

OAK TO NINTH AVENUE PROJECT

Final Environmental Impact Report

State Clearinghouse No. 2004062013

Prepared for:
City of Oakland CEDA

February 2006



CITY OF OAKLAND

Community and Economic Development Agency, Planning & Zoning Services Division
250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, 94612-2032

NOTICE OF AVAILABILITY OF FINAL ENVIRONMENTAL IMPACT REPORT FOR THE OAK TO NINTH AVENUE PROJECT

TO: All Interested Parties

SUBJECT: Notice of Availability of Final Environmental Impact Report for the Oak to Ninth Avenue Project

CASE NUMBER: ER04-0009

PROJECT LOCATION: Approximately 64.2 acres bound by Embarcadero Road, the Oakland Estuary, Fallon Street, and 10th Avenue. APN Nos. 0000-0430-001-02, portion of 0000-0430-001-04, 0000-0460-003, 0000-0460-004, 0000-0465-002, and a portion of 0000-0470-002.

PROJECT SPONSOR: Oakland Harbor Partners, LLC (Signature Properties and Reynolds & Brown)

BRIEF DESCRIPTION OF PROJECT:

The project would construct approximately 3,100 residential dwelling units, approximately 200,000 square feet of ground-floor retail/commercial space, and approximately 28.4 acres of parks and open spaces (including improvements to the existing Estuary Park). The project would substantially demolish the existing 180,000 square-foot Ninth Avenue Terminal building (an historic resource) and 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 bicycle facility along the project's waterfront (excluding parcels not owned by the City/Port of Oakland or the project sponsor) as a segment of the Bay Trail. The majority of existing uses and structures on the project site would be removed or demolished.

ENVIRONMENTAL REVIEW: On September 1, 2005, a Draft EIR was published for this project, and the public review period ran until October 24, 2005. All comments that were received have been compiled and responded to in a Final EIR, along with changes and clarifications to the Draft EIR. The preparation of the Final EIR has been overseen by the Environmental Review Officer or his/her representative, and the conclusions and recommendations in the document represent the independent conclusions and recommendations of the City. Copies of the Final EIR are available for distribution to interested parties at no charge at the Community and Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612, Monday through Friday, 8:30 a.m. to 5:00 p.m. The Final EIR is also available on the City of Oakland website at www.oaklandnet.com under "Oak to Ninth EIR" on the front page.

PUBLIC HEARING: The Oakland Planning Commission will hold public hearing to consider approval of the Oak to Ninth Avenue Project. This action consists of the certification of the Final EIR and consideration of the planning entitlements for the project. When the City confirms the date for the hearing, it will publish a public notice of the meeting date, time, and location in advance, as required by law. For further information, please contact Margaret Stanzione at (510) 238-4932 or mstanzione@oaklandnet.com.

February 1, 2006

Claudia Cappio, Development Director

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CHAPTER I

Introduction

A. CEQA Process

On September 1, 2005, the City of Oakland (Lead Agency) released for public review a Draft Environmental Impact Report (Draft EIR or DEIR) for the Oak to Ninth Avenue Project (ER04-0009). The 54-day public review and comment period on the Draft EIR began on September 1, 2005, and closed on October 24, 2005.

The City of Oakland Planning Commission held a public hearing on the Draft EIR on September 28, 2005. The Oakland Parks and Recreation Commission (PRAC) held a public hearing on the Draft EIR on October 12, 2005. The Oakland Landmarks Preservation Advisory Board (LPAB) held a public hearing on the Draft EIR on October 17, 2005.¹

The Draft EIR for the Oak to Ninth Avenue Project, together with this response to comments document, constitute the Final Environmental Impact Report (Final EIR or FEIR) for the project.² The Final EIR is an informational document prepared by the Lead Agency that must be considered by decisionmakers (including the Oakland City Planning Commission and City Council) before approving or denying the proposed project.

The City of Oakland (Lead Agency) has prepared this document pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15132 of the CEQA Guidelines specify the following:

“The Final EIR shall consist of:

- (a) The Draft EIR or a revision of that draft.
- (b) Comments and recommendations received on the Draft EIR either verbatim or in a summary.
- (c) A list of persons, organizations, and public agencies commenting on the Draft EIR.

¹ On January 9, 2006, the LPAB held a public hearing regarding the historic designation of specific properties on the project site. These determinations are pertinent to the Cultural Resources analysis in the EIR, but do not, in and of themselves, address the analysis in the DEIR. To the extent that information is changed in the DEIR as a result of determinations made by the LPAB, it is addressed in this Final EIR.

² The commonly used term “EIR” is used in this document to refer to the Draft EIR combined with this document. This document is referred to as “Final EIR,” its commonly used and practical title.

- (d) The response of the Lead Agency to significant environmental points raised in review and consultation process.
- (e) Any other information added by the Lead Agency.”

This Final EIR incorporates comments from public agencies and the general public, and contains appropriate responses by the Lead Agency to those comments.

B. Organization of the Final EIR

This document contains information that responds to issues and comments raised during the public comment period on the Draft EIR. Comments received after close of the public comment period, and appropriate responses thereto, are also included and noted as such. The document is organized as follows after this introductory chapter.

Chapter II, *New Project Variant and Environmental Effects*, describes an additional project variant of the Oak to Ninth Avenue Project described in the Draft EIR and contains the environmental analysis of the new project variant.

Chapter III, *Changes to the Draft EIR*, contains text changes to the Draft EIR. These are changes initiated by Lead Agency staff or resulting from comments on the Draft EIR.

Chapter IV, *Organizations and Persons Commenting on the Draft EIR*, contains a list of organizations and persons that submitted written comments or commented at the various public hearings on the Draft EIR.

Chapter V, *Master Responses*, contains master responses to recurring topic areas raised in multiple written or spoken comments on the Draft EIR.

Chapter VI, *Other Responses to Written Comments on the Draft EIR*, contains comment letters received during the comment period (and within a reasonable timeframe after). The responses to the set of comments in each letter are provided following the letter.

Chapter VII, *Planning Commission Hearing Comments*, contains a transcript of the public comments received at the Oakland Planning Commission public hearing on the Draft EIR and responses to those comments.

Chapter IX, *Parks and Recreation Commission Hearing Comments*, contains a transcript of the public comments received at the Oakland PRAC public hearing on the Draft EIR and responses to those comments.

Chapter X, *Landmarks Preservation Advisory Board Hearing Comments*, contains a transcript of the public comments received at the LPAB public hearing on the Draft EIR and responses to those comments.

Appendices are included at the end of this report.

CHAPTER II

New Project Variant and Environmental Effects

In response to input received from the City as a result of its urban design analysis of the proposed project, the project sponsor has developed an additional project variant for the configuration of Parcel N.¹ The variant configuration is intended to reduce the amount of paved internal roadway area surrounding the building, which limited public access and separated the parcel from Estuary Park located immediately south of Parcel N. Additionally, the building design is modified to shift some of much of the building's mass and height away from the park and the waterfront. Parcel N is located directly west of the Jack London Aquatic Center (Aquatic Center) and north of Estuary Park.

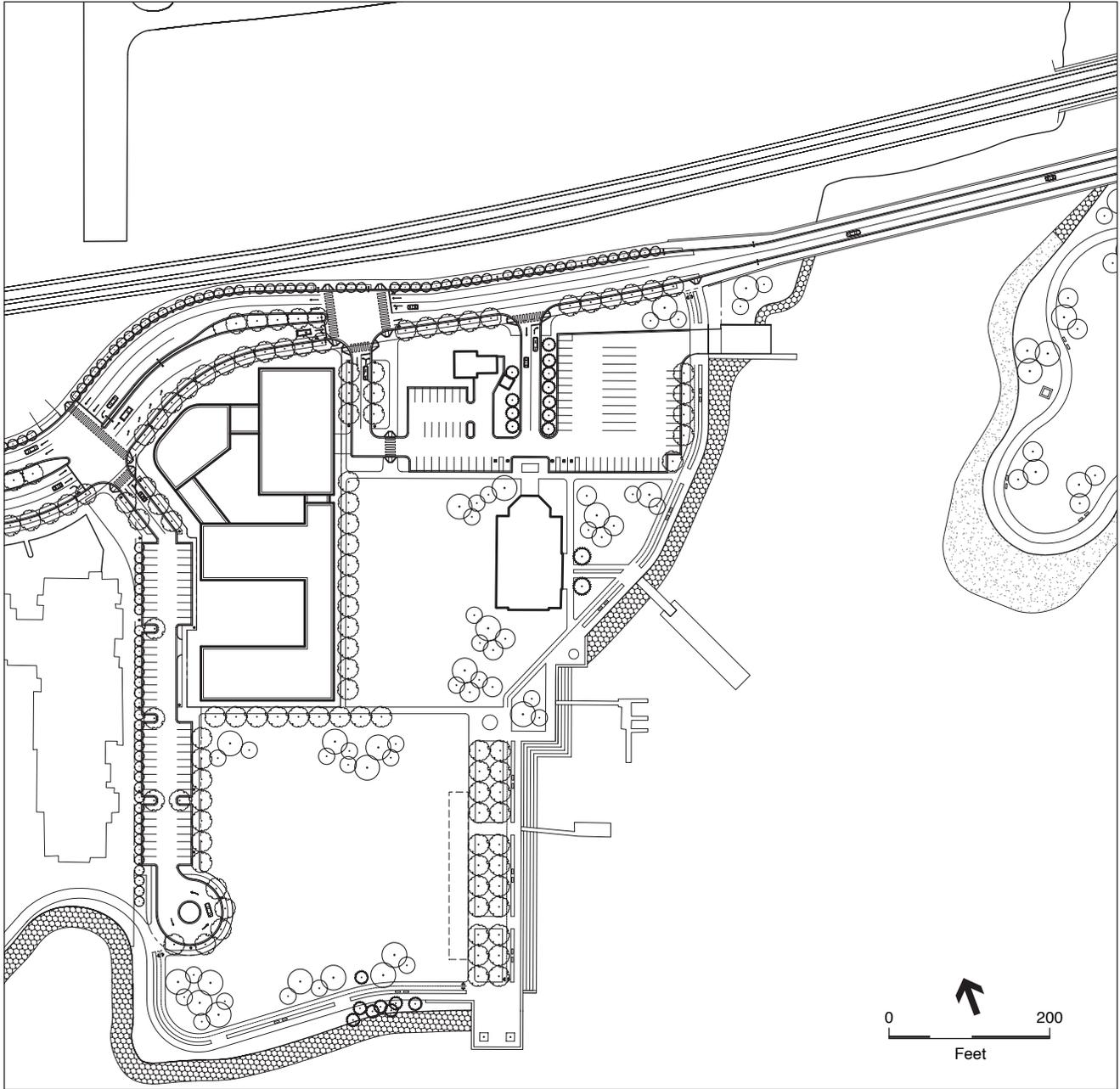
A. Description of Parcel N Variant

Shown below in **Figure II-1**, the new project variant presents a modified site plan configuration for Parcel N. Like the proposed project described in the Chapter III (Project Description) of the DEIR (and shown in **Figure II-2** of this Chapter), development on Parcel N would continue to provide up to 300 dwelling units and up to approximately 15,000 square feet of ground-floor retail. Approximately 300 onsite parking spaces (on-street and within the building) would continue to be provided to serve the uses on the site.

In the Parcel N site configuration for the project (as analyzed in the DEIR), streets with parking would border the west property line, the north edge of Estuary Park, and the east edge of the parcel, adjacent to the Jack London Aquatic Center and its associated parking lot. This street configuration created a "U" around the Parcel N building, and access to the site would occur at two new intersections at Embarcadero. The eastern intersection would also provide secondary access to the existing Aquatic Center parking lot.

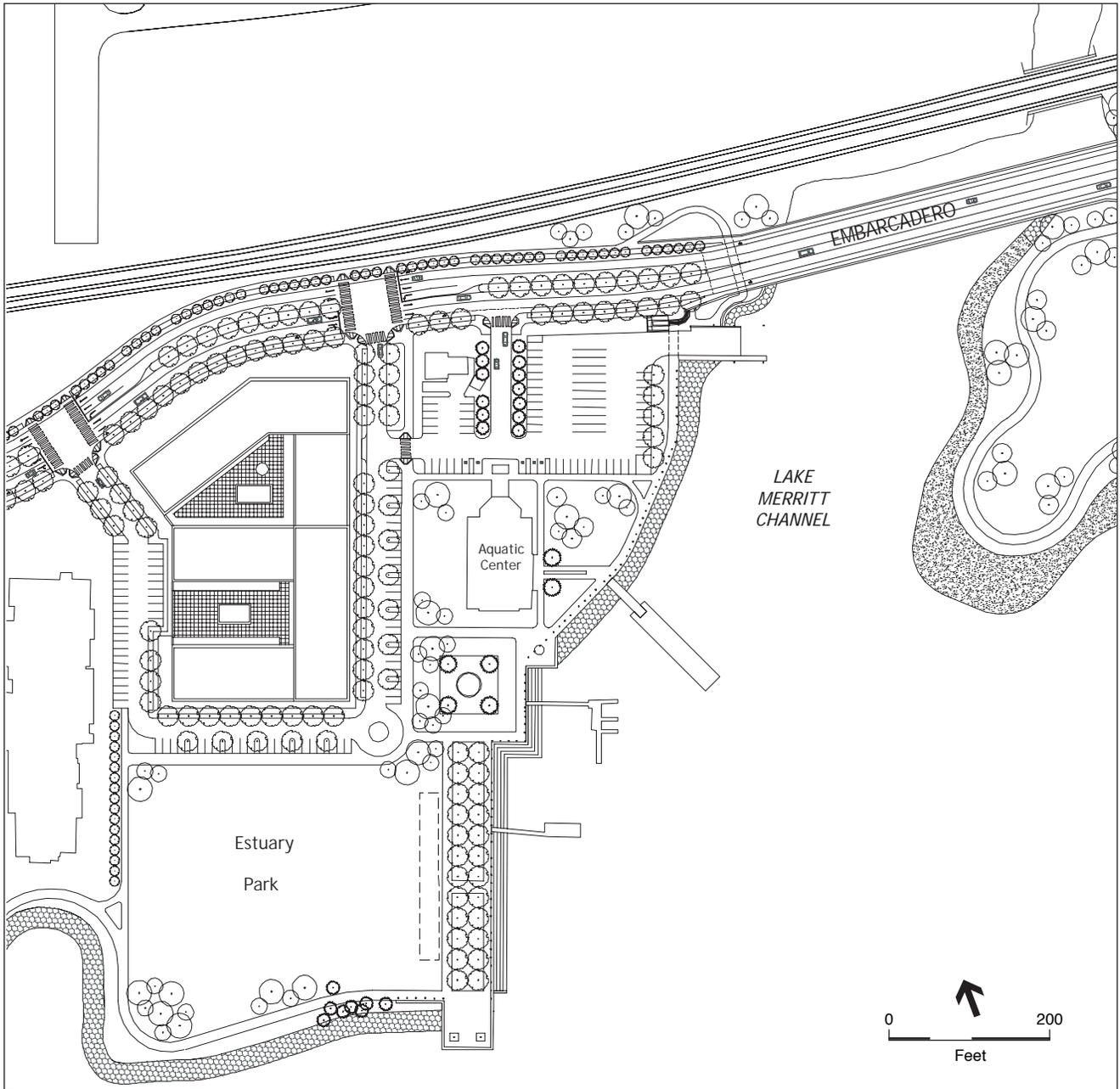
In the Parcel N Variant, vehicular access to Parcel N from this intersection is prohibited and would serve as a secondary access to the Aquatic Center parking lot only. Access to Parcel N would be from the western intersection, and the street and associated on-street parking would abut the west boundary of the project site and extend further south along Estuary Park, similar to

¹ The City retained Ken Kay Associates, an Urban Planning, Landscape Architecture, and Urban Design firm to assist staff with an urban design analysis of the proposed site plan for the project. The outcomes were presented and discussed at the City Planning Commission hearings of December 14, 2005 and January 25, 2006.



SOURCE: ROMA Design Group in association with
MVE Architects, Moffatt & Nichol and BKF Engineers

Oak to Ninth Avenue . 202622
Figure II-1
Variant Parcel N Site Plan



SOURCE: ROMA Design Group

Oak to Ninth Avenue . 202622

Figure II-2
 Project Parcel N Site Plan
 (as analyzed in DEIR)

current conditions. With removal of the driveway north of Estuary Park, the park area could be increased to the north along the west side of the Aquatic Center. Parcel N would be reduced from 2.4 acres to approximately 1.85 acres (or 0.55 acres). Slight modifications would occur to the Embarcadero roadway alignment along the Parcel N frontage (compared to that depicted in the DEIR and shown in Figure II-2 in this FEIR document).

As shown comparing **Figure II-3** and **Figure II-4** (photosimulations of the Parcel N variant and Project Parcel N analyzed in the DEIR, respectively), the distribution of building height within the building would change, and the variant would introduce a 185-foot tower at the northeast corner of the building along the Embarcadero. The building height on other portions of the buildings would vary, with a maximum height of 64 feet (compared to a maximum 86 feet in the Project Parcel N analyzed in the DEIR). This tower would be approximately 150 feet wide on its east and west facades, and approximately 75 feet wide on its north and south facades.

As with the Increased Height Variant analyzed in the DEIR, the proposed Parcel N Variant is presented as a variation of the project for the City to consider. The environmental effects of the new variant, highlighting the extent to which they differ from those presented in the DEIR, are discussed below.

B. Environmental Effects

The Parcel N Variant would have the same impacts identified and analyzed in the DEIR for the proposed project. A summary analysis of the potential impacts of the Parcel N Variant is provided below. Emphasis is provided to the areas most potentially affected by the Parcel N changes described: circulation, views and scenic vistas, and shadow.

Land Use, Plans, and Policies

Compared to the proposed project, the variant would not result in changes to the Land Use, Plans, and Policies impacts identified for the project in the DEIR since no changes in land use or development program would occur.

Transportation, Circulation, and Parking

The variant would not result in changes to the transportation, circulation, and parking impacts identified for the project in the DEIR since no changes in land use or development program are proposed. The number of dwelling units, parking spaces, and square footage of retail/commercial uses would remain the same as with the proposed project. The change in site configuration would not result in the same impacts identified for the project related to site access and circulation, as discussed starting on DEIR page IV.B-57.

Air Quality and Meteorological Conditions

Since the variant would have the same traffic and circulation characteristics as the proposed project, it would generate the same number of vehicle trips and criteria air pollutant emissions. No change would result to the impacts identified in the DEIR.

Hydrology and Water Quality

The variant would not result in changes to the amount of impervious surfaces onsite, and would continue to remove existing uses and onsite handling and storage of hazardous material, improve the onsite storm drain system, and implement measures to treat runoff. As a result, the variant would result in the same water quality and hydrology impacts during construction and operations as identified for the project.

Cultural Resources

The variant would not affect the proposed substantial demolition of the Ninth Avenue Terminal. No historic resources are located in the area of Parcel N. Therefore, the variant would have the same cultural resources impacts as identified for the project.

Geology, Soils, and Seismicity

Building development of residential use would still occur with the variant, as with the project, therefore the same impacts relative to geology, soils, and seismic hazards that would occur with the project would occur with the variant.

Noise

Since the variant would have the same traffic and circulation characteristics and the internal street along the property line is generally consistent with that proposed by the project, the variant would therefore result in the same noise impacts as identified in the DEIR. The variant, like the project, would result in a significant, unavoidable impact because it locates residential uses in a noise environment that exceeds the City's "normally acceptable" standard.

Hazardous Materials

The variant would involve construction activities and would therefore have the same construction-related impacts identified in the DEIR. The project would still expose the public to hazardous materials during construction. Remediation would still occur, and any operational hazardous materials impacts would be less than significant, as with the project.

Biological Resources

The variant would not change the overall location of the development on Parcel N or any other characteristics that may affect biological resources, therefore the same impacts identified in the DEIR would occur.

Population, Housing, and Employment

The variant would not change the total number of housing units, population, or number or type of jobs proposed to occur. Therefore, the project would have the same population, housing, and employment impacts identified in the DEIR for the proposed project.

Visual Quality and Shadows

Visual Character

While the relative heights of the multiple building elements would change with the variant, compared to the proposed project, the overall massing of the building and its replacement of existing land uses and structures would not change the visual character impact identified in the DEIR.

Views and Scenic Vistas

Figure II-3 simulates the Parcel N Variant as viewed from the Amtrak pedestrian bridge at Jack London Square. This viewpoint is the same as that provided as Figure IV.K-4 of the Draft DEIR (and provided as **Figure II-4** in this Chapter) and provides a medium range view of the parcel. This viewpoint shows the widest building façade – the north-south façade being narrower. Compared to the DEIR project, the reconfigured Parcel N building would reduce the building height at the south portion of the site from up to 86 feet maximum to 64 feet maximum (adjacent to Estuary Park and the adjacent residential condominiums). Along the Embarcadero, the tower would be a new prominent element at up to 185 feet tall (other project towers up to 240 feet tall), and a lower podium approximately (56 to 64 feet maximum) would be situated at the initial east-bound approach to the site, as proposed in the DEIR project. Compared to the DEIR project, the Parcel N Variant would not result in a change to the resulting project views from this vantagepoint (looking at the building's broadest façade) that would not otherwise occur with the project. The same degree of existing long-range view of the distant hills would be blocked. Overall, Parcel N would result in noticeable changes to existing views, but would not substantially affect any scenic vista, including the long-range views of the East Bay hills



Existing view from Amtrak pedestrian bridge looking southeast (VP3)



Visual simulation of proposed project



Existing view from Amtrak pedestrian bridge looking southeast (VP3)



Visual simulation of proposed project

Shadow

As discussed above, the variant would shift the relative heights of the multiple building elements as well as overall massing compared to the project. These changes would alter the shadow patterns cast by the project throughout the year and times of day. Situated along the western portion of the site, Parcel N development would cast shadows eastward toward the adjacent residential development (shadow-sensitive area) and northward on and across the Embarcadero. A set of variant shadow diagrams (**Figures II-5 through II-16**) is provided at the end of this Chapter. Shadow diagrams for the proposed project as analyzed in the DEIR are provided in **Appendix C** of this FEIR.)

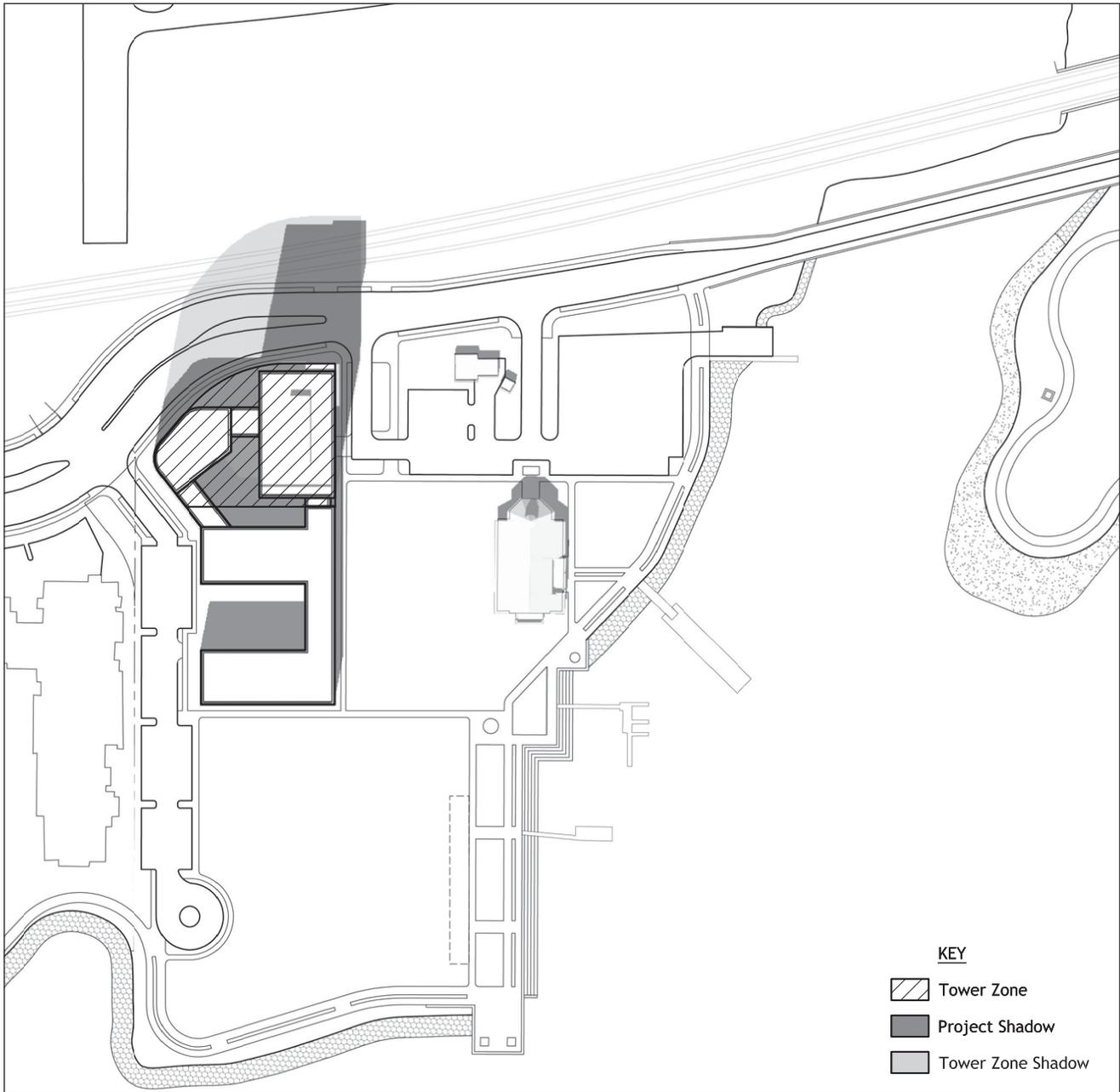
The noticeable changes in shading that would occur under the variant compared to the proposed project would occur to the west as a result of “opening” up the solid west-facing building façade and introduction of the new tower along the Embarcadero. During mornings in March, September, and December (worst-cases) (**Figures II-5, II-11, and II-14**, respectively), variant shadows on the adjacent residential property to the west would be less than that cast by the project shadow (**Figures IV.K-20, IV.K-26, and IV.K-29** in **Appendix C** of this FEIR). Shadow in this shadow-sensitive area would be in full sun by mid-day (around noon) all year as shown in **Figures II-6, II-12, and II-15**. Shadow from the new tower would cast shadow on or across the Embarcadero during the afternoons most of the year, however, this right-of-way and the area immediately north are not considered shadow-sensitive areas and no significant impact would occur.

Public Services and Recreation

The variant would not change the proposed total open space acreage proposed by the project and could result in area where existing Estuary Park could extend northward. Also, the development program for the site, in terms of dwelling units, population, or land uses under the variant would be the same as for the proposed project; therefore the variant would not change the public services and recreation impacts identified for the proposed project.

Utilities and Service Systems

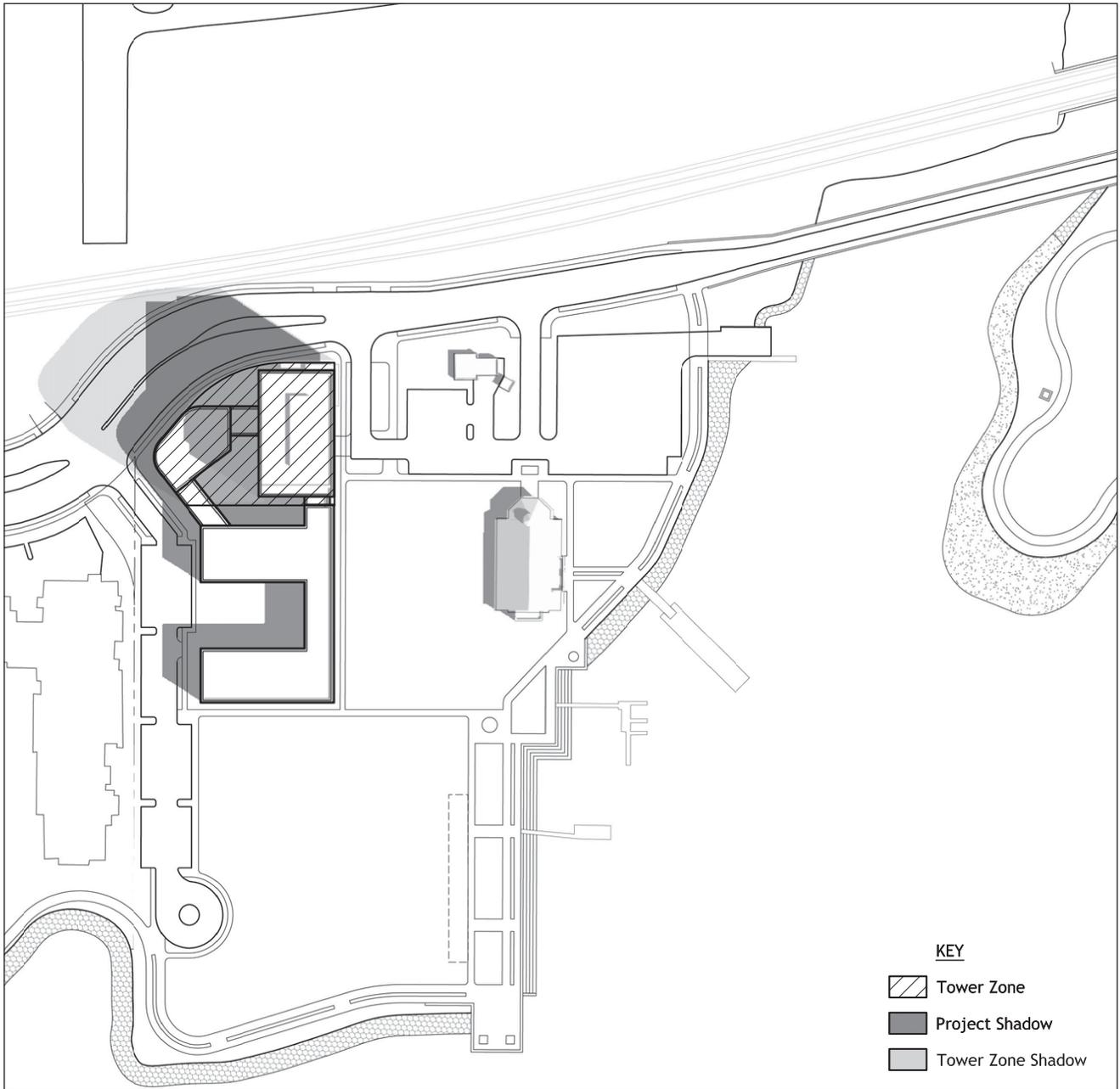
Similar to public services impacts above, since the variant would not change the total number of dwelling units, population, or land uses impacts identified for public utilities and service systems would be the same as identified for the proposed project.



