees will apply throughout the term of the DA with respect to the project, 4) stipulate an affordable housing agreement, and 5) establish other commitments. The City Planning Commission must review the DA and forward its recommendations to the City Council/Redevelopment Agency for final action. A more detailed summary of the major deal points of the proposed DA are presented below:

Oakland Harbor Partners requests of the City:

- 20 years of vested rights enabling the project to be developed in discreet phases consistent with the proposed Design Guidelines and PDP over a 20-year period
- Guarantee that City will not impose any new development fees other than those stipulated in the DA and subject to adopted fee increases over time
- No new project requirements other than through the DA and those listed in the project approvals and mitigation measures
- Implementation of each mitigation measure concurrent with the need for the mitigation as the project is sequenced
- The right to transfer density between certain parcels without exceeding the total number of units approved
- The right to assign all or a portion of its rights and /or obligations under the DA without the City's consent to a qualified lender, affiliate, or a pre-qualified transferee. All other assignments would require the consent of the City.

In exchange for 20 years of vested rights, Oakland Harbor Partners proposes to:

- Make off-site waterfront trail improvements up to Homewood Suites, provided the City delivers clean land, plans and specifications. Alternatively, OHP will provide an in lieu payment, at its election.
- Pay for trail signs and markers on the project site.
- Underground utilities from 5th Avenue to 10th Avenue on both sides of the Embarcadero and along the south side of the project's Embarcadero frontage from 5th Avenue to the Cash and Carry site (estimated to save Measure DD funds in the amount of \$22 million)
- Provide security and maintenance for the parks through a master association, Community Service District (CSD), or other type of agreement (estimated to be approximately \$950,000 per year)
- Fund private shuttle service and other transportation demand reduction measures pursuant to an approved Transportation Demand Management Plan
- Restore the 15,000 s.f. portion of the bulkhead of the Ninth Avenue Terminal shed building. OHP suggests that it have the right to lease for 3 years.
- Maintain street trees and landscaping in the project's internal streets through a master association, CSD, or other type of agreement.
- Install median and landscaping along the Embarcadero.
- Install open space and Bay Trail improvements with each phase of development as per the phasing plan.
- Assist the Redevelopment Agency in meeting its affordable housing obligations in part by offering a parcel for development of a dedicated affordable housing project to a non-profit developer
- Comply with a specific phasing schedule
- Fund \$250,000 in pedestrian safety/traffic circulation improvements in the Chinatown area prior to issuance of the first building permit and an additional \$150,000 prior to the 1,000th certificate of occupancy.
- Abide by the Port's non-discrimination and small local business utilization and prevailing wage policy.
- Participate in local hiring and construction job training.

Tree Removal Permit

The project sponsors would be required to obtain a Tree Removal Permit prior to removal of, or construction activity in close proximity to, a Protected Tree, as defined in Oakland Municipal Code Section 12.36.020. A tree survey has not yet been submitted for review, but it is estimated that approximately 35 trees will need to be removed because of the extensive soil remediation that will need to take place. Tree permits would require approval by the Tree Services Division of the Oakland Public Works Agency.

Creek Protection Permit

Creek Protection Permit is necessary for work proposed adjacent to the Oakland Estuary and/or along the Lake Merritt Channel. All creek protection permits would require approval by the Environmental Services Division of the Oakland Public Works Agency.

Other City Permits

The project would require City Approval of Encroachment, Demolition, Building, and other permits required for project construction.

Other Agency Approvals

The proposed project is also subject to approval by the Port of Oakland, California State Lands Commission (Tidelands Trust), San Francisco Bay Conservation and Development Commission (BCDC), California Department of Toxic Substances Control (DTSC), California State Water Resources Control Board-San Francisco Region (RWQCB), Alameda County Environmental Health Department, The United States Army Corp of Engineers (Corps), The United States Fish and Wildlife Service (USFWS), California Department of Fish and Game (CDFG), Bay Area Air Quality Management District (BAAQMD), East Bay Municipal Utility District (EBMUD), Alameda County Airport Land Use Commission (ALUC) and Federal Aviation Administration (FAA), and the California Department of Transportation (Caltrans).

CONSISTENCY WITH LAND USE PLANS AND REGULATIONS

GENERAL PLAN ANALYSIS

Almost every Element of the Oakland General Plan includes goals, objectives, policies and/or actions that apply to the proposed project. Appendix F of the DEIR lists goals, objectives, policies and/or action from the *Land Use and Transportation Element*; the *Estuary Policy Plan*; the Historic Preservation Element; the Open Space, Conservation and Recreation Element; the Safety Element; the Housing Element; Noise Element; Bicycle Master Plan, Pedestrian Master Plan; and the Scenic Highways Element. Appendix F also discusses goals from the Central City East Redevelopment Plan and the Central District Urban Renewal Plan that relate to the project. Additionally, there is also a section on the San Francisco Bay Plan and the San Francisco Bay Area Seaport Plan.

The DEIR, Chapter IV, “Environmental Setting, Impact, and Mitigation Measures, A. Land Use, Plans and Policies,” contains a thorough analysis of the City’s adopted plans and policies and those that relate to the proposed project. The following is a summary of that discussion.

General Plan Land Use and Transportation Element (*LUTE*)

The *LUTE* shows the project area within the Mixed Use Waterfront/Estuary Plan Area land use classification, which is intended to “encourage, support and enhance the transformation of the land adjacent to the shoreline into a vibrant use of mixed use waterfront.” The *LUTE* includes a number of Waterfront Policies, Transportation and Transit-Oriented Development Policies, and Neighborhood Policies that relate to the proposed project. Please see DEIR pages IV.A-8

through IV.A-10 for a discussion about how the proposed project, which will transform an underutilized industrial site into a mixed-use neighborhood, is consistent with these key policies.

Estuary Policy Plan Text and Land Use Map (EPP)

There are several sections of the EPP with goals and objectives that apply in general to the entire estuary area, including the project site. Only those district recommendations described in the Oak-to-Ninth Avenue District chapter of the EPP will be addressed in the following discussion.

The EPP divides the Oakland Estuary into three districts: the Jack London District, the Oak-to-Ninth Avenue District, and the San Antonio/Fruitvale District. The proposed project is within the Oak-to-Ninth Avenue District, but does not include the entire 120-acre district described in the EPP.

The EPP provides a set of overall objectives to address Land Use, Shoreline Access and Public Space, and Regional Circulation and Local Street Network. These objectives apply to the entire Oakland Estuary. The EPP identifies specific policies and implementation measures to guide development within each of the three districts that define the Oakland Estuary.

The EPP assigns two land use designations to the project site. Estuary Park and Jack London Aquatic Center (except within approximately 200 feet of the Embarcadero) are designated as Parks, Open Space and Promenades (P). The remaining portion of the project is designated as Planned Waterfront Development (PWD-1).

The adopted *intent* of the PWD-1 is to “provide for the transformation of maritime and marine industrial uses into a public-oriented waterfront district that encourages significant public access and open space opportunities. Encourage unique mix of light industrial, manufacturing, artist lofts and workshops, hotel, commercial-recreation, cultural uses, and water-oriented uses that complement the recreational and open space character of the waterfront.”

The *desired character* of the PWD-1 is that “future development in this area should be primarily public recreational uses including boating clubs, community and cultural uses, parks, and public open spaces; with primary uses including light industrial, manufacturing, assembly, artists workshops, cultural work/live studios, offices, neighborhood commercial, and restaurants; and including hotel, conference, restaurant, commercial recreation, and cultural. Water uses also included.”

The EPP acknowledges that the Oak-to-Ninth Avenue District is likely to be redeveloped as many of the port-related activities were relocating to other land areas under the jurisdiction of the Port. The EPP recognizes that with the changes of land use, there are opportunities for “a large-scale network of open spaces and economic development that extend for over 60 acres from Estuary Park to Ninth Avenue. The assemblage of parkland would create the major open space resource in Oakland and, at the same time, establish a recreation asset of regional significance. In areas adjacent to the open space, additional development of hotels, cultural activities, and other attractions that take advantage of the unique setting, could help to energize the entire district.”