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622

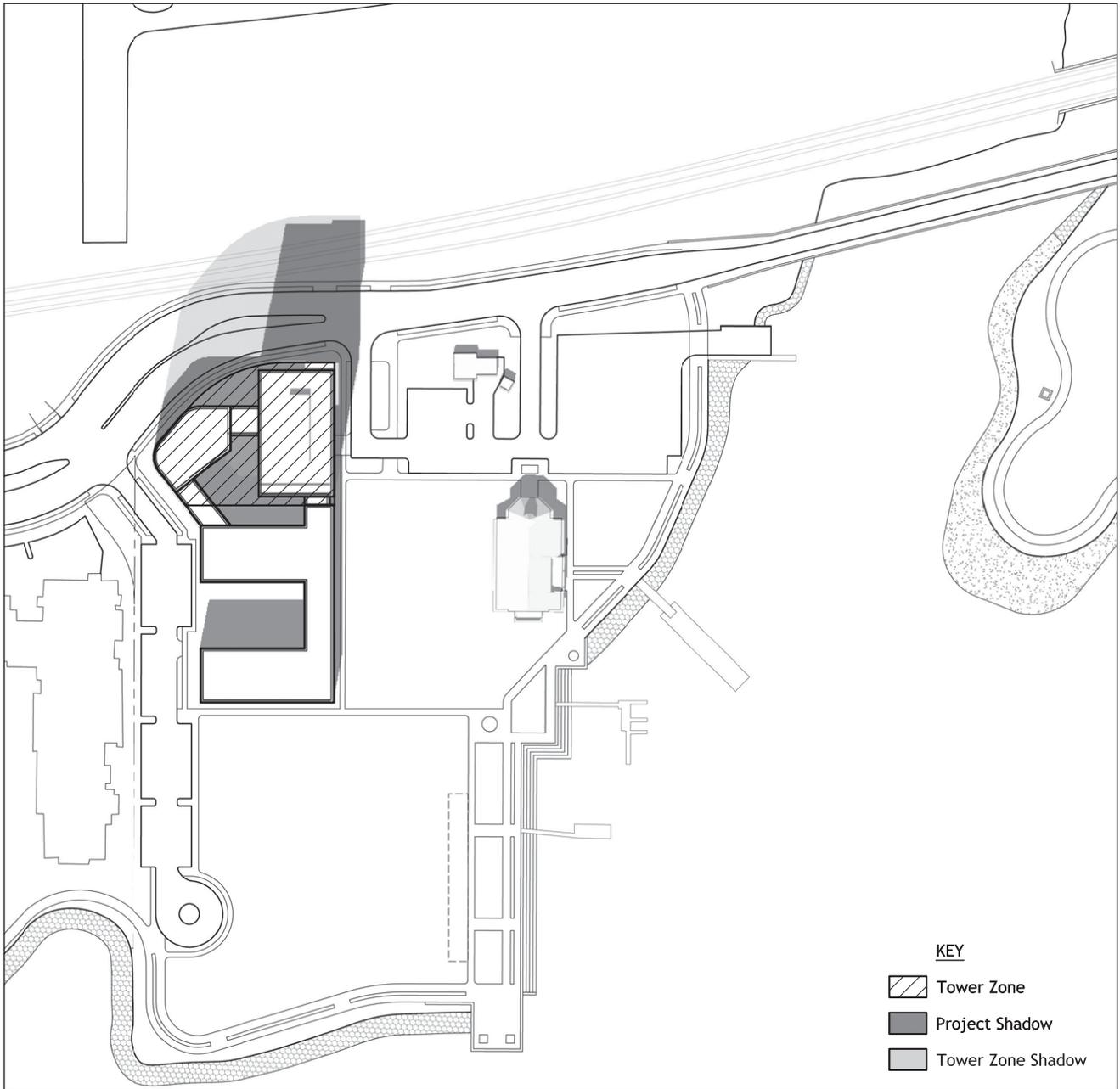
Figure II-5
 Variant Parcel N-
 March Shadow Patterns, 9 am



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622

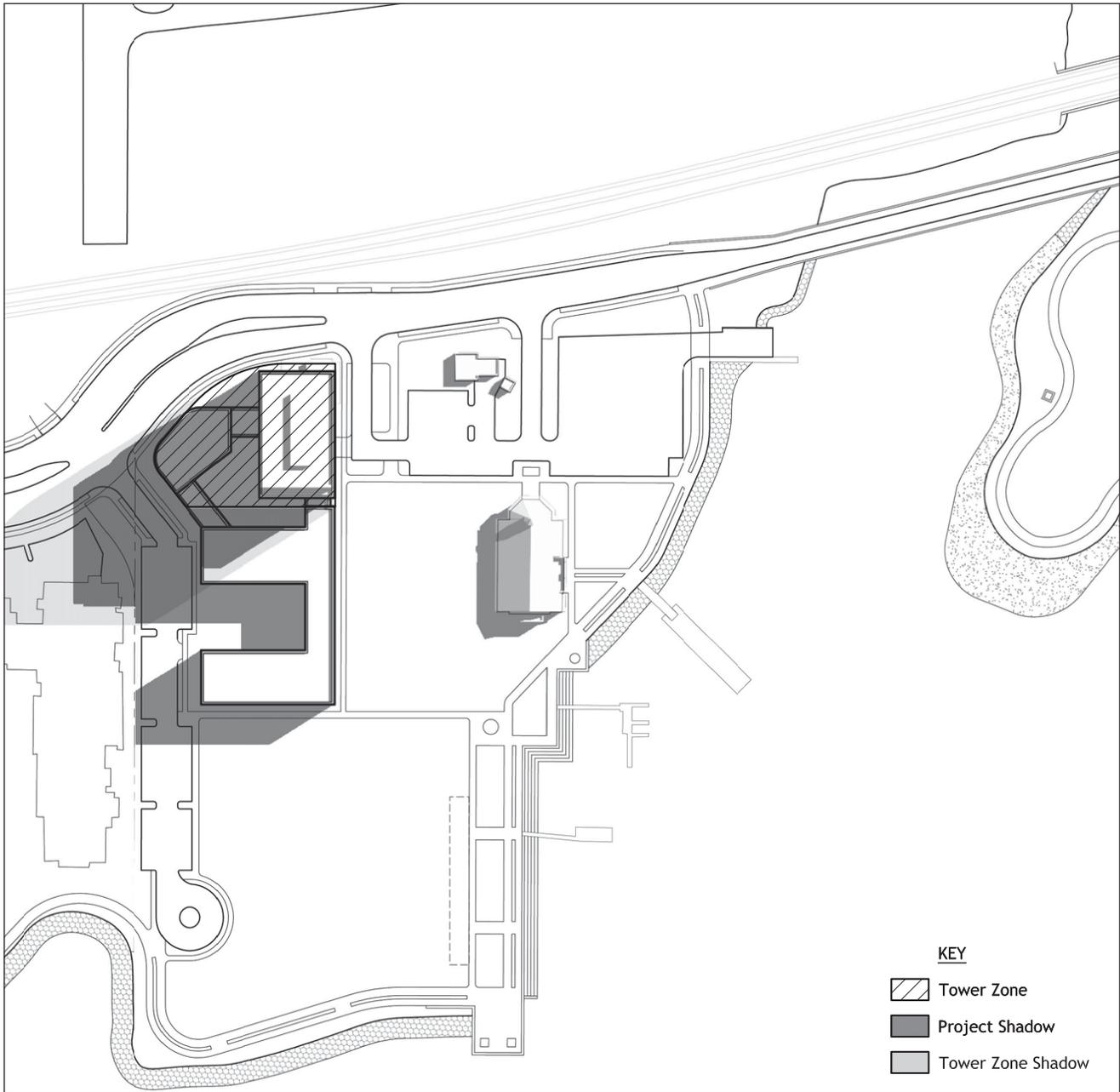
Figure II-6
Variant Parcel N-
March Shadow Patterns, 12 noon



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622

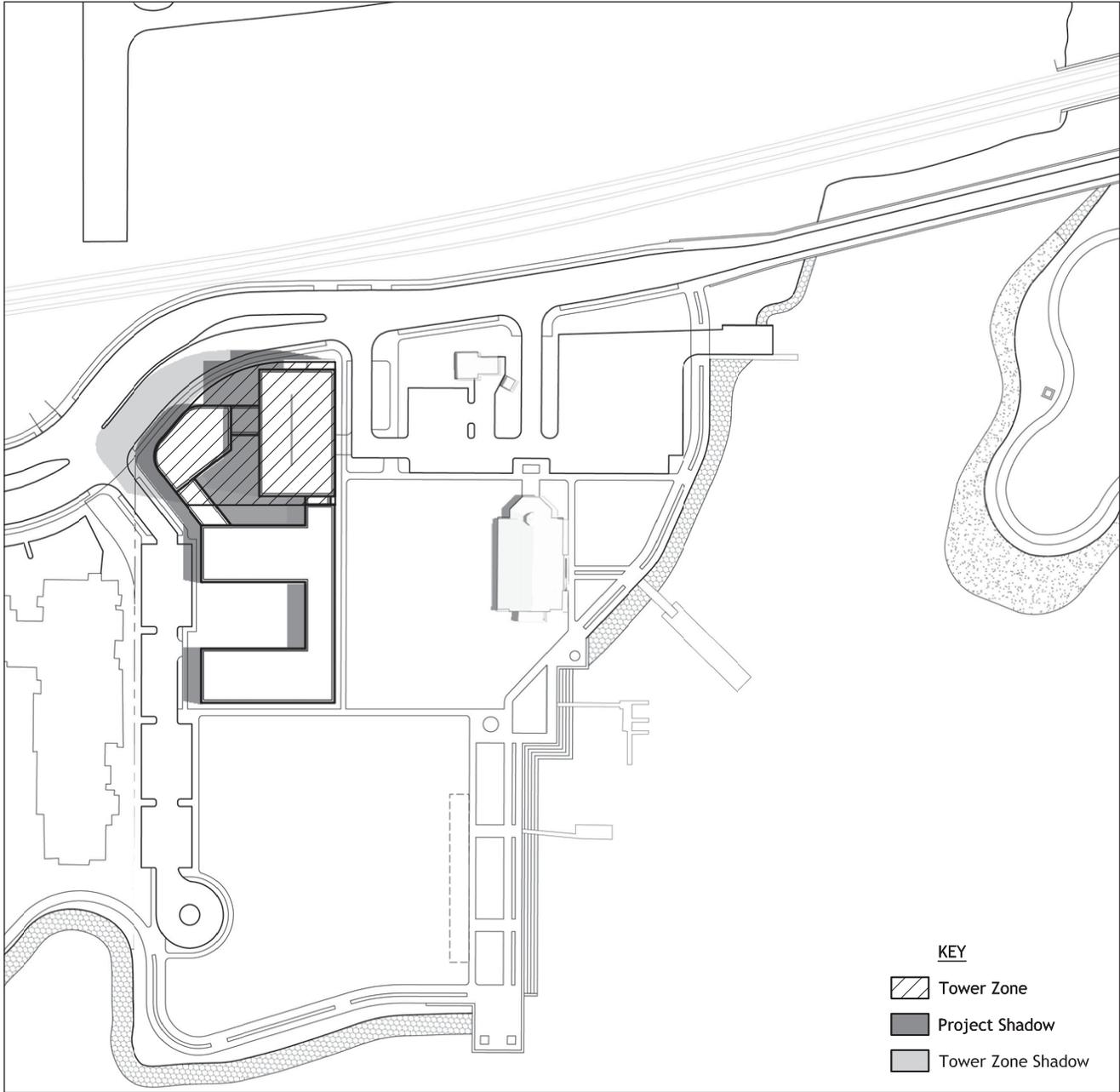
Figure II-7
 Variant Parcel N-
 March Shadow Patterns, 3 pm



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622

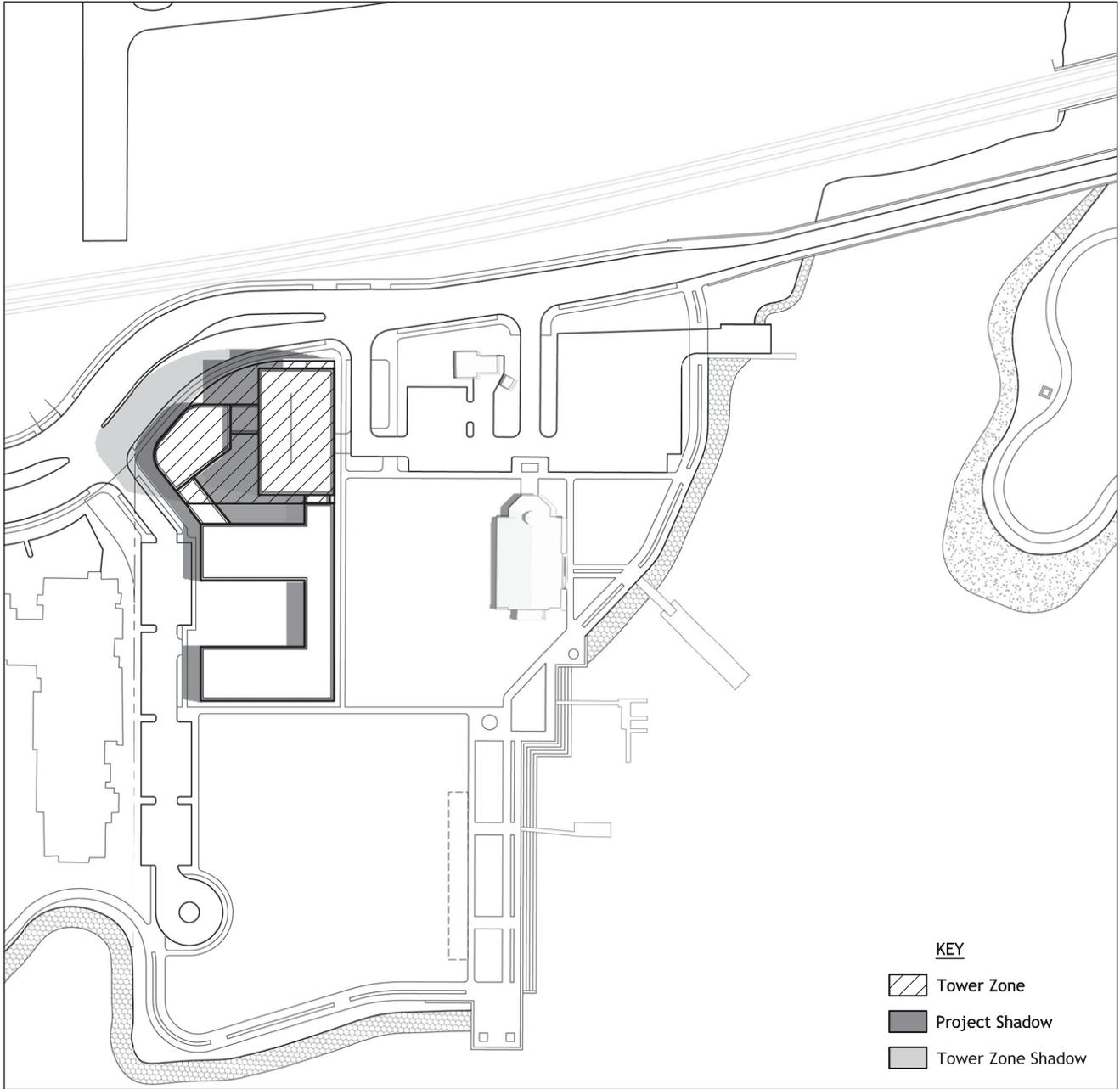
Figure II-8
 Variant Parcel N-
 June Shadow Patterns, 9 am



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622

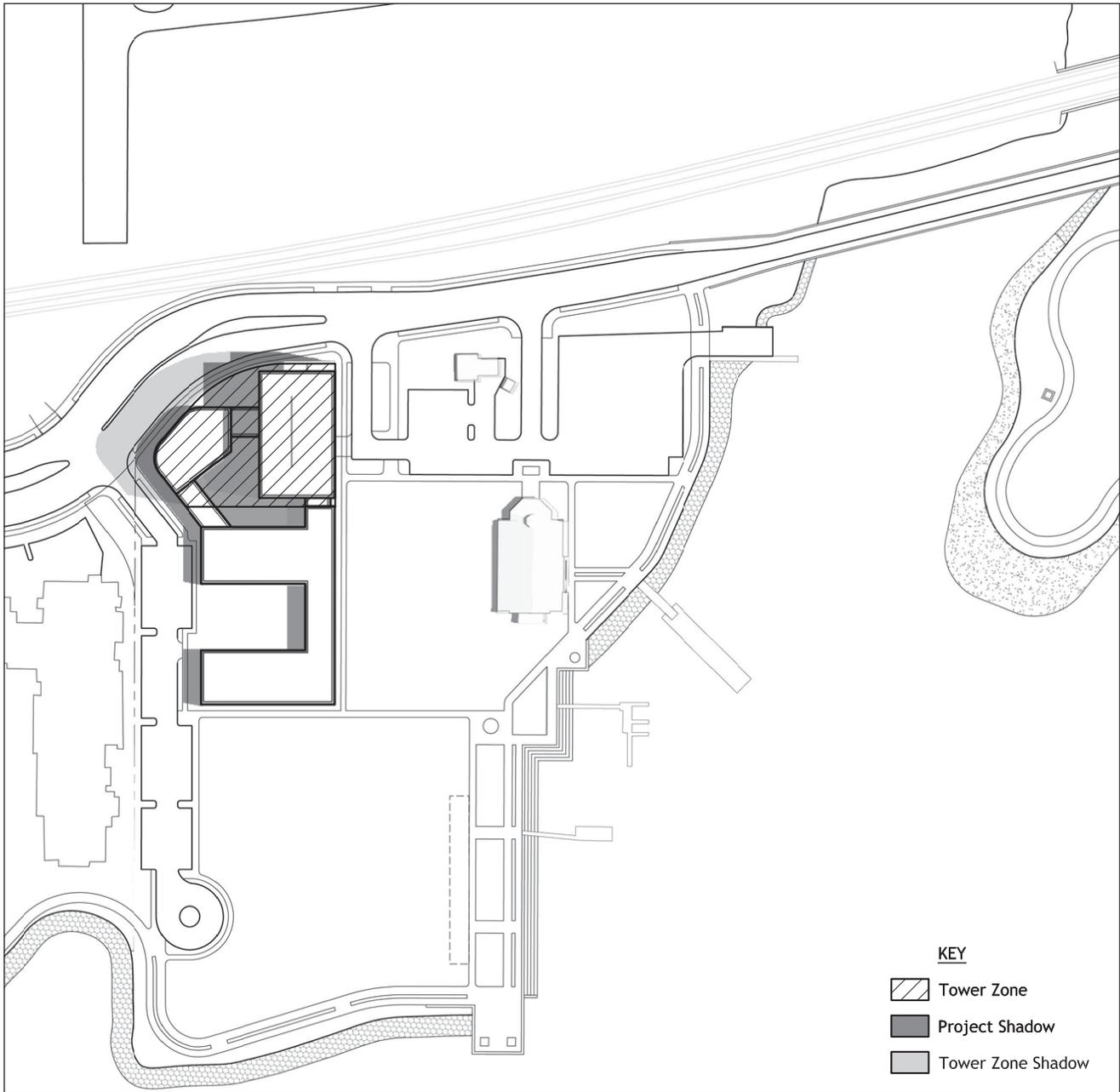
Figure II-9
 Variant Parcel N-
 June Shadow Patterns, 12 Noon



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622

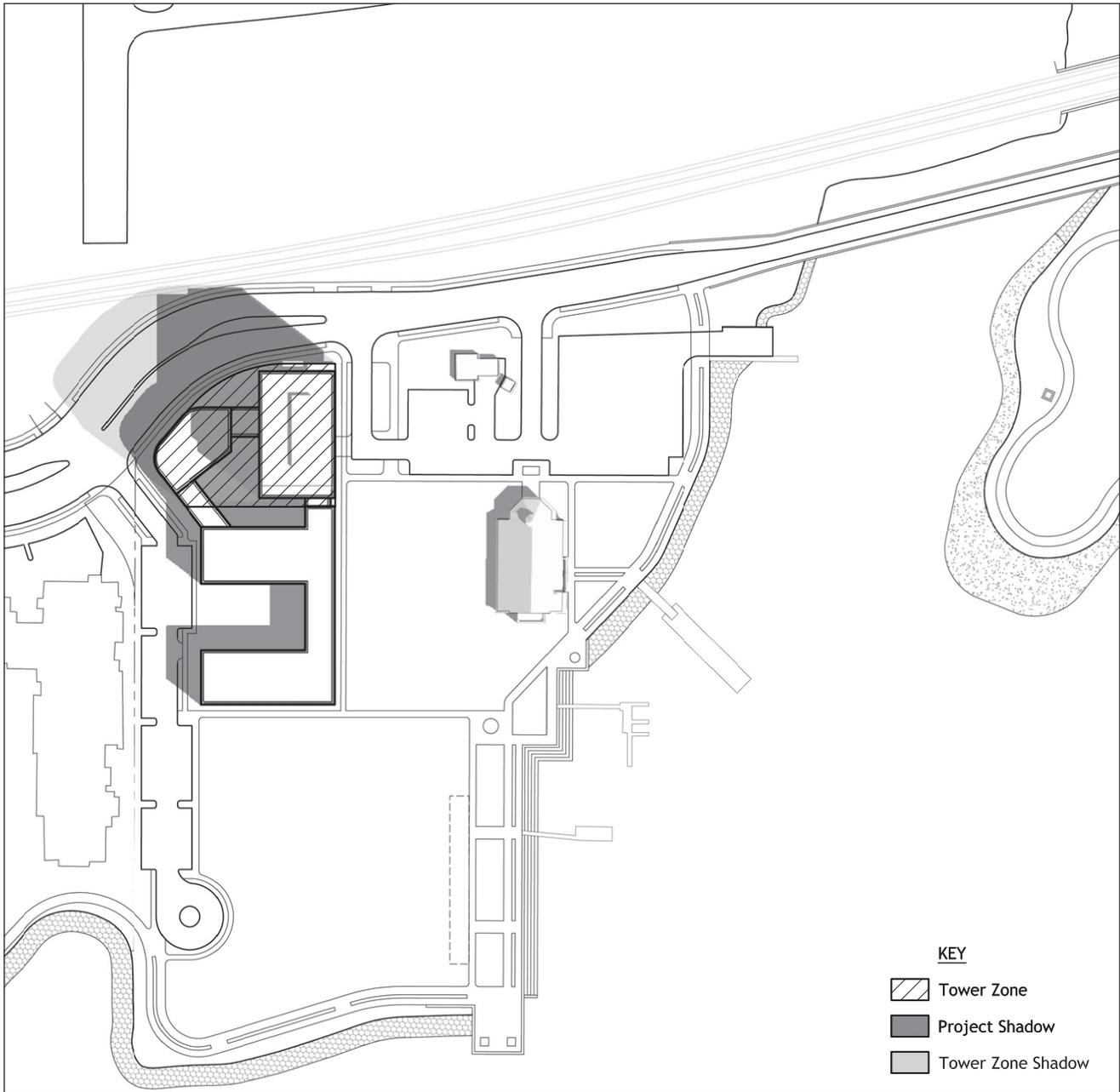
Figure II-10
 Variant Parcel N-
 June Shadow Patterns, 3 pm



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622

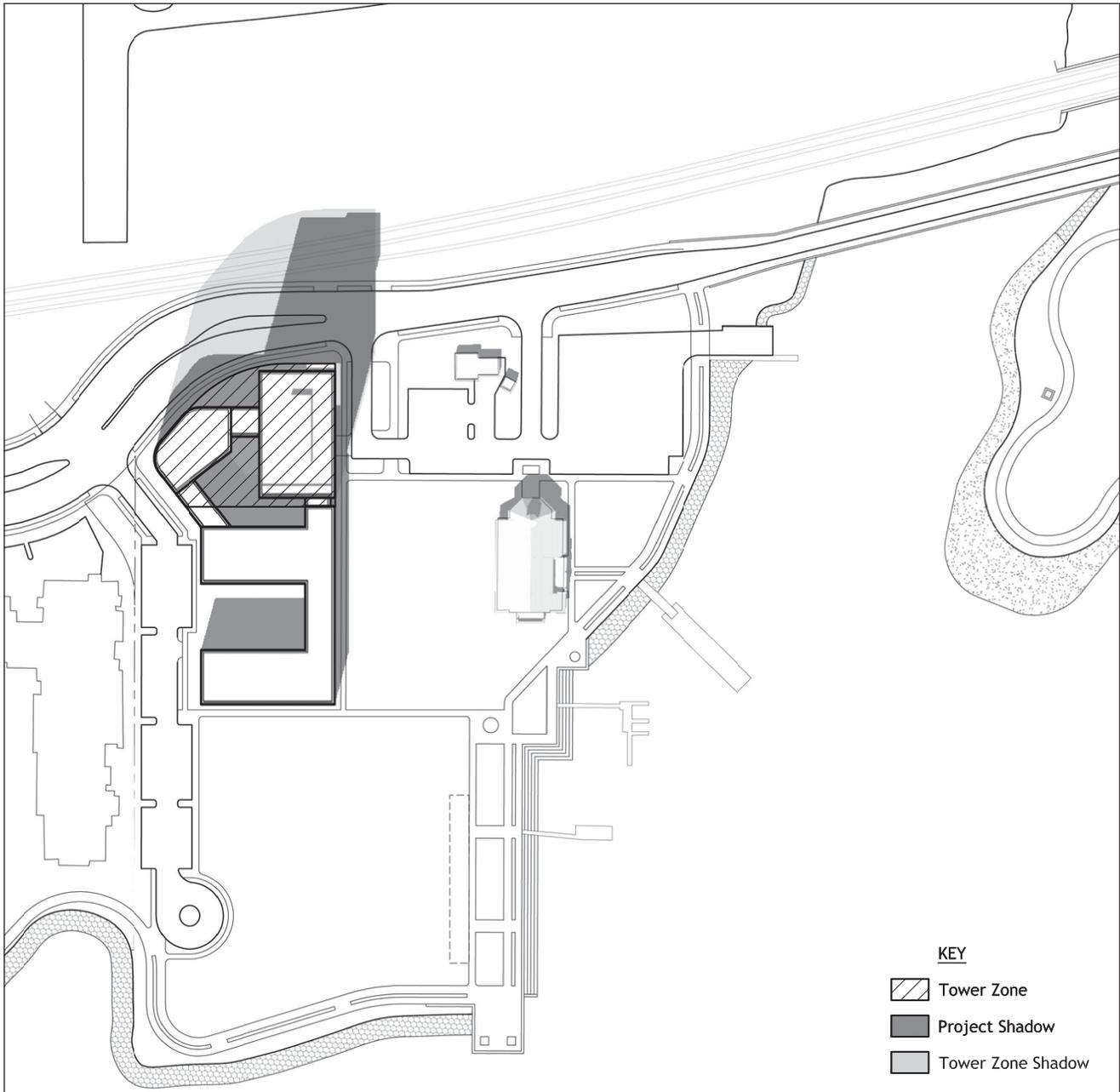
Figure II-11
 Variant Parcel N-
 September Shadow Patterns, 9 am



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622

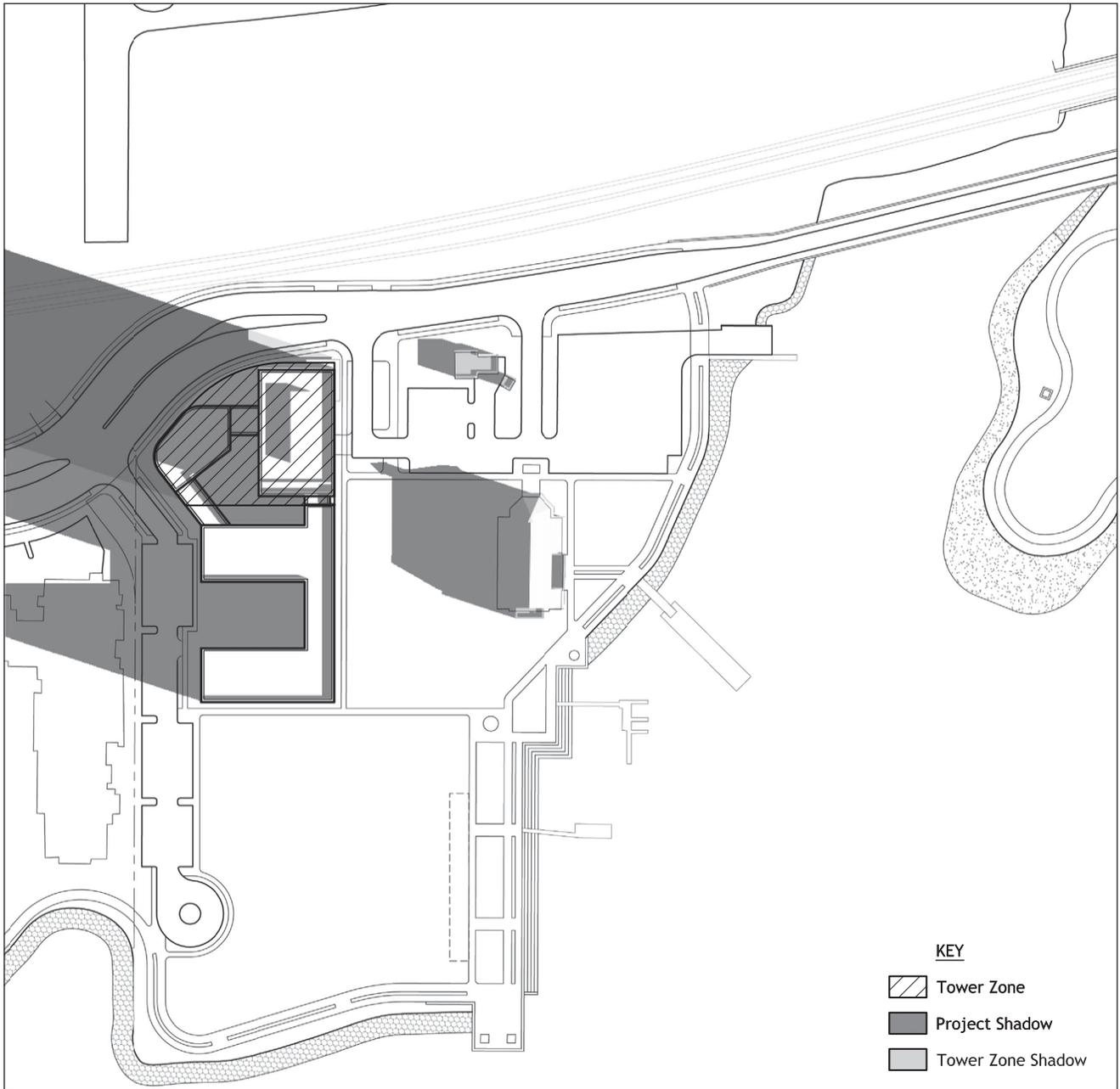
Figure II-12
 Variant Parcel N-
 September Shadow Patterns, 12 noon



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622

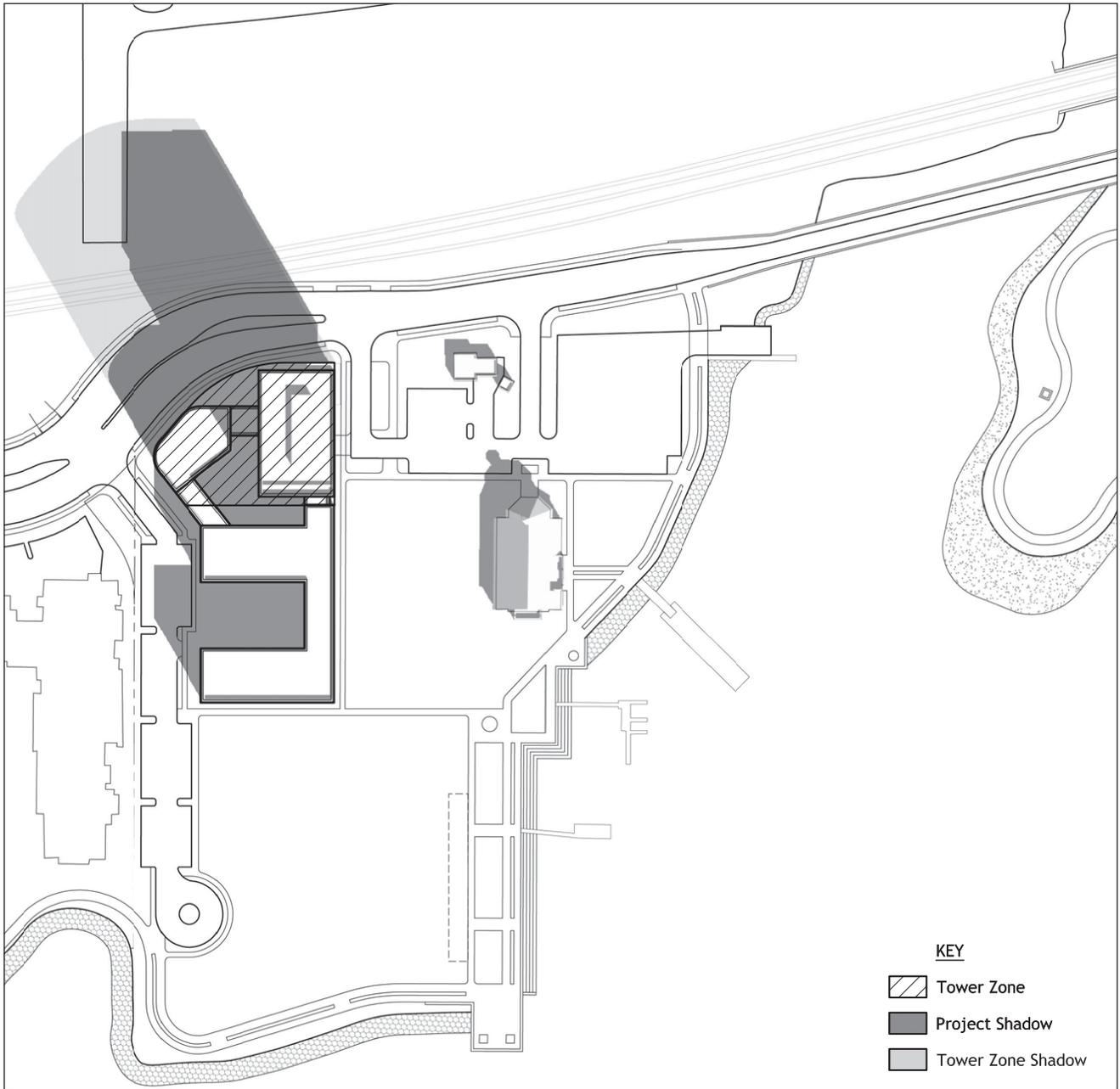
Figure II-13
 Variant Parcel N-
 September Shadow Patterns, 3 pm



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622

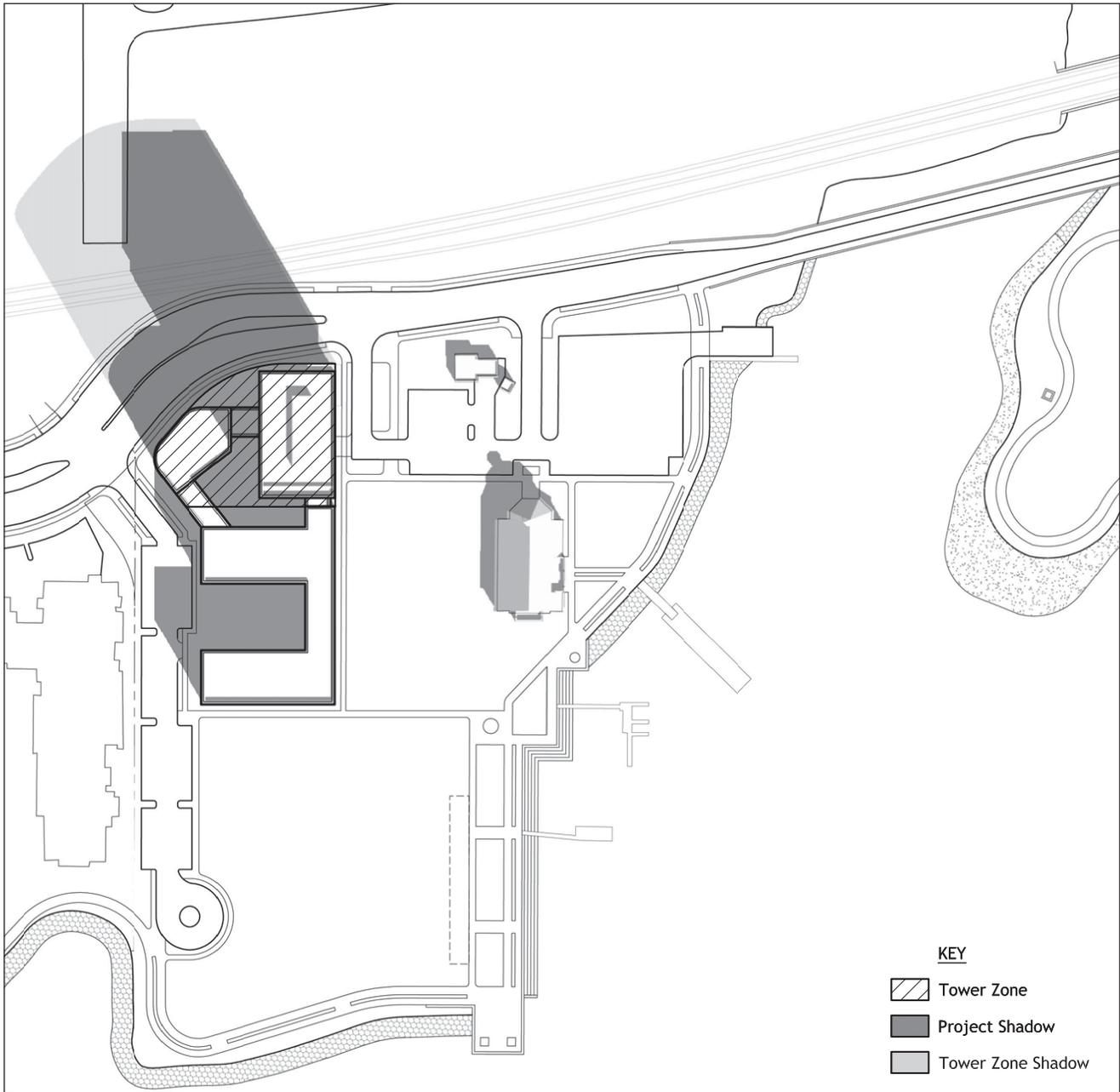
Figure II-14
 Variant Parcel N-
 December Shadow Patterns, 9 am



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622

Figure II-15
 Variant Parcel N-
 December Shadow Patterns, 12 noon



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622

Figure II-16
 Variant Parcel N-
 December Shadow Patterns, 3 pm

CHAPTER III

Changes to the Draft EIR

A. Changes to the Draft EIR

The text changes presented in this chapter are initiated by Lead Agency staff or by comments on the Draft EIR. Changes include text corrections to the DEIR in cases where the error may cause misinterpretation of the information. Throughout this chapter, newly added text is shown in underline format, and deleted text is shown in strikethrough format. For comments initiated by comments on the DEIR, the alpha-numeric comment designator is indicated at the end of the revision in italics.

Table III-1 provided at the end of this chapter is a Summary of Impacts and Mitigation Measures as they are revised in this document. This Response to Comments document, combined with the DEIR, constitutes the Final EIR.

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1. The text for Mitigation Measures C.7a through C.7k on DEIR pages IV.C-30-31 was omitted from Table II-1, Summary of Impacts and Mitigation Measures, (Chapter II, Summary) on DEIR page II-18. Revised **Table II-1** showing all revisions to impacts statements and mitigation measures is provided at the end of this chapter.

-
2. The text for Mitigation Measure B.2a in Table II-1 (Chapter II, Summary) is incorrect (i.e., does not match the true mitigation language on DEIR p. IV.B-35 in the body of the DEIR. The following full text description of Mitigation Measure B.2a replaces the text in Table II-1 on DEIR page II-8:

“B.2a: The project applicant shall pay its fair share contribution to the cost of improvements proposed by the City of Alameda at the signalized intersection of Atlantic Avenue and Webster Street. Intersection reconfiguration would consist of adding and restriping lanes to provide the following lanes per approach:

- **Webster Street (from Oakland) – 1 Left-turn lane, 2 Through lanes, and 1 Right-turn lane (non-channelized right turn)**

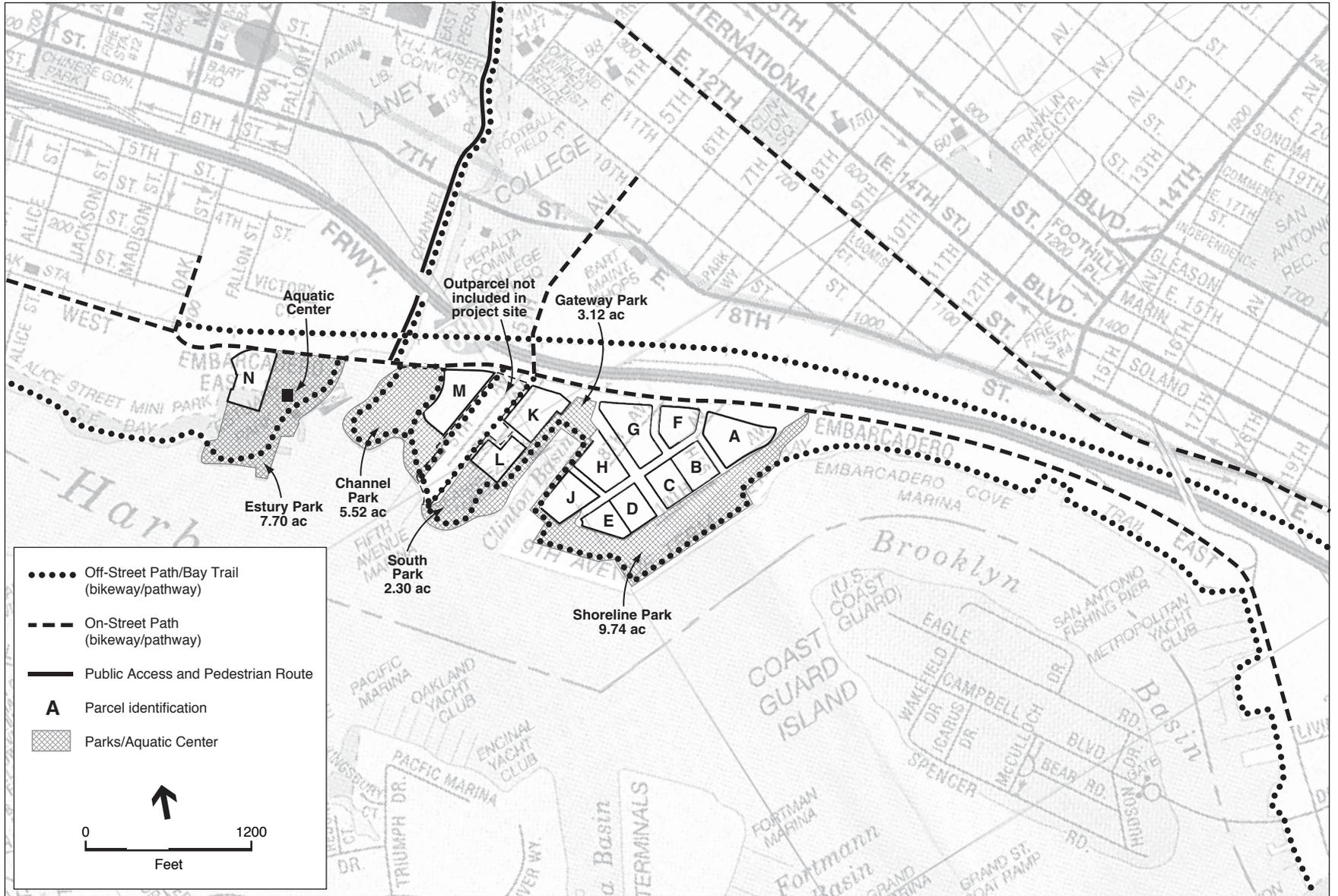
- **Webster Street (to Oakland) – 2 Left-turn lanes, 1 Through lane, and 1 Through/Right-turn lane**
- **Atlantic Avenue (towards Alameda Point) – 1 Left-turn lane, 1 Through lane, and 1 Through/Right-turn lane**
- **Atlantic Avenue (away from Alameda Point) – 2 Left-turn lanes, 2 Through lanes, and 1 Right-turn lane**

“This mitigation measure was identified by the City of Alameda as the required improvement to accommodate redevelopment of the former Naval Air Station. The project would contribute to the implementation of this mitigation measure through payment of a fair share cost of the improvement (to be determined). During the AM and PM peak hours, the project’s contribution to the estimated growth in traffic between the existing and cumulative traffic volumes (including project traffic). would be 5 and 6 percent, respectively. The project applicant would pay this fair share amount to the City of Alameda, which would then be responsible for the implementation of this improvement.” (G-10)

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3. The text for Mitigation Measure B.3a in Table II-1 (Chapter II, Summary) is incorrect (i.e., does not match the true mitigation language on DEIR p. IV.B-47 in the body of the DEIR. The following full text description of Mitigation Measure B.3a replaces the text in Table II-1, p. II-9:

“B.3a: Implement Mitigation Measure B.2a (contribute fair-share contribution to intersection improvements proposed by the City of Alameda).” (G-10)

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4. Figure III-7, Proposed Shoreline Parks Network, on p. III-17 of the DEIR is replaced with **Figure III-1** provided below:



Note: The shoreline / Bay Trail segment "across" the outparcel is not part of the Oak to Ninth Project; neither the project sponsor nor the Port of Oakland owns this property.

SOURCES: ESA; ABAG Bay Trail Project, 2002; Oakland Pedestrian Master Plan, 2002
Oakland Estuary Policy Plan; Oakland Bicycle Master Plan

Oak to Ninth Avenue . 202622

Figure III-1
Modified Shoreline Parks and Trails Network

Additionally, the following text is added after the second complete sentence on p. III-14 of the DEIR (additions shown as underlined):

“The continuity of the proposed trail alignment along the waterfront is prevented by a segment that would cross the existing outparcel property that is within, but not part of, the project site and that fronts the water. Figure III-7 depicts the continuous alignment that would occur with respect to the outparcel and along Embarcadero.”

-
5. On p. III-11 of the DEIR, the first full paragraph is corrected as follows (additions shown as underlined; deletions as ~~strikeout~~):

“The proposed number of parking spaces is based on minimum parking ratios of 1.0 covered space per residential dwelling unit, 1.0 space per ~~1,000~~ 500 square feet of retail/commercial use, and 1.0 space per five marina slips.”

-
6. The following text is provided under the Estuary Park and Jack London Aquatic Center on DEIR p. III-18 to clarify the proposed improvements to the existing Bay Trail segment along Estuary Park:

Estuary Park and Jack London Aquatic Center

The project would improve the existing Estuary Park through re-vegetation of the approximately 3.5-acre lawn/play field, shoreline protection (discussed below), and extending the waterfront Bay Trail that would edge the park and Lake Merritt Channel. The project would not change the existing picnic table/seating area pavilion and waterfront access facilities adjacent to the park and the Aquatic Center (boating and fishing docks and boat launch), and no new structures are proposed. The existing Bay Trail facilities along the shoreline of Estuary Park would be removed and replaced with a segment of the continuous public pedestrian trail and bicycle facility that would line the project’s waterfront to the extent feasible. (T-9)

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7. Footnote on DEIR p.III-19 is corrected as follows (additions shown as underlined; deletions as ~~strikeout~~):

“¹³ See Footnote ~~35~~.”

8. On p. III-22 of the DEIR, the second bullet under *Project Phasing* is corrected as follows (additions shown as underlined; deletions as ~~strikeout~~):

- “• **Phases IV and V** (2008 to 2014) - Approximately ~~1,473~~ 873 units and 79,000 square feet of retail/commercial: Parcels D, E, H, and J; Clinton Basin and Quay; and project street rights-of-way. Shoreline Park would be developed by 2012, and Gateway Park would be developed by 2014, as would the Bay Trail segment from Brooklyn Basin to Clinton Basin.
- **Phases VI and VII** (2009 to 2017) - Approximately ~~798~~ 788 units and 37,000 square feet of retail: Parcels K, L, and M; and project street rights-of-way. South Park would be developed by 2015, and Channel Park would be developed by 2017, as would the Bay Trail segment east of Clinton Basin. Estimated demolition: Approximately 46,000 square feet of marine, storage, service, manufacturing, and industrial uses.”

9. The table inset on Figure III-8, Proposed Phasing Plan, on p. III-23 of the DEIR is corrected as follows (additions shown as underlined; deletions as ~~strikeout~~):

Parcel Areas	Development Area (ac.)	Retail Areas (sq.ft.)	Total Units
I	4.2	15,000	539
II	2.7	42,000	280
III	3.0	12,000	320
IV	2.7	14,000	244 <u>246</u>
V	3.9	47,000	627
VI	3.7	32,000	454
VII	2.7	5,000	334
VIII	2.4	15,000	300
Total	25.3	20,000	3,100

10. The following text is added to DEIR p. III-28 under *San Francisco Bay Conservation and Development Commission* (additions shown as underlined; deletions as ~~strikeout~~):

- “• **San Francisco Bay Conservation and Development Commission (BCDC)** - The project would be subject to review by the San Francisco Bay Conservation and Development Commission (BCDC), a state agency. The project would be required to obtain BCDC permits and approvals for all development proposed within the Agency’s jurisdiction, including filling, dredging, ~~and shoreline alteration,~~ and waterfront development that requires public access.” (T-11)

11. The third sentence of the third paragraph under *San Francisco Bay Plan and San Francisco Bay Are Seaport Plan* on DEIR p. IV.A-30 is revised as follows (additions shown as underlined; deletions as ~~strikeout~~):

“The project site is within Bay Plan Map No. Five (Center Estuary), which designates a portion of the site west of Lake Merritt Channel (near Estuary Park) as Waterfront Park Priority Use Area. BCDC has regulatory authority for all portions of the project site waterside of BCDC’s 100-foot shoreline band (~~including that~~ excluding portions within of the priority use area). . . . No port priority use area is designated for the Ninth Avenue Terminal break bulk facility on the site.” (E-3)

12. On p. IV.B-1 of the DEIR, the first sentence of the fourth paragraph is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

“State Route 260 (SR 260) is a six four-lane controlled-access facility (classified in the highway log as a freeway (three-two lanes in each directional tunnel) that connects the cities of Alameda and Oakland through the Posey & Webster tubes.” (G-6)

13. On p. IV.B-11 of the DEIR, the second paragraph under *Rail Service (BART and Amtrak)* is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

“Amtrak provides passenger rail service at the Jack London Square station. This station is about 0.75 mile west of the project site. Several lines use this station, including the Capital Corridor (~~to Reno, Nevada, via serving Auburn-Sacramento-Oakland-San Jose~~), the San Joaquin (to Bakersfield via Fresno), and the Coast Starlight (between Seattle and Los Angeles). Currently 24 weekday Capitol Corridor trains operate between Sacramento and Oakland Jack London Square (18 trains on weekends), with 8 of these weekday trains continuing from Oakland Jack London Square Station to/from San Jose (12 trains on the weekends).” (J-1)

14. On p. IV.B-16 of the DEIR, the first paragraph under *Broadway/Jackson Interchange at I-880* is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

“Considerable efforts have also been made to improve operations at the Broadway / Jackson interchange at I-880. Phase I improvements would involve modifying the intersection at Broadway/5th Street and modifying the ramps at Jackson Street. The

preliminary studies and environmental process for Phase I improvements are complete, and both Project Study Report (PSR) and Project Report (PR) have been completed by Caltrans ~~the environmental process is still underway~~. Partial funding is available for these improvements, and the project is listed in the current official 2004 State Transportation Improvement Program (STIP). Additional funding is needed to accomplish all of the improvements necessary. Phase II improvements would improve access to the Posey Tube from I-880 and I-980. This phase is being funded by the Alameda County Transportation Improvement Agency and is being managed by the City of Alameda. Funding is not available for the design and construction of Phase II at this time.” (G-8)

15. The following text is added after the second full paragraph on page IV.B-18, above Bicycle/Pedestrian Improvements:

“The Capitol Corridor Joint Powers Authority (CCJPA), which operates the Capitol Corridor service along the Union Pacific Railroad (UPRR), currently operates 8 trains along the rail line adjacent to the project site. According to the CCJPA, by 2006, this number of trains is anticipated to increase to 14 trains per day, and is expected to increase further, to 32 trains per day, within the next 5 to 7 years; with these service expansions, the yearly ridership is anticipated to increase from 1.25 million riders to 2.5 million riders.” (J-3)

16. On p. IV.B-55 of the DEIR, Mitigation Measure B.4b, DEIR p. IV.B-55, is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

“Mitigation Measure B.4b: The project applicant shall operate a private shuttle service to complement AC Transit service that might be extended to the project site. The shuttle service shall run between the project site and nearby activity centers and transit nodes (e.g., Lake Merritt BART station) with ~~have an~~ adequate number of shuttle stops located onsite, and ~~shall operate on a~~ frequency sufficient to attract use of the service by project residents and employees.” (F-3)

17. On DEIR p. IV.B-57, the following text is added to the discussion of *Pedestrian Safety Impacts* (as a new paragraph):

“An additional aspect of pedestrian safety is the issue of pedestrians crossing the existing UPRR railroad tracks located adjacent to Embarcadero near the project site. Pedestrians could cross either along 5th Avenue or across the railroad tracks

to the north or south of 5th Avenue. Currently, the 5th Avenue crossing has safety equipment including crossing gates and warning lights. These facilities limit access by pedestrians as well as vehicles. There is also a chain link fence along Embarcadero, which limits crossings by pedestrians at other locations. With the development of the project site, these existing facilities would be maintained. While portions of 5th Avenue would be restriped by the project, no changes would be made to the existing crossing gates or warning signals. The project would also install additional warning signage related to bicyclists and pedestrians at the 5th Avenue and Oak Street crossing. Additionally, the project would maintain the existing chain link fence along the Embarcadero.” (*Master Response F*)

18. The following is added to the list of requirements shown in bullet format as part of Mitigation Measure B.7:

- “Maintain or reconstruct the fence along the Embarcadero that limits access to the railroad tracks adjacent to the project site.
- Install additional bicycle and pedestrian warning signage at the existing at-grade crossing along 5th Avenue.”

19. On p. IV.B-69 of the DEIR, the first sentence of Mitigation Measure B.10 is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

“Mitigation Measure B.10: Prior to initiation of each phase of development ~~the issuance of each building permit~~, the project applicant and construction contractor shall meet with the Traffic Engineering and Parking Division of the Oakland Public Works Agency and other appropriate City of Oakland and non-City agencies (e.g., Caltrans) to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction.” (*D-14*)

20. On p. IV.B-69 of the DEIR, the following is added to the list of items and requirements shown in bullet format as part of Mitigation Measure B.10:

- Provisions for coordination with BART to reduce, as needed, adverse effect on access to the Lake Merritt BART Station. (*F-10*)

21. The following revisions are made to the first paragraph on DEIR p. IV.C-10, before the *Air Quality and Meteorological Conditions Impact Discussion* heading (additions shown as underlined; deletions as ~~strikeout~~):

“The existing sensitive receptors in the immediate project area are part of the six-acre Fifth Avenue Point live-work artist community along 5th Avenue, south of the Embarcadero. Fifth Avenue Point includes a mix of residential, industrial, and commercial uses on privately owned parcels. Also, proposed parks and open space recreational areas to be developed as part of the project would also be considered sensitive land uses. Due to the project construction phasing, proposed residential units that would be completed during initial phases would be occupied while other parcels are under construction developed. Therefore, the nearest sensitive receptors to project-related air quality impacts include the new project residents and tenants. In addition to the sensitive receptors in the immediate project vicinity, there are also receptors off-site, including residences within the Chinatown and Downtown areas.” (RR-6)

22. The following revisions are made on DEIR p. IV.E-24 (additions shown as underlined; deletions as ~~strikeout~~):

“Mitigation Measure E.1a: An archival cultural resource evaluation shall be implemented prior to the start of construction or other ground-disturbing activities to identify whether historic or unique archaeological resources exist within the project site. The archival cultural resource evaluation, or “sensitivity study,” shall be conducted by a cultural resource professional approved by the City and who meets the Secretary of the Interior’s Professional Qualifications Standards for Prehistoric and Historical Archaeology.

The purpose of the archival cultural resource evaluation is to: (1) identify documentation and studies to determine the presence and location of potentially significant archaeological deposits; (2) determine if such deposits meet the definition of a historical resource under CEQA Guidelines Section 15064.5 or a unique archaeological resource under CEQA Section 21083.2(g); (3) guide additional archaeological work, potentially including pre-construction subsurface archaeological investigation if warranted, to recover the information potential of such deposits; and (4) define an archaeological monitoring plan, if warranted. A pre-construction meeting shall occur with the cultural resource professional and the City regarding the findings of the evaluation, and shall include consultation with and considerations of the Department of Toxic Substances (DTSC), the Lead Agency for the environmental cleanup activities on the project site. If excavation is the only feasible means of data recovery, such excavation shall

be in accord with the provisions of CEQA Guidelines Section 15126.4(b)(3)(C). Any additional archaeological work and or monitoring shall be pursuant to a plan approved by the City. If a pre-constructing testing program is deemed necessary by the qualified professional as a result of the archival study, it shall be guided by the archival study and shall use a combination of subsurface investigation methods (including backhoe trenching, augering, and archaeological excavation units, as appropriate).

If monitoring of any areas during ground disturbing activities is determined to be required based on the results of the archival evaluation and the pre-construction testing, the monitoring will be conducted by a qualified cultural resources professional and the monitoring plan will include appropriate provisions for evaluating any archaeological deposits, consultation with the City, and any necessary data recovery program.

Mitigation Measure E.1b: Prior to the commencement of ground distributing activities, all construction personnel shall receive environmental training from a cultural resource professional approved by the City and who meets the Secretary of the Interior’s Professional Qualifications Standards for Prehistoric and Historical Archaeology. The purpose of the environmental training is to inform all construction personnel of the possibility of encountering historical resources. All construction personnel specifically involved in onsite activities that may uncover prehistoric resources shall be trained in the identification of prehistoric resources and immediate actions required if potential resources are found.

Mitigation Measure E.1a: Pursuant to CEQA Guidelines 15064.5 (f), “provisions for historical or unique archaeological resources accidentally discovered during construction” should be instituted. Therefore, in the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project proponent and/or lead agency shall consult with a qualified archaeologist to assess the significance of the find. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified archaeologist would meet to determine the appropriate avoidance measures or other appropriate mitigation, with the ultimate determination to be made by the City. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.

Mitigation Measure E.1b: In the event that human skeletal remains are uncovered at the project site during construction or ground-breaking activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and follow the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code,

and all excavation and site preparation activities shall cease within a 50-foot radius until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.”

Significance after Mitigation: Less than Significant. *(JJ-6)*

23. The additional text is added to Mitigation Measure E.8 on p. IV.E-24 (additions shown as underlined; deletions as ~~strikeout~~). This text also was omitted from Table II-1, Summary of Impacts and Mitigation Measures, (Chapter II, Summary) on DEIR page II-18.:

“Mitigation Measure E.8: The project sponsor shall set aside a minimum of 200 square feet of floor area within the Bulkhead Building for an historical exhibit depicting the history of the Oakland Municipal Terminals. At a minimum, the exhibit would consist of the following:

- 5) **An educative and documentary audio/visual history on the Oak to Ninth area and accessory areas as appropriate, including:**
- a. **Visual explanation of wharf design versus other types of pier design;**
 - b. **Oral histories of people who worked at the building and/or other maritime industries in the area;**
 - c. **Historic film clips.**
 - d. **History of the development of the harbor;**
 - e. **History of the development of the Port Board;**
 - f. **PWA and WPA involvement at the Port;**
 - g. **World War II uses;**
 - h. **A visual film documentation of the existing warehouse/industrial character of the area, including views from the water to the City.**
 - i. **Written transcripts on archival quality paper for any audio or visual exhibits prepared for this mitigation.” *(JJ-7)***

24. The following text is inserted as the last paragraph before the *Noise Attenuation* heading on DEIR p. IV.G-4 (additions shown as underlined; deletions as ~~strikeout~~):

“Noise can have significant effects on physical and mental human health and well-being. Adverse impacts and effects include interference with speech and other forms of communication such as television and radio; sleep disruption; negative mood and behavioral changes; and hearing loss (usually temporary and caused by occupational, rather than environmental, noise). Sleep disruption and interference with communication are the main sources of noise-related community complaints. It should be mentioned that people’s tolerance to annoyance from noise is highly subjective, varying greatly among individuals (Oakland General Plan Noise Element, 2005). Also, epidemiological studies have shown that cardiovascular effects occur after long-term exposure to noise (aircraft and road traffic) with 24-hour Leq values of 65-70 dBA, but the associations are weak and more research is required to estimate the long-term cardiovascular and psychophysiological risks due to noise (WHO, 1999).”

The following reference is added to DEIR p. IV.G-29:

“World Health Organization (WHO), *Guidelines for Community Noise*, 1999.” (R-11)

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25. The following text shall be added on DEIR p. IV.G-5, as the third paragraph under *State of California Regulations*:

“The project would involve hazardous noise activities related to certain construction activities and duration of such activities. Construction operations on the site therefore would be subject to federal and state Occupational Safety and Health Agency (OSHA) standards that address construction employee hearing conservation and noise exposure.” (DOSH, 2006; OSHA, 2006) References:

California Division of Occupational Safety and Health (DOSH) website, <http://www.dir.ca.gov/title8/5097.html>; accessed January 4, 2006.

U.S. Department of Occupational Safety and Health Agency (OSHA) website, <http://www.osha.gov/SLTC/constructionnoise/programs.html>; accessed January 4, 2006. (KK-17)

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26. The following text is added to the first paragraph on DEIR p. IV.G-27 (additions shown as underlined; deletions as ~~strikeout~~):

“Based on noise measurements in the project site vicinity (see Table IV.G-3 and Table IV.G-4), existing ground-level and aerial (elevations of 14 to 70 feet) Ldn noise levels range from 60 dBA to 80 dBA and from 62 dBA to 85 dBA, respectively. These noise levels are primarily due to the proximity of the measurement location to the Embarcadero and I-880, as well as the railroad tracks to the north, and show that project-related ground floor and non-ground floor residences in close proximity to these noise sources would be exposed to noise levels classified from “normally unacceptable” to “clearly unacceptable” for residential uses (DEIR Table IV.G-2).” (M-7)

27. The following revisions and additions are made to Mitigation Measures for Impact G.3 on page IV.G-27 (additions shown as underlined; deletions as ~~strikeout~~):

“Mitigation Measure G.3a: To comply with the requirements of Title 24 and achieve an interior noise level of less than 45 dBA, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls) shall be incorporated into project building design. Final recommendations for sound-rated assemblies will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phase.¹

Mitigation Measure G.3b: Due to the proximity of the project to a railroad crossing, a written disclosure of railroad crossing noise, particularly usage of train horns and bells on warning devices during the daytime and nighttime hours, shall be provided to potential residents of the project.” (M-7)

28. The fourth paragraph under *Ninth Avenue Terminal Area, Site Investigations*, on DEIR p. IV.H-17 is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

In addition to the soil and groundwater investigations, the Port of Oakland has previously conducted asbestos surveys in Port owned buildings in the project area for tenant notification purposes. The results of the surveys indicate that asbestos was detected or assumed in various friable and non-friable materials including transite pipe, floor tile and adhesive, duct tape, drywall and joint compound, and wall texturing compound (ACC Environmental Consultants, 1998)(~~Heinze, 2005~~).

Additionally, the following references are revised on DEIR p. IV.H-26 (additions shown as underlined; deletions as ~~strikeout~~):

¹ *Oak to 9th Residential Development, Oakland, California, Environmental Noise Assessment* by Charles M. Salter Associates, Inc., November 2002. Table 4 of the Salter Associates document lists conceptual window and wall Sound Transmission Class (STC) ratings for different noise environments and gives an estimate of the STC requirements needed to meet interior noise criteria.

~~Heinze, Diane, Port of Oakland, personal communication, June 16, 2005.~~

“ACC Environmental Consultants, “Asbestos Survey Reports, Port of Oakland, Inner Harbor, Area H,” April 1998.”

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29. The last sentence in the first paragraph under *Recycled Water* on DEIR p. IV.M-3 is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

“The Water Supply Management Program established goals of delivery a total of 14 mgd, or 5.1 billion gallons a year of recycled water by 2020~~an additional 8 mgd of recycled water by 2020, for a total of 5.8 billion gallons a year.~~” (C-9)

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30. The third sentence in the second paragraph under *Inflow/Infiltration Correction Program* on DEIR p. IV.M-5 is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

“The program has resulted in three ~~four~~ new wet weather treatment facilities, two storage basins, 7.5 miles of new interceptors, and expansion of the main wastewater treatment plant.” (C-8)

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31. The last three sentences in the second paragraph on DEIR p. IV.M-11 are revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

“Recycled water delivery to the project area is expected by 2009 ~~2005~~. Recycled Reclaimed~~Reclaimed~~ water infrastructure will be installed by the project sponsor throughout the proposed site and along the project frontage for future connection to the EBMUD recycled ~~reclaimed~~ water network that will be extended to the project site. Similar to water lines, recycled ~~reclaimed~~ water lines will be installed above the water table.” (C-10)

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32. The following revision is made to the third paragraph on DEIR p. IV.M-11 and replaces the entire second paragraph under *Water Supply System* on p. IV.M-1 (additions shown as underlined; deletions as ~~strikeout~~):

“Existing water lines in the project vicinity are expected to be adequate to serve the project’s anticipated water demand. As discussed in the Setting, the projects site is served by a ~~12-inch~~ EBMUD water line within the Embarcadero right-of-way, which forms a “looped” system between 5th and 9th Avenues, with a 12-

inch main in 9th Avenue and the Embarcadero that traverses the project site ~~line serving the area west of 5th Avenue and that terminates at the Lake Merritt Channel bridge.~~ The Estuary Park portion of the site to the west of Lake Merritt Channel is serviced by a 12-inch branch from a separate looped system located in the Embarcadero and Fallon Street. There is an 8-inch water main in Fallon Street and 6-inch water mains in 5th and 6th Avenues. This 12-inch branch runs from the intersection of the Embarcadero and Fallon Street to the limit of the Lake Merritt Channel bridge.” (CC-1)

33. The following text is added to the fourth paragraph on DEIR p. IV.M-11 (addition shown as underlined):

“As part of the project, water mains designed and supplied by EBMUD would be installed onsite to serve the project demands. A main extension and pipeline improvements or relocations offsite may also be required. All improvements would occur in coordination with EBMUD.” (C-2)

34. The following corrections are made starting on DEIR p. V-28 (additions shown as underlined; deletions as ~~strikeout~~):

L. Public Services and Facilities

Compared to the project, the Open Space / Partial Preservation Alternative would introduce fewer new residents (2,938 compared to 5,270) and households (1,728 compared to 3,100⁴) to the project site. Approximately 32.933-4⁵ acres of new park would be added to the project site (compared to ~~20.749-25~~ new acres with the project), which would result 11.4 acres per 1,000 residents on the project site. Overall, this alternative would result in the same less-than-significant impacts on public services and facilities that would occur with the project.

⁴ 1,658 households compared to 2,976 project households, with 4 percent vacancy rate applied.

⁵ Total 40.6 acres proposed, minus existing ~~7.77-2~~-acre Estuary Park and Jack London Aquatic Center

35. The following corrections are made starting on DEIR p. V-37 (additions shown as underlined; deletions as ~~strikeout~~):

L. Public Services and Facilities

Compared to the project, the Reduced Development / Preservation Alternative would introduce fewer new residents (881 compared to 5,270) and households

(518 compared to 3,100)¹³ to the project site. Approximately ~~32.232.7~~¹⁴-acres of new park would be added to the project site (compared to ~~20.719.25~~-new acres with the project), which would result 37.1 acres per 1,000 residents on the project site. Overall, this alternative would result in the same less-than-significant impacts on public services and facilities that would occur with the project. (G-7)

¹³ 497 households compared to 2,976 project households, with 4 percent vacancy rate applied.

¹⁴ Total 39.9 acres proposed, minus existing ~~7.77.2~~-acre Estuary Park and Jack London Aquatic Center

(G-7)

36. **Figure III-2** on the following page shows the typographic correction made to DEIR Appendix C Figure C-1b regarding the existing conditions peak hour volumes for Intersection #21 (8th and Webster Streets) (additions shown as underlined; deletions as ~~strikeout~~).