When the EPP was adopted in 1999, the uses that were contemplated for the Oak-to-Ninth District were those consistent with the Tidelands Trust. Residential uses are not permitted on Tidelands Trust properties. In September 2004 the California Assembly adopted legislation (SB 1622) that would allow the California State Lands Commission (SLC) to amend the Tidelands Trust boundaries. If the SLC agrees to the boundary changes, then residential development can be accommodated in this location in exchange for placing the Tidelands Trust designation on other Port-owned property. The decision by the SLC will occur after the City of Oakland decides on the project.

Residential uses are not specifically called out as a permitted land use in the PWD-1; therefore, the EPP will need to be amended to allow residential uses. The residential density currently assigned to this land use designation will need to be amended to accommodate the proposed development. The EPP specifies a floor area ratio of 1.0 and a density standard of 30 units per gross acre (40 units per net acre) for the project site. The project sponsor is requesting an amendment which would allow a residential density of 50 units per gross acre (128 units per net acre).

Following is a list of the EPP policies and implementation measures for the Oak-to-Ninth District and staff's analysis about how the proposed project compares to most of these policies and implementation measures.

Policy OAK-1: Protect and enhance the natural and built components that establish the waterfront's unique environment

OAK-1.1: Encourage the preservation and enhancement of wetland areas

OAK-1.2: Provide for continuous pedestrian and bicycle movement along the water's edge

OAK-1.3: Undertake remediation of contaminants in conjunction with development and/or improvement of relevant sites

Staff Comment: The project sponsor is incorporating the existing wetland area into the project; is constructing the segment of the Bay Trail that traverses the project site; and is remediating contaminants in compliance with Department of Toxic Substance Control and Regional water Quality Control Standards for the anticipated uses. Additionally, the project would improve shoreline conditions and natural areas for potential habitats along the Estuary and the Lake Merritt Channel frontages of the project site. The proposed shoreline improvements would create or restore shoreline marsh and revegetate the length of shoreline from the existing sandy beach at the existing wetlands restoration project (Clinton Basin) and along the Lake Merritt Channel where it fronts the project site.

Policy OAK-2: Establish a well-structured, integrated system of major recreational facilities which accommodate a wide variety of activities and which take advantage of the unique waterfront setting. Promote a variety of recreational experiences.

OAK-2.1: Expand Estuary Park. Encourage aquatic sports within the mouth of Lake Merritt Channel

OAK-2.2: Create a major new park on the east side of the mouth of the Lake Merritt Channel, at the Estuary

OAK-2.3: Enhance Clinton Basin

OAK-2.4: Establish a large park in the area of the existing Ninth Avenue Terminal to establish a location for large civic events and cultural activities

OAK-2.5: Provide for mooring of the ARTSHIP

Staff Comment: The project is creating approximately 20.7 acres of new, publicly-accessible open space in the series of new parks and open spaces along the shoreline, including a large park where the Ninth Avenue Terminal and wharf structure currently exist. The Fifth Avenue Marina and Clinton Basin will be renovated with 170 boat slips. A portion of the Ninth Avenue Terminal is proposed to remain and could be used for civic uses. The project is not providing mooring for the ARTSHIP.

The series of parks that would be created by the project is generally consistent with those envisioned in the EPP (east shore of Lake Merritt Channel, around and at the entrance of Clinton Basin, Ninth Avenue Terminal area), except that the existing Estuary Park would not be expanded north towards the Embarcadero. The EPP does not prescribe a park and open space program by acreage, however, based on the EPP illustration and the acreages used to assess parks and recreation impacts in the EPP environmental impact report, the project would provide less overall open space than was envisioned in the EPP or analyzed in the EIR. However, the project is consistent with numerous EPP objectives and policies that call for new public open space to be created along the Oak-to-Ninth District waterfront.

The project would demolish the majority of the historic Ninth Avenue Terminal to accommodate the approximately 9.7-acre Shoreline Park and would retain a minimum of approximately 15,000 square feet of the terminal's original bulkhead building (the northernmost 1920s section). The bulkhead building would be reused for Tidelands Trust uses such as community, cultural, or recreational uses (i.e., public meeting rooms, banquet/festival space, or museum space focused on the cultural and maritime history of the Oak-to-Ninth Avenue area and the Ninth Avenue Terminal). The discussion of this policy in the EPP recognizes that all or portions of the terminal may be suitable for rehabilitation and adaptive reuse and that the structure currently impedes public access to and views of a key area of the estuary. The project aims to balance the value of retaining the historic resources with the value of maximizing public access and views of the estuary from the Oak-to-Ninth project site and beyond.

Policy OAK-3: Link the Estuary to Lake Merritt by enhancing the Lake Merritt Channel

OAK-3.1: Create a system of public open spaces that connects Lake Merritt Channel to the Estuary

OAK-3.2: Work with public agencies in the area to extend the open space system inland from the Channel

Staff Comment: A large park at the mouth of the Lake Merritt Channel is proposed on the project site which will contribute towards linking the Estuary to Lake Merritt. No improvements to parks or open space are proposed by the project sponsor beyond the boundaries of the project site.

Policy OAK-4: Provide for lively, publicly oriented activities that complement the adjacent waterfront parks and open spaces

OAK-4.1: Preserve and expand the existing Fifth Avenue Point community as a neighborhood of artists and artisan studios, small businesses, and water-dependent activities

OAK-4.2: Promote development of educational and cultural interpretive facilities

OAK-4.3: Facilitate the location of break bulk cargo operations from the Ninth Avenue Terminal

OAK-4.4: Promote development of commercial-recreational uses in the vicinity of the Crescent Park and Clinton Basin

OAK-4.5: North of the Embarcadero, encourage a mixed-use district while maintaining viable industrial uses

Staff Comment: The project is proposing residential development with ground-floor retail and commercial uses adjacent to the waterfront parks and open spaces. The Fifth Avenue Marina and Clinton Basin will be restored with 170 boat slips. Educational and cultural interpretive facilities can be incorporated into the remaining portion of the Ninth Avenue Terminal. The introduction of more people into the area, along with retail and commercial uses, civic uses, boating activities, and public open spaces are likely to make the area livelier and safer. The Fifth Avenue Point community and the area north of the Embarcadero are outside the boundaries of the proposed project.

Policy OAK-5: Initiate more specific planning of the entire Oak-to-Ninth District

Staff Comment: A specific plan has not been prepared for the entire Oak-to-Ninth District. Staff believes that the project application (with the modifications proposed in the EIR), the analysis provided in the EIR, and the public review process required pursuant to CEQA and the City of Oakland, fulfill, and may in certain cases exceed, the objectives of detailed planning and analysis envisioned in the EPP. The project application, environmental analysis, and public review process are considered functionally equivalent to the preparation and review of a specific plan. Further, the proposed regulatory framework (PDP, FDP, Design Guidelines), coupled with the obligations under the development agreement and other financial commitments, fulfill the

statutory requirements in Government Code §65450 including development standards and criteria and financing and implementation mechanisms.

Policy OAK-6: Explore the future potential for a new BART station and major parking facility on BART property at Fifth Avenue and East Eighth Street

Staff Comment: No improvements are proposed to the BART facility as it is outside the boundaries of the proposed project.

Policy OAK-7: Coordinate with Caltrans on the upgrade of the I-880 freeway to improve regional access to the waterfront

Staff Comment: The project sponsor is in consultation with Caltrans regarding the I-880 freeway improvements and the timing of construction of this project.

Policy OAK-8: Enhance Fifth Avenue as the principal pedestrian and vehicular linkage to the public open space surrounding the mouth of the Lake Merritt Channel

Staff Comment: The intersection of Fifth Avenue and the Embarcadero will be improved and designed as the main gateway to the site. Several new public streets will be constructed as part of the new development. All will provide public access to the public parks and open spaces along the waterfront.