SOURCE: Fehr & Peers

Oak to Ninth Avenue . 202622

Figure III-2
 Corrected Existing Conditions Peak Hour
 Traffic Volumes at 8th Street and Webster Street

REVISED TABLE II-1

SUMMARY OF IMPACTS AND MITIGATION MEASURES FOR THE OAK TO NINTH REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>Significant and Unavoidable Impacts (<i>Significant, with Mitigation, or not in Lead Agency's Control</i>)</p>		
<p>B. Transportation, Circulation, and Parking</p>		
<p>B.1b: The LOS F conditions at the signalized intersection of <i>5th Street and Broadway</i>, which would prevail during the PM peak hour under 2010 baseline conditions, would worsen with the addition of traffic generated by Phase 1 of the project. The project-generated increases in vehicle delay on a critical movement would exceed the four-second threshold of significance.</p>	<p>No feasible mitigation measures are available that would fully improve operations at 5th Street and Broadway to acceptable levels. While improvements such as reconfiguring lanes on Broadway and adding directional signage, as discussed in the JLS EIR, would improve traffic flow conditions on some movements, downstream bottlenecks in the Webster Tube would continue to cause substantial backups and delay on 5th Street approaching Broadway, and the previously described unacceptable LOS F conditions would continue. The constrained capacity of the tube is an issue of multi-jurisdictional concern (solutions are being explored by the cities of Oakland and Alameda, Caltrans, and the Alameda County Congestion Management Agency), and no feasible measures to increase the tube's capacity have been identified to date (e.g., the tube cannot simply be widened as can a roadway).</p>	<p>Significant and Unavoidable</p>
<p>B.1c: The signalized intersection of <i>6th and Jackson Streets at the I-880 Northbound On-Ramp</i> would degrade from LOS E to LOS F during the PM peak hour with the addition of traffic generated by Phase 1 of the project.</p>	<p>B.1c: Optimize the traffic signal timing at the signalized intersection of <i>6th and Jackson Streets at the I-880 Northbound On-Ramp</i>. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p>	<p>This project impact would be significant and unavoidable because it is not certain that the measure could be implemented (because the City of Oakland, as lead agency, could not implement Measure B.1c without the approval of Caltrans. However, in the event that Mitigation Measure B.1c could be implemented, the impact would be less than significant.</p>
<p>B.1e: Traffic generated by Phase 1 of the project would add more than ten vehicles to the unsignalized intersection of <i>Embarcadero and I-880 Northbound Off-Ramp – 6th Avenue</i>, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant, during the PM peak hour.</p>	<p>B.1e: Install traffic signals at the unsignalized intersection of <i>Embarcadero and I-880 Northbound Off- Ramp – 6th Avenue</i>. Installation of traffic signals shall include the traffic signal equipment and optimization of signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and</p>	<p>This project impact would be significant and unavoidable because it is not certain that the measure could be implemented because the City of Oakland, as lead agency, could not implement Measure B.1e without the approval of Caltrans. However,</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>B.2a: The signalized intersection of <i>Atlantic Avenue and Webster Street</i> would degrade from LOS E to LOS F during the AM peak hour with the addition of traffic generated by buildout of the project.</p>	<p>coordination with signal phasing and timing of adjacent intersections. Traffic signal equipment shall include pedestrian signal heads (with adequate time for pedestrians to cross the streets). Signal installation shall meet City of Oakland and Caltrans design standards.</p> <p><u>B.2a: The project applicant shall pay its fair share contribution to the cost of improvements proposed by the City of Alameda at the signalized intersection of Atlantic Avenue and Webster Street. Intersection reconfiguration would consist of adding and restriping lanes to provide the following lanes per approach:</u></p> <ul style="list-style-type: none"> • <u>Webster Street (from Oakland) – 1 Left-turn lane, 2 Through lanes, and 1 Right-turn lane (non-channelized right turn)</u> • <u>Webster Street (to Oakland) – 2 Left-turn lanes, 1 Through lane, and 1 Through/Right-turn lane</u> • <u>Atlantic Avenue (towards Alameda Point) – 1 Left-turn lane, 1 Through lane, and 1 Through/Right-turn lane</u> • <u>Atlantic Avenue (away from Alameda Point) – 2 Left-turn lanes, 2 Through lanes, and 1 Right-turn lane</u> <p><u>This mitigation measure was identified by the City of Alameda as the required improvement to accommodate redevelopment of the former Naval Air Station. The project would contribute to the implementation of this mitigation measure through payment of a fair share cost of the improvement (to be determined). During the AM and PM peak hours, the project’s contribution to the estimated growth in traffic between the existing and cumulative traffic volumes (including project traffic), would be 5 and 6 percent, respectively. The project applicant would pay this fair share amount to the City of Alameda, which would then be responsible for the implementation of this improvement.</u></p> <p><u>B.2a: Optimize the traffic signal timing for the PM peak period at the signalized intersection of <i>Atlantic Avenue and Webster Street</i>. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</u></p>	<p>in the event that Mitigation Measure B.1e could be implemented, the impact would be less than significant.</p> <p>This project impact would be significant and unavoidable because it is not certain that the measure could be implemented because the City of Oakland, as lead agency, could not implement Measure B.2a without the approval of the City of Alameda). However, in the event that Mitigation Measure B.2a could be implemented, the impact would be less than significant.</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>B.2c: The LOS F conditions at the signalized intersection of <i>5th Street and Broadway</i>, which would prevail during the PM peak hour under 2025 baseline conditions, would worsen with the addition of traffic generated by buildout of the project. The project-generated increases in vehicle delay would exceed the two-second threshold of significance.</p>	<p>No feasible mitigation measures are available that would fully improve its operations to acceptable levels. While improvements such as reconfiguring lanes on Broadway and adding directional signage, as discussed in the JLS EIR, would improve traffic flow conditions on some movements, downstream bottlenecks in the Webster Tube would continue to cause substantial backups and delay on 5th Street approaching Broadway, and the previously described unacceptable LOS F conditions would continue. The constrained capacity of the tube is an issue of multi-jurisdictional concern (solutions are being explored by the cities of Oakland and Alameda, Caltrans, and the Alameda County Congestion Management Agency), and no feasible measures to increase the tube's capacity have been identified to date (e.g., the tube cannot simply be widened as can a roadway).</p>	<p>Significant and Unavoidable</p>
<p>B.2d: The signalized intersection of <i>5th and Oak Streets at the I-880 Southbound On-Ramp</i> would degrade from LOS E to LOS F during the PM peak hour with the addition of traffic generated by buildout of the project.</p>	<p>B.2d: Optimize the traffic signal timing for the PM peak period at the signalized intersection of <i>5th and Oak Streets at the I-880 Southbound On-Ramp</i>. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p>	<p>This project impact would be significant and unavoidable because it is not certain that the measure could be implemented because the City of Oakland, as lead agency, could not implement Measure B.2d without the approval of Caltrans. However, in the event that Mitigation Measure B.2d could be implemented, the impact would be less than significant.</p>
<p>B.2e: The signalized intersection of <i>6th and Jackson Streets at the I-880 Northbound On-Ramp</i> would degrade from LOS E to LOS F during the AM peak hour with the addition of traffic generated by buildout of the project, and the LOS F conditions that, which would prevail during the PM peak hour under 2025 baseline conditions, would worsen (total intersection average vehicle delay would exceed the two-second threshold of significance) with the addition of traffic generated by buildout of the project.</p>	<p>No feasible mitigation measures are available. The 2010 analysis concluded that the impact from Phase 1 development could be mitigated through optimization of signal timing (see Mitigation Measure B.1c). However, with the additional growth in background traffic and the growth in project traffic that would occur from 2010 to 2025, this retiming could not fully mitigate the impact from Project Buildout. Given the constrained right-of-way at this location, the addition of turn lanes or other similar improvements would not be feasible.</p>	<p>Significant and Unavoidable</p>
<p>B.2h: The LOS F conditions at the signalized intersection of <i>Lakeshore Avenue and MacArthur Boulevard</i>, which would prevail during the PM peak hour under 2025 baseline conditions, would worsen (an increase in the average vehicle delay for a critical movement of more than four seconds) with the addition of traffic generated by buildout of the project.</p>	<p>No feasible mitigation measures are available. Assessment of possible mitigation measures indicates that optimization of signal timing at this intersection would reduce average vehicle delays by about 15 seconds, but would not fully mitigate the project's impact. Other improvements, such as additional turn lanes, do not appear feasible given the constrained right-of-way at the intersection.</p>	<p>Significant and Unavoidable</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>B.2l: Traffic generated by buildout of the project would add more than ten vehicles to the unsignalized intersection of <i>Embarcadero and I-880 Southbound On-Ramp – 10th Avenue</i>, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant during the PM peak hour.</p>	<p>B.2l: Install traffic signals at the unsignalized intersection of Embarcadero and I-880 Southbound On- Ramp – 10th Avenue. Installation of traffic signals shall include the traffic signal equipment and optimization of signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. Traffic signal equipment shall include pedestrian signal heads (with adequate time for pedestrians to cross the streets). Prior to the installation of this traffic signal, a complete traffic signal warrant analysis would be conducted at this location to verify that this location meets MUTCD signal warrants, which include both daily and peak-hour volume, accidents, and pedestrian volumes. Signal installation shall meet City of Oakland and Caltrans design standards.</p>	<p>This project impact would be significant and unavoidable because it is not certain that the measure could be implemented because the City of Oakland, as lead agency, could not implement Measure B.2l without the approval of Caltrans. However, in the event that Mitigation Measure B.2l could be implemented, the impact would be less than significant.</p>
<p>B.3a: Traffic generated by buildout of the project would contribute at least five percent of the cumulative traffic increases at the signalized intersection of <i>Atlantic Avenue and Webster Street</i> in Alameda during the AM and PM peak hours, as measured by the difference between existing and cumulative (with project) conditions.</p>	<p><u>B.3a: Implement Mitigation Measure B.2a (contribute fair-share contribution to intersection improvements proposed by the City of Alameda).</u> B.3a: Implement Mitigation Measure B.2a (optimize traffic signal timing).</p>	<p>This cumulative impact would be significant and unavoidable, both because it is not certain that the measure could be implemented because the City of Oakland, as lead agency, could not implement Measure B.2a without the approval of the City of Alameda), and because even though the increased average delay for the above-described mitigated condition would be less than the threshold of significance established by the City of Oakland, implementation of Mitigation Measure B.2a would not reduce volumes at this intersection, and the project's percent contribution would remain cumulatively considerable.</p>
<p>B.3c: Traffic generated by buildout of the project would contribute more than five percent of the cumulative traffic increases at the signalized intersection of <i>5th Street and Broadway</i> during the PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.</p>	<p>No feasible mitigation measures are available that would fully improve its operations to acceptable levels. While improvements such as reconfiguring lanes on Broadway and adding directional signage, as discussed in the JLS EIR, would improve traffic flow conditions on some movements, downstream bottlenecks in the Webster Tube would continue to cause substantial backups and delay on 5th Street approaching Broadway, and the previously described unacceptable LOS F conditions would continue. The constrained capacity of the tube</p>	<p>Significant and Unavoidable</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>B.3d: Traffic generated by buildout of the project would contribute more than five percent of the cumulative traffic increases at the signalized intersection of <i>5th and Oak Streets at the I-880 Southbound On-Ramp</i> during the PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.</p>	<p>is an issue of multi-jurisdictional concern (solutions are being explored by the cities of Oakland and Alameda, Caltrans, and the Alameda County Congestion Management Agency), and no feasible measures to increase the tube's capacity have been identified to date (e.g., the tube cannot simply be widened as can a roadway).</p> <p>B.3d: Implement Mitigation Measure B.2d (optimize traffic signal timing).</p>	<p>This cumulative impact would be significant and unavoidable because it is not certain that the measure could be implemented because the City of Oakland, as lead agency, could not implement Measure B.2d without the approval of Caltrans. However, in the event that Mitigation Measure B.2d could be implemented, the impact would be less than significant.</p>
<p>B.3e: Traffic generated by buildout of the project would contribute more than five percent of the cumulative traffic increases at the signalized intersection of <i>6th and Jackson Streets at the I-880 Northbound On-Ramp</i> during the AM and PM peak hours, as measured by the difference between existing and cumulative (with project) conditions.</p>	<p>No feasible mitigation measures are available. The 2010 analysis concluded that the impact from Phase 1 development could be mitigated through optimization of signal timing (see Mitigation Measure B.1c). However, with the additional growth in background traffic and the growth in project traffic that would occur from 2010 to 2025, this retiming could not fully mitigate the impact from Project Buildout. Given the constrained right-of-way at this location, the addition of turn lanes or other similar improvements would not be feasible.</p>	<p>Significant and Unavoidable</p>
<p>B.3f: Traffic generated by buildout of the project would contribute more than five percent of the cumulative traffic increases at the signalized intersection of Lakeshore Avenue and Foothill Boulevard during the AM peak hour, as measured by the difference between existing and cumulative (with project) conditions.</p>	<p>B.3f: Implement Mitigation Measure B.2g (optimize traffic signal timing).</p>	<p>This cumulative impact would be significant and unavoidable because even though the increased average delay for the above-described mitigated condition would be less than the threshold of significance established by the City of Oakland, implementation of Mitigation Measure B.2g would not reduce volumes at this intersection, and the project's percent contribution would remain cumulatively considerable.</p>
<p>B.3g: Traffic generated by buildout of the project would contribute more than five percent of the cumulative traffic increases at the signalized intersection of Lakeshore Avenue and MacArthur Boulevard during the PM peak hour, as</p>	<p>No feasible mitigation measures are available. Assessment of possible mitigation measures indicates that optimization of signal timing at this intersection would reduce delays, but would not fully mitigate the project's impact. Other improvements (to</p>	<p>Significant and Unavoidable</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
measured by the difference between existing and cumulative (with project) conditions.	achieve an acceptable LOS D or better condition), such as additional turn lanes, are not feasible because there is not sufficient right-of-way available for additional lanes at the intersection.	
B.3k: Traffic generated by buildout of the project would contribute more than five percent of the cumulative traffic increases at the unsignalized intersection of <i>Embarcadero and I-880 Southbound On-Ramp</i> during the PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.	B.3k: Implement Mitigation Measure B.2l (install traffic signals).	This cumulative impact would be significant and unavoidable because it is not certain that the measure could be implemented because the City of Oakland, as lead agency, could not implement Measure B.2l without the approval of Caltrans. However, in the event that Mitigation Measure B.2l could be implemented, the impact would be less than significant.
B.3m: Traffic generated by buildout of the project would contribute more than five percent of the cumulative traffic increases at the signalized intersection of <i>14th Avenue and 7th/East 12th Streets (Southbound)</i> during the PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.	B.3m: Implement Mitigation Measure B.2n (optimize traffic signal timing).	This cumulative impact would be significant and unavoidable because even though the average delay for the above-described mitigated condition would be lower than under the No Project condition, implementation of Mitigation Measure B.2n would not reduce volumes at this intersection, and the project's percent contribution would remain cumulatively considerable.
B.9: The project would contribute to 2025 changes to traffic conditions on the regional and local roadways.	Direct mitigation of the project's significant impact on the freeway segment is not feasible. Factors that limit the mitigation of impacts include constrained right-of-way, no regional or local traffic impact fee mechanism to collect and disperse funds for roadways improvements, and the inherent difficulties with widening the freeways, such as the need to widen over crossings and structures adjacent to the freeway.	Significant and Unavoidable
C. Air Quality and Meteorological Conditions.		
C.7: The project together with anticipated future cumulative development in Oakland and the Bay Area in general would contribute to regional air pollution.	C.7: To reduce the significance of the operational impacts of the project, the project sponsor shall, as feasible and practical, implement a combination of the following mitigation measures:	With implementation of the above mitigation measures, the cumulative air quality impact would be significant and unavoidable . Based on the effectiveness of these measures as determined by the BAAQMD,

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>E. Cultural Resources</p>	<p>E.3a: Photograph the affected historic resource through large-format, black and white photographs meeting the Photographic Specifications of the Historic American Building Survey (HABS). The documentary photographs would be archived locally at the Oakland History Room (OHR) of the Oakland Public Library along with a copy on archival paper of the Oakland Landmark and S-7 Preservation Combining Zone Application Form for the Ninth Avenue Terminal. Digital copies of the photographs would be forwarded to the Oakland Cultural Heritage Survey. Even with extensive documentation, however, the demolition of a substantial portion of the building would result in the permanent loss of the historic resource that is associated with Oakland's history.</p> <p>E.3b: Although the historic resource would no longer retain its historic significance, adaptive use and rehabilitation of the Bulkhead Building would comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties. The current concept depicts a design that appears to comply, although their conceptual nature precludes the ability to reach an informed conclusion. The project sponsor would be subject to submitting more detailed designs, including, but not limited to, proposed window treatments, materials palette, awnings, signage, and interior configurations for review. For the latter, particular attention would be paid to the significance of the interior's "Expansive, unimpeded space with exposed trusses," and the statement "A key feature of the transit shed is its expansive interior with exposed trusses." In addition, the first story of the existing office in the Bulkhead Building, mentioned in Attachment 2 of the Oakland Landmark and S-7 Preservation Combining Zone Application Form for the Ninth Avenue Terminal, would be retained and rehabilitated. The review should be conducted by a professional meeting the standards for Historic Architecture or Historic Preservation Planning as set</p>	<p>the above mitigation measures would reduce the operational impacts of the project by reducing motor vehicle trips by the project by 15 to 20 percent (BAAQMD, 2004). However, no feasible mitigation is available to reduce the residual impact to a less than significant level.</p>
		<p>Significant and Unavoidable</p>
		<p>Significant and Unavoidable</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>E.4: The project would substantially alter the wharf structure supporting the Ninth Avenue Terminal and surrounding areas, which is an historic resource, as defined in CEQA Guidelines Section 15064.5.</p>	<p>forth in the Secretary of the Interior's Professional Qualification Standards, 1997 Proposed Changes (not adopted). The results of the review should be forwarded to the Secretary of the Landmarks Preservation Advisory Board, City of Oakland, for final approval.</p>	<p>Significant and Unavoidable</p>
<p>E.5: The project would construct a new mixed-use, multi-story development within approximately 100 feet of the remaining Bulkhead Building which may not be architecturally compatible with this structure as a potential future Oakland City Landmark.</p>	<p>(See E.3a and E.3b.)</p>	
<p><u>E.8: The substantial demolition of the Ninth Avenue Terminal, in combination with the previous loss of the other two Oakland Municipal Terminals, would result in cumulative impacts to historic resources.</u></p>	<p><u>E.8: The project sponsor shall set aside a minimum of 200 square feet of floor area within the Bulkhead Building for an historical exhibit depicting the history of the Oakland Municipal Terminals. At a minimum, the exhibit would consist of the following:</u></p> <ol style="list-style-type: none"> <li data-bbox="848 935 1440 980">1) <u>Historic photographs of the Grove Street Terminal, Outer Harbor Terminal and Ninth Avenue Terminal.</u> <li data-bbox="848 1032 1440 1101">2) <u>Contemporary photographs of the Ninth Avenue Terminal taken as recommended in Mitigation Measure E.3a.</u> <li data-bbox="848 1153 1440 1247">3) <u>Examples of manifests, log books, invoices and other artifacts that may be in the possession of the Port of Oakland or private companies, if available. These may be reproductions.</u> <li data-bbox="848 1299 1440 1318">4) <u>Other displayable objects and narrative information.</u> 	<p><u>Significant and Unavoidable</u></p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
	<p>5) <u>An educative and documentary audio/visual history on the Oak to Ninth area and accessory areas as appropriate, including:</u></p> <ul style="list-style-type: none"> i. <u>Visual explanation of wharf design versus other types of pier design;</u> j. <u>Oral histories of people who worked at the building and/or other maritime industries in the area;</u> k. <u>Historic film clips.</u> l. <u>History of the development of the harbor;</u> m. <u>History of the development of the Port Board;</u> n. <u>PWA and WPA involvement at the Port;</u> o. <u>World War II uses;</u> p. <u>A visual film documentation of the existing warehouse/industrial character of the area, including views from the water to the City.</u> q. <u>Written transcripts on archival quality paper for any audio or visual exhibits prepared for this mitigation</u> <p>6) <u>The proposed park design, to be located where the Ninth Avenue Terminal demolition is proposed, should incorporate landscaping, sculptural elements, paths, lighting, etc. that conceptually reference the expanse of the building's footprint and height.</u></p>	

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>G. Noise</p> <p>G.1: Project construction activities would intermittently and temporarily generate noise levels above existing levels in the project vicinity. Project construction noise levels could exceed City of Oakland standards and cause disturbances in noise-sensitive areas, such as residential areas.</p>	<p>G.1a: The project applicant shall require construction contractors to limit standard construction activities as required by the City of Oakland Building Services Division. Such activities are generally limited to between 7:00 AM and 7:00 PM Monday through Friday, with pile driving and/or other extreme noise-generating activities (greater than 90 dBA) limited to between 8:00 AM and 4:00 PM Monday through Friday, with no extreme noise generating activity permitted between 12:30 PM and 1:30 PM. No construction activities shall be allowed on weekends, except that interior construction shall be permitted after buildings are enclosed, without prior authorization of the Building Services Division, and no extreme noise-generating activities shall be allowed on weekends and holidays.</p> <p>G.1b: To reduce daytime noise impacts due to construction, the project applicant shall require construction contractors to implement the following measures:</p> <ul style="list-style-type: none"> • Equipment and trucks used for project construction shall use the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds, wherever feasible). • Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible; this could achieve a reduction of 5 dBA. Quieter procedures, such as use of drills rather than impact tools, shall be used whenever feasible. • Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible. 	<p>Significant and Unavoidable</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>G.4: The project would locate noise-sensitive multifamily residential uses and public parks in a noise environment where noise levels are above what is considered “normally acceptable” according to the City of Oakland General Plan Noise Element. (Potentially Significant)</p>	<ul style="list-style-type: none"> If feasible, the noisiest phases of construction (such as pile driving) shall be limited to less than 10 days at a time to comply with the local noise ordinance. <p>G.1c: To further mitigate pile driving and/or other extreme noise-generating construction impacts, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the City of Oakland Building Services Division to ensure that maximum feasible noise attenuation will be achieved.</p> <p>G.1d: Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the City Building Services Division a list of measures to respond to and track complaints pertaining to construction noise.</p>	<p>Significant and Unavoidable</p>

Significant Impacts (Reduced to Less Than Significant, with Mitigation)

<p>A. Land Use, Plans, and Policies</p>		
<p>A.1: The project would develop new and different uses and buildings immediately adjacent to and surrounding Fifth Avenue Point and may result in the physical division of an existing community.</p>	<p>A.1: The project applicant shall incorporate into the project site plan design elements that 1) address the relationship (setback, height and upper-story setbacks, etc.) of new buildings located adjacent to Fifth Avenue Point to minimize the physical division of the outparcels from the existing Oak-to-Ninth District; 2) provide safe, direct, and well-designed pedestrian and bicycle access between the outparcels and the new public open spaces, trails, and marina uses on the project site; 3) provide appropriate landscaping and/or other feature(s) to provide appropriate buffering between the outparcels and the project site, where necessary and feasible. The proposed Planned</p>	<p>Less than Significant</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>A.2: The project would not be consistent with the current existing Estuary Plan land use classification and zoning districts for the project site.</p>	<p>Waterfront Zoning District (PWD-1) regulations discussed in Impact A.2 shall incorporate, as appropriate, specific design standards to address the aforementioned elements in areas abutting Fifth Avenue Point.</p> <p>A.2a: The project sponsor shall apply for and obtain City approval for a General Plan Amendment to the Planned Waterfront Development-1 land use classification in the Estuary Policy Plan to 1) include residential as a permitted land use, 2) incorporate the density, FAR, and the other land use and development standards (as appropriate to include in the General Plan) outlined in the proposed Planned Water Development-1 Zone-1, and 3) explicitly state the intended treatment of the Ninth Avenue Terminal. If approved, the General Plan Amendment would eliminate the project's inconsistency with the Estuary Policy Plan.</p> <p>A.2b: The project sponsor shall apply for and obtain City approval for an amendment to the Oakland Planning Code to add the "Planned Waterfront Zoning District" (PWD-1) and associated regulations, and to amend the Oakland General Plan and Zoning Map to apply the PWD-1 District to the geographic area of the project site. The project would be required to adhere to the PWD-1 District regulations, development standards, design guidelines, and other requirements, including allowable uses, requirements for open space, streets, building heights, maximum densities, maximum commercial space, and parking. If approved, the change in zoning from the existing industrial (M-40 Zone) and special (S-2/S-4 Zone) districts to the PWD-1 District would eliminate the project's inconsistencies with the existing zoning as well as any zoning inconsistency with the General Plan.</p>	<p>Less than Significant</p>
<p>A.3: The project would introduce new land uses, and residential densities, and large building masses, forms, and significant height to the project site. The project may likely increase noise, light and glare, and traffic, and that may reduce or eliminate existing views from public vantage points. As a result, the project would result in a substantial change in existing environment and existing land uses.</p>	<p>A.3a: The project sponsor shall implement all mitigation measures identified throughout this EIR to address the significant physical impacts associated with the environmental changes that would occur as a result of the project, reducing each impact to less than significant, where feasible.</p> <p>A.3b: The project sponsor shall implement the specific regulations and standards of the proposed Planned Waterfront Zoning District (consistent with Mitigation Measures A.1 and A.2b), if approved. To specifically address the physical impacts</p>	<p>Less than Significant</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>B. Transportation, Circulation, and Parking</p> <p>B.1: Traffic generated by Phase 1 of the project would affect traffic levels of service at local intersections in the project vicinity in 2010.</p> <p>B.1a: Traffic generated by Phase 1 of the project would add more than ten vehicles to the unsignalized intersection of <i>Embarcadero and Oak Street</i>, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant.</p> <p>B.1d: Traffic generated by Phase 1 of the project would add more than ten vehicles to the unsignalized intersection of <i>Embarcadero and 5th Avenue</i>, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant during the PM peak hour.</p> <p>B.2: Traffic generated by buildout of the project would affect</p>	<p>resulting from the change in land use and environment in proximity to Fifth Avenue Point and adjacent residential development, the project shall adhere to the regulations and standards for allowable uses, open space, streets, setbacks, building heights and upper-story stepbacks, maximum densities, maximum commercial space, pedestrian and bicycle access, and landscaping and buffering.</p> <p>B.1a: Install traffic signals at the unsignalized intersection of Embarcadero and Oak Street. The signals shall have fixed-time controls with permitted left-turn phasing, which would not require a separate left-turn arrow. Installation of traffic signals shall include the traffic signal equipment and optimization of signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. Traffic signal equipment shall include pedestrian signal heads (with adequate time for pedestrians to cross the streets). Signal installation shall meet City of Oakland and Caltrans design standards.</p> <p>B.1d: Install traffic signals at the unsignalized intersection of <i>Embarcadero and 5th Avenue</i>. The signals shall have fixed-time controls with permitted left-turn phasing, which would not require a separate left-turn arrow. Installation of traffic signals shall include the traffic signal equipment and optimization of signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. Traffic signal equipment shall include pedestrian signal heads (with adequate time for pedestrians to cross the streets). Signal installation shall meet City of Oakland and Caltrans design standards.</p>	<p>Less than Significant</p> <p>Less than Significant</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>traffic levels of service at local intersections in the project vicinity in 2025.</p>		
<p>B.2b: Traffic generated by buildout of the project would add more than ten vehicles to the unsignalized intersection of <i>Embarcadero and Broadway</i>, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant during the PM peak hour.</p>	<p>B.2b: Install traffic signals at the unsignalized intersection of <i>Embarcadero and Broadway</i>. The signals shall have fixed-time controls with permitted left-turn phasing, which would not require a separate left-turn arrow. Installation of traffic signals shall include the traffic signal equipment and optimization of signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. Traffic signal equipment shall include pedestrian signal heads (with adequate time for pedestrians to cross the streets). Signal installation shall meet City of Oakland and Caltrans design standards.</p>	Less than Significant
<p>B.2f: The LOS F conditions at the signalized intersection of <i>West Grand Avenue and Harrison Street</i>, which would prevail during the AM peak hour under 2025 baseline conditions, would worsen (total intersection average vehicle delay would exceed the two-second threshold of significance) with the addition of traffic generated by buildout of the project.</p>	<p>B.2f: Optimize the traffic signal timing for the AM peak period at the signalized intersection of <i>West Grand Avenue and Harrison Street</i>. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p>	Less than Significant
<p>B.2g: The LOS E conditions at the signalized intersection of <i>Lakeshore Avenue and Foothill Boulevard</i>, which would prevail during the AM peak hour under 2025 baseline conditions, would worsen (an increase in the total intersection average vehicle delay of more than four seconds) with the addition of traffic generated by buildout of the project.</p>	<p>B.2g: Optimize the traffic signal timing for the AM peak period at the signalized intersection of <i>Lakeshore Avenue and Foothill Boulevard</i>. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p>	Less than Significant
<p>B.2i: The LOS E conditions at the signalized intersection of <i>Lakeshore Avenue and Lake Park Avenue</i>, which would prevail during the PM peak hour under 2025 baseline conditions, would worsen (an increase in the average vehicle delay for a critical movement of more than six seconds) with the addition of traffic generated by buildout of the project.</p>	<p>B.2i: Optimize the traffic signal timing for the PM peak period at the signalized intersection of <i>Lakeshore Avenue and Lake Park Avenue</i>. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p>	Less than Significant
<p>B.2j: The LOS F conditions at the intersection of <i>Embarcadero and 5th Avenue</i>, which would prevail during the PM peak hour under 2025 baseline unsignalized conditions, would continue under traffic signal control (installed by 2010 [see Mitigation</p>	<p>B.2j: Widen <i>Embarcadero</i> to provide two through travel lanes in each direction along the project site frontage (i.e., from north of 4th Avenue to 9th Avenue), with separate left-turn lanes provided at the intersections, and provide appropriate lane</p>	Less than Significant

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>Measure B.1d) with the addition of traffic generated by buildout of the project.</p>	<p>configurations on the streets that intersect Embarcadero within the above-cited limits.</p>	
<p>B.2k: The intersection of <i>Embarcadero and I-880 Northbound Off-Ramp</i> (to be signalized by 2010 [see Mitigation Measure B.1e]) would degrade from LOS B to LOS F during the PM peak hour with the addition of traffic generated by buildout of the project.</p>	<p>B.2k: Implement Mitigation Measure B.2j.</p>	<p>Less than Significant</p>
<p>B.2m: The signalized intersection of <i>5th Avenue and 7th/8th Streets</i> would degrade from LOS D to LOS F during the PM peak hour with the addition of traffic generated by buildout of the project.</p>	<p>B.2m: Optimize the traffic signal timing for the PM peak period at the signalized intersection of 5th Avenue and 7th/8th Streets. Additionally, the westbound and eastbound (5th Avenue) approaches of the intersection would be restriped within the current paved approach, and on-street parking spaces adjacent to the intersection would be removed, to provide separate left-turn, through, and through/right-turn lanes. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p>	<p>Less than Significant</p>
<p>B.2n: The signalized intersection of <i>14th Avenue and 7th/12th Streets (Southbound)</i> would degrade from LOS E to LOS F during the PM peak hour with the addition of traffic generated by buildout of the project.</p>	<p>B.2n: Optimize the traffic signal timing for the PM peak period at the signalized intersection of <i>14th Avenue and 7th/12th Streets (Southbound)</i>. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p>	<p>Less than Significant</p>
<p>B.2o: The signalized intersection of <i>Foothill Boulevard and 14th Avenue (Westbound)</i> would degrade from LOS D to LOS E during the AM peak hour with the addition of traffic generated by buildout of the project.</p>	<p>B.2o: Optimize the traffic signal timing for the AM peak period at the signalized intersection of <i>Foothill Boulevard and 14th Avenue (Westbound)</i>. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p>	<p>Less than Significant</p>
<p>B.2p: The LOS F conditions at the signalized intersection of <i>Foothill Boulevard and 14th Avenue (Eastbound)</i>, which would prevail during the PM peak hour under 2025 baseline conditions, would worsen (total intersection average vehicle delay would exceed the two-second threshold of significance) with the addition of traffic generated by buildout of the project.</p>	<p>B.2p: Optimize the traffic signal timing for the AM peak period at the signalized intersection of <i>Foothill Boulevard and 14th Avenue (Eastbound)</i>. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p>	<p>Less than Significant</p>

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<p>B.2q: The LOS E conditions at the signalized intersection of <i>16th Street and 23rd Avenue</i>, which would prevail during the PM peak hour under 2025 baseline conditions, would worsen (an increase in the average vehicle delay for a critical movement of more than six seconds) with the addition of traffic generated by buildout of the project.</p>	<p>B.2q: Optimize the traffic signal timing for the PM peak period at the signalized intersection of <i>16th Street and 23rd Avenue</i>. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.</p>	Less than Significant
<p>B.3: Traffic generated by buildout of the project would contribute to cumulatively significant impacts at local intersections in the project vicinity in 2025.</p>		
<p>B.3b: Traffic generated by buildout of the project would contribute more than five percent of the cumulative traffic increases at the unsignalized intersection of <i>Embarcadero and Broadway</i> during the PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.</p>	<p>B.3b: Implement Mitigation Measure B.2b (install traffic signals).</p>	Less than Significant
<p>B.3h: Traffic generated by buildout of the project would contribute more than five percent of the cumulative traffic increases at the signalized intersection of <i>Lakeshore Avenue and Lake Park Avenue</i> during the PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.</p>	<p>B.3h: Implement Mitigation Measure B.2i (optimize traffic signal timing).</p>	Less than Significant
<p>B.3i: Traffic generated by buildout of the project would contribute more than five percent of the cumulative traffic increases at the unsignalized intersection of <i>Embarcadero and 5th Avenue</i> during the PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.</p>	<p>B.3i: Implement Mitigation Measure B.2j (widen Embarcadero).</p>	Less than Significant
<p>B.3j: Traffic generated by buildout of the project would contribute more than five percent of the cumulative traffic increases at the unsignalized intersection of <i>Embarcadero and I-880 Northbound Off-Ramp</i> during the PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.</p>	<p>B.3j: Implement Mitigation Measure B.2j (widen Embarcadero).</p>	Less than Significant
<p>B.3l: Traffic generated by buildout of the project would contribute more than five percent of the cumulative traffic increases at the signalized intersection of <i>5th Avenue and</i></p>	<p>B.3l: Implement Mitigation Measure B.2m (optimize traffic signal timing).</p>	Less than Significant