Policy OAK-9: Improve the Embarcadero east of Oak Street as a multimodal landscaped parkway with bicycle, pedestrian and vehicular facilities

Staff Comment: The project would improve and widen segments of the Embarcadero into a landscaped parkway along the frontage of the project site. The 84-foot right-of-way will include 12-foot wide landscaped sidewalks on both sides of the street, 6-foot wide bicycle lanes on both sides of the street, a 14-foot wide median with turn pockets, a 14-foot wide travel lane on the north side of the median, and a 20-foot wide travel lane on the south side of the median.

Policy OAK-10: Create a network of pedestrian-friendly streets that opens up views and access to the water

Staff Comment: The project proposes a number of new public streets that contain view corridors and public access to the waterfront.

Policy OAK-11: Design parking to be convenient and complementary to the public orientation of uses within the area

Staff Comment: Parking for residential and commercial users will be within covered parking structures. Some public parking spaces will be available within these parking structures, but most spaces will be provided along new public streets and in surface parking lots within close proximity to new parks and open space areas. The project sponsor is also working with Caltrans to obtain a lease for extra parking under the freeway.

Policy OAK-12: Establish a management program for special events access and parking

Staff Comment: Permits for special events occurring on the public open space will be issued by the City and all operators will be required to comply with City conditions for the events.

Illustrative Diagrams

The following discussion focuses on how the proposed site plan compares to the illustrative diagrams in the Oak to Ninth District chapter of the EPP.

Figure III-10: Oak to 9th District Illustrative Open Space Key map

Figure III-11: Oak to 9th Bird's-eye Perspective

These figures show the future locations for public open space and developable areas within the site area. The proposed site plan is similar in configuration with the exception of the expansion of Estuary Park. The Ninth Avenue Terminal is not shown and a larger space is designated for Shoreline Park. Also, the pier where the boat is moored in the illustration is proposed to be demolished. The areas designated for open space and development are in the same general locations as those proposed in the EPP.

Figure III-12: Clinton Basin Illustrative Cross Section

This figure is a cross section of the area surrounding Clinton Basin. One side shows a 40-foot wide open space area, a sidewalk, and a roadway; the other side shows a 20-foot pedestrian trail and what appear to be active ground-floor uses next to a building. In the proposed site plan (see Sheet 3.1), the area surrounding Clinton Basin is a minimum of 35-feet wide and will accommodate a pedestrian and bicycle trail, as well as active ground-floor uses from the anticipated commercial and retail uses in the adjacent buildings.

Figure III-14: Oak to 9th District: Illustrative Circulation

Both Class I and Class II bikeways/pathways are proposed within and along the boundaries of the project site. The proposed project includes more pedestrian and bicycle trails (see Sheet 3.2). The Oakland Waterfront Trail, a segment of the Bay Trail, will be constructed along the shoreline. A Class I (off street) bikeway will be included within the Bay Trail as well as other areas within the site plan. A Class II (on street) bike lane will be provided along the Embarcadero; and a Class II (on street) bike route will be provided along the internal streets of the project. Several pedestrian ways are also included within the project.

EPP Text Amendment – As shown in **Attachment B**, changes proposed to the EPP include allowing residential density in the Planned Waterfront District-1 at a higher density than specified in the EPP. Other text changes are proposed to bring the district chapter up-to-date with other activities that have occurred since its adoption in 1999. With adoption of the amended text language, the proposed project will be consistent with the *Estuary Policy Plan*.

EPP Map Amendment – The EPP land use map needs to be amended to show a larger area designation of Park, Open Space and Promenades and a smaller area classified as Planned Waterfront Development-1. Also, the land use designation behind Estuary Park will be changed from Park, Open Space and Promenades to Planned Waterfront District-1 to accommodate residential development in this location. With adoption of the amended land use map, the proposed project will be consistent with the *Estuary Policy Plan* land use map.

Open Space, Conservation and Recreation Element (OSCAR)

The goals and policies in the OSCAR primarily address the management of open land, natural resources, and parks in Oakland. DEIR, Appendix F, “Applicable Oakland General Plan and Other Agency/Jurisdiction Policies/Oak-to-Ninth Avenue District Policies (*Estuary Policy Plan* excerpt)” lists all policies that pertain to the project and page IV.A-19 and 20 discuss nine specific policies that are most relevant to the project (level of service standards for parkland, develop a system of linear parks and trails, improve trail connections, make all shoreline development accessible to the public, create a Bay Trail, protect views of the shoreline, minimize visual effects of new development, enhance underutilized resources, promote land use patterns and densities which help improve regional air quality).

The project would not conflict with OSCAR policies. The project would provide a total of approximately 30 acres of parkland, including the existing Estuary Park, along the shoreline. A continuous public trail is proposed along the shoreline, except for the waterfront along the Fifth Avenue Point outparcel, which would allow dedicated paths for pedestrians and bicycles and would be located as close to the waterfront as possible. The project would also include housing uses and water-oriented services and activities, balanced with the series of public parks and open spaces along the water’s edge.

The project would not substantially block views of the Oakland Hills, the shoreline, or other scenic resources compared to the existing views of and across the site. Furthermore, the project would create new waterfront view and access where none currently exist.

The project would result in a number of significant and potentially significant impacts for topics addressed by OSCAR policies. These include water quality, geologic and seismic hazards, soil constraints, toxic substances, biological resources, regional air quality, and dust emissions. Each of these adverse effects would be reduced to less than significant levels (after mitigation), except for regional air emissions (under cumulative conditions) which would remain significant even with implementation of trip reduction/transit incentive measures (including a public shuttle) and other project characteristics prescribed in specific OSCAR policies.

Historic Preservation Element (HPE)

The policies in the HPE generally encourage, but do not mandate, the preservation of Oakland's historic resources, within the context of, and consistent with, other General Plan goals, objectives, and policies. Policies that encourage the retention of historic resources need to be weighed against other General Plan policies such as the provision of housing, open space, maximizing waterfront views and vistas.

The substantial demolition of the Ninth Avenue Terminal is not consistent with Policy 3.1, "Avoid or Minimize Adverse Historic Preservation Impacts Related to Discretionary City Actions." According to Policy 3.8, the substantial demolition of the Ninth Avenue Terminal and its related wharf would constitute a significant impact under CEQA that cannot be mitigated to a less-than-significant level.

Policy 3.5 states that, "for any project involving complete demolition of Heritage Properties or Potential Designated Historic Properties requiring discretionary permits, the City will make a finding that: (1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood." The Planning Commission and City Council would need to make at least one of these findings prior to making a decision on the proposed project.

REDEVELOPMENT PLAN ANALYSIS

The project site covers portions of two redevelopment areas: Central City East and Central District Urban Renewal Plan. The majority of the project, east of the Lake Merritt Channel, is within the Central City East Redevelopment area. The remainder of the project site, west of the Lake Merritt Channel, falls within the Central District Urban Renewal Plan area.

Central City East Redevelopment Plan (CCERP)

Land Use Map Amendment - The CCERP did not mandate a specific development program for the project site; instead, it deferred to the range of land use activities that are allowed by the Oakland General Plan and, subsequently, the *Estuary Policy Plan*, and zoning requirements. The General Plan/Estuary Policy Plan land use designation assigned to the project site is "Planned Waterfront Development 1." Because amendments are being made to the EPP (residential uses are being proposed which are not now currently permitted), and the boundaries of the Planned Waterfront Development 1 designation could change, it is necessary to amend the Redevelopment Plan land use map consistent with the EPP. The City Council/Redevelopment Agency is the approving authority for these changes.

Inclusionary Housing – The Redevelopment Plan requires that "at least 15 percent of all new or rehabilitated dwelling units developed by public or private entities or persons other than the Agency in the Project Area shall be available at affordable housing cost to persons and families of low or moderate income, with not less than 40 percent of these units made available at affordable housing costs to very low income households" as required by Community

Redevelopment Law. This requirement applies to all projects “in the aggregate,” over a 10-year period, not necessarily to individual projects.

Given the approximately 2,800 units that the project would develop within the CCERP (east of the Lake Merritt Channel), the Redevelopment Agency would be required to assure that at least 420 low- to moderate-income units within the Redevelopment Project area be constructed within 10 years. At least 168 of the affordable units would need to be affordable to very-low income households.