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>7th/8th Streets during the PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.</p>	<p>B.3n: Implement Mitigation Measure B.2o (optimize traffic signal timing).</p>	<p>Less than Significant</p>
<p>B.3n: Traffic generated by buildout of the project would contribute more than five percent of the cumulative traffic increases at the signalized intersection of <i>Foothill Boulevard and 14th Avenue (Westbound)</i> during the PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.</p>	<p>B.3o: Implement Mitigation Measure B.2q (optimize traffic signal timing).</p>	<p>Less than Significant</p>
<p>B.3o: Traffic generated by buildout of the project would contribute more than five percent of the cumulative traffic increases at the signalized intersection of <i>16th Street and 23rd Avenue</i> during the PM peak hour, as measured by the difference between existing and cumulative (with project) conditions.</p>	<p>B.4a: The project applicant shall redesign the project site plan to include transit facilities, including bus turnouts on the Embarcadero at a minimum, to ensure that bus service could be accommodated if agreement with AC Transit were to be met to extend service to the project site. Additional facilities would include bus stops within the project, or even a dedicated transit center at which public buses and/or private shuttles could stop.</p> <p>B.4b: The project applicant shall operate a private shuttle service to complement AC Transit service that might be extended to the project site. The shuttle service shall <u>run between the project site and nearby activity centers and transit nodes (e.g., Lake Merritt BART station) with</u> have an adequate number of shuttle stops located onsite, and shall operate on a frequency sufficient to attract use of the service by project residents and employees.</p>	<p>Less than Significant</p>
<p>B.4: The project would generate demand for alternative transportation service for the area.</p>	<p>B.7: The project applicant shall redesign the site plan as follows:</p> <ul style="list-style-type: none"> • Reconfigure the intersections of Embarcadero/7th Avenue and Embarcadero/9th Avenue intersection for right-in/right-out movements only (to ensure proper spacing between signalized intersections). 	<p>Less than Significant</p>
<p>B.7: The project would increase the potential for conflicts among different traffic streams.</p>		

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>B.10: Project construction would temporarily affect traffic flow and circulation, parking, and pedestrian safety.</p>	<ul style="list-style-type: none"> • Install a traffic signal at the intersection of Embarcadero and 8th Avenue. • Install signal interconnect on Embarcadero between 5th and 10th Avenues to allow for coordination of traffic signals along Embarcadero (to minimize queuing [back-ups] on Embarcadero). • The design of pedestrian facilities including sidewalks, crosswalks, and curb ramps shall comply with ADA standards and other applicable legislation. • <u>Maintain or reconstruct the fence along the Embarcadero that limits access to the railroad tracks adjacent to the project site.</u> • <u>Install additional bicycle and pedestrian warning signage at the existing at-grade crossing along 5th Avenue.</u> <p>B.10: Prior to initiation of each phase of development the issuance of each building permit, the project applicant and construction contractor shall meet with the Traffic Engineering and Parking Division of the Oakland Public Works Agency and other appropriate City of Oakland <u>and non-City agencies (e.g., Caltrans)</u> to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project applicant shall develop a construction management plan for review and approval by the City Traffic Engineering Division. The plan shall include at least the following items and requirements:</p> <ul style="list-style-type: none"> • A set of comprehensive traffic control measures, including scheduling of major truck trips and deliveries to avoid peak traffic hours, detour signs if required, lane closure procedures, signs, cones for drivers, and designated construction access routes. In addition, the information shall include a construction staging plan for any right-of-way used on the Embarcadero, including sidewalk and lane intrusions and/or closures. 	<p>Less than Significant</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>C. Air Quality and Meteorological Conditions</p> <p>C.1: Activities associated with demolition, site preparation and construction would generate short-term emissions of criteria pollutants, including suspended and inhalable particulate matter and equipment exhaust emissions.</p>	<ul style="list-style-type: none"> ● Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur. ● Location of construction staging areas for materials, equipment, and vehicles (must be located on the project site). ● Identification of haul routes for movement of construction vehicles that would minimize impacts on vehicular and pedestrian traffic, circulation and safety; and provision for monitoring surface streets used for haul routes so that any damage and debris attributable to the haul trucks can be identified and corrected by the project applicant. ● Temporary construction fences to contain debris and material and to secure the site. ● Provisions for removal of trash generated by project construction activity. ● A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. ● Provisions for monitoring surface streets used for truck routes so that any damage and debris attributable to the trucks can be identified and corrected. ● <u>Provisions for coordination with BART to reduce, as needed, adverse effect on access to the Lake Merritt BART Station.</u> <p>C.1a: During construction, the project sponsor shall require the construction contractor to implement the following measures required as part of BAAQMD's basic and enhanced dust control procedures required for sites larger than four acres (aggregate):</p> <p>Basic Control Measures – The following controls should be implemented at all construction sites:</p> <ul style="list-style-type: none"> ● Water all active construction areas at least twice daily. 	<p>Less than Significant</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
	<ul style="list-style-type: none"> • Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard. • Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites. • Sweep daily (with water sweepers) all paved access roads, parking areas and staging area at construction sites. • Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets. <p>Enhanced Control Measures – The following measures shall be implemented during project construction because the site is greater than four acres in area:</p> <ul style="list-style-type: none"> • All “Basic” control measures listed above. • Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for one month or more). • Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.). • Limit traffic speeds on unpaved roads to 15 miles per hour. • Install sandbags or other erosion control measures to prevent silt runoff to public roadways. • Replant vegetation in disturbed areas as quickly as possible. <p>The following control measures shall be implemented during project construction because the site is large in area and located near sensitive receptors:</p> <ul style="list-style-type: none"> • Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site. • Install wind breaks, or plant trees/ vegetative wind 	

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
	<p>breaks at windward side(s) of construction areas.</p> <ul style="list-style-type: none"> • Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 miles per hour. • Limit the area subject to excavation, grading and other construction activity at any one time. <p>C.1b: Demolition and disposal of any asbestos containing building material would be in accordance with the procedures specified by Regulation 11, Rule 2 (Asbestos Demolition, Renovation and Manufacturing) of BAAQMD's regulations.</p> <p><i>Rideshare Measures</i></p> <p>C.7a: Encourage all tenants (commercial and residential) at the site to implement carpool/ vanpool programs (e.g., carpool, ride matching for employees, assistance with vanpool formation, provision of vanpool vehicles, guaranteed ride home program, etc.). Distribute information about the Alameda County Congestion Management Agency's Guaranteed Ride Home Program to tenants of the building to facilitate alternative transportation modes. As part of the program, a person who uses an alternate mode of travel, including transit or a carpool, is provided with free taxi service in the case of unexpected circumstances. These circumstances might include unscheduled overtime or a family illness or emergency.</p> <p>C.7b: Encourage commercial tenants to implement employee rideshare incentive programs providing cash payments or pre-paid fare media such as transit passes or coupons.</p> <p><i>Transit Measures</i></p> <p>C.7c: Construct transit facilities, such as bus turnouts/bus bulbs, benches, shelters, etc., as determined appropriate by AC Transit, consistent with Transit Mitigation Measure B.4a.</p> <p>C.7d: Encourage commercial tenants to meet standard, minimum employee ridesharing requirements or to provide incentives to encourage employees to rideshare.</p> <p>C.7e: Encourage commercial tenants to implement a parking cash-out program for employees (e.g., non-driving employees receive transportation allowance equivalent to the value of subsidized parking).</p>	

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	<p><i>Shuttle Measures</i></p> <p>C.7f: The project applicant shall operate a private shuttle service between the project site and nearby activity centers and transit nodes (e.g., Lake Merritt BART station) with an adequate number of shuttle stops located onsite, and on a frequency sufficient to attract use of the service by project residents and employees.</p> <p><i>Bicycle and Pedestrian Measures</i></p> <p>C.7g: Provide bicycle lanes and/or paths, connected to the community-wide network.</p> <p>C.7h: Provide secure, weather-protected bicycle parking for employees.</p> <p>C.7i: Provide direct, safe, attractive pedestrian and bicycle access to transit stops and adjacent development.</p> <p>C.7j: Provide adequate street lighting within the street right of way immediately adjacent to and within the project site.</p> <p>C.7k: Provide secure short-term bicycle parking for retail customers and other non-commute trips.</p>	
D. Hydrology and Water Quality		
<p>D.1: Project construction would involve activities (excavation, soil stockpiling, boring and pile driving, grading, and dredging, etc.) that would generate loose, erodable soils that, if not properly managed, could violate any water quality standards or waste discharge requirements; result in substantial erosion or siltation; create or constitute substantial polluted runoff; or otherwise substantially degrade water quality.</p>	<p>D.1: The project sponsor shall comply with all NPDES requirements, RWQCB General Construction Permit requirements, and all City regulations and Creek Protection Permits requirements.</p>	Less than Significant
<p>D.2: Project construction activities would include dredging in Clinton Basin, which could require disturbance, removal, and disposal of contaminated sediment that may result in adverse impacts to aquatic organisms and water quality.</p>	<p>D.2: The project sponsor shall obtain and comply with all water quality certification and requirements required for dredging activities, which shall include a Section 404 permit process pursuant to the Army Corps of Engineers (Corps) and pursuant to the oversight, permitting, and approval of the Dredged Material Management Office (DMMO).</p>	Less than Significant

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<p>D.5: Site development under the project would involve new landscaping and open lawns. If not properly handled, chemicals used to establish and maintain landscaping and open lawn areas, such as pesticides and fertilizers, could flow into the waterways and result in water quality impacts to the Oakland Estuary, and eventually San Francisco Bay.</p>	<p>D.5: The project sponsor shall prepare a landscape management plan (LMP) for all public open spaces that includes, but is not necessarily limited to, a description of application, storage, and safety measures involving the use of pesticides and fertilizers. The LMP shall include but not be limited to the following:</p> <ul style="list-style-type: none"> • Transportation and storage: Pesticides and fertilizers shall be transported and stored as per state and federal guidelines. They shall be stored in designated bermed areas onsite. • Pesticide Application: Pesticides and fertilizers shall be handled and applied according to the procedures set by the manufacturer. The LMP shall address methods to optimize and reduce the use of pesticides and fertilizers and present strategies to incorporate environmentally-safe (organic) pest and growth enhancement materials. These strategies shall address eventually eliminating the use of chemicals such as diazinon that harm water quality. The RWQCB has found that the pesticides have a reasonable potential to cause or contribute to exceedances of water quality standards. Therefore, the NPDES permit requires the City of Oakland (as a permittee) to address pesticides. The project sponsor shall adhere to the Diazinon Pollutant Reduction Plan or the Pesticide Plan submitted by the ACCWP to the RWQCB. The goals of the Pesticide Plan and of its resulting implementing actions are to reduce or substitute pesticide use (especially diazinon use) with less toxic alternatives (ACCWP, 2003). • The Plan shall identify pesticide and fertilizer application schedules. • Container Disposal: The contractor shall dispose of empty containers carefully. The containers shall never be disposed at locations that would contaminate natural waterways. <p>The LMP and its recommendations for use, control, and eventual reduction of nonorganic pesticide and fertilizer use shall be approved by the City prior to installing the landscape and shall be implemented throughout the life of the project.</p>	<p>Less than Significant</p>

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<p>D.6: The project sponsor could deplete groundwater supplies or interfere with groundwater recharge and cause contamination of surface.</p>	<p>D.6: The project sponsor shall comply with NPDES permit requirements by the RWQCB for dewatering activities.</p>	<p>Less than Significant</p>
<p>E. Cultural Resources E.1: Construction of the project could cause substantial adverse changes to the significance of currently unknown cultural resources at the site, potentially including an archaeological resource pursuant to CEQA Guidelines Section 15064.5 or CEQA Section 21083.2(g), or the disturbance of any human remains, including those interred outside of formal cemeteries.</p>	<p><u>E.1a: An archival cultural resource evaluation shall be implemented prior to the start of construction or other ground-disturbing activities to identify whether historic or unique archaeological resources exist within the project site. The archival cultural resource evaluation, or "sensitivity study," shall be conducted by a cultural resource professional approved by the City and who meets the Secretary of the Interior's Professional Qualifications Standards for Prehistoric and Historical Archaeology.</u></p>	<p>Less than Significant</p>
	<p><u>The purpose of the archival cultural resource evaluation is to: (1) identify documentation and studies to determine the presence and location of potentially significant archaeological deposits; (2) determine if such deposits meet the definition of a historical resource under CEQA Guidelines Section 15064.5 or a unique archaeological resource under CEQA Section 21083.2(g); (3) guide additional archaeological work, potentially including pre-construction subsurface archaeological investigation if warranted, to recover the information potential of such deposits; and (4) define an archaeological monitoring plan, if warranted. A pre-construction meeting shall occur with the cultural resource professional and the City regarding the findings of the evaluation, and shall include consultation with and considerations of the Department of Toxic Substances (DTSC), the Lead Agency for the environmental cleanup activities on the project site. If excavation is the only feasible means of data recovery, such excavation shall be in accord with the provisions of CEQA Guidelines Section 15126.4(b)(3)(C). Any additional archaeological work and or monitoring shall be pursuant to a plan approved by the City. If a pre-constructing testing program is deemed necessary by the qualified professional as a result of the archival study, it shall be guided by the archival study and shall use a combination of subsurface investigation methods (including backhoe trenching, augering,</u></p>	

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
	<p><u>and archaeological excavation units, as appropriate).</u></p> <p><u>If monitoring of any areas during ground disturbing activities is determined to be required based on the results of the archival evaluation and the pre-construction testing, the monitoring will be conducted by a qualified cultural resources professional and the monitoring plan will include appropriate provisions for evaluating any archaeological deposits, consultation with the City, and any necessary data recovery program.</u></p> <p>Mitigation Measure E.1b: Prior to the commencement of ground distributing activities, all construction personnel shall receive environmental training from a cultural resource professional approved by the City and who meets the Secretary of the Interior's Professional Qualifications Standards for Prehistoric and Historical Archaeology. The purpose of the environmental training is to inform all construction personnel of the possibility of encountering historical resources. All construction personnel specifically involved in onsite activities that may uncover prehistoric resources shall be trained in the identification of prehistoric resources and immediate actions required if potential resources are found.</p> <p>Mitigation Measure E.1ac: Pursuant to CEQA Guidelines 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore, in the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project proponent and/or lead agency shall consult with a qualified archaeologist to assess the significance of the find. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified archaeologist would meet to determine the appropriate avoidance measures or other appropriate mitigation, with the ultimate determination to be made by the City. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to</p>	

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E.2: The project may adversely affect unidentified paleontological resources at the site.	<p>current professional standards.</p> <p>Mitigation Measure E.1b: In the event that human skeletal remains are uncovered at the project site during construction or ground-breaking activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and follow the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.</p> <p>E.2: The project sponsor shall notify a qualified paleontologist of unanticipated discoveries, who shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find under the criteria set forth in Section 15064.5 of the CEQA Guidelines. In the event of an unanticipated discovery of a breas, true, and/or trace fossil during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards (SVP 2004)). The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The paleontologist shall submit the excavation plan to the City for review and approval.</p>	Less than Significant

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>F. Geology, Soils, and Seismicity</p> <p>F.1: In the event of a major earthquake in the region, seismic ground shaking could potentially injure people and cause collapse or structural damage to proposed structures.</p>	<p>F.1: A site-specific, design level geotechnical investigation for each site area (which is typical for any large development project) shall be required as part of this project. Each investigation shall include an analysis of expected ground motions at the site from known active faults. The analyses shall be in accordance with applicable City ordinances and policies and consistent with the most recent version of the California Building Code ,which requires structural design that can accommodate ground accelerations expected from known active faults. In addition, the investigations shall determine final design parameters for the walls, foundations, foundation slabs, and surrounding related improvements (utilities, roadways, parking lots and sidewalks). The investigations shall be reviewed and approved by a registered geotechnical engineer. All recommendations by the project engineer and geotechnical engineer shall be included in the final design. Recommendations that are applicable to foundation design, earthwork, and site preparation that were prepared prior to or during the project design phase, shall be incorporated in the project. The final seismic considerations for the site shall be submitted to and approved of by the City of Oakland Building Services Division prior to the commencement of the project.</p>	Less than Significant
<p>F.2: In the event of a major earthquake in the region, seismic ground shaking could potentially expose people and property to liquefaction and earthquake-induced settlement.</p>	<p>F.2: Prepare an updated site specific, design level geotechnical investigation for each building site to consider the particular project designs and provide site specific engineering recommendations for mitigation of liquefiable soils. Liquefiable soils under the conditions described in the geotechnical report shall be mitigated using various proven methods to reduce the risk of liquefaction. Liquefaction mitigation measures include subsurface soil improvement, deep foundations, structural slabs, and soil cover. Site improvement methods to address potential liquefaction include dynamic compaction, compaction grouting, jet grouting, and vibroflotation can significantly reduce the risk of liquefaction. Deep foundations extending below the liquefiable layers can be designed to support structures despite the occurrence of liquefaction. Structural slabs are designed to span across areas of non-support, such as in the case of liquefaction or settlement. The presence of a sufficiently thick, engineered fill layer over liquefiable soil can reduce the potential for damage at the ground surface due to liquefaction by helping to bridge across isolated liquefaction zones. Other</p>	Less than Significant

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
F.3: Development at the project site could be subjected to settlement.	<p>methods of mitigating potential liquefaction hazards suggested in the <i>California Geological Survey's (CGS) Geology Guidelines for Evaluating and Mitigating Seismic Hazards</i> (CGS Special Publication 117, 1997) include edge containment structures (berms, dikes sea walls, retaining structures, compacted soil zones), removal or treatment of liquefiable soils, modification of site geometry, lowering the groundwater table, in-situ ground densification, deep foundations, reinforced shallow foundations, and structural design that can accommodate predicted displacements (CDMG, 1997).</p> <p>These measures shall be evaluated during the site specific geotechnical investigation and the most effective, practical and economical methods should become part of the project. Prior to incorporation into the project, geotechnical engineering recommendations regarding the mitigation and reduction of liquefaction for each site shall be reviewed for compliance with the CGS Geology Guidelines. The purpose of these guidelines is to protect the public safety from seismic effects such as liquefaction.</p> <p>F.3: As with standard geotechnical practices, site specific geotechnical investigations and reports would be required in order to obtain permits from the City of Oakland. Such geotechnical investigations and reports prepared for the project site shall include generally accepted and appropriate engineering techniques for determining the susceptibility of the project site to settlement and reducing its effects. Where settlement and/or differential settlement is predicted, mitigation measures such as lightweight fill, geofoam, surcharging, wick drains, deep foundations, structural slabs, hinged slabs, flexible utility connections, and utility hangers could be used. These measures shall be evaluated and the most effective, feasible, and economical measures shall be recommended. Engineering recommendations shall be included in the project engineering and design plans. All construction activities and design criteria shall comply with applicable codes and requirements of the 1997 UBC with California additions (Title 22), and applicable City construction and grading ordinances.</p>	Less than Significant
F.4: Development at the project area may include use of dredged material as fill which would be subject to settlement and subsidence.	<p>F.4: Any dredged material used for fill will have to undergo an appropriate process of consolidation and stabilization to render it suitable for the support of engineered fill. A geotechnical investigation and report will be required in order to obtain</p>	Less than Significant

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>F.5: Construction activities at the project area could loosen and expose surface soils. If this were to occur over the long term, exposed soils could erode by wind or rain causing potential loss of topsoil. In addition, shoreline areas exposed to wave action could be subject to erosion and loss of topsoil.</p>	<p>permits from the City of Oakland in addition to the Dredged Material Management Office permitting requirements. The geotechnical investigations and reports prepared for the project site shall include generally accepted and appropriate engineering techniques for determining the susceptibility of the project specific site to settlement and reducing its effects. Engineering recommendations shall be included in the project engineering and design plans. The use of dredged materials as fill shall be limited to open space areas.</p> <p>F.5: Consistent with Mitigation Measure D.1 (which addresses construction-related water quality impacts), the project sponsor shall comply with all applicable NPDES requirements, RWQCB General Construction Permit requirements, and all City regulations, including Creek Protection Permits, as detailed in Mitigation D.1.</p>	<p>Less than Significant</p>
<p>G. Noise</p> <p>G.2: Noise from project-generated traffic and other operational noise sources, such as mechanical equipment and truck loading/unloading, could exceed City of Oakland Noise Ordinance standards and disturb project occupants and nearby residents.</p>	<p>G.2: The project applicant shall incorporate the following design features into the final site plans:</p> <ul style="list-style-type: none"> • Building equipment (e.g., HVAC units) shall be located away from nearby residences, on building rooftops, and properly shielded within an enclosure that effectively blocks the line of sight of the source from receivers in order to meet City of Oakland Noise Ordinance standards. • Truck delivery areas shall be located as far from adjacent residences as possible. To the extent feasible, project buildings shall be located so that they block noise related to truck deliveries and waste collection from residential or other sensitive receptors. 	<p>Less than Significant</p>
<p>G.3: The project would locate noise-sensitive multifamily residential uses in a noise environment where noise levels are above what is considered “normally acceptable” according to the City of Oakland General Plan Noise Element.</p>	<p>G.3a: To comply with the requirements of Title 24 and achieve an interior noise level of less than 45 dBA, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls) shall be incorporated into project building design. Final recommendations for sound-rated assemblies will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phase. (Oak to 9th Residential Development, Oakland, California, Environmental Noise Assessment by Charles M. Salter Associates, Inc., November 2002. Table 4 of the Salter</p>	<p>Less than Significant</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>H. Hazardous Materials</p> <p>H.1: Disturbance and release of contaminated soil during remediation, demolition and construction phases of the project, or transportation of excavated material, contaminated groundwater or dredged sediment could expose construction workers, the public, or the environment to adverse conditions related to hazardous materials handling.</p>	<p>Associates document lists conceptual window and wall Sound Transmission Class (STC) ratings for different noise environments and gives an estimate of the STC requirements needed to meet interior noise criteria.)</p> <p><u>G.3b: Due to the proximity of the project to a railroad crossing, a written disclosure of railroad crossing noise, particularly usage of train horns and bells on warning devices during the daytime and nighttime hours, shall be provided to potential residents of the project</u></p> <p>H.1a: The applicant shall retain a qualified environmental consulting firm to prepare a cleanup plan for the contaminated soil and groundwater which would be based on a comprehensive remedial investigation report for the project area. This plan shall be approved by the appropriate regulatory agencies which may include but not be limited to the DTSC and the RWQCB. The plan shall also include the preparation of a health and safety plan to protect the workers and the public during all remediation and construction activities proposed. Following agency approval of the plan, remediation and removal work shall be conducted according to all applicable OSHA worker safety regulations. Remediation activities at the site may include, without limitation, closure or removal of subsurface structures, excavation and disposal of contaminated materials, natural and enhanced bioremediation of soil and groundwater, restoration and improvement of shoreline structures, limited dredging of sediments, and institutional and engineering controls to prevent exposure to and migration of contaminated materials. Throughout the course of remediation and construction activities, the handling, transport, and storage of any hazardous waste or potentially hazardous waste shall be conducted appropriate to all local and state agency protocols.</p> <p>H.1b: Prior to offsite disposal, the project applicant shall adequately profile excavated soils to establish the proper classification of the soils for hazardous or non-hazardous waste disposal. The soils shall be handled, stored and transported according to all applicable regulations for the appropriate classification.</p> <p>H.1c: Soil generated by construction activities shall be</p>	<p>Less than Significant</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>H.2: Disturbance and release of hazardous structural and building components (i.e. asbestos, lead, PCBs, USTs, and ASTs) during demolition and construction phases of the project or transport of these materials could expose construction workers, the public, or the environment to adverse conditions related to hazardous materials handling.</p>	<p>stockpiled onsite and sampled prior to reuse or disposal at an appropriate facility. Any reuse of soils shall be conducted by prior approval from the appropriate state oversight agency.</p> <p>H.1.d: Groundwater generated during construction dewatering shall be contained and transported offsite for disposal at an appropriate facility, or treated, if necessary, prior to discharge into the sanitary sewer to levels acceptable to the East Bay Municipal Utilities District.</p> <p>H.1.e: Prior to dredging any materials from the Clinton Basin, the project applicant shall retain a qualified environmental consulting firm to prepare a Sampling and Analysis Plan (SAP) as described by the Corps of Engineers (PN 99-4). The SAP shall be approved by the Dredged Material Management Office (DMMO) and shall include a proposal for a disposal location and a disposal alternatives analysis. Following agency approval of the plan, sediment removal work shall be conducted in accordance with all applicable OSHA worker safety regulations. In addition, the handling, transport, and storage of any hazardous waste or potentially hazardous waste shall be conducted consistent with all local and state agency protocols.</p> <p>H.2a: A pre-demolition ACM survey shall be performed by a state-certified asbestos consultant prior to demolition of any of the structures located on the project site. The survey shall include sampling and analysis of suspected ACMs. Abatement of known or suspected ACMs shall occur prior to demolition or construction activities that would disturb those materials. Pursuant to an asbestos abatement plan developed by a state-certified asbestos consultant and approved by the City, all ACMs shall be removed and appropriately disposed of by a state certified asbestos contractor.</p> <p>H.2b: The project applicant shall implement a lead-based paint abatement plan, prepared by a qualified consultant, which shall include the following components:</p> <ul style="list-style-type: none"> A pre-demolition LBP survey for all structures proposed for demolition at the project site. The survey shall include sampling and identification of suspected materials 	<p>Less than Significant</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
	<p>containing LBP.</p> <ul style="list-style-type: none"> • Development of an abatement specification plan which shall be based on survey work and detail proposed abatement work areas and procedures. • A site Health and Safety Plan. • Containment of all abatement work areas to prohibit offsite migration of paint chip debris. • Removal of all peeling and stratified lead-based paint on building surfaces and on non-building surfaces to the degree necessary to safely and properly complete demolition activities per the recommendations of the survey. The demolition contractor shall be identified as responsible for properly containing and disposing of intact lead-based paint on all equipment to be cut and/or removed during the demolition. • Appropriately remove paint chips by vacuum or other approved method. • Collection, segregation, and profiling waste for disposal determination. • Appropriate disposal of all hazardous and non-hazardous waste. 	
	<p>H.2c: A pre-demolition PCB survey shall be performed prior to demolition of any of the structures located on the project site. The survey shall include sampling and identification of suspected PCBs. Abatement of known or suspected PCBs shall occur prior to demolition or construction activities that would disturb those materials. In the event that electrical equipment or other PCB-containing materials are identified prior to demolition activities they shall be removed, and shall be disposed of by a licensed transportation and disposal contractor at an appropriate hazardous waste facility.</p>	
	<p>H.2d: When known or previously unidentified USTs are encountered during construction, construction in the immediate</p>	

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>H.3: Hazardous materials used onsite during construction activities (i.e., solvents) could be released to the environment through improper handling or storage.</p>	<p>area shall cease until the UST is removed with oversight from the City of Oakland Fire Department Hazardous Materials Unit or other applicable oversight agency. If there is any indication that the tank has leaked, then the lead agency shall direct any appropriate remediation measures. Removal of the UST shall include, to the extent deemed necessary by the lead agency, over-excavation and disposal of any impacted soil that may be associated with such tanks to a degree satisfactory to the oversight agency.</p> <p>H.3: The use of construction best management practices shall be implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following:</p> <ul style="list-style-type: none"> • Follow manufacturer's recommendations on use, storage and disposal of chemical products used in construction; • Avoid overtopping construction equipment fuel gas tanks; • During routine maintenance of construction equipment, properly contain and remove grease and oils. • Properly dispose of discarded containers of fuels and other chemicals. 	<p>Less than Significant</p>
<p>I. Biological Resources / Wetlands</p> <p>I.2: Construction activities required for the project would result in a substantial adverse effect on potentially jurisdictional wetlands or waters of the U.S. under the jurisdiction of the Corps, waters of the state under the jurisdiction of the Regional Water Quality Control Board (RWQCB), and wetlands under the jurisdiction of BCDC jurisdiction.</p>	<p>I.2a: <i>Corps-Verified Wetland Delineation</i>. A preliminary identification of potentially jurisdictional areas was conducted in 2004 (LSA, 2004), and the project sponsor submitted the draft potentially jurisdictional wetland delineation to the Corps in July 2005. The project sponsor shall obtain Corps verification of the preliminary identification of jurisdictional areas prior to submitting permit applications. A verified wetland delineation would be required prior to the submittal of regulatory permit applications.</p> <p>Mitigation Measure I.2b: <i>Wetland Avoidance</i>. Section 404 first requires that projects avoid or minimize adverse effects on jurisdictional waters to the extent practicable. To the extent feasible, the final project design shall minimize effects on</p>	<p>Less than Significant</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
	<p>wetlands and other waters in accordance with Section 404 of the Clean Water Act. Areas that are avoided shall be subject to Best Management Practices (BMPs), as described in Mitigation Measure I.2.d below. Such measures shall include installation of silt fencing, straw wattles or other appropriate erosion and sediment control methods or devices. Equipment used for the removal of debris and concrete rip-rap along the estuary edge will be operated from land using backhoes and cranes. Construction operations along Clinton Basin and Shoreline Park shall be barge-mounted or shall involve water-based equipment such as scows, derrick barges and tugs.</p> <p>Additionally, the existing restoration project at the southwest end of Clinton Basin, implemented by the Port of Oakland, shall be protected during construction activities. The extent of this area shall be clearly marked by a qualified biologist prior to the start of any grading or construction activities and a buffer zone established. All construction personnel working in the vicinity of the restoration area shall be informed of its location and buffer zone.</p> <p>I.2c: Obtain Regulatory Permits and other Agency Approvals. Prior to the start of construction activities for the project, the project applicant shall obtain all required permit approvals from the Corps, the RWQCB, BCDC, and all other agencies with permitting responsibilities for construction activities within jurisdictional waters of other jurisdiction areas. Permit approvals and certifications shall include, but not be limited to Section 404/Section 10 permits from the Corps, Section 401 Water Quality Certification from the RWQCB, and BCDC permit.</p> <p><i>Section 404 / Section 10 Permits.</i> Permit approval from the Corps shall be obtained for the placement of dredge or fill material in waters of the U.S., if any within the interior of the project site, pursuant to Section 404 of the federal Clean Water Act.</p> <p>Construction along the estuary edge below MHW elevation will be considered dredging by the Corps and will require a Section 10 permit. In addition, dredging of Clinton Basin will also require a Section 10 permit.</p> <p><i>Section 401 Water Quality Certification.</i> Approval of Water Quality Certification (WQC) and/or Waste Discharge Requirements (WDRs) shall be obtained from the RWQCB for</p>	

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
	<p>work within jurisdictional waters. Preparation of the Section 401 Water Quality Certification applications will require an application and supporting materials including construction techniques, areas of impact, and project schedule.</p> <p><i>BCDC Permit.</i> Permit approval from BCDC placing solid material, pilings floating structures boat docks, or other fill and/or dredging or other extraction of material from the Bay and the 100-foot shoreline band inland from mean high tide line along the length of the project site. Activities would include dredging for rebuilding the marina in Clinton Basin, and replacing the 5th Avenue marina with a new marina that will contain approximately 170 boat slips. The proposed project will include the removal of approximately 33,780 square feet of solid Bay fill as part of the shoreline design and the placement of 74,110 square feet of solid Bay fill for the creation of a village green at Clinton Basin. The project also includes the removal of approximately 129,920 square feet of pile-supported fill with the removal of a portion of the Ninth Avenue Terminal wharf. Additionally, floating fill will be required to create the two proposed marinas.</p> <p>The project will be required to comply with all BCDC permit conditions that typically include requirements to construct, guarantee and maintain public access to the bay, specified construction methods to assure safety or to protect water quality, and mitigation requirements to offset the adverse environmental impacts the project.</p> <p>I.2d: <i>Best Management Practices (BMPs).</i> The project applicant shall implement standard BMPs to maintain water quality and control erosion and sedimentation during construction, as required by compliance with the General National Pollution Discharge Elimination System (NPDES) Permit for Construction Activities and established by Mitigation Measure D.1 to address impacts on water quality. Mitigation measures would include, but would not be limited to, installing silt fencing along the edges of the project site to protect estuarine waters, locating fueling stations located away from potential jurisdictional features, and isolating construction work areas from the identified jurisdictional features. The project applicant shall also implement, BMPs to avoid impacts on water quality resulting from dredging activities within the Bay, and that as identified in the <i>Long-Term Management Strategy for the Placement of</i></p>	

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>I.3: Construction activities required for the project could have a substantial adverse effect, either directly or through habitat modifications, on fisheries resources in the Oakland Inner Harbor.</p>	<p><i>Dredged Material in the San Francisco Bay Region</i> (LTMS) (Corps, 2001). These BMPs include: silt fencing and gunderbooms or other appropriate methods for keeping dredged materials from leaving the project site.</p> <p>I.2e: <i>Compensatory Mitigation</i>. The project applicant shall provide compensatory mitigation for temporary impacts to, and permanent loss of, waters of the U.S., including wetlands, as required by regulatory permits issued by the Corps, RWQCB, and BCDC. Measures shall include, but not be limited to 1) onsite mitigation through wetland creation or enhancement, 2) development of a Mitigation and Monitoring Plan, and 3) additional wetland creation or enhancement or offsite mitigation:</p> <p>I.3a: <i>Protection of Fish and Migrating Salmonids</i>. The project applicant shall implement measures for protection of salmonids and Pacific herring during dredging projects and for indirect impacts on the San Francisco Bay "Essential Fish Habitat" (EFH) that are identified in the Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region (LTMS) (Corps, 2001).</p>	<p>Less than Significant</p>
<p>I.4: Construction activities required for the project could have a substantial adverse effect, either directly or through habitat modifications, on nesting habitat for breeding raptors and passerine birds, including Cooper's hawk.</p>	<p>I.4a: <i>Timing of Construction</i>. To the extent feasible, construction activities shall be conducted outside the breeding season for birds and raptors (August 1-January 30) Trees and shrubs that could provide potential nesting habitat may be removed during this period to avoid future nesting within the project site.</p> <p>I.4b: <i>Preconstruction Surveys</i>. <i>If seasonal avoidance is infeasible, the following measures shall be required to avoid potential adverse effects on nesting special-status raptors and other nesting birds:</i></p> <ul style="list-style-type: none"> • A qualified wildlife biologist shall conduct preconstruction surveys of all potential nesting habitat within 500 feet of construction activities. Preconstruction surveys should occur no later than two weeks prior to the start of construction activities. • If active nests of raptors or other bird species are found during preconstruction surveys, a no-disturbance buffer 	<p>Less than Significant</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
<p>I.5: The project could have a substantial adverse effect, either directly or through habitat modifications, on special-status nesting and roosting bats.</p>	<p>zone shall be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. The size of these buffer zones and types of construction shall be determined in consultation with the CDFG and shall be based on existing noise and human disturbance levels at the project site.</p> <ul style="list-style-type: none"> If preconstruction surveys indicate that nests are inactive or potential habitat is unoccupied during the construction period, no further mitigation is required. Trees, shrubs, and buildings that have been determined to be unoccupied by special-status birds or that are located more than 500 feet from active nests may be removed. <p>I.5: Before demolition of abandoned or underused buildings on the project site, such as the Ninth Avenue Terminal building, a qualified biologist who is familiar with bat biology and who is able to recognize signs of bats using abandoned buildings shall conduct pre-demolition building surveys in order to adequately make a determination on the presence of bat nurseries.</p> <p>If abandoned or underused buildings slated for destruction are being used by bats as nursery sites, demolition shall be postponed until young are reared and able to forage on their own. This determination shall be made by a qualified biologist specializing in bat biology.</p> <p>If bats are found to be roosting in abandoned or underused buildings on the project site, the bats shall be actively relocated to a temporary roosting structure (preferably onsite) during demolition activities. In addition, permanent bat roosting structures ("bat boxes") shall be created in order to properly mitigate the effects of a loss of roosting structure. The design of the bat boxes shall conform to the specifications appropriate to the species of bats found on the project site and vicinity, and shall be approved by a qualified bat biologist knowledgeable in the design of bat boxes. The bat boxes shall conform to the architectural design of the project buildings to reduce the visibility and obtrusiveness of the boxes and to avoid vandalism or disturbance to bat colonies.</p>	<p>Less than Significant</p>

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
Less Than Significant, and as noted, Beneficial or No Impacts <i>(No Mitigation Required)</i>		
B. Transportation, Circulation, and Parking		
B.5: The project would create demand for bicycle parking.	None Required.	
B.6: The project would increase the potential for pedestrian safety conflicts.	None Required.	
B.8: The project would contribute to 2010 changes to traffic conditions on the regional and local roadways.	None Required.	
C. Air Quality and Meteorological Conditions		
C.2: The project would result in an increase in regional ROG, NOx, and PM emissions due to project-related traffic.	None Required.	
C.3: Project traffic would increase localized carbon monoxide concentrations at intersections in the project vicinity.	None Required.	
C.4: Operation of project facilities would produce objectionable odors that would affect a substantial number of people.	None Required.	
C.5: Construction and operation of the project would expose existing sensitive receptors in the project vicinity and planned multifamily residential land uses associated with the project to health risks from diesel emissions.	None Required.	
C.6: The proposed project could result in hazardous wind conditions.	None Required.	
C.8: The proposed project could result in cumulative hazardous wind conditions.	None Required	
D. Hydrology and Water Quality		
D.3: Development of the project would result in a substantial decrease in impervious area. The project would implement post-construction BMPs to increase stormwater infiltration; to treat and direct stormwater runoff or discharge into a	None Required / Beneficial Effect.	

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
stormwater system and the estuary; and to prevent illicit discharge. Therefore, the project would not violate regulatory water quality standards or waste requirements.	None Required.	
D.4: Project operation would involve increased use of the marinas at the project site. As required by the RWQCB, the project design would incorporate post construction BMPs to treat stormwater and control discharge of wastes from the vessels used at the marinas. Therefore, the project would not violate water quality standards or waste discharge requirements.	None Required.	
D.7: The project would not result in flooding due to its proximity to a 100-year flood hazard area, or expose people or property to other substantial risks related to flooding, seiche, tsunami, or mudflow.	None Required.	
D.8: The project would result in a net decrease in impervious surfaces and would reconfigure and stabilize the shoreline along the project site, thereby decreasing the volume of stormwater runoff. Therefore the project would not increase runoff and result in substantial flooding on or offsite, or exceed the capacity of the existing stormwater drainage system.	None Required / Beneficial Effect.	
D.9: The increased construction activity and new development resulting from the project, in conjunction with population and density of other foreseeable development in the city, would not result in cumulative impacts with respect to hydrology and water quality.	None Required.	
E. Cultural Resources		
E.6: The project would demolish the remaining buildings on the project site	None Required.	
E.7: The project would construct a new mixed-use, multi-story development, diminishing the industrial character of the project site and vicinity, and altering the existing setting of the Fifth Avenue Point neighborhood.	None Required.	
F. Geology, Soils, and Seismicity		
F.6: The project would not expose people or structures to substantial risk or hazards as a result of 1) expansive soils, or 2) conditions that would potentially result in landslides or 3) surface fault rupture.	None Required.	

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
F.7: The project would not create substantial risks to life or property as a result of being located above a well, pit, swamp, mound, tank vault, or unmarked sewer line; above landfills for which there is no approved closure and post-closure plan, or unknown fill soils; or soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems.	None Required.	
F.8: The development proposed as part of the project, when combined with other reasonably foreseeable development in the vicinity, would not result in significant cumulative impacts with respect to geology, soils or seismicity.	None Required.	
G. Noise		
G.5: The proposed project, together with anticipated future development in Oakland, could result in long-term traffic increases that could cumulatively increase noise levels.	None Required.	
H. Hazardous Materials		
H.4: Project operations would generate and involve the handling of general commercial/retail and household hazardous waste in small quantities, and therefore would not cause an adverse effect on the environment.	None Required.	
H.5: The project would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school.	None Required.	
H.6: The project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.	None Required.	
H.7: Development proposed as part of the project, when combined with other foreseeable development in the vicinity, would not result in cumulative hazardous materials impacts.	None Required.	
I. Biological Resources / Wetlands		
I.1: Construction activities required for the project could have a substantial adverse effect, either directly or through habitat modifications, on special-status mammal species, specifically the Pacific harbor seal.	None Required.	

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
I.6: Increased lighting and shading associated with the new project buildings could have a substantial adverse effect, either directly or through habitat modifications, on biological resources.	None Required.	
I.7: The removal of any protected trees identified within the project site would be conducted in compliance with the City of Oakland's Tree Preservation and Removal Ordinance.	None Required.	
I.8: Construction activity and new development resulting from the project, in conjunction with other foreseeable development in the city and along its shoreline, could result in impacts on wetlands, other waters of the U.S., and special-status species.	None Required.	
J. Population, Housing, and Employment		
J.1: The project would not displace substantial numbers of existing housing units; nor would the project displace substantial numbers of people, necessitating construction of replacement housing.	None Required / No Impact.	
J.2: The project would displace existing businesses and jobs, but not in substantial numbers necessitating construction of replacement facilities, or resulting in substantial increases in distances traveled.	None Required.	
J.3: The project would not induce substantial population growth directly by proposing new housing, or indirectly through infrastructure improvements.	None Required.	
J.4: The project would not induce substantial population growth in a manner not contemplated in the General Plan, with infrastructure requirements not previously considered or analyzed.	None Required.	
J.5: The project would not induce substantial population growth as a result of business and employment growth proposed in the project.	None Required.	
(Non-CEQA) Potential for new retail development to cause ripple effects of store closures and long-term vacancies that result in physical deterioration and urban decay	N/A	

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
(Non-CEQA) Potential for housing market effects to lead to displacement or physical deterioration of housing or neighborhoods K. Visual Quality and Shadow	N/A	
K.1: The project would construct new buildings that would be taller and have more bulk than existing buildings in the area along pedestrian and vehicular routes and adjacent to the Oakland Estuary, and would substantially demolish the Ninth Avenue Terminal building. This would substantially, but not adversely, alter the existing visual character and quality of the project area.	None Required / Beneficial Effect.	
K.2: The project would construct new buildings that would be taller and have more bulk than existing nearby buildings which would result in changes to views from nearby public viewpoints, but that would not adversely affect scenic vistas of which the project site is a part.	None Required.	
K.3: The project would increase the amount of light and glare emitted from the project site but would not result in substantial adverse effects to day or nighttime views.	None Required.	
K.4: The project would create additional shadow on adjacent areas west and north of the project site, however, the project would not cast shadow on historic resources (retained Ninth Avenue Terminal Bulkhead Building), would not introduce landscaping conflicting with the California Public Resource Code; would not cast shadow on buildings using passive solar heat, solar collectors for hot water heating, or photovoltaic solar collectors; and would not cast shadow that impairs the use of any public or quasi-public park, lawn, garden, or open space.	None Required.	
K.5 The project would require approval of a general plan amendment and rezoning (among other discretionary approvals), but would be consistent with the policies and regulations addressing the provision of adequate light to appropriate uses.	None Required.	
L. Public Services and Recreation Facilities		
L.1: The increased population and density resulting from the project would not involve or require new or physically altered	None Required.	

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
governmental facilities in order to maintain acceptable service ratios, response time, or other performance objectives for police protection services.	None Required.	
L.2: The increased population and density resulting from the project would not involve or require new or physically altered governmental facilities in order to maintain acceptable service ratios, response time, or other performance objectives for fire protection and emergency medical services and facilities.	None Required.	
L.3: The students generated by the project would not require new or physically altered school facilities in order to maintain acceptable service ratios or other performance objectives at local public schools.	None Required.	
L.4: The project would create new parks, and the increased population resulting from the project would not result in increased use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of these facilities would occur or be accelerated, nor would the project include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment.	None Required / Beneficial Effect	
L.5: The project would increase the on-site resident population and increase the demand for library services; however, the increase in demand for such services would not result in the need to construct or expand libraries that might have an adverse physical effect on the environment.	None Required.	
L.6: The increased population and density resulting from the project, in conjunction with population and density of other foreseeable development in the city, would result in a cumulative increase in the demand for public services and parks. However, the project's contribution to such impacts would not be cumulatively considerable.	None Required.	
M. Utilities and Service Systems		
M.1: The project would not exceed water supplies available to serve the project from existing entitlements and resources and require or result in the construction of water facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.	None Required.	

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation
M.2: The project's projected wastewater demand would not result in the city of Oakland exceeding its citywide allocation under the Wet Weather Program or East Bay Municipal Utility District's (EBMUD) capacity to serve the project's projected demand in addition to its existing commitments within its service area.	None Required.	
M.3: The project would not require or result in construction of new offsite stormwater drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.	None Required.	
M.4: The project would be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs, and therefore the project would not require or result in construction of landfill facilities or expansion of existing facilities, construction of which could cause significant environmental effects. The project would not impede the City of Oakland's ability to meet the waste diversion requirements of the California Integrated Waste Management Act or the Alameda County Waste Reduction and Recycling Initiative, nor cause the City to violate other applicable federal, state, or local statutes and regulations related to solid waste.	None Required.	
M.5: The project would not violate applicable federal, state, or local statutes and regulations relating to energy standards. The project would not result in a determination by the energy provider that serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the providers' existing commitments, nor require or result in construction of new energy facilities or expansion of existing facilities, construction of which could cause significant environmental effects.	None Required.	
M.6: The increased development resulting from the project, in conjunction with population and density of other foreseeable development in the city, would result in increased demand for utilities and service systems. However, the project's contribution to such impacts would not be cumulatively considerable.	None Required.	

CHAPTER IV

Commenters on the Draft EIR

A. Organizations and Persons Commenting in Writing

The following agencies, organizations, and individuals submitted written comments on the Draft EIR (DEIR) during the public comment period, September 1, 2005 through October 24, 2005. City of Oakland staff received the correspondence below by mail, email, fax, or other delivery by 4:00 p.m. on October 24, 2005, the publicly-noticed end of the public comment period on the Draft EIR. Correspondence received after closer of the public comment period are included and noted.

PUBLIC AGENCIES

Designator	Public Agency and Signatory	Correspondence Received	Correspondence Dated
A	State of California Public Utilities Commission. Kevin Boles, Utilities Engineer, Railroad Crossings Engineering Section	9/23/05	9/20/05
B	East Bay Regional Park District. Brad Olson, Environmental Programs Manager	10/10/05	10/05/05
C	East Bay Municipal Utility District. William R. Kirkpatrick, Manager of Water Distribution Planning	10/17/05	10/07/05
D	State of California Department of Transportation. Timothy Sable, District Branch Chief	10/21/05	10/21/05
E	San Francisco Bay Conservation and Development Commission. Brad McCrea, Bay Design Analyst	10/24/05	10/24/05
F	San Francisco Bay Area Rapid Transit District. Kathleen Kelly, Executive Manager, Planning & Budget	10/24/05	10/24/05
G	City of Alameda, California. Greg McFann, Acting Planning and Building Director	10/24/05	10/24/05
H	Alameda County Congestion Management Agency. Saravana Suthanthira, Associate Transportation Planner	10/24/05	10/24/05
I	State of California State Lands Commission. Dwight E., Sanders, Chief, Division of Environmental Planning and Management	10/24/05	10/24/05
		<i>Agency Correspondence Received after 10/24/05</i>	
2	Capitol Corridor Joint Powers Authority. Eugene K. Skoropowski, Managing Director	10/28/05	10/24/05

4	Alameda County Parks, Recreation and Historical Commission. Abe Friedman, Chair	10/28/05	10/24/05
6	California Department of Fish and Game. Robert Floerke, Regional Manager, Central Coast Region	10/28/05	11/4/05
PUC	State of California Public Utilities Commission. Kevin Boles, Utilities Engineer, Railroad Crossings Engineering Section	12/22/05	12/22/05

ORGANIZATIONS

Designator	Organization and Signatory Name	Correspondence Received	Correspondence Dated
J	League of Women Voters of Oakland. Helen Hutchison, President	10/11/05	10/05/05
K	Friends of the Ninth Avenue Terminal. Leal Charonnat, Secretary	10/24/05	10/21/05
L	Save the Bay. David Lewis, Executive Director	10/22/05	10/19/05
M	Sierra Club, Northern Alameda County Regional Group. Joyce Roy, Member of Executive Committee	10/24/05	10/24/05
N	Jack London Aquatic Center. Robert Kidd, President	10/24/05	10/24/05
O	Oakland Heritage Alliance. Naomi Schiff	10/24/05	10/24/05
P	San Francisco Bay Trail. Lee Chien Huo, Bay Trail Planner	10/24/05	10/24/05
Q	Waterfront Action. Sandy Threllfall, Executive Director	10/24/05	10/23/05
R	Friends of Oakland Parks and Recreation. Tom Guarino, President	10/24/05	No Date
S	The Jack London District Association. Simon Waddington, Secretary	10/24/05	10/24/05
T	East Bay Asian Local Development Corporation. Lynette Lee, Executive Director	10/24/05	No Date
	East Lake Merchants Association. Jose Macias, President		
DD	Fifth Avenue Institute. Charles M. Weber, Jr., Director	10/24/05	10/23/05
1	Piedmont Avenue Neighborhood Improvement League	10/24/05	10/17/05
		<i>Organization Correspondence Received after 10/24/05</i>	
7	Coalition of Advocates for Lake Merritt	No Date	9/28/05
U	California Dog Owner's Group. Katin Mac Donald, President	10/26/05	10/24/05
V	Friends of the Ninth Avenue Terminal. Leal Charonnat, Secretary	10/26/05	10/18/05
W	Golden Gate Park Audubon Society. John Bowers, Member, Conservation Committee	10/26/05	10/24/05

3	Alameda County League of Conservation Voters	11/4/05	No Date
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LETTERS FROM INDIVIDUALS

Designator	Signatory Name	Correspondence Received	Correspondence Dated
X	Leal Royce Charonnat, Architecture + Engineering, 1 – 5th Avenue, Oakland, CA 94606	10/10/05	10/06/05
Y	East Bay Regional Park District. John Sutter, Director, Ward 4 [add attachment, Letter AA]	10/19/05	10/14/05
Z	Michael Cosentino, 1070 Marina Village Parkway, Alameda, CA	10/18/05	10/18/05
AA	Margaret Elizares, 7501 Sunkist Drive, Oakland, CA 94605	10/24/05	10/19/05
BB	Anna Naruta, M.A., Ph.D. Candidate, Oakland CA, 94604	10/24/05	10/23/05
CC	Pamela And Charles Weber, #3 Fifth Avenue, Oakland, CA 94606	10/24/05	10/23/05
EE	Eva Tolmach	10/24/05	10/23/05
FF	Nancy Nadel, Councilmember District #3	10/24/05	10/24/05
GG	Patty St. Louise, 499 Embarcadero, 94606	10/24/05	No Date
HH	Kirk E. Peterson & Associates Architecture, 5253 College Avenue, 94618	10/24/05	10/24/05
II	Robert A. Karn, Sea Scout Ship Makai, Castro Valley, 94546	10/24/05	10/24/05
JJ	Joanna Adler, Business Owner and Resident of Jack London District, 94606		
<i>Individual Correspondence Received after 10/24/05</i>			
5	Rajiv Bhatia, MD, MPH, 99 Roble Road, 94618	10/24/05	10/28/05

LETTERS AS PLANNING COMMISSION HEARING EXHIBITS

Designator	Signatory Name	Correspondence Received	Correspondence Dated
KK	Wendy Tinsley, Jack London District Association, President, 247-4th Street, 94606	9/28/05	9/28/05
LL	Kathleen Jensen, 122 Cypress Street, 94501	9/28/05	9/25/05

B. Persons Commenting at the Public Hearings

Planning Commission (PH)

The following persons offered public comment on the Draft EIR during the City of Oakland Planning Commission public hearing held at the Oakland City Hall on September 28, 2005:

- Commissioner McClure
- Commissioner Boxer
- Commissioner Lee
- Commissioner Lighty
- Commissioner Jang
- Leonor Godinez
- Andy Nelson
- Muang Saechoa
- Chandu Mae
- Antonio Varruz
- Quan Tut
- Gloria Lomeli
- Disheng Huang
- Reverend Jim Hopkins
- Andre Spearman
- Jennifer Lin
- Ms. Kuan
- Iliana DeLa Torres
- Rod Divelbliss
- Tersita Cruz
- Doug Block
- Susan Yee
- Orna Sasson
- Charles Lerrigo
- Naomi Schiff
- Ken Katz
- Darrel Carey
- Pamela Weber
- Charles Weber
- Helen Hutchison
- Joyce Roy, speaking on behalf of the Sierra Club
- Windy Tinsley
- Pamela Drake
- Sandra Threlfall, representing Waterfront Action
- John Sutter
- Chris Durazo
- James Vann, on behalf of the Coalition of Advocates for Lake Merritt (CALM)
- Sanjiv Handa

Parks and Recreation Commission (PR)

The following persons offered public comment on the Draft EIR during the City of Oakland Parks and Recreation Commission (PRAC) public hearing held at on October 12, 2005:

- Chair Commissioner Webb
- Commissioner Abad
- Commissioner Ricards
- Commissioner McClure
- Commissioner Magid
- Commissioner Nelson
- Commissioner Armendariz
- Commissioner Taylor
- Keith Miller
- Helen Hutchison
- Sandra Threlfall
- John Sutter
- Marina Carlson
- Margaret Elizares
- Joyce Roy, speaking on behalf of the Sierra Club
- Joyce Roy, speaking on behalf of Oakland Heritage Alliance (OHA)
- Caroline Kim
- Charles Weber
- Steve Lowe

Landmarks Preservation Advisory Board (LB)

The following persons offered public comment on the Draft EIR during the City of Oakland Landmarks Preservation Advisory Board (LPAB) public hearing held at Oakland City Hall on October 17, 2005.

- Joyce Roy
- Steve Lowe
- Charles Weber, speaking for the Fifth Avenue Institute
- Anna Naruta
- Keith Miller
- Sandra Threlfall
- Naomi Schiff
- Chair Board Member Armstrong
- Board Member Peterson
- Board Member Muller
- Board Member Parish

CHAPTER V

Master Responses to Comments on the Draft EIR

A number of recurring topics emerged from several comments received on the Draft EIR (DEIR). These topics are presented in this chapter, and a master response is provided for each. Although the comments on a particular topic may vary, taken together, the number of similarly-focused comments received on a topic warranted a single, comprehensive response. The master responses are intended to reduce repetition and extensive cross-referencing within the responses to comments provided in Chapters VI through IX of this document.

Master Response A: Preparation of a Specific Plan

A number of comments question the City's and the project sponsor's decision to proceed with a specific project proposal, instead of preparing a specific plan, for the Oak to Ninth Avenue Project site. The comments assert three main points: 1) the Estuary Policy Plan requires preparation of a specific plan and thus proceeding without a specific plan violates the general plan; 2) a specific plan would allow for community design of the project instead of responding to a proposal prepared by a developer; and 3) a specific plan would allow for public, Planning Commission and City Council review and input on development of the project site that is otherwise curtailed with a specific project proposal. This response first addresses the Estuary Policy Plan requirements and then reviews the statutory elements of, and requirements for, a specific plan in order to provide a context for understanding the nature and content of a specific plan and the legal requirements attendant to its adoption. Thereafter, the response documents how the project and the process for approval provides at least the equivalent level of information and public review as a specific plan and then addresses each of the main assertions contained in the comments.

Estuary Policy Plan Direction

In response to the first of the three main concerns raised in the comments that the lack of a specific plan violates the general plan, the applicable policy in the Estuary Policy Plan (Policy OAK-5) states: "Initiate more specific planning of the entire Oak to Ninth district." The text explaining the policy states that a specific plan "should be prepared prior to development" in order to account for site constraints, to resolve simultaneously a number of issues, to analyze the feasibility of various developments, and to develop a funding strategy for the open space. The text further notes that meeting these goals will require preparing a realistic development program and site plan. The policy itself only calls for more specific planning, not necessarily a specific

plan, and the proposed project would achieve each of the articulated reasons for the further detailed planning determined to be necessary for the site. The language that a specific plan "should be" prepared is directory not mandatory. Given that the detailed project proposal and comprehensive analysis in the DEIR meet the intent of the policy, proceeding without a specific plan does not violate the general plan. Moreover, the City could decide to amend this policy to clarify its intent prior to approval of the project in which case the potential for any conflict will be avoided.

Specific Plan Requirements

Under California state law, a specific plan is a planning tool available to local agencies that provides for the systematic implementation of the general plan for all or part of an area covered by the general plan. (Gov. Code § 65451.) As set forth in the Draft EIR (p. IV.A-16-17), a specific plan must include text and diagrams which provide detail about five aspects of the proposed development: 1) the distribution, location, and extent of the land uses, including open space; 2) the distribution, location, and extent and intensity of major components of public and private transportation, sewage, water, drainage, solid waste disposal, energy and other essential facilities to serve the land uses located in the specific area; 3) the standards and criteria for development and for the conservation, development and utilization of natural resources; 4) an implementation program, including financing measures, for carrying out the specific plan; and 5) a statement of the relationship of the specific plan to the general plan. (Gov. Code § 65451.)

The process for adopting a specific plan is generally the same as for adoption of a general plan. Specific requirements include: 1) the planning agency must provide opportunities for public involvement through public hearings and any other means the city deems appropriate (Gov. Code § 65351); 2) the plan must be referred to other agencies that may be affected by its adoption (Gov. Code §§ 65352, 65352.5); 3) a noticed, public hearing must be held by the planning commission prior to adoption of a recommendation to the legislative body (Gov. Code § 65354); and 4) a noticed, public hearing by the legislative body must be held prior to adoption of the specific plan. Unlike general plans, there are no restrictions on how often a specific plan may be amended.

As noted in the DEIR (p. IV.A-17), the specific project proposal analyzed in the DEIR includes all the information required for a specific plan. In many respects the Oak to Ninth Avenue project proposal analyzed in the DEIR provides greater detail on a broader range of topics than required for a specific plan and in this way provides the public and decision makers with information that may not be available at a specific plan level of planning. The following discussion reviews the project's and DEIR's compliance with the five informational requirements of a specific plan.

The project characteristics are described in detail in Chapter III of the DEIR (Project Description) and include the distribution, location, and density of land uses, including the open space. Figure III-3 provides an illustrative development plan. Figure III-4 provides a proposed development program and parcelization plan showing detailed information for each of the proposed parcels, including acreage, retail space, residential units, density, and parking. The proposed building massing and height is also provided (Table III-4). A discussion of the open space plan, including

improvements, uses, and the size of each open space area is provided together with Figure III-7 illustrating the open space plan. Additionally, the DEIR provides a description of the shoreline improvements and site remediation process. This information meets or exceeds the first informational requirement for a specific plan.

The DEIR also includes extensive information about the proposed infrastructure for the project. The DEIR describes the internal circulation and public access to the site (p. III-19, Figure III-3) and describes the offsite improvements that would be implemented as mitigation measures (Section IV.B, Transportation, Circulation and Parking). Additionally, this Final EIR (FEIR) includes the project sponsor's Transportation Demand Management Program. The plans for utilities, including water, sanitary sewer, stormwater drainage, solid waste service, gas, and electricity are described in detail in DEIR Section IV.M (Utilities and Service Systems). That section reviews existing conditions, relevant regulations, the capacity of service providers, the proposed infrastructure plans for the project, and potential project impacts (no significant impacts were identified). Requirements for the storm drainage system are also discussed in DEIR Section IV. D (Hydrology and Water Quality). The shoreline improvements are described and analyzed on p. III-19 and in Section IV.D. Thus, the DEIR not only describes all the infrastructure systems required for a specific plan, but also provides setting information, impact analysis, and, if necessary, mitigation measures. In this way, the information in the DEIR meets or exceeds the second requirement for a specific plan.

The standards and criteria for development will be provided in a new Planned Waterfront Zoning District (PWD-1) that will establish land use regulations, development standards, and design guidelines. The PWD will be reviewed in connection with the City's consideration of the project. The DEIR describes the PWD on pages III-22, III-26, and IV.A-38-39. Additionally, the DEIR describes existing federal, state and local regulations that will apply to the project and provides for numerous mitigation measures that set forth specific standards and criteria intended to mitigate any potential environmental impact associated with development of the site and conservation and use of the site's natural resources. These combined sources provide extensive, detailed standards and criteria that fulfill or exceed the requirement for a specific plan.

The DEIR contains a phasing plan for the project (pp. III-22-23), a description of the state-mandated process for preparing and implementing the remediation of the site (p. III-21 and Section IV.H, Hazardous Materials), a description of the implementation, ownership and maintenance of the open space areas (p. III-18), and a description of the regulatory approvals required for implementation (pp. III-26-29). This information provides the equivalent of an implementation program required for a specific plan.

The DEIR provides an extensive review of the project's relationship to the general plan. DEIR Section IV.A, (Land Use, Plans and Policies), examines the key policies of the Land Use and Transportation Element, the Estuary Policy Plan, the Historic Preservation Element, the Open Space, Conservation and Recreation Element, the Oakland Safety Element, the Noise Element, the Bicycle Master Plan, the Pedestrian Mater Plan and the Scenic Highways Element. Other sections of the DEIR further examine relevant policies from these Elements. Appendix F contains

a comprehensive listing of the applicable general plan policies and policies from the plans of other agencies. Thus, the DEIR adequately addresses this requirement for a specific plan.

Procedural Requirements of the Specific Plan

With respect to the procedural requirements for adoption of a specific plan, the process for review of the project proposal exceeds the legal requirements for the City's consideration of a specific plan. The project has been developed during a nearly five-year planning process that has thus far involved extensive community outreach by the project sponsor. Presentations, meetings, and workshops with over 100 neighborhood associations, business groups, civic and political organizations, governmental and quasi-governmental agencies and organizations, environmental and waterfront groups, labor and employment-focused groups, and a number of non-profit organizations and local press have resulted in the project sponsor speaking directly to over 4,000 people and to groups representing over 20,000 people about the project. Information about the project exists on over 10 internet websites. Community meetings also included a community outreach process conducted by Circlepoint on behalf of the City.

Since publication of the Notice of Preparation (NOP) of the DEIR, and as of publication of this FEIR, public hearings related to the project have occurred at the Landmarks Preservation Advisory Board and subcommittee (3), the Park and Recreation Advisory Commission (1), the Planning Commission and subcommittees (4), and a joint special hearing of the Planning Commission, Landmarks Preservation Advisory Board, Park and Recreation Advisory Commission, the Redevelopment Agency and the City Council for a tour of the Ninth Avenue Terminal shed and wharf. Upcoming public hearings are scheduled for the Park and Recreation Advisory Commission, and both the Planning Commission and the City Council will hold additional hearings prior to acting on the project proposal. The noticing for public hearings on the project includes approximately 600 individuals, agencies and organizations. Additionally, the DEIR was distributed to the state, regional, and other local agencies that could be affected by the project. This process exceeds the requirements for public involvement and hearings required for a specific plan.

Community Input Opportunity

In response to the second of the three main concerns raised in the comments that a specific plan would allow the community, rather than a private developer, to design the project, the discussion above reveals that state law does not provide such assurances. Specific plans are often prepared by private developers to facilitate the implementation of their development plans. How a specific plan is prepared is left to the discretion of the local agencies. Although the author of some of the comments may desire a community design for the site, there is no legal requirement or other assurance that the preparation of a specific plan would guarantee community design of a site. Also, as noted above, the community has had, and will continue to have, numerous opportunities for input into the City's decision on the project. The DEIR includes alternatives that were suggested or influenced by members of the public and these will be considered by the decision makers in acting on the project approvals. It is also important to note that a City-sponsored, community design of the site would have been prohibitively expensive given the expert

evaluations and reports required to realistically consider, resolve and plan for the complex conditions on and around the site and to prepare the environmental review of a specific plan. With a private project sponsor, these planning and entitlement costs are borne by the developer.

Specific Plan Public Review

In response to the third main concern, the discussion above (*Procedural Requirements of the Specific Plan*) demonstrates that the public review requirements for a specific plan are limited: at least one hearing before the planning commission and one hearing before the city council. The opportunities for public involvement and comment available for the project are not merely equivalent to, but in fact far exceed, the legal requirements for a specific plan. Thus, the project has not curtailed any public review that would have been required for a specific plan.

Master Response B: Analysis of Reuse Alternatives for the Ninth Avenue Terminal

Several comments state that the DEIR should identify and analyze additional uses or a mix of uses that could be located within the retained Ninth Avenue Terminal as part of the preservation alternatives. This master response reviews the criteria by which the project alternatives in the DEIR were selected and discussed, identifies the information about possible reuses that are currently before the City for consideration, and clarifies the conditions that must occur for the project to avoid the significant and unavoidable impact resulting from substantial demolition of the Terminal.

Alternatives Selection and Scope

The DEIR includes a comprehensive list of project suggestions that were submitted to the City as response to the Notice of Preparation (NOP) or during preparation of the DEIR. Most of the suggestions, including those pertaining to possible reuses for the Ninth Avenue Terminal, were incorporated into the project alternatives selected for analysis in the DEIR (p. V-2 to V-3). As an introduction to the list of suggestions, the DEIR describes that, consistent with the CEQA Guidelines, “although many other alternatives to the project could be formulated, for purposes of this EIR, the City of Oakland has considered the selected alternatives to constitute ‘a range of reasonable alternatives to the project...which would feasibly attain most of the basic objectives of the project’ (CEQA Guidelines Section 15126(a)).” The alternatives (and components of possible alternatives) in the DEIR are considered to generally align with the overall goals and policies of the Estuary Policy Plan, present possible project alternatives, and incorporate many of the suggestions for the project. Specifically, the *Ninth Avenue Terminal: A Feasibility Study for Adaptive Reuse* describes several examples of uses that could occur in the fully- or partially-retained Ninth Avenue Terminal (Perry et al., 2005). Other commenters on the DEIR subsequently also submitted further information on this topic.

The DEIR includes three alternatives that retain all or part of the Terminal: Alternative 2 (Enhanced Open Space / Partial Ninth Avenue Terminal Preservation and Reuse), Alternative 3 (Reduced Development / Ninth Avenue Terminal Preservation and Reuse), and the Preservation Sub-Alternative (Full Ninth Avenue Terminal Preservation and Reuse). The Terminal reuses assumed in each of these DEIR project alternatives include a potential mix of cultural, educational and recreational uses as envisioned in the Estuary Policy Plan and that are assumed to be allowable Tidelands Trust-compliant uses (as confirmed as of publication of the DEIR; see below). The extent that any specific or mix of cultural, educational, and recreational reuse activities would result in significant environmental impacts has been identified and fully analyzed in the relevant topical sections of Chapter IV of the DEIR (Setting and Impact Analysis).

A number of comments assert that the State Lands Commission may provide additional flexibility to the allowable Tidelands Trust uses within historic structures. At the present time, the project site is held by the Port subject to the public trust for commerce, navigation, and fishery because the lands within the site either were (a) tidelands or submerged lands originally acquired by the State of California in its sovereign capacity when it joined the Union in 1850 and subsequently granted by the State in trust to the City of Oakland; or (b) other lands acquired by the Port with revenues derived from tide or submerged lands that the City held in trust under grants from the State. Although the Project contemplates a land exchange and sale of lands authorized by state law which will lift the public trust from portions of the site, significant portions of the project site, including the site of the existing Ninth Street Terminal Building, will remain subject to the public trust.