OHP has presented several options for meeting this requirement. The options are summarized below with more details to follow as specified in the Development Agreement (to be published within the next three weeks). The City has retained a financial consultant to prepare an analysis of the affordable housing proposal with regard to the financial commitments of OHP, the value of the land, and the degrees of affordability that could be achieved. This information will be available in more detail at the next Planning Commission meeting in March. The conceptual outline of providing affordable housing on the site is summarized below:

1. Sell Parcel F (1.6 acres) to an affordable housing developer selected by the developer for the construction of 160 to 180 units for very low income seniors.

2a. Enter into an agreement with the City’s Redevelopment Agency whereby the RDA would have the opportunity to “buy down” market rate rental units to a level of affordability to be determined by the RDA, *or*

2b. Three of the “for-rent” parcels within the project would be subject to a restriction that 20% of the units must be affordable to households with incomes equal to 50% of the Area Median Income for a period of 55 years.

3a. The Developer would enter into an agreement(s) with a qualified affordable housing developer(s) to assist the developer(s) in the development of up to approximately 225 off-site affordable units located within the Eastlake, Chinatown and Lower San Antonio neighborhoods, *or*

3b. Developer shall provide a reputable affordable housing developer selected by Developer with a right of first offer to purchase an approximately 1.4 acre parcel at a market rate. The parcel would be subject to a 55-year affordability restriction, but the market rate would be determined as if the parcel were not subject to such a restriction.

Central District Urban Renewal Plan (CDURP)

Unlike the CCERP discussed above, there is no affordable housing requirement under the CDURP since it was adopted in 1969 and the affordable housing production requirements apply only to project areas adopted after January 1, 1976.

Land Use Map Amendment – The General Plan/Estuary Policy Plan land use designation assigned to the project site is “Parks, Open Space and Promenades” with a small portion of the site along the Embarcadero designated “Planned Waterfront Development 1.” Because

amendments are being made to the EPP to allow residential uses where the Cash and Carry Wholesale grocer is currently located, which is also designated "Parks, Open Space and Promenades," the Redevelopment Plan land use map will need to be amended to increase the boundaries of the Planned Waterfront District 1 and reduce the boundaries of the Parks, Open Space and Promenade designations in this location. The City Council/Redevelopment Agency is the approving authority for these changes.

ZONING ANALYSIS

Oakland Zoning Code (Chapter 17, Zoning)

The Oakland Zoning Code, as written, does not have the appropriate land use regulations and development standards contained within one zoning district to address large, mixed use projects. There are several zoning tools available for this purpose, but Oakland has not adopted a Planned Development zone, and the existing Planned Unit Development zone is awkward because it must rely on an underlying zoning district. In this case, the underlying zones are Heavy Industrial (M-40) and Civic Center/Design Review Combining Zone (S-2/S-4) none of which are appropriate for the large-scale, mixed-use character of the proposed project. Also, the M-40 zone is inconsistent with the Planned Waterfront District-1 EPP land use designation.

To address this issue, a new zoning district has been prepared for the 64.2 acre site (similar to the process that was adopted for the Wood Street Mixed Use project). If adopted, the land uses, development standards, and design guidelines would be applied exclusively to the 64.2 acre site within the Oak-to-Ninth District identified in the EPP. (Another zoning designation will likely be applied to the remaining 56 acres in the District north of the Embarcadero.) This new zoning district is described in the next section of this report.

Proposed Planned Waterfront Zoning District (PWD-1)

The proposed PWD-1 zone is intended to establish specific regulations to facilitate the development of an integrated mixed-use, residential, public and private open space, and commercial community on the project site. The proposed zoning district is based on regulations from the existing zoning code with variations to accommodate a large, master-planned, mixed-use development. For example, residential density and property development standards are based on existing multifamily zoning district standards for high density projects. Because there are a variety of housing types proposed within the development, the standards may vary from one development project to another. However, the proposed Design Guidelines are intended to provide overall consistency while encouraging unique, high-quality architectural design.

Commercial land uses identified in the Planned Waterfront Zoning District are based on a combination of land uses from different commercial zones in the existing zoning code. The land uses proposed are a mixture of neighborhood-serving commercial uses, including retail, office, food sales, restaurants, and various civic activity types. Such land uses are considered compatible with the higher density residential development being proposed throughout the project.

Land uses proposed for the Oak to Ninth Mixed Use Development are included in a land use table which specifies what uses are permitted, limited subject to certain requirements (usually size), conditionally permitted, or prohibited for each development area, consistent with the format proposed for the update of the City's zoning code.

Development standards are specified for residential densities, non-residential intensity, building heights, yards, setbacks, buffers, private open space for residential uses, landscaping and paving, parking requirements, and signs.

It is intended that development applications for proposals within the Planned Waterfront Zoning District be processed as Preliminary Development Plans and Final Development Plans. Applications for projects within the Oak to Ninth Mixed Use development can be processed under the City's current Planned Unit Development requirements with the Planned Waterfront Zoning District as the underlying zone. Final Development Plans (FDP) will be submitted for each development proposal and will be processed according to the requirements specified in PWD-1. All Final Development Plans will need to be in "substantial compliance" with the approved PDP including design review, similar to the process established for the Jack London District (JLD) project. According to the JLD process, future FDP project plans are submitted for administrative review for determination of compliance with the PDP. Those plans are then submitted to the Design Review Committee for confirmation of compliance.

The major differences between the existing PUD and the proposed PDP are as follows:

- The submittal requirements listed in the Planned Waterfront Zoning District are more extensive than what is required under the current PUD ordinance.
- Under the existing PUD requirements, final development plans must be submitted within one year of preliminary plan approval. Because this is a large project with construction phased over a 20-year period, the sequencing is proposed to run concurrently with the phasing plan set forth in the Development Agreement.

Oak to Ninth (Brooklyn Basin) Review Process and Design Guidelines

The City retained the urban design consultation services of Ken Kay Associates (KKA) to assist with an urban design analysis and recommendations of the site plan, and to assist with drafting the Design Guidelines. Because there are no architectural drawings included for future buildings, staff recommended that design principles and guidelines be prepared to define expectations for future development.

The Design Guidelines are not proposed to be codified as part of the zoning district, but are referenced in the Planned Waterfront Zoning District as a design review requirement for future approvals. Findings will need to be made during design review of future projects that the Final Development Plans are consistent with the approved Preliminary Development Plan, the Planned Waterfront Zoning District, and the Oak to Ninth (Brooklyn Basin) Design Guidelines. The Design Guidelines have been introduced and discussed with the Design Review Committee at its January 25, 2006 meeting. Following is a summary of the major components of the Design

Guidelines. (The proposed Design Guidelines were included as an attachment to the Design Review Committee report and are included with this staff report as **Attachment C.**)

- I. The Vision for Brooklyn Basin
- II. Urban Design Principles
- III. Urban Design Concept
- IV. Design Guidelines

a) Building Height, Massing and Treatment (design intent, tower location and massing, variation in overall building height, variation in street wall building volume and plane, parking garage façades, windows, rooftop treatment, exterior wall materials, roofing materials for sloped roofs, exterior color, mechanical penetrations at façades)

b) Building Orientation and the Public Realm (design intent, retail frontages, commercial work/live frontages, mixed use street frontages, mews frontage, waterfront/park edge, Embarcadero frontage, blank walls, awnings and canopies, service areas, equipment screening, waste handling areas)

Zoning Map

The Zoning Map will need to be amended to reflect the new zoning district and the increased amount of permanent open space. It is proposed that the developable portions of the site be designated PWD-1, Planned Waterfront Zoning District and that the park and open space areas be designated OS (RSP), Open Space (Regional Serving Park). The M-40, Heavy Industrial zone and, possibly, the S-2/S-4, Civic Center/Design Review Combining Zone currently assigned to site would be replaced with these new zones. (The S-2/S-4 zone currently designated for Estuary Park and the Jack London Aquatic Center can remain or be re-designated OS (RSP).