Lands subject to the public trust in California are subject to use restrictions imposed by the common law and the provisions of any applicable trust grant. California's common law public trust use restrictions are the product of many years of judicial decisions, opinions and informal advice provided by the California Attorney General, and interpretations of the public trust by the members and staff of the California State Lands Commission. Furthermore, in addition to trust grants, other legislative acts such as those creating BCDC and the California Coastal Commission also define the scope of the use restrictions under the public trust. As a consequence, there is no "approved list" of trust-consistent uses that can easily be referred to for guidance. Rather decisions have been made on a case-by-case basis

However, certain uses (such as residential and general office use) historically have been deemed not to be consistent with the public trust. Other uses, such as retail use, have been deemed trust-consistent under some circumstances (where it clearly caters to those who are seeking a recreational experience on the waterfront, e.g., shops selling maritime goods or that serve waterfront visitors and enhance the waterfront experience), but not trust-consistent under other circumstances (where the retail caters to those who simply want to shop, e.g. "big box" retail). Nonetheless, the State Lands Commission and other agencies charged with interpreting and applying the public trust have permitted general office use, generally deemed a non-trust-consistent use, within historic buildings under certain, limited circumstances where necessary to preserve and rehabilitate those buildings. In this context, "historic buildings" has meant buildings that played a significant role in the maritime heritage of San Francisco Bay. The

historic buildings where this has occurred are the Ferry Building, Pier 1, and Piers 1½, 3, and 5, all in San Francisco.

With respect to Oak to Ninth, the Legislature has found that the property to be retained in trust should only be used for trust-consistent uses such as “open space, public access, water-related recreation, such as a marina and boat launch, commercial services to visitors as necessary, such as food service, plant and animal habitat, such as wetlands, circulation to and along the waterfront, or similar uses, as the port and the commission determine may be required to support the activities and goals of the Estuary Policy Plan or the Oak Street to 9th Avenue legislative grants.” (Stats. 2004, ch. 542, § 4(j)(2).)

City Consideration of Possible Reuses

To determine whether a reuse alternative is feasible, reasonable assumptions would be made regarding the appropriate or preferred specific reuses. The City will consider these questions as it balances the competing policy and other issues facing the project (see e.g., Master Response H). The record contains detailed reuse information submitted during the EIR scoping process and public hearings on the DEIR, during other non-EIR-related public input opportunities that have paralleled the EIR process, and from educational study (i.e., the aforementioned *Ninth Avenue Terminal: A Feasibility Study for Adaptive Reuse*) to enable decisionmakers and public to evaluate these issues and to assist City decisionmakers in deliberations on the project. Also, a number of comments within this FEIR document provide more detailed information regarding possible reuse opportunities for all or part of the Terminal. To further assist the City, the project sponsor has prepared an economic feasibility and constraints report (capital and operational) of retaining all or parts of the Ninth Avenue Terminal.

To summarize, pursuant to CEQA, the DEIR adequately identifies and analyzes a range of uses for the Terminal that would allow the City to make an informed decision about the physical environmental impacts of the preservation alternatives to the project. Ultimately, the City will make its determination on the demolition or preservation and specific reuses of the Terminal along with any required supporting findings and statement of overriding considerations for the CEQA-related impacts. It should be noted that the City made such findings and statement of overriding considerations in connection with its adoption of the Estuary Policy Plan for which a significant unavoidable cultural resources impact was identified for full or partial demolition of the Terminal.

Master Response C: Significant and Unavoidable Transportation Impacts

Several comments expressed concerns about the DEIR-identified significant and unavoidable traffic impacts, which in the commenters’ opinion indicate a less-than-thorough investigation of feasible mitigation measures to avoid unacceptable traffic conditions.

The DEIR noted significant and unavoidable traffic impacts at nine intersections (in some cases, a project impact was found to occur at the same intersection under both 2010 [interim project] and 2025 [project buildout] conditions, as well as a cumulative impact).

For each significant impact, possible improvements were explored and tested for feasibility to achieve an acceptable level of service, or at least to mitigate the project's impact (i.e., to reduce the increased delay to a point smaller than the thresholds of significance in the City of Oakland's 2004 CEQA Thresholds/Criteria of Significance Guidelines). The explorations entailed extensive field reviews, and reviews of previous studies (such as the Jack London Square Redevelopment EIR).

The significant and unavoidable impacts fell into the following two broad categories (one with subcategories):

1. Roadways or intersections that are located within the City of Oakland (under City of Oakland jurisdiction), but where improvements could not be physically improved; and
2. Roadways or intersections that are not under the jurisdiction of the City of Oakland and instead are:
 - a. Located in the City of Oakland, but in the State roadway system, and therefore implementation of mitigation would require approval by Caltrans; or
 - b. Located in the City of Alameda, and therefore implementation of mitigations would require approval by the City of Alameda.

1. Infeasible to Mitigate Impacts Within City of Oakland (City jurisdiction)

At five intersections in the City of Oakland, the above-described explorations concluded that intersection operations could not be improved to acceptable levels and further improvements are infeasible at these locations. For example, mitigating the project impact at Broadway/5th Street (2010, 2025 and cumulative) and Jackson/6th Streets (2025 and cumulative) would require a substantial reconfiguration of the roadway system, which is beyond the ability of this project and other individual projects to fund. As noted in the DEIR, a set of potential improvements have been identified to improve the operations of Broadway/5th and Jackson/6th. The initial planning and engineering studies for these improvements, Caltrans Project Study Report (PSR) and Project Report (PR) are complete, but insufficient funds are available at this time to complete these improvements. These improvements also implement the Near-Term Improvement Strategies outlined in the SR 260 Deficiency Plan. Additional improvements are planned at these locations, which will implement other strategies outlined in the SR 260 Deficiency Plan. These improvements represent a comprehensive approach to improve the operation of the interchange system and the associated surface streets. As such, these improvements are beyond the ability of the City of Oakland to implement without concurrence of Caltrans, the City of Alameda, and other stakeholders in the area.

At other intersections (Lakeshore Avenue / MacArthur Boulevard [2025 and cumulative], Lakeshore Avenue / Foothill Boulevard [cumulative], and 14th / 7th-12th Streets [cumulative]),

the absence of sufficient right-of-way available for additional lanes was the cited in the DEIR as the reason why improvements other than signal timing optimization are not feasible.

At the Lakeshore Avenue / MacArthur Boulevard intersection, fully mitigating this impact would require the addition of turn lanes and the extension of existing lanes to provide additional storage for the various turning movements at this intersection. There is insufficient physical space to implement these improvements because of the proximity of adjacent intersections such as Lakeshore Avenue / Lake Park Avenue and the I-580 structure which crosses over this intersection. The park and its associated pedestrian facilities along Lakeshore Avenue further limit potential improvements at this intersection. The project's contribution to traffic volumes at this intersection would range from 2 percent (contribution to future total traffic volumes) to 15 percent (contribution to growth in traffic volumes).

The intersection of Lakeshore Avenue /Foothill Boulevard is similarly constrained. At this intersection, the intersection is bounded by a City park on two of the three approaches. These parks include the linear park along Lake Merritt as well as a tennis facility at the corner of Lakeshore Avenue and Foothill Boulevard. Across from the tennis facility is a condominium building with surface parking. Improving operations at this intersection would require the addition of a turn lane on Foothill Boulevard, which can not be constructed without adversely affecting either the park or the condominium building and its associated parking lot. The project's contribution to traffic volumes at this intersection would range from 2 percent (contribution to future total traffic volumes) to 9 percent (contribution to growth in traffic volumes).

Sufficient right-of-way is also not available to fully mitigate project impacts at the intersection of 14th Avenue / 7th – 12th Street. This intersection is constrained by the railroad right-of-way adjacent to I-880 and an existing Burger King restaurant with surface parking. For example, it would be difficult to add a second southbound left turn lane without negatively impacting the Burger King parking lot. Improvement options at this location are restricted by the nearby intersection of 14th Avenue / East 12th Street, which is located only 250 feet away. The project's contribution to traffic volumes at this intersection would range from 5 percent (contribution to future total traffic volumes) to 12 percent (contribution to growth in traffic volumes).

2a. Feasible to Mitigate Impacts Within City of Oakland, but in Caltrans jurisdiction

At two intersections in the City of Oakland (Embarcadero / 6th Avenue at the I-880 Northbound Off-Ramp [2010], and Embarcadero / 10th Avenue at the I-880 Southbound On-Ramp [2025 and cumulative]), the above-described explorations concluded that operations at these unsignalized intersections could be improved to acceptable levels by installing traffic signals and adding turn lanes along the Embarcadero. Under the DEIR mitigation measures, the project applicant would be responsible for fully funding the design and construction of these improvements. However, the City of Oakland does not have the final say over any improvements at these intersections within Caltrans jurisdiction. Caltrans would only allow improvements at intersections under its jurisdiction after preparation of an encroachment permit, which cannot be prepared until the project is approved by the City of Oakland. As stated on DEIR pp. IV.B-31 and IV.B-42, in the event that Caltrans approves these improvements, the impacts would be less than significant.

At two other intersections (Jackson / 6th Streets [2010] and 5th / Oak Streets at the I-880 Southbound On-Ramp [2025 and cumulative]), the above-described explorations concluded that operations at these signalized intersections could be improved to acceptable levels by optimizing the traffic signal timing. Under the DEIR mitigation measures, the project applicant would be responsible for fully funding these improvements. However, as described above, the City of Oakland does not have the final authority over any improvements at these intersections within Caltrans jurisdiction. As stated on DEIR pp. IV.B-29 and IV.B-37, in the event that Caltrans approves the implementation of these mitigation measures, the impacts would be less than significant.

2b. Feasible to Mitigate Impacts Within City of Alameda

The proposed mitigation for the significant impact at the intersection of Webster Street / Atlantic Avenue (2025 and cumulative) in the City of Alameda is the reconstruction of the intersection to provide added travel lanes. In cooperation with the City of Alameda, the DEIR mitigation measure would require the project applicant to pay a fair-share portion of the cost of these intersection improvements. However, as described above regarding Caltrans, the City of Oakland does not have the final authority over any improvements at this intersection within Alameda jurisdiction. As stated on DEIR p. IV.B-35, in the event that Alameda approves this mitigation measure, the impact would be less than significant.

Based on the above information, is likely that the project would be able to mitigate at least four of the proposed improvements through optimization of traffic signals or construction of new traffic signals along the project frontage.

Master Response D: Transportation Demand Management (TDM)

Several comments expressed concerns about the limited alternative transportation options available to project residents, employees, and visitors (and related questions about what transit/shuttle services and bicycle facilities would be provided); and about how parking would be managed for access to recreational uses.

A draft Transportation Demand Management (TDM) Plan has been prepared for the proposed project by Nelson\Nygaard Consulting Associates, a firm specializing in TDM research and applications, and key aspects are summarized in this Master Response. Preparation of a final TDM Plan will likely be a condition of approval for the project.

The draft TDM plan for the project sets out a series of measures by which the developer and property manager could reduce vehicle travel to and from the site, promote transit, walking and cycling, and manage onsite parking for project residents, employees, visitors and recreational users. These measures would help mitigate impacts identified in the DEIR, but because the actual success rate related to TDM measures is not readily quantifiable, can vary among development

projects, and cannot be ensured, significant impacts identified in the DEIR are not assumed to be fully mitigated by the TDM Plan.

One overarching recommendation is to employ a full-time TDM coordinator (two full-time positions may be warranted in Phase 2 of the project), based in the property management office. He or she would take overall responsibility for implementing and adjusting the TDM program; promoting it to the public; and selling parking permits.

Other required and recommended TDM measures of note are the following:¹

Transit Measures

Required Measures:

- Create a shuttle bus line that would begin operation with the first residential move-ins. The shuttle would connect the Oak to Ninth development with the Aquatic Center, Jack London Square and downtown Oakland, operating at 15- or 30-minute intervals. This route would connect with AC Transit Line 72 in Jack London Square as well as Amtrak, the Ferry Terminal, the 12th Street BART station (and other AC Transit bus routes).

Recommended Measures:

- Implement AC Transit's proposed extension of Line 11 service, providing service every 20 minutes during the week to both Lake Merritt and 12th Street BART stations.
- Work with AC Transit to consider the extension of Line 72 from its current terminus at the Jack London Amtrak station to the Oak to Ninth development site.
- Provide high-quality stop amenities and wayfinding for Oak to Ninth residents and visitors to the site. Bus shelters should be provided at all stops, and signage should indicate key locations within the development, especially the Bay Trail.
- Provide enhanced transit information specifically tailored to residents and visitors.
- Develop an "eco-pass" deeply-discounted transit pass, ideally using Translink, which would enable Oak to Ninth residents to access all Bay Area transit systems without any out-of-pocket expenses for fares.

Parking Management Measures

As assessed by Nelson\Nygaard Consulting Associates, based on representative hourly accumulation patterns for different land uses (in Urban Land Institute's *Shared Parking*), the proposed parking supply would fully accommodate the peak weekday parking demand at project

¹ The "required" measures are considered essential for the project's success and the "recommended" measures would help reduce adverse effects, but are not considered essential. The full Draft Transportation Demand Management Plan is presented as Appendix A to this document.)

build-out. On weekend days, there would be parking spaces available on-street and in the Parcel G Garage (which would be open to the public). All of these spaces could be used by recreational visitors to the site.

Required Measures:

- Charge for parking separately from the costs of residential units, and offer residents the option of a reserved, dedicated space at a higher price, or a discounted, shared space.

Recommended Measures:

- Provide at least two City CarShare vehicles, and provide free memberships to residents and employees, with the caveat that City CarShare would be willing to provide this service at the project site.
- Charge non-residents an hourly or daily rate for parking. Price all on-street parking using meters or pay-on-foot technology.
- Charge the right price to maintain availability, through adjusting prices to ensure that spaces are available.
- Provide smartcard access to residential garages, ensuring security for residents while allowing employees to use this parking
- Manage on-street parking, for example through pricing and/or time limits; charge the right price to maintain availability, adjusting prices to ensure that spaces are available
- Regularly monitor parking occupancy to effectively manage the parking supply.
- Depending on parking demand in Phase I, consider the potential to lease additional space for overflow parking for special events. Caltrans, for example, has historically been willing to lease space under freeways for this purpose.

Bicycle Measures

Required Measures:

- Provide an on-site network of bicycle and pedestrian paths, with appropriate signage, to ensure public access to the shoreline, in line with Bay Trail design standards

At the Oak to Ninth Project, Class I bike paths would primarily provide for recreational use, following the shoreline, as part of the Bay Trail.² Class II bike lanes, meanwhile,

² There are three types of bikeways, as defined by Caltrans' *Highway Design Manual*: Class I Bike Path, which provides a completely separated right-of-way for the exclusive use of bicycles and pedestrians with crossflow minimized; Class II Bike Lane, which provides a striped lane for one-way bike travel on a street or highway; and Class III Bike Route, which provides for shared use with pedestrian or motor vehicle traffic.

would provide a higher-speed, direct route along the Embarcadero. Fifth Avenue, Main Street and Eighth Avenue would carry some bicycle traffic, and would be treated as Class III bicycle routes, although not necessarily signed.

- Provide a sufficient number of long-term bicycle parking spaces to meet demand, with cages and/or lockers in the residential garages

Recommended Measures:

- Provide good connections to the City bicycle network, particularly to BART and Downtown Oakland, through ensuring safe crossings at Ninth Avenue and Fourth Avenue **NOTE: Does Natalie (per her email comments) want this deleted, or left as “recommended?”**
- Provide long-term bicycle parking at an initial ratio of 1 space per 5 units, adjusted upwards as necessary to cater to demand
- Provide secure short-term bicycle parking, with bicycle racks provided along retail frontages in line with City of Oakland placement standards
- Provide distinctive gateway signage to direct cyclists off the Embarcadero to follow the shoreline

Master Response E: Traffic Signal Retiming as Mitigation

Several comments questioned the DEIR’s reliance on traffic signal retiming and optimization to mitigate significant traffic impacts. Some comments questioned why optimization was not simply assumed to occur without the need for mitigation measures, while others questioned whether signal retiming alone would be enough to mitigate the impact.

The DEIR’s level of service (LOS) analyses for intersections with pretimed traffic signal timing held those existing settings unchanged for future conditions. That approach is conservative because jurisdictions have the ability to adjust signal timings as circumstances change the relative traffic volumes on the roadways comprising the intersections. However, because the City of Oakland does not have funds available to track and implement traffic signal optimization, and for purposes of isolating potential project impacts at signalized study intersections in the DEIR, existing signal timing was held constant, and mitigation measures to optimize the signal timing at adversely affected intersections were identified to highlight the need for such action and to provide a mechanism to collect funds from the project applicant towards that end.

Signal retiming and optimization involves changing the timing of an individual traffic signal to better reflect existing and projected traffic volumes. Changes can include changing the cycle

length (i.e., the total time a traffic signal cycles through all phases) or reallocating green time between different phases of a traffic signal. For example, adding green time to a left-turn movement can provide additional capacity to that movement. The impact of signal timing changes was tested using *Synchro for Windows* software, which implements the *2000 Highway Capacity Manual* methodologies and procedures. Documentation of the recommended signal timing changes, and of the improved conditions, at the affected intersections is provided in LOS output sheets in the appendix to the technical resource document (*Oak to Ninth Project Final Traffic Study*, August 26, 2005) on-file at the City of Oakland office.

Master Response F: Pedestrian Activity at Nearby Rail Crossings

Several comments expressed concerns about pedestrian safety under project conditions, specifically related to nearby railroad crossings.

It is recognized that there is a potential for pedestrians from the project to cross the railroad tracks in front of the project, along either 5th Avenue or other sections of the tracks that are located near Embarcadero. There are also vehicular at-grade crossings in the study area where service or drill tracks cross on- and off-ramps to I-880 (at 6th and 9th Avenue), but no pedestrians are expected to cross the tracks at these latter locations. The DEIR did not specifically address pedestrian impacts at railroad crossings because there are existing safety measures (i.e., crossing gates, warning lights, and chain link fencing along the Embarcadero) that would limit the ability of pedestrians from the project to cross the tracks. Additional pedestrian safety improvements could be installed at the existing at-grade crossing at 5th Avenue. These improvements could be installed concurrently with the construction of the traffic signals and in conjunction with other safety improvements. Appropriate pedestrian and bicycle safety improvements could include additional directional signage and some channelization, which would limit pedestrian access across the tracks in conjunction with the proposed fencing along Embarcadero near the 5th Avenue crossing.

The installation of arms or gates to limit pedestrian access is not recommended since arms or gates could trap pedestrians along the tracks. For example, if gates are installed along 5th Avenue, a broken lock of a gate malfunction would prevent a person traveling north along 5th Avenue from leaving the track area. A gate malfunction would also force a pedestrian to divert to the travel lanes on 5th Avenue, thereby mixing with the vehicles traveling to and from Embarcadero.

The citizens of Oakland have investing significantly to establish Lake Merritt Channel as the primary public access route to and from the shoreline in the area of the project site through the approval of Measure DD bond in 2002. The Measure DD bond program expenditure plan has appropriated \$27 million in 2003 for improvements to improve public access along Lake Merritt Channel, \$2 million of which is specifically budgeted for improvements that include bicycle and

pedestrian access (among other shoreline and wetland improvements) along the Channel. Although funded, these improvements are not yet in the design phase, however, the City approved the reallocation of funding for Lake Merritt Channel projects in a way that would allow these improvements to be designed and constructed earlier in the bond series than originally scheduled. Related to these improvements, construction of a pedestrian/bicycle bridge over the railroad tracks at the southern length of the Channel (below I-880) is being considered and would span across Embarcadero and reach the proposed park on the east side of the Channel (Channel Park). This effort is not currently funded, however, in 2005, the City adopted a resolution authorizing the application for, acceptance and appropriate of \$10 million from the California Coastal Conservancy (CCC) to assist in the planning, design and implementation of this concept and construction of the additional Measure DD projects discussed below.

Measure DD has appropriated \$25 million for projects to improve water flow (10th Street culvert/bridge) and flood control (7th Street flood control pump station), thereby creating and improving pedestrian (and boat) access along the Channel. Measure DD has also appropriated approximately \$47.3 million for improvements to 12th Street that will improve vehicular and pedestrian/bicycle circulation with new bridges and significant improvements and reconfiguration of traffic lanes. The 7th Street, 10th Street and 12th Street projects are currently in design phase and construction is anticipated to occur 2006 through 2008-2009.

In addition to the improvements to the bicycle and pedestrian paths that are being funded by the Measure DD bond program (and potentially supplemented by the CCC), Caltrans will be constructing and improving various facilities along the Lake Merritt Channel as required by the San Francisco Bay Conservation and Development Commission (BCDC). These improvements were identified by BCDC during the review and approval of the permits for the I-880 Seismic Retrofit. Caltrans will be required to construct approximately 600 linear feet of new public paths adjacent to the Lake Merritt Channel while upgrading other existing paths near the Channel. The BCDC permits also require Caltrans to contribute \$500,000 to develop a connection to the shoreline from existing residential and commercial areas.

The combined improvements funded by the Measure DD bond program, Caltrans, and potentially the CCC will encourage bicyclists and pedestrians to travel along the Lake Merritt Channel to the shorelines, consistent with the City's priority vision for waterfront access in the project area. In addition, future shuttle services and potential transit service that would serve the project site would also be available to facilitate access to inland areas.

On DEIR p. IV.B-57, the following text is added to the discussion of *Pedestrian Safety Impacts* (as a new paragraph):

“An additional aspect of pedestrian safety is the issue of pedestrians crossing the existing UPRR railroad tracks located adjacent to Embarcadero near the project site. Pedestrians could cross either along 5th Avenue or across the railroad tracks to the north or south of 5th Avenue. Currently, the 5th Avenue crossing has safety equipment including crossing gates and warning lights. These facilities limit access by pedestrians as well as vehicles. There is also a chain link fence along Embarcadero, which limits crossings by pedestrians

at other locations. With the development of the project site, these existing facilities would be maintained. While portions of 5th Avenue would be restriped by the project, no changes would be made to the existing crossing gates or warning signals. The project would also install additional warning signage related to bicyclists and pedestrians at the 5th Avenue and Oak Street crossing. Additionally, the project would maintain the existing chain link fence along the Embarcadero.”

On p. IV.B-62 of the DEIR, the following is added to the list of requirements shown in bullet format as part of Mitigation Measure B.7:

- Maintain or reconstruct the fence along the Embarcadero that limits access to the railroad tracks adjacent to the project site.
- Install additional bicycle and pedestrian warning signage at the existing at-grade crossing along 5th Avenue.

Master Response G: Phasing of Open Space and Trail Improvements

Several comments suggest that the proposed parks and open space and Bay Trail improvements proposed by the project should be, or in some cases, are required to be, implemented during the initial development phases of the project. A number of comments misstate that the proposed improvements, particularly the Bay Trail, would not be implemented until 2018. To clarify, pages III-22-24 of the DEIR describe that, starting with Shoreline Park in 2012, the proposed new parks/open spaces and Bay Trail segments would be developed across the project site, moving east to west, with the proposed improvements to Estuary Park and its adjacent existing Bay Trail segment occurring last, by 2018.

To address the points raised by the numerous comments, this response 1) addresses the factors that drive the timing of open space and trail improvements, 2) demonstrates that over time the project would provide adequate open space for the development occurring within each phase, and 3) clarifies the legislative requirements of Measure DD regarding implementing Bay Trail improvements.

Timing Open Space Improvements

As described in the DEIR, the project sponsor will be required to complete extensive site improvements to prepare the site for development. Most relevant to the introduction of new public parks/open spaces and trail facilities is the site remediation and regrading that must occur. The soils and groundwater of the project site have varying levels of contamination, and the project sponsor would prepare and implement a phased remediation process for cleanup of the site to appropriate levels. This process is described on pages III-20-21 of the DEIR and in greater

detail in Section IV.H (Hazardous Materials). Regarding proposed open space areas in particular, page IV.H-19 of the DEIR explains that some of these areas will be raised to approximately five feet above existing grade given the existing site conditions and the need to underground utilities at elevations above the groundwater table. In short, the site remediation and related site grade changes must be completed before new open spaces, particularly those on the contaminated sites east of Lake Merritt Channel, can be created and accepted for public use. This, as well as the extent of right-of-way, in-water and shoreline construction work that would occur during each phase, precludes the implementation of certain open spaces and trail segments sooner than proposed.

Open Space Provision by Phase

Project Phasing Described in Draft EIR

Table V-1 shows new project population and new open space acreage that would be developed, by major phase of the project as presented in the DEIR. The DEIR (pp. III-22-24) presented a conservative project phasing and plan appropriate for the environmental analysis. (Text corrections to the *Project Phasing* discussion in the DEIR are included in Chapter IV of this document, Changes to the Draft EIR, and shown corrected in **Table IV-1**).

Table V-1 compares the project phasing, as described in the DEIR, to the City's adopted standard of 4 acres of local-serving parks per 1,000 residents, the appropriate standard for site specific project evaluation per the General Plan.³ As shown, no new open space or trail segments would be implemented in the initial phase of the project (by 2010). This is primarily due to the anticipated time that would be required for the significant improvements necessary for Shoreline Park and Gateway Park (Ninth Avenue Terminal demolition, pier and shoreline improvements, Clinton Basin bulkhead walls, etc.). These two new parks and initial trail segment between Brooklyn Basin and Clinton Basin would be implemented by 2014, during the second major phase of work. With these initial new parks, the subsequent phases of development would meet or exceed the City's standard of 4 acres per 1,000 residents.

It is also important to note that Estuary Park is an existing 3.5-acre lawn area/playing field along the waterfront with an adjacent waterfront Bay Trail segment that extends from Jack London Square (to the west). As described in Chapter III of the DEIR (Project Description), the park currently provides picnic facilities, public restrooms, a fishing and observation pier, and playing fields that are used by local soccer and other leagues, and /or for special events. Continued public use of this park would not be precluded during development of the project east of Lake Merritt Channel, and would remain available as viable open space until the project sponsor implements the proposed improvements described in the DEIR (revegetation, shoreline protection, and Bay Trail extension along the west shore of the Channel). However, the acreage provided by this area is not included in the following analysis, thus the findings are conservative.

³ "A local-serving park acreage standard of 4 acres per 1,000 residents is proposed. This standard can be applied at both a citywide and community level." Open Space, Conservation and Recreation Element (OSCAR) of the General Plan (1996), p. 4-9.

**TABLE V-1
RESIDENT POPULATION AND PARK ACREAGE BY PHASE
(UNDER PHASING PRESENTED IN DEIR)**

Phase / Year	New Residents for Phase	Cumulative Residents	New Park Acreage for Phase	Cumulative New Park Acres	Park Acres per 1,000 Residents (compared to 4 per 1,000 standard)
Phase I – III (by 2010, 3 yrs from 1st permit)	1,859	1,859	0	0	-
Phase IV – V (by 2014, 7 yrs from 1st permit)	1,425	3,284	12.86 ^a	12.86	3.9
Phase VI – VII (by 2017, 10 yrs from 1st permit)	1,287	4,571	7.82 ^b	20.68	4.5
Phase VIII (by 2018, 11 yrs from 1st permit)	490	5,061	0 ^c	20.68	4.1

^a 9.74-acre Shoreline Park by 2012; and 3.12-acre Gateway Park and Bay Trail Brooklyn Basin to Clinton Basin by 2014.

^b 2.30-acre South Park by 2015; and 5.52-acre Channel Park and Bay Trail Clinton Basin to Lake Merritt Channel by 2017.

^c Improvements to existing Estuary Park and adjacent Bay Trail; extension of existing Bay Trail along the west shore of Lake Merritt Channel.

SOURCE: Oakland Harbor Partners; Hausrath Economic Group (Table D.3-1, DEIR Appendix D.3)

Draft Modified Project Phasing

Table V-2 shows the same information according to the draft modified phasing program developed as part of the ongoing Development Agreement discussions among the City, the Redevelopment Agency, and the project sponsor. This modified phasing program would lengthen the overall duration of the project development (through 2024 versus 2017), but would not change the impact analyses in the DEIR, which were based on the more conservative phasing. For example, the 2010 project in the DEIR (and as modified below) affect the same number of dwelling units and new residents, however, instead of occurring by approximately 3 years after the initial building permit for the project (2010), this development would occur approximately 5 years after issuance of the initial building permit for the project (2012). Although the overall development would be longer, the draft modified phasing program would accelerate the development of certain public improvements related to the Embarcadero and the 5.9-acre pile-supported section of Shoreline Park, and the park and open space improvements would continue to be developed consistent with residential development and occupancy on the site. Also, the draft modified phasing program specifies minimum park acreage (by specific park) that must be developed prior to a specified number of dwelling units on the site.

As in **Table V-1** above, **Table V-2** compares the project phasing, as currently modified and subject to approval, to the City's adopted standard of 4 acres of local-serving parks per 1,000 residents. New open space would be implemented in the initial phase of the project with the

improvements to the pier-supported portion of Shoreline Park occurring before the 550th dwelling unit is permitted. Approximately 539 units would be developed within the initial development parcel, Parcel A (or 879 residents per the 1.63 persons per unit ratio established in the DEIR). The project would meet or exceed the City's standard of 4 acres per 1,000 residents throughout each subsequent phase of development. As in **Table V-1**, the acreage provided by existing Estuary Park is not included in the following analysis, thus the findings are conservative.

**TABLE V-2
RESIDENT POPULATION AND PARK ACREAGE BY PHASE
(UNDER DRAFT MODIFIED PHASING)**

Phase / Year	New Residents for Minimum Park Acreage Required	Cumulative Residents	New Park Acreage for Phase	Cumulative New Park Acres	Park Acres per 1,000 Residents (compared to 4 per 1,000 standard)
Phase I (by 2012, 5 yrs from 1st permit; pier-supported Shoreline Park by unit 550)	897	879	5.9	5.9	6.71
Phase II (by 2015, 8 yrs from 1st permit; Gateway, Clinton Basin Shoreline and remainder of Shoreline Park by unit 1,650)	1,811	2,690	6.96 ^a	12.86	4.78
Phase III (by 2018, 11 yrs from 1st permit; South Park by unit 2,340)	1,125	3,815	2.30	15.16	3.97
Phase IV (by 2021, 14 yrs from 1st permit; Channel Park by unit 2,800)	749	4,564	5.52 ^b	20.68	4.53
Phase V (by 2024, 17 yrs from 1st permit; Estuary Park by unit 3,100)	497	5,061	0 ^c	20.68	4.1

^a Includes 3.84-acres of non-pile-supported Shoreline Park, 3.12-acre Gateway Park, and Bay Trail from Brooklyn Basin to Clinton Basin.

^b Includes Bay Trail from Clinton Basin to Lake Merritt Channel.

^c Improvements to existing Estuary Park and adjacent Bay Trail; includes extension of existing Bay Trail along the west shore of Lake Merritt Channel.

SOURCE: Oakland Harbor Partners; Hausrath Economic Group (Table D.3-1, DEIR Appendix D.3)

City Discretion and Measure DD

The proposed schedule for creating new and improving existing parks/open spaces and Bay Trail facilities is a component of the project that City decisionmakers will consider and have the discretion to modify during their review of the project. The DEIR includes a thorough analysis of the potential environmental impacts that could occur with development of the project. To the extent that new parks/open spaces or trail facilities would not interfere with required site work or preparation, altering the timing of these improvements would not result in a new or more severe significant impact.

The new and improved parks/opens spaces and trail segments are proposed as part of the project and are not required a mitigation measures to reduce significant project impacts to parks and recreational facilities, as some comments assert. The project would result in a less than significant impact on this topic, as discussed on pages IV.L-15 through 18, and requires no mitigation. Additionally, Measure DD, which is intended to finance a series of improvements related to parks and open spaces (including specifically Estuary waterfront parks and trails and Lake Merritt Channel; see Master Response C) does not require the project sponsor to implement the parks/open space, and trail improvements proposed as part of the Oak to Ninth Avenue Project within a specific timeframe. Since its adoption in 2002, the Measure DD bond program has been programmed for implementation any time by any entity. The project sponsor does not propose to utilize Measure DD funds to implement the 20.68 new acres of new parks/open space and trail facilities on the project site, however, this has no bearing on the environmental impacts or analysis provided in the DEIR. These facilities will, however, be owned and operated by the City of Oakland.

Master Response H: Non-CEQA Topics and Considerations

Many comments were received on the DEIR that address issues or topics that do not pertain the adequacy of the analysis presented in the DEIR document or to physical environmental issues that are within the purview of the California Environmental Quality Act (CEQA) (Section 15064). These comments occur throughout the comment letters provided in Chapter VII of this Final EIR, and are particularly represented by the spoken comments provided during the Planning Commission Public Hearing on the DEIR on September 28, 2005 (see Chapter VIII). Overall, these comments pertain to policy considerations or design considerations to be considered by the City decisionmakers who will ultimately consider and act on all aspects of the project.

Policy Considerations

Policy considerations are those that pertain to discretionary matters that the City must balance in its deliberations of the project. Policy topics are not typically related to the quantifiable, physical environmental issues addressed in the EIR document, which are objectively assessed against the significance criteria provided by the City of Oakland's 2004 CEQA Thresholds/Criteria of Significance Guidelines. Many policy topics raised directly relate to the Oakland General Plan policies discussed in Section IV.A of the DEIR (Land Use, Plans and Policies). Others pertain to ongoing project performance or project sponsor obligations over time that typically addressed through terms of a Development Agreement between the City and the project sponsor.

Affordable Housing and Local Construction Jobs

The most frequently recurring policy considerations address the project's provision of affordable housing and dedication of project-generated construction jobs to Oakland residents. These topics

address economic and social considerations that the City must consider. According to Section 15131 of the State CEQA Guidelines, “Economic or social information may be included in an EIR or may be presented in whatever form the agency desires.” Section 15131(a) states, “Economic or social effects of a project shall not be treated as significant effects on the environment.” However, Section 15131(b) states in part, “Economic or social effects of a project may be used to determine the significance of physical changes caused by the project.” Taken together, the economic or social impacts of the proposed project shall be evaluated in an EIR if there is evidence that the economic or social effects of the project will produce significant physical environmental impacts. To the extent that the economic and social effects of the project could result in physical changes to the environment, such potential environmental impacts have been identified and fully analyzed in the relevant topical sections of Chapter IV of the DEIR (Setting and Impact Analysis). Specifically, Section IV.J of the DEIR (Population, Employment, and Housing) addresses how the project could create or displace housing, people, businesses, and jobs, and the related indirect physical impacts of each.