SAN FRANCISCO BAY TRAIL PLAN/OAKLAND WATERFRONT PROMENADE AND BAY TRAIL ALIGNMENT FEASIBILITY STUDY AND DESIGN STANDARDS

The project will install the segment of the Bay Trail along the shoreline of the site (where OHP has access control) and will connect to existing segments both east and west of the project site consistent with the overall policies and design guidelines in the Bay Trail Plan and the City of Oakland waterfront trail design standards.

ENVIRONMENTAL REVIEW

As mentioned previously, the 54-day public review period for the Draft Environmental Impact Report (DEIR) began on September 1, 2005 and closed on October 24, 2005. Forty-six comment letters were received during the comment period. Twelve were from governmental agencies, 19 were from organizations, and 15 were from individuals. Oral and written comments were received at the and at the Planning Commission public hearing on September 28, 2005, the Parks and Recreation Advisory Commission on October 12, 2005, and the Landmarks Preservation Advisory Board public hearing on October 17, 2005.

Written responses to the comments received are still being prepared and compiled into the Final Environmental Impact Report (which may be published before this meeting). The FEIR and the certification of the FEIR will be discussed at a future Planning Commission meeting.

This report includes an overview of the comments received during the public review period and a brief discussion on how they were addressed. These will be discussed in detail when the FEIR is completed.

The document analyzes potentially significant environmental impacts in the following environmental categories:

- Land Use, Plans and Policies
- Transportation, Circulation, and Parking
- Air Quality and Meteorological Conditions
- Hydrology and Water Quality
- Cultural Resources
- Geology, Soils, and Seismicity
- Noise
- Hazardous Materials
- Biological Resources
- Population, Housing, and Employment
- Visual Quality
- Public Services and Recreation
- Utilities and Service Systems

Table II-1, "Summary of Impacts and Mitigation Measures for the Oak to Ninth Redevelopment Project" (DEIR pages II-7 to II-48) summarizes the impacts and mitigation measures identified in the DEIR (see Attachment B). The table describes the potential impacts with a level of significance prior to mitigation; recommended mitigation measures; and the resulting level of significance with implementation of the required mitigations. A complete discussion of each impact and associated mitigation measure is provided in Chapter IV, Environmental Setting, Impacts, and Mitigation Measures.

SUMMARY OF SIGNIFICANT ENVIRONMENTAL IMPACTS AND MITIGATION

The EIR identifies several impacts and mitigation measures which can be incorporated into the project design to lessen or eliminate the potential environmental impacts of the Oak to Ninth Mixed Use project, 24 which are significant unavoidable impacts, and 50 which are significant impacts which could be mitigated to a less than significant level. These impacts are described in Table II-1 of the DEIR, "Summary of Impacts and Mitigation Measures for the Oak to Ninth Redevelopment Project" and are summarized again as follows. A revised "Summary of Impacts and Mitigation Measures for the Oak to Ninth Redevelopment Project" will be published with the Final EIR.

Significant, Unavoidable Impacts *(these are repeated from the PC Report dated 9/28/05)*

The Draft EIR also identifies certain significant and unavoidable impacts, even after the implementation of mitigation measures. Staff has organized the Significant and Unavoidable impacts into five categories:

1. **Project-level** impacts that cannot be mitigated to a level of less than significant
2. **Project-level** impacts that cannot be mitigated by the City of Oakland because the City does not have the authority to implement the mitigation measures. If mitigated by the responsible entity, the impacts will be mitigated to a level of less than significant
3. **Cumulative impacts** that cannot be mitigated to a level of less than significant
4. **Cumulative impacts** that cannot be mitigated by the City of Oakland because the City does not have the authority to implement the mitigation measures. If mitigated by the responsible entity, the impacts will be mitigated to a level of less than significant.
5. **Cumulative impacts** that cannot be mitigated by the City of Oakland because the City does not have the authority to implement the mitigation measures. Even when mitigation measures are implemented by the responsible entity, the impacts are still Significant and Unavoidable.

1. The DEIR states that no feasible mitigation measures have been identified that would reduce the following *project-level impacts* to a level of less than significant:

Transportation, Circulation, and Parking

- Traffic at the intersection of *5th Street and Broadway* would worsen during the evening peak traffic times
- Traffic at the intersection of *6th and Jackson Streets and at the I-880 Northbound On-Ramp* to the freeway would worsen during the morning peak traffic times
- Traffic at the intersection of *Lakeshore Avenue and MacArthur Boulevard* would worsen during the evening peak traffic hours

Noise

- Construction activities could exceed existing noise levels in the project area and could be heard in residential areas
- New housing and public parks are proposed to be developed in an area where existing noise levels are above what is considered “normally acceptable”

Cultural Resources

- The Ninth Avenue Terminal would be demolished, and the wharf structure supporting the Ninth Avenue Terminal would be substantially altered. Both are historic resources as defined by CEQA.
- New construction is proposed within 100 feet of the remaining Bulkhead Building which may not be architecturally compatible with the historic structure.

2. The DEIR states that the following *project level impacts* will remain Significant and Unavoidable because the mitigation measures cannot be solely implemented by the City of Oakland. Once implemented, however, the impact would be less than significant.

Transportation, Circulation, and Parking

- Traffic at the intersections of *6th and Jackson Streets and at the I-880 Northbound On-Ramp* to the freeway would worsen during the evening peak traffic times unless Caltrans changed the timing of the traffic signal
- Traffic at the intersections of *Embarcadero and I-880 Northbound Off-Ramp-6th Avenue* would worsen during the evening peak traffic times unless Caltrans installed a traffic signal
- Traffic at the intersection of *Atlantic Avenue and Webster Street* would worsen during the morning peak traffic hours unless the City of Alameda changed the timing on the traffic signal
- Traffic at the intersection of *5th and Oak Streets at the I-880 Southbound On-Ramp* would worsen during the evening peak traffic hours unless Caltrans changed the timing on the traffic signal
- Traffic at the intersection of *Embarcadero and I-880 Southbound On-Ramp* would worsen during the evening peak hour traffic hours unless Caltrans installed a traffic signal

3. The DEIR states that no feasible mitigation measures have been identified that would reduce the following *cumulative impacts* to a level of less than significant:

Transportation, Circulation, and Parking

- Traffic generated by the project when built out, as well as other cumulative traffic in the vicinity, would worsen the intersection of *5th Street and Broadway* during the evening peak hour traffic times
- Traffic generated by the project when built out, as well as other cumulative traffic in the vicinity, would worsen the intersection of *6th and Jackson Streets at the I-880 Northbound On-Ramp* during the morning and evening peak hour traffic times

- Traffic generated by the project when built out, as well as other cumulative traffic in the vicinity, would worsen the intersection of *Lakeshore Avenue and Foothill Boulevard* during the morning peak hour traffic times
- Traffic generated by the project when built out, as well as other cumulative traffic in the vicinity, would worsen the intersection of *Lakeshore Avenue and MacArthur Boulevard* during the evening peak hour traffic times
- Traffic generated by the project when built out, as well as other cumulative traffic in the vicinity, would worsen the intersection of *14th Avenue and 7th/East 12th Streets (Southbound)* during the evening peak hour traffic times
- Traffic generated by the project by year 2025 will change traffic conditions on the local and regional roadways

Air Quality and Meteorological Conditions

- The project together with anticipated future cumulative development in Oakland and the Bay Area in general would contribute to regional air pollution

Cultural Resources

- Substantial demolition of the Ninth Avenue Terminal, and the demolition of the two other Oakland Municipal Terminals, would result in cumulative impacts to historic resources

4. The DEIR states that the following *cumulative impacts* will remain Significant and Unavoidable because the mitigation measures cannot be implemented by the City of Oakland. Once implemented, however, the impact would be less than significant.

Transportation, Circulation, and Parking

- Traffic generated by buildout of the project would worsen traffic at the intersection of *5th and Oak Streets at the I-880 Southbound On-Ramp* during the evening peak traffic hours unless Caltrans changed the timing on the traffic signal
- Traffic generated by buildout of the project would worsen traffic at the intersection of *Embarcadero and I-880 Southbound On-Ramp* during the evening peak hour traffic hours unless Caltrans changed the timing on the traffic signal

5. The DEIR states that the following *cumulative impact* will remain Significant and Unavoidable because the mitigation measures cannot be implemented by the City of Oakland. Even when mitigation measures are implemented, the impact would still be Significant and Unavoidable.

Transportation, Circulation, and Parking

- Traffic generated by buildout of the project would worsen traffic at the intersection of *Atlantic Avenue and Webster Street* in Alameda during the morning and evening peak commute hours unless the City of Alameda improves the signal timing

Significant Impacts Reduced to Less than Significant with Mitigation

The DEIR identified fifty significant impacts that would be reduced to a less-than-significant level with mitigation. These are included in the “Summary of the Impacts and Mitigation Measures for the Oak to Ninth Redevelopment Project” and in the DEIR on pages II-15 to II-41.

Alternatives Considered in the Draft EIR

CEQA requires that a range of reasonable alternatives to the proposed project, or to the location of the proposed project, be described in the DEIR. The discussion should focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project. Chapter V of the Draft EIR discusses several alternatives to the proposed project including:

- Alternative 1A: No Project/No New Development
The project site would remain as it is currently.
- Alternative 1B: No Project/Estuary Policy Plan
The project site would be developed according to the *Estuary Policy Plan* (based on certain assumptions and the Bird’s eye perspective diagram)
- Alternative 2: Enhanced Open Space/Partial Ninth Avenue Terminal Preservation and Adaptive Reuse
This alternative would increase the amount of open space to approximately 41.5 acres, retain the 1920s portion of the Ninth Avenue Terminal building, construct approximately 1,800 dwelling units and 95,000 square feet of commercial space.
- Alternative 3: Reduced Development/Ninth Avenue Terminal Preservation
This alternative would retain the entire Ninth Avenue Terminal building, partially remove the wharf structure, provide almost 40 acres of public open space, and construct approximately 540 residential units and 10,000 square feet of commercial space.
- Sub-Alternative: Full Ninth Avenue Terminal Preservation and Adaptive Reuse
This stand-alone sub-alternative would retain and reuse the entire Ninth Avenue Terminal building and related wharf structure. This sub-alternative could be combined with the proposed project or any other alternative.

Comparison of Impacts: Table V-5, “Summary of Impacts: Project and Alternatives” (DEIR, pages V-42 to V-67) summarizes the impacts between the various alternatives. In general, all

alternatives would result in fewer traffic impacts to the local and regional roadway circulation in year 2025 and Alternative 3 would result in Less than Significant impacts for local intersections for traffic generated by Phase I construction. Cumulative regional air pollution would result in Less than Significant impacts with Alternatives 1B and 3. Population growth would be lower with Alternatives 1B and 3. The Sub-alternative would preserve the Ninth Avenue Terminal, thereby reducing any impacts associated with its full or partial removal. All other impacts shown in the summary table are similar to those identified for the project.

Environmentally Superior Alternative: The Draft EIR, as required by CEQA, determined that Alternative 1A is the environmentally superior project. As required by CEQA, however, a second alternative shall be identified when the “no project” alternative emerges as the Environmentally Superior Alternative. In this case, the Reduced Development/Preservation (Alternative 3) with the full Preservation Sub-Alternative would therefore be considered environmentally superior since it would avoid (or reduce to the greatest extent) several significant and unavoidable impacts that would occur with the project. Refer to DEIR Table V-5, “Summary of Impacts: Project and Alternatives,” (pages V-42 to V-67) for a comparison between the proposed project and the alternatives.

Planning Commission Public Hearing – September 28, 2005

Comments received from members of the public focused on the following issues: affordable housing, adequacy of park and open space, use of parks and open spaces by residents rather than members of the public, operation and maintenance of parks, community benefits for Oakland residents, job apprenticeship programs, construction jobs for Oakland residents, the use of public land for development, traffic, parking and transportation issues, preservation and reuse of the Ninth Avenue Terminal, project is inconsistent with the EPP and other General Plan policies, need for a Specific Plan, Bay Trail, air quality issues, urban design, density, loss of industrial land, views of the waterfront, and public access to the waterfront.

Planning Commissioners commented about the vision for the waterfront in the EPP vs. the proposed project, financial feasibility of the land uses specified in the EPP, affordable housing, whether the project sponsors are requesting financial subsidies from the City, future ownership of the parks and open space, amount of parks and open space, examining other project alternatives, such as those proposed by Oakland Heritage Alliance, differing opinions about community benefits, changing the boundaries of the public trust lands, job apprenticeship programs and local hiring, the Specific Plan “requirement” in the EPP, opportunities to develop the waterfront, Ninth Avenue Terminal: preservation vs. open space, tradeoffs of EPP development vs. amenities that can be obtained with this project, project phasing, pedestrian safety, and the rationale for the amount of open space specified in the EPP.

A court reporter transcript of the meeting is available for review in CEDA, Planning and Zoning, 250 Frank Ogawa Plaza, Suite 3315 and is an attachment to the FEIR.

Parks and Recreation Advisory Commission Public Hearing – October 12, 2005

Comments received from members of the public focused on the following issues: consistency with the EPP, adequate parking, adequate access to the site and insufficient parking, no public transit, impacts from railroad traffic, visual access to the open space, concern about future homeowners limiting public access to the public parks, support for the 41.5 acres of open space specified in the EPP EIR, visibility of open space, support for public/private partnerships for management of open space, blockage of views of the Estuary from high-rise development, opportunities for kayaking business close to the water, concern about impacts from a seismic event, the taking of public lands for private purposes, project consistency with the EPP and General Plan, the EPP calls for a Specific Plan to be prepared, density and buildings too high for buildings constructed on Bay fill mud, the need for another neighborhood in Oakland, Ninth Avenue Terminal preservation and reuse opportunities, Ninth Avenue Terminal could be another Fort Mason, and concern about wildlife habitat.

The PRAC commented about the amount of open space, operation and maintenance of the parks and open space, impact on existing recreational facilities, whether there was adequate parking, the privatization of public land, the need for additional park patrols, the need for a school in the project area, pedestrian connections along Lake Merritt Channel, why a Specific Plan was not done for this area, traffic impacts, transportation access, why housing behind Estuary Park, visibility of open space, leasing vs. owning the land, large events in the open space, consistency with the EPP, and the Ninth Avenue Terminal.

A court reporter transcript of the meeting is available for review in CEDA, Planning and Zoning, 250 Frank Ogawa Plaza, Suite 3315 and is an attachment to the FEIR.

Landmarks Preservation Advisory Board Public Hearing – October 17, 2005

Comments received from members of the public focused on the following issues: the proposed project is dense and the parks appear to be for private use, the historic 9th Avenue terminal may be adapted for uses other than those permitted by the State Land Use Commission under the Tidelands Trust, the Estuary Policy Plan should be followed, the project should be more public and not an isolated community in close proximity to a pollution-generating freeway, the entire 9th Avenue terminal shed should be preserved and a study should be done that looks at more uses for it, the terminal shed is a unique piece of architecture, there are opportunities to duplicate what has occurred at Fort Mason and make the reuse financially feasible, comments on archaeology in the DEIR are inadequate, support for many aspects about the proposed project, no clear direction in the EPP regarding the terminal shed, wants to see more open space and supports leaving 15,000 square feet of the bulkhead building, 9th Avenue terminal shed is a remarkable structure, concerned about Oakland losing its history, concern about new residents not wanting large community events on the public open space, the LPAB has already recommended that the 9th Avenue Terminal be landmarked, bracing could be added to the 9th Avenue shed to make the building seismically safe, inspection by a structural engineer thought the building was in decent condition, the Bay Trail could be installed between the shed and the water and still provide views of the waterfront, could be a good place for a ferry stop, could convert the terminal shed to an inn, and the streets in proposed project do not provide adequate waterfront views.

The LPAB commented about the analysis of alternatives in the DEIR, how a historic resource that complies with the Secretary of Interior standards can be destroyed, the terminal shed should be preserved because there is nothing like it remaining, the building is part of a different kind of view, does not preclude views of the water from the public spaces but instead from the residents of the proposed project buildings, cannot see how the findings can be made regarding design quality of the proposed project compared to the original structure, remaining portion of the bulkhead building could block people from using the open space behind it, agrees with DEIR in stating that removal of 90% of the historic structure is a significant impact, difficult to think about uses for the building and where those visitors would park, the amount of work that would be done on the pilings, the amount of parking, transit services, the use of Measure DD funds, residential density, the proposed zoning district, and re-examining the proposed project with regard to the Ninth Avenue Terminal.

A court reporter transcript of the meeting is available for review in CEDA, Planning and Zoning, 250 Frank Ogawa Plaza, Suite 3315 and is an attachment to the FEIR.

Response to DEIR Comments

A number of commentors raised issues regarding the same topics. ESA, the environmental consultant, has prepared a "Master Response" for the specific topics rather than repeat the response in each individual letter. Master Responses are being prepared for the following issues:

- A. Preparation of a Specific Plan
- B. Reuse Alternatives for the Ninth Avenue Terminal
- C. Significant and Unavoidable Transportation Impacts
- D. Transportation Demand Management (TDM)
- E. Traffic Signal Retiming as Mitigation
- F. Pedestrian Activity at Nearby Rail Crossings
- G. Phasing of Open Space and Trail Improvements
- H. Non-CEQA Topics and Considerations

The Final Environmental Impact Report is expected to be published on January 30, 2006.

KEY ISSUES AND ANALYSIS

Vision of the Waterfront

Issue #1: After review of the project's consistency with the *Estuary Policy Plan*, and the proposed plan amendments as presented in this staff report and in Attachment B, does the Commission have any remaining concerns about the project being able to fulfill the goals, policies and objectives as set forth in the *Estuary Policy Plan*?

When the EPP was prepared, there was consensus in the community that future improvements along the Oakland waterfront contain a considerable amount of public parks and open space. The locations for the open spaces and parks were specified in illustrative diagrams for the Oak Ninth project. Although conceptual, these diagrams indicate a total of approximately 43 acres of

parcs and open space for the Oak to Ninth area (see DEIR, p. IV.L-17). There were also allowances for some mixed use development along the Estuary which included land uses not specifically related to Port or marine-related uses.

Uses specified in the EPP for the Oak to Ninth district are primarily “public recreational uses including boating clubs, community and cultural uses, parks, and public open spaces; with primary uses including light industrial, manufacturing, assembly, artists workshops, cultural work/live studios, offices, neighborhood commercial, and restaurants; and including hotel, conference, restaurant, commercial recreation, and cultural. Water uses also included.”

The project proposes approximately 29.9 acres of public open space in generally the same locations, and residential uses where hotels and museums were proposed in the EPP. The project will improve both Clinton Basin and the Fifth Avenue Marinas. Improvements to Clinton Basin with surrounding commercial activity will activate this area. The development patterns, although with different uses, are very similar in terms of active areas and passive recreational opportunities.

The EPP presents somewhat contradictory policies pertaining to the future of the 9th Avenue Terminal. Retention of a small portion of the terminal shed, as proposed is consistent a part of OAK-2.4. The major issue appears to be the amount of building that is saved. With the proposed Shoreline Park, the area will be open and inviting for passive activities with unobstructed views; with the terminal shed or a portion of the shed, the area will be more activated and the views will be compromised.

Staff Comment: The project proposes open space and parks in approximately the same locations as those specified in the EPP. Although the project introduces residential uses to the area, these uses are in approximately the same locations where other non-park activities are proposed in the EPP, away from the shoreline and closer to the freeway. They are just different activities. Instead of attracting museum and hotel visitors, there will be permanent residents in the area. Staff believes that the tradeoff between civic and museum activities and permanent residents is a reasonable substitution considering the amount of open space that will be provided to the City and the commitment to completely maintain the parks and open space for a long-term period.

Design Guidelines and Future Development

Issue #2: With the proposed Design Guidelines serving to frame future development, can the City be assured that there will be a high degree of design quality and to assure an attractive and inviting development for all phases of construction?

The project sponsors have submitted the Preliminary Development Plan without architectural plans or elevations for the future buildings. While this is not an uncommon practice for a large, mixed-use project that will be constructed in phases over many years, staff believed that design guidelines with the PDP would be essential to ensure design consistency of future development. Refer to **Attachment C** for a draft of the Design Guidelines. The Design Guidelines, discussed by the Design Review Committee earlier this evening, set the framework and standards for future design.

Staff Comment: From staff's viewpoint, the guidelines are intended to assure key design elements get incorporated into the future buildings that build on the overall design vision and intention of the project. This approach, while not prescriptive, will assure design quality, [provide active street edges, produce an interesting skyline that preserves major view corridors and assures appropriate scale and massing transitions adjacent to public spaces (streets, mews, parks, plazas, promenades.) There is no successful way to legislate good design. Rather, adopting design principals, assuring the highest quality public improvements and providing key regulatory design and development standards will produce the highest quality design. The Guidelines emphasize architectural variability, allow degrees of flexibility regarding placement of structures within the parcels, address street walls, garage façades, windows and rooftop treatments, support a variety of building heights in the project, and specify the use of high quality materials. With such an approach, future architects will be able to take advantage of the site's characteristics, apply different building technology and materials and provide for a wide variety of architectural treatments within the 20 year development time frame.

As an alternative, the Commission could choose to rely on a more prescriptive approach that would provide a much greater detail on development standards and setbacks.

Historic and Cultural Resources

Issue #3: What is the preferred option for the Ninth Avenue Terminal Shed?

At its public hearing on January 9, 2006, the Landmarks Preservation Advisory Board discussed two items related to the Oak to Ninth project.

1) Philbrick Boat Works, 603 Embarcadero

Briefly, a "Notice of Intent to Submit a Landmark and S-7 Preservation Combining zone Application form for Preliminary Determination of Landmark Eligibility" was submitted by the business owner and considered by the LPAB. The Board recognized the uniqueness of the wooden boat building business, and recommended that the business be relocated elsewhere on the Estuary, but did not recommend it as a City Landmark or a Heritage Property.

2) Ninth Avenue Terminal

Previously, the LPAB approved a recommendation to designate the Ninth Avenue Terminal Shed as a City of Oakland Landmark. Staff determined that this recommendation should move simultaneously with the review and consideration of the Oak to Ninth Project.

The Ninth Avenue Terminal Shed is 180,000 square feet in size. The project proposes to retain 15,000 square of the bulkhead of the Terminal shed, and demolish the remaining 165,000 square feet. Public comments received throughout the public outreach and review process have ranged from support for retaining the bulkhead, as proposed in the project, retaining the 1920s portion of the building, and retaining the entire structure. There have

also been many comments about the structural integrity of the building and its potential for adaptive reuse.

As discussed in previous reports and in other sections of this report, the City's policy documents do not provide clear guidance on this issue and the objectives of historic preservation and the provision of a large, waterfront open space area are competing objectives for this site.

These issues have been presented to the LPAB. The LPAB discussed the conflicting EPP policies at the time of their review of the Draft Environmental Impact Report in October, 2005. The Board formed a sub-committee to examine these issues in more detail. The sub-committee reviewed the mitigation measures in the DEIR and recommended additional options and measures for consideration by the Planning Commission. These options were discussed at the LPAB meeting on January 9, 2006. The LPAB will formalize its recommendations to the Planning Commission at the February 27, 2006 meeting. Below is a summary of the recommendations that were discussed at the meeting in January:

- Required findings in Historic Preservation Element, Policy 3.5 cannot be made
- Direct staff to forward the nomination of Ninth Avenue Terminal to the Planning Commission for a public hearing on its landmark status
- Retain and rehabilitate the entire 1920s portion of the Ninth Avenue Terminal
- Pursue alternate uses of the historic terminal building with the California State Lands Commission (Tidelands Trust)
- Request additional information regarding additional feasible uses for the historic terminal building
- Update the "use feasibility study" prior to any demolition to reflect changes in market trends
- Submit a protection and maintenance plan for the Ninth Avenue Terminal building
- Demolition shall not take place prior to submission for building permits, approval of building permit plan for Shoreline Park, City review and approval of a funding structure for the rehabilitation and re-use of the portion of the terminal shed that will be preserved
- If approval is granted to demolish the 1920s portion of the Ninth Avenue Terminal, then the project shall (1) provide a minimum of two s.f. of park space for every one s.f. of building that is demolished over and above what is shown on the plan in the DEIR, and (2) \$200/s.f. to subsidize the rehabilitation of a landmark(s) and/or preservation district(s), and/or establish a Historic Preservation Fund, and (3) if any of the 18,000 s.f. proposed for retention is demolished, then the project shall compensate for the loss of the 18,000 s.f. historic resource at \$400/s.f.

Staff Comment: The recommendations to have the project compensate for the loss of portions of the Ninth Avenue Terminal by providing additional park space (thereby reducing the amount of developable area) and by contributing financially to a Historic Preservation Fund have major financial implications for the overall feasibility of the project. If the Planning Commission believes that there should be land and/or financial compensation for the loss of an historic structure, or a portion of a structure, then it should review the amounts proposed by the LPAB

and determine whether these are reasonable. In the Commission's consideration, the following points should be reviewed:

- a. The project sponsor has stated that the reuse and restoration of the portion of the building proposed to be retained would cost approximately \$ 5 million. Obviously, saving a larger portion of the building will cost more.
- b. The project sponsor will be undertaking a major set of improvements and investing in long term maintenance of all the parks and shoreline improvements. In reviewing monetary contributions as a mitigation measure for the loss of the landmark, these other investments in the physical improvements and landscape should be considered.
- c. Feasibility reports will be forthcoming in early February, 2006, on the reuse and physical conditions of the Ninth Avenue Terminal Building. This financial and technical information will likely further inform the Planning Commission's decision.

Residential Land Uses

Issue #4: Shall the Estuary Policy Plan be amended to allow residential uses in this location?

If the vision of the waterfront is to allow uses that are different than those proposed in the EPP, extensive residential development must be closely reviewed. Part of this review is whether such a use is compatible and complimentary for the other proposed uses on the site. Another aspect of this review is the financial ability to remediate the site, develop the park, open space and other physical improvements that are envisioned, within a reasonable timeframe, without the residential development. There will be a financial feasibility analysis available in February, 2006 that analyzes these issues in more detail.

Staff Comment: Staff believes that on the whole, the development of the park and open space system, the environmental remediation and the Bay Trail development, in fulfillment of the EPP, are public benefits worth the potential impacts of the proposed residential development. Other beneficial aspects of residential development include the commercial activities that would be supported by such use and the development of a new bay front community that would add to the diversity of Oakland.

Issue #5: Should the EPP be amended to allow a higher residential density?

The residential density adopted in the EPP is 30 units per *gross* acre. The project is proposing to increase the density to 50 dwelling units per *gross* acre (128 acres per *net* acre). The net density proposed is less than that permitted in the Retail, Dining and Entertainment District and the Mixed Use District of the EPP, and the Urban Residential, Neighborhood Center Mixed Use, Community Commercial, Regional Commercial, and Institutional General Plan land use classifications (166.67 du/net acre). The proposed density is comparable to what is permitted in the Waterfront Warehouse District of the EPP (133.33 du/net ac) which is in close proximity to the project site.

Staff Comment: Staff believes that the proposed density is comparable to and even less than, the density permitted in many other areas of Oakland where higher density, multifamily housing is permitted. The location is close to Jack London Square and downtown, other more urban areas.

Staff also believes that the housing type for this location is appropriate. Granted, it will be more noticeable than what is currently on the site, but the height and massing is appropriate for the development of a new neighborhood in this location. Oakland already has multifamily housing along the waterfront, in the areas to the west at Jack London, and to the east with the new developments occurring in the Kennedy Tract by the same developer. The I-880 freeway is situated above the site, thereby reducing its visibility. With the higher density development, the site will be activated and the commercial areas will be available to many more people.

Terms and Length of Development Agreement and “Governance”

Issue #6: Should the City enter into a 20-year Development Agreement with the project sponsors, as summarized earlier in this report?

The developers have requested a Development Agreement with the City. The Development Agreement would be in effect for 20 years from the date of approval. The major negotiating points of the agreement were mentioned earlier in this report. There are several issues that may be of concern to the City regarding the Development Agreement:

- Is the term of the agreement too long (or too short) for a phased project of this size?
- Is the timing of improvements appropriate for a phased project of this size?
- Is the City receiving enough benefits in exchange for a 20 year contract?
- Do the terms of the agreement provide enough assurances for the City that the project will be completed in the time specified in the agreement?
- Is the design review process, allowing a narrower degree of discretion, appropriate for the type of residential development proposed?

Staff Comment: Staff believes that the Planning Commission, City Council/Redevelopment Agency need to discuss the negotiating points of the agreement and decide whether this is a good agreement for all parties involved.

Amending the *Estuary Policy Plan*

Issue #7: Should the Estuary Policy Plan be amended to accommodate this development?

Comments have been made over the course of the public outreach and public hearings about amending the *Estuary Policy Plan* so soon after adoption. Several people have testified that the EPP should be followed exactly as it was adopted. The EPP, Chapter IV, Moving Forward, “Steps Toward Implementing the *Estuary Policy Plan*,” discusses how the Plan should be implemented. **Policy MF-2** states “Develop a companion document to the *Estuary Policy Plan*

to be called the *Estuary Plan Implementation Guide*.” In the discussion about the preparation of an Implementation Guide, the *EPP* states on page 129,

“Implementation of significant project initiatives such as those identified in the *Estuary Policy Plan* typically takes time, and undergo several twists and turns over their lifetimes. For that reason, the Implementation Guide should not be a static document that presents a single way of implementing initiatives. Rather, it should be a ‘working document,’ updated on a regular basis, to reflect unforeseen opportunities or constraints to implementing projects. Specific recommendations should be continually assessed and periodically re-evaluated, based on current market conditions, economic feasibility, site-specific physical characteristics, funding options, etc.”

And, finally, the last paragraph in the *EPP*, p. 137, states,

“In addition, the *Estuary Policy Plan* shall not prohibit the City or Port from accepting and processing development applications, including but not limited to General Plan amendments.”

Staff Comment: Staff believes that the intent of this section of the Plan is to recognize that changes in market forces and the economy could happen and that amendments to the Plan may be warranted. Staff also believes that the site specific conditions make civic or public use projects financially infeasible for public agencies and that it may be appropriate to consider private development options. Therefore, it is appropriate for the City to consider this development application for a project that appears to balance public access and open space opportunities with private residential and commercial development.

NEXT STEPS

- Release of the FEIR expected January 30, 2006
- Public Hearing with Parks and Recreation Advisory Commission on February 8, 2006
Recommendation to the Planning Commission on proposed open space and parks
- Public Hearing with Landmarks Preservation Advisory Board – February 27, 2006
Recommendation to the Planning Commission on recommendations for the 9th Avenue Terminal
- Public Hearing with Planning Commission – March (date to be determined)
Recommendation to the City Council/Redevelopment Agency
- City Council Workshop (unscheduled – but proposed for late March or early April)
- City Council Public Hearings (unscheduled)

STAFF RECOMMENDATION

Staff recommends that the Planning Commission review and consider the issues discussed in the environmental impact report, and provide comments and direction to staff regarding the proposed project and the policy issues raised in this staff report.

Prepared by:

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Planning & Zoning - Major Projects

Approved for forwarding to the
City Planning Commission:

CLAUDIA CAPPIO
Director of Development

ATTACHMENTS:

- A. Phasing Plan
- B. Draft *Estuary Policy Plan* text amendment
- C. Draft Design Guidelines

Vesting Tentative Subdivision Map (Planning Commission only)
Preliminary Development Plans (Planning Commission only)