Since publication of the DEIR, Development Agreement discussions among the City, the Oakland Redevelopment Agency, and the project sponsor are underway and include negotiations on a number of affordable housing units to be provided within the Oak to Ninth Avenue Project site and a number within the Central City East Redevelopment Plan Area in an effort to help the City meet its requirements under state law.

Design Considerations

Similar, and often overlapping with policy considerations, are design-related considerations that generally address the physical land use compatibility and design aspects (site planning, urban design, and architectural) of the project. These topics are measured against the City’s established criteria and findings that the project must satisfy to obtain City approval of required discretionary permits, including a general plan amendment, rezoning, conditional use permit, preliminary development plan (PDP) and final development plan (FDP).

Summary of Policy and Design Considerations Raised

Policy and design considerations that recur in the DEIR comments in Chapter VII through Chapter IX this document include the following (listed randomly):

- **Provision of affordable housing as part of the project** (discussed above)
- **Dedication of project-generated construction jobs to Oakland residents** (discussed above)
- **Specific Plan / Estuary Plan Compliance**
Master Response A considers preparation of a specific plan. The Estuary Policy Plan provides a set of policies for the Oakland Estuary waterfront and specifically for the Oak-to-Ninth Avenue District (within which the project site is located). As stated before, the level of the project’s consistency with these policies is presented in Section IV.A (Land Use, Plans,

and Policies) of the DEIR (pp. IV.A-11 through A-16, and IV.A-36 and A-37). Final determinations of the project's consistency with the Estuary Policy Plan will be made by the City decisionmakers in acting on the project approvals.

- **Possible Terminal Reuses Not Specified in the DEIR** (see Master Response B above)
- **Appropriate Mechanism to Ensure Public Open Space**
Comments raise concern with how the proposed parks and open spaces would be owned, operated, managed, and programmed in the future to ensure that these spaces remain as public spaces (literally and perceptually) despite being located adjacent to private development. All parks and open space areas within the project would be owned and operated by the City of Oakland. A comprehensive signage program will also clearly convey these new public spaces that will be part of the city's network of waterfront parks and trails.

The DEIR (pp. III-18 and IV.L-17 and 18) explains that the project sponsor will be responsible for installing open space improvements and providing for the maintenance of the open spaces in a manner that meets or exceeds minimum standards provided by the City. Maintenance by the project sponsor may be accomplished through the establishment of 1) a project homeowners' association, 2) a Community Facilities District or Community Services District (in conjunction with the City), or 3) other mechanism approved by the City. This proposed distribution of open space responsibilities between the City, the project sponsor, or other entity is at the City's discretion and would be implemented through the required conditions of approval for the project or a Development Agreement between the City and the project sponsor.

- **Phasing of Parks/Open Space and Trail Improvements** (See Master Response G above)
- **Site and Building Design**
The City will evaluate, revise, and have final discretion over all aspects of the project design, including, but not limited to, the orientation and placement of streets, buildings, open spaces, phasing, building design and characteristics, parking location, etc. To the extent aspects of the project design or site plan could result in physical changes to the environment, such potential environmental impacts have been identified and fully analyzed in the relevant topical sections of Chapter IV of the DEIR (Setting and Impact Analysis).
- **Adequacy of Proposed Park Acreage**
Many comments point out that the project proposes less total acreage of new open space than envisioned in the Estuary Policy Plan for the Oak to Ninth District. Most comments assert that this would constitute a conflict with the Estuary Policy Plan. To first clarify, as discussed on page IV.A-13 through 14 in the DEIR, the Estuary Plan does not quantify a park and open space program. All open space acreage comparisons of the project to the Estuary Plan in the Oak to Ninth Avenue DEIR are based on the acreages provided in the parks and recreation facilities analysis in the Estuary Plan EIR. The project proposes a total of 20.68 total acres of new open space; the EIR analyzed a total of 35.7 acres of new open space (including only the proposed expansion to Estuary Park). Second, the parks and recreation impacts for the project

are analyzed in Section IV.L of the DEIR (Public Services and Recreational Facilities) and found to be less-than-significant according to the significance criteria prescribed by the City of Oakland's 2004 CEQA Thresholds/Criteria of Significance.

The Estuary Plan does, however, include a host of policies that address the provision, location, and public accessibility of new open spaces in the project area. Thus, the City will evaluate the project in accordance with these policies (identified on pp. IV.A-11 through 13, and Appendix F of the DEIR).

CHAPTER VI

Other Responses to Written Comments on the Draft EIR

This chapter includes copies of the written comment letters received during the public review period on the DEIR and responses to those written comments. Letters received from public agencies are presented first, followed by those received from organizations, and then those received from individuals. The letters are generally listed chronologically according to the “date received” indicated by the City of Oakland. Comment letters received after the public review period are noted as such and responded to herein.

Each letter is identified by an alpha designator. Specific comments within each letter are identified by an alphanumeric designator that reflects the correspondence designator (alpha) and the sequence of the specific comment (numeric). All responses immediately follow the letter.

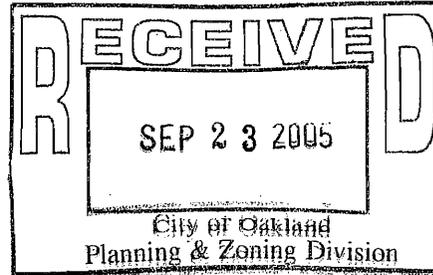
Where responses have resulted in changes to the text of the DEIR, these changes also appear in Chapter IV of this FEIR.

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



September 20, 2005



Margaret Stanzione
City of Oakland Com. & Eco. Dev. Agency
250 Frank H. Ogawa Plaza, Ste. 3315
Oakland, CA 94612

Dear Ms. Stanzione:

Re: SCH# 2004062013; Oak to Ninth Mixed Use Development

As the state agency responsible for rail safety within California, we recommend that any development projects planned adjacent to or near the rail corridor in the County be planned with the safety of the rail corridor in mind. New developments may increase traffic volumes not only on streets and at intersections, but also at at-grade highway-rail crossings. This includes considering pedestrian circulation patterns/destinations with respect to railroad right-of-way.

A-1

Safety factors to consider include, but are not limited to, the planning for grade separations for major thoroughfares, improvements to existing at-grade highway-rail crossings due to increase in traffic volumes and appropriate fencing to limit the access of trespassers onto the railroad right-of-way.

A-2

The above-mentioned safety improvements should be considered when approval is sought for the new development. Working with Commission staff early in the conceptual design phase will help improve the safety to motorists and pedestrians in the County.

If you have any questions in this matter, please call me at (415) 703-2795.

Very truly yours,

Kevin Boles
Utilities Engineer
Rail Crossings Engineering Section
Consumer Protection and Safety Division

cc: Pat Kerr, UP

Letter A – Public Utilities Commission

- A-1 Plans for the proposed development project have taken into account the proximity of the rail corridor, and various considerations addressed in other studies are discussed in further detail in Response to Comment A-2 below.
- A-2 Previous planning work for the proposed development project has considered a grade-separated crossing along 5th Avenue, which would improve operational and safety conditions. However, there are significant topographic, engineering, and environmental constraints that limit the ability of the project applicant or the City of Oakland to construct these grade separations. The major constraint is the I-880 structure, which precludes an above-grade crossing. A below-grade crossing would also be difficult to construct, given the intersecting streets and the distance required to return the roadway to the existing grade on both sides of an undercrossing. Given the obstacles to constructing a grade-separated crossing, this element was not included in the proposed project. Additional detail regarding above-grade and below-grade crossings is provided in Response to Comment M-3 in the Public Utilities Commission’ subsequent comment on the DEIR.

See Master Response F regarding Pedestrian Activity at Nearby Rail Crossings. Specifically, instead of recommending changes to the existing at-grade crossing along 5th Avenue, the DEIR recommended a variety of intersection improvements along Embarcadero and 5th Avenue. These improvements are designed to limit queuing, which in turn would reduce the potential for the backup of vehicles to spill onto the railroad tracks. The DEIR also recommended that 5th Avenue be restriped as a four-lane roadway, which would provide additional capacity at the Embarcadero and 7th/8th Streets intersections. There is an existing fence along the Embarcadero that limits access to the railroad tracks adjacent to the project. The DEIR notes that the project would reconstruct the Embarcadero along the project frontage, but does not explicitly state whether or not this fence would be maintained. In addition, combined improvements funded by the Measure DD bond program, Caltrans and potentially the CCC will encourage bicyclists and pedestrians to travel along the Lake Merritt Channel to the shorelines, consistent with the City’s priority vision for waterfront access in the project area. The project would install additional warning signage related to bicyclists and pedestrians at the 5th Avenue and Oak Street crossing.

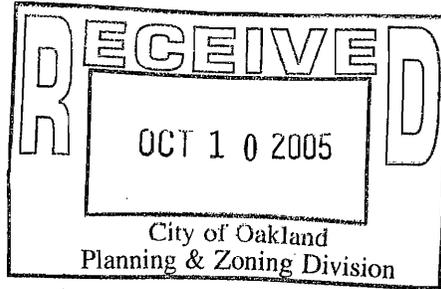
The following is added to the list of requirements shown in bullet format on DEIR p. IV.B-62 as part of Mitigation Measure B.7:

- **Maintain or reconstruct the fence along the Embarcadero that limits access to the railroad tracks adjacent to the project site.**
- **Install additional bicycle and pedestrian warning signage at the existing at-grade crossing along 5th Avenue.**

EAST BAY REGIONAL



PARK DISTRICT



October 5, 2005

Margaret Stanzione
City of Oakland
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612

Subject: Comments on DEIR for Oak to Ninth Mixed Use Development Project
Martin Luther King Jr. Regional Shoreline/San Francisco Bay Trail

Dear Ms. Stanzione,

Thank you for providing the East Bay Regional Park District ("District") with a copy of the Draft Environmental Impact Report (DEIR) for the proposed Oak to Ninth Avenue Project in Oakland. The following are the District's comments relevant to our interest in protecting open space, providing access to San Francisco Bay and completing the San Francisco Bay Trail.

BOARD OF DIRECTORS

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Open Space

The proposed project would reduce open space from 41.5 acres in the Estuary Plan to 28.4 acres in the proposed project. This is about a 1/3 reduction in the planned open space when compared with the earlier 41.5 acres of open space contained in the Estuary Plan. It should also be noted that the existing 7.7 acre Estuary Park is included within the proposed 28.4 acres of open space in the project area; however, since Estuary Park already exists, it should not be counted as "new" open space. This change actually reduces the 28.4 acres of open space to just 20.7 acres. This is significant, because the proposed project will provide up to 3,100 residential units, providing housing for about 5,061 people, and about 200,000 sq. ft. of retail and work space for 623 employees. The proposed new 20.7 acre open space seems too small given these population figures and the much larger open space of 41.5 acres contemplated in the adopted Estuary Plan.

B-1

B-2

Nearby existing City of Oakland parks, such as Lake Merit, are already heavily used by existing Oakland residents. Nearby regional park facilities, such as Martin Luther King Jr. Regional Shoreline along the fringes of San Leandro Bay contain only a small portion of developed upland and cannot provide sufficient open space for this large number of new residents in an already congested area of Oakland.

B-3

Public Access to San Francisco Bay Shoreline

The proposed Oak to Ninth Street project will be located some distance from BART and major public transit centers, and as a result, most of the access to the shoreline will be from private vehicles. The proposed project calls for the construction of 3,500 parking spaces for up to 5,061 new residents and an unknown number of vehicles associated with proposed commercial facilities. The DEIR identifies only 75 parking spaces in open space areas, however, it does not appear to state how many of these are existing spaces and how many would be new parking spaces provided by the proposed project. It also identifies 375 on-street parking spaces; however,

B-4

B-5

B-6



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it does not state what restrictions would be imposed on these spaces so that they are usable by the general public for shoreline access. Given that the anticipated number of residential vehicles in this area will likely exceed the proposed residential parking spaces, it's highly likely that residential parking will overflow into the public areas and will make non-residential parking on public streets and open space areas impracticable for shoreline access. The DEIR needs to provide specific design features and parking restrictions that will allow for adequate parking and public access to the shoreline.

B-6
(CONT.)

B-7

San Francisco Bay Trail

There are a number of multi-story structures proposed in the project area that may create visual or physical barriers to public access to the shoreline and to the San Francisco Bay Trail. Open visual corridors that create attractive views of the Bay from public areas are important for encouraging public access. Trail corridors that are located between tall buildings and trees can create a closed-in feeling that will discourage trail use because trails users may feel unsafe or the experience may not be enjoyable.

B-8

B-9

Figure III-7 in the DEIR shows the shoreline parks and trails that currently exist or are proposed as part of this project. This figure does not appear to include a through Bay Trail connector along Embarcadero Road. The DEIR states on page IV.A-24 that Embarcadero Road will include a Class II trail, but it is not shown on Figure III-7 and the DEIR does not state if it will run the full length of the project frontage on Embarcadero Road. A through trail on Embarcadero Road is an important trail segment for Bay Trail users who do not wish to follow the circuitous route through the proposed development and instead wish to use the trail as a transit corridor from home to work, or are seeking a more expeditious trail route with less congestion.

B-10

Another missing Bay Trail segment is through the private property in the center of the proposed development. The DEIR text on pages IV.4-33, IV.4-34 and several other locations states that the proposed project would create a "continuous public shoreline trail". Unfortunately, with the above mentioned gap, the trail will not be continuous, as stated in the DEIR. Constructing a trail to both edges of this private property and leaving a 200 foot gap in the trail will likely create trespass and safety issues for trail users and the private property owners. Figure III-7 does not appear to show an alternative means of access for Bay Trail users to get through or around this private property. It's difficult to see how such a gap in an otherwise complete shoreline-section of the Bay Trail would be acceptable to the San Francisco Bay Conservation and Development Commission (BCDC) or be consistent with Bay Trail policies. Without closure of this small gap, the project fails to achieve completion of this important Bay Trail segment.

B-11

Thank you for the opportunity to comment on this DEIR. Should you have any questions, please call me at (510) 544-2622.

Sincerely,



Brad Olson
Environmental Programs Manager

cc. Board of Directors
Robert E. Doyle, Assistant General Manager
Laura Thompson, ABAG Bay Trail

Pat O'Brien, General Manager
Brad McCrea, BCDC

Letter B – East Bay Regional Parks District

B-1 The comment correctly states that the existing 7.7-acre Estuary Park and Jack London Aquatic Center is included within the total 28.4 acres of open space that the project proposes. As stated and footnoted in the DEIR on p. IV.L-16 and Table IV.L-2 (and consistently throughout), “Approximately 20.7¹ of the 28.4 total acres of permanent open space that would exist on the project site at buildout would be new, usable park area that does not currently exist.” In no instance does the DEIR present the acreage of *new* open space proposed by the project as including the existing Estuary Park area.

B-2 The comment suggests that the proposed new 20.7 acres of open space “seems too small” given the resident and employee population and retail square footage the project would provide. The project’s potential physical impact on parks and recreation facilities is measured by the significance criteria provided by the City of Oakland’s 2004 CEQA Thresholds/Criteria of Significance Guidelines. They include:

- Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated; or
- Include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment.

Impact L.4 (DEIR p. IV.L-15 through IV.L-18) discusses that the project would have a less-than-significant impact as measured by the above criteria. The impact discussion also explains how the proposed resident population and park acreage would exceed the City’s adopted service standard for local-serving parks (4 acres per 1,000 residents) established by the Open Space, Conservation, and Recreation (OSCAR) Element of the General Plan. This is also, and most appropriately, addressed in the discussion of the project’s consistency with OSCAR policies in Section IV.A (Land Use, Plans and Policies) on DEIR p. IV.A-20.

B-3 The comment points out that a number of City parks and regional park facilities in Oakland are now heavily used or offer limited open space for the resident population that the project would add. The DEIR presents that, according to the OSCAR, the estimated total acres of parkland within the city, including region-serving parks managed by the East Bay Regional Parks District (EBRPD), falls short of the City’s citywide service standard and local-serving parks service standard (DEIR p. IV.L-7). It is anticipated that the 20.7 acres of new open space (and trail facilities) proposed by the project would augment the city’s park acreage and, as stated on DEIR p. IV.L-7, be both region-serving and local-serving.

B-4 As stated on DEIR p. IV.B-11, the closest transit stops (the Lake Merritt BART station, the Amtrak station, and AC Transit bus stops at those two rail stations) are from 0.75 to 1.0 mile from the project site. It is acknowledged that unless AC Transit service is

¹ 28.4 acres total proposed, less 7.7 acres of the existing Estuary Park and Aquatic Center.

- extended (to the project site *and private shuttle service is provided), access to the shoreline by people not living or working at the project site would be primarily from private vehicles. (See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures),
- B-5 The parking spaces in surface lots in the open space areas of the site (about 30 spaces for Phase 1, and about 75 spaces for project buildout) would be newly provided by the proposed project.
- B-6 See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management measures.
- B-7 See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management measures.
- B-8 The comment states that the proposed multistory structures may create visual or physical barriers to public access to the shoreline and Bay Trail. The project proposes new buildings that would range from six to eight stories tall (65 to 86 feet), with five highrise buildings up to 240 feet tall. The proposed building massing and height is described and depicted in Chapter III (Project Description) of the DEIR (p. III-8, Table III-3, and Figure III-5). The analysis of the project's impact on views is provided in Section IV.K (Visual Quality and Shadow) (pp. IV.K-10 through IV.K-39) and concludes that the impact on scenic vistas would be less than significant under the City of Oakland's 2004 CEQA Thresholds/Criteria of Significance Guidelines. As stated on DEIR p. IV.K-39, "the [proposed] tall buildings avoid significantly obstructing views of the hills and of the few existing immediate view corridors to the Estuary from the Embarcadero. Regarding shorter-range views to the shoreline from within the project or along the Embarcadero, in many cases the project would create new view corridors by removing of most of the Ninth Avenue Terminal and existing warehouse buildings and creating new public streets within the project site and new public trails and open spaces located along the waterfront (DEIR pp. IV.K-30 through IV.K-34, and Figure IV.K-12 discussed on DEIR p. IV.K-27).

Regarding potential physical barriers to public access, the DEIR discusses this within the context of Land Use and Transportation Element (LUTE) policies (*Open Space and Access* on DEIR p. IV.A-10), Estuary Plan Policies (*Open Space and Recreation* starting on DEIR p. IV. A-13), the *San Francisco Bay Plan* policies (DEIR p. IV.A-32), and the *San Francisco Bay Trail Plan / Oakland Waterfront Promenade and Bay Trail Alignment Feasibility Study and Design Guidelines* (DEIR p. IV.A-33). To summarize, the project is situated on a grid of new public streets that would intersect the Embarcadero. New continuous pedestrian and bicycle linkages (and amenities such as lighting, landscaping, etc.) would lead to the shoreline and open space areas to encourage and facilitate public access. Proposed trail improvements would facilitate future connections along Lake Merritt Channel and to existing Bay Trail segments that currently culminate east and west of the project site. Also, a comprehensive signage program would guide the public to the

trail and open space system. As stated on DEIR p. IV.L-18 in the discussion of parks and recreation impacts, “the City of Oakland would review the adequacy of the...public access to public parks, open spaces, and recreational facilities on the project site.” This topic also would be subject to review by the Bay Conservation and Development Commission (BCDC) review to ensure adequate access to and along the shoreline.

- B-9 The comment asserts that trail use will be discouraged due to the “closed-in feeling caused by locating trail corridors between tall buildings and trees.” However the comment provides no supporting evidence to demonstrate that the project would deter potential trail users for this reason. As depicted in DEIR Figure III-7 (Proposed Shoreline Parks Network) (DEIR p. III-17), the continuity of the proposed trail alignment along the waterfront is prevented by a segment that would cross the existing outparcel property that is within, but not part of, the project site and that fronts the water. The proposed alignment is modified in this document (**Figure III-1, Shoreline Parks and Trail Network**, in Chapter) to depict the additional continuous alignment that would occur with respect to the outparcel and along Embarcadero. Unlike the alignment shown in the DEIR (to which the comment responds), the modified alignment lies between buildings only along the perimeter of the outparcel, adjacent to Parcels K, L, and M.

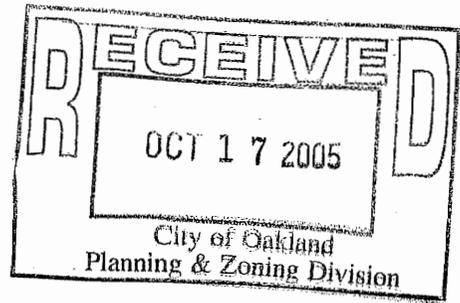
The proposed trail system within the project site would provide opportunities for new open views of the water that are currently blocked and inaccessible. Additionally, the trail would link an existing Bay Trail segment that currently ends at Estuary Park to Brooklyn Basin where the trail currently continues east to the Martin Luther King Regional Shoreline and beyond. The trail would also follow both sides of Lake Merritt Channel, crossing east-west over Lake Merritt Channel Bridge (over the Embarcadero), allowing for future City projects aimed at improved connections between Lake Merritt and the Estuary to connect to the project site. As stated above in Response to Comment B-8, a comprehensive sign program would guide the public to the system as well. Therefore, the proposal includes numerous aspects that are reasonably expected to attract future users. As stated in Response to Comment B-8, the City will review the project with regard to the appropriateness of the proposed trail alignment and the project also would be subject to review by BCDC.

- B-10 The proposed trail alignment is modified in this document (**Figure III-1, Shoreline Parks and Trail Network**, in Chapter III) to depict the additional continuous alignment along Embarcadero at the project site.
- B-11 The proposed trail alignment is modified in this document (**Figure III-1, Shoreline Parks and Trail Network**, in Chapter III) to depict the additional continuous alignment that would occur with respect to the outparcel in a way that would not “close” the 200-foot gap across the outparcel. Although a continuous shoreline trail alignment would be most fully consistent with policies and visions in the City’s General Plan (and a number of other plans associated with access to the waterfront), the project sponsor does not own,

and does not intend to acquire, the outparcel. Therefore, the trail segment over the “gap” cannot be proposed as part of this project.



October 7, 2005



Margaret Stanzone, Project Planner
City of Oakland
Community and Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 3330
Oakland, CA 94612

Re: Draft Environmental Impact Report – Oak to Ninth Mixed Use Development Project, Oakland

Dear Ms. Stanzone:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Draft Environmental Impact Report (EIR) for the Oak to Ninth Mixed Use Development Project located in the City of Oakland (City). EBMUD has the following comments.

WATER SERVICE

EBMUD's Central Pressure Zone, with a service elevation range between 0 and 100 feet, will serve the proposed development. EBMUD owns and operates distribution pipelines in Fallon Street, Embarcadero, 5th Avenue, 6th Avenue, and 9th Avenue, which provide continuous service to customers in the area. There is an 8-inch water main in Fallon Street, 6-inch water mains in 5th and 6th Avenues, and a 12-inch water main in 9th Avenue and Embarcadero that traverses through the proposed development. Any proposed construction activity in these streets would need to be coordinated with EBMUD so that the integrity of these water mains is maintained at all times.

C-1

A main extension, at the project sponsor's expense, will be required to serve the proposed development. Off-site pipeline improvements and/or relocations, also at the project sponsor's expense, will be required to serve the proposed development. When the development plans are finalized, the project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions for providing water service to the proposed development. Engineering and installation of new and relocated water mains and services requires substantial lead-time, which should be provided for in the project sponsor's development schedule.

C-2

The project sponsor should be aware that EBMUD will require documentation that the areas in which EBMUD crews are to work do not contain contaminated soils or groundwater. In addition to soil contaminants identified in the Draft EIR, EBMUD is concerned with the potential presence of asbestos containing material that may be present in fill or in existing pipes that are to be removed or otherwise abandoned. The potential for

C-3

C-4

C

trace radioactive elements associated with former naval ship repair is also a concern. EBMUD will also be concerned with the methods used to characterize utility corridors that require remediation. The depth and width of remediation within utility corridors must be acceptable to EBMUD. The techniques used to protect "clean fill" placed in remediated utility corridors from recontamination must be addressed.

C-4
(CONT.)

C-5

WASTEWATER

EBMUD is currently working with the City to resolve the subbasin allocation issue as stated on page IV.M-13 of the Draft EIR. The subbasin allocation should be resolved between EBMUD and the City and included in the Final EIR. The City's Infiltration/Inflow (I/I) Correction Program sets a maximum allowable peak wastewater flow from each subbasin within the City and EBMUD agreed to design and construct wet weather conveyance and treatment facilities to accommodate these flows. EBMUD prohibits discharge of wastewater flows above the allocated peak flow for a subbasin because conveyance and treatment capacity for wet weather flows may be adversely impacted by flows above this agreed limit.

C-6

The projected peak wet weather wastewater flows from this project needs to be determined to assess the available capacity within the subbasin and confirmation included in the Final EIR. Suggested language to include in the Final EIR is as follows: "The City of Oakland Public Works Department has confirmed that there is available wastewater capacity within subbasin (*insert subbasin number here*) for this project."

On page IV.M-4, the Draft EIR lists nearby EBMUD wastewater facilities in the area. Please note that all EBMUD facilities in the project area should remain undisturbed by the project.

C-7

On page IV.M-5 paragraph 3, the Wet Weather Program has only developed three new wet weather treatment facilities, not four as stated in the Draft EIR.

C-8

WATER RECYCLING

On page IV.M-3, Recycled Water, first paragraph, last sentence, replace "an additional 8 mgd of recycled water by 2020, for a total of 5.8 billion gallons a year." with "a total of 14 mgd, or 5.1 billion gallons a year of recycled water by 2020."

C-9

On page IV.M-11, second paragraph, replace the last three sentences "Recycled water delivery the water table." with "Recycled water delivery to the project area is anticipated by 2009. Recycled water infrastructure will be installed by the project sponsor throughout the proposed site and along the project frontage for future connection to the EBMUD recycled water system. Similar to water lines, recycled water lines will be installed above the water table."

C-10

Margaret Stanzone, Project Planner
October 7, 2005
Page 3

WATER CONSERVATION

The proposed project presents an opportunity to incorporate water conservation measures. EBMUD staff would appreciate the opportunity to meet with the project sponsor to discuss water conservation programs and best management practices applicable to the project area. A key objective of this discussion will be to explore timely opportunities to expand conservation via early consideration of EBMUD's conservation programs and best management practices applicable to the project

C-11

If you have any questions concerning this response, please contact David J. Rehnstrom, Senior Civil Engineer, Water Service Planning, at (510) 287-1365.

Sincerely,



William R. Kirkpatrick
Manager of Water Distribution Planning

WRK:NJR:sb
sb05_281.doc

cc: Oakland Harbor Partners
4670 Willow Road
Pleasanton, CA 94588

Letter C – East Bay Municipal Utilities District

- C-1 The following DEIR text describing the East Bay Municipal Utility District (EBMUD) distribution of water pipelines in the project area is revised. This change occurs in the third paragraph on DEIR p. IV.M-11 and replaces the entire second paragraph under *Water Supply System* on p. IV.M-1:

Existing water lines in the project vicinity are expected to be adequate to serve the project’s anticipated water demand. As discussed in the Setting, the project site is served by a ~~12-inch~~ EBMUD water line within the Embarcadero right-of-way, which forms a “looped” system between 5th and 9th Avenues, with a 12-inch main in 9th Avenue and the Embarcadero that traverses the project siteline serving the area west of 5th Avenue and that terminates at the Lake Merritt Channel bridge. The Estuary Park portion of the site to the west of Lake Merritt Channel is serviced by a 12-inch branch from a separate looped system located in the Embarcadero and Fallon Street. There is an 8-inch water main in Fallon Street and 6-inch water mains in 5th and 6th Avenues. ~~This 12-inch branch runs from the intersection of the Embarcadero and Fallon Street to the limit of the Lake Merritt Channel bridge.~~

- C-2 The following DEIR text change to recognize the potential for offsite water main improvements required. Text is added to the fourth paragraph on DEIR p. IV.M-11:

As part of the project, water mains designed and supplied by EBMUD would be installed onsite to serve the project demands. A main extension and pipeline improvements or relocations offsite may also be required. All improvements would occur in coordination with EBMUD.

- C-3 Comment is noted that the project sponsor shall provide EBMUD with documentation that EBMUD subsurface work areas do not contain contaminated soils or groundwater that would be considered a hazardous waste. As stated on DEIR p. IV. H-19, the project sponsor shall provide EBMUD with “necessary soil and groundwater quality reports and remediation plans prior to EBMUD’s design or installation of pipeline on the project site.” In addition, the DEIR describes that, since removal of all contaminated soils prior to construction activities would be prohibitive, the project proposes to excavate a utility trench for EBMUD utilities that will be backfilled with clean, imported material.

With regard to asbestos containing soils material in particular, Subsurface Consultants Inc. conducted investigations on the Ninth Avenue Terminal area on behalf of the Port in 1997 that included the collection and analyses of soil samples for the presence of asbestos. Seven of the eight samples had nondetectable concentrations of asbestos, and one sample (which included pieces of fibrous material) contained 25 to 30 percent asbestos. Consistent with the impacts identified in the DEIR and proposed mitigation measures, the final remediation plan required under Mitigation Measures H.1a will

address the clean-up of all contaminants identified in the comprehensive remedial investigation report for the project area, also required under that mitigation measure. The remediation plan would include a safety plan to protect workers and the public from during on remediation and construction activities. Mitigation measures are also identified for Impact H.1 that addresses the proper classification of soils prior to disposal.

References

Third Interim Report, Data Gap Studies of January/February 1997 and April/May 1997, Subsurface Consultants, Inc., 15 August 1997.

- C-4 Trace radioactive elements have not been identified as a chemical of concern at the site from any of the previous Phase I studies conducted at the site. The ongoing environmental process of remediation is being overseen by the DTSC. Any new evidence showing the potential for trace radioactive elements at the site will be addressed by the DTSC and appropriately delineated and remediated as stated in Mitigation Measure H.1a on DEIR p. IV.H-19.
- C-5 See Response to Comment C-3. In addition, as stated on DEIR p. IV. H-19, for trenches that extend into the Bay Mud and below groundwater, cutoff walls will be constructed “to control migration of potentially contaminated groundwater into the permeable backfill around utility pipes.”
- C-6 As stated in the discussion of Impact M.2 (DEIR p. IV.M-13), “The project’s projected [wastewater] demand would exceed the current unused sub-allocation for the relevant subbasins (54-07, 59-03, and 64.07).” The City of Oakland Public Works Department, in coordination with EBMUD, is ongoing in an effort to ensure that there is available wastewater capacity within Subbasins 54-07, 59-03, and 64-07 for the project based, which may be the result of the City’s reallocation of existing available city-wide allocation for wastewater flows under the Wet Weather Program, or and alternative method agreed upon by the City and EBMUD. The exceedance that would occur with the project is not a significant impact under CEQA, and therefore no mitigation measure is required. The City will, however, require that a final approved method to ensure adequate capacity within the relevant subbasins prior to it taking action on the project.
- C-7 As described on DEIR p. IV.M-4, a 54-inch pipeline runs in an elevated trestle across Lake Merritt Channel and is visible at mean and low time. This pipeline leads to the dechlorination facility where sewage is treated. Treated sewage then flows through Estuary Park to discharge in the Estuary via a submerged outfall. The project would involve improvements to the existing shoreline, including that along Lake Merritt Channel along the project site. As described under Impact D.1 (Water Quality / Construction Impacts) on DEIR p. IV.D-20 (and shown in DEIR Figure IV.D-3), proposed improvements along Channel Park, near the elevated pipeline described above, would create or restore shoreline marshland and vegetated shoreline embankments. Work in this area would also involve site remediation and potentially the raising of existing

grade (see Master Response G). West of the Channel, the new structure and related circulation on Parcel N would occur, adjacent to the EBMUD dechlorination facility. It is not anticipated that any project construction would disturb these existing EBMUD facilities. Other existing facilities would be affected only to the extent necessary to install, extend, or relocate facilities to adequately serve the project.

- C-8 Per the comment, on DEIR p. IV.M-5, the third sentence in the second paragraph under *Inflow/Infiltration Correction Program* is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

The program has resulted in three ~~four~~ new wet weather treatment facilities, two storage basins, 7.5 miles of new interceptors, and expansion of the main wastewater treatment plant.

- C-9 Per the comment, on DEIR p. IV.M-3, the last sentence in the first paragraph under *Recycled Water* is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

The Water Supply Management Program established goals of delivery a total of 14 mgd, or 5.1 billion gallons a year of recycled water by 2020~~an additional 8 mgd of recycled water by 2020, for a total of 5.8 billion gallons a year.~~

- C-10 Per the comment, on DEIR p. IV.M-11, the last three sentences in the second paragraph are revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

Recycled water delivery to the project area is expected by 2009 ~~2005~~. Recycled ~~Reclaimed~~-water infrastructure will be installed by the project sponsor throughout the proposed site and along the project frontage for future connection to the EBMUD recycled ~~reclaimed~~ water network that will be extended to the project site. Similar to water lines, recycled ~~reclaimed~~ water lines will be installed above the water table.

- C-11 Comment noted. The DEIR recognizes EBMUD's water conservation programs and measures on DEIR p. IV.M-3 under *Water Conservation*. As would be required by the conditions of approval for the project, the project sponsor would consult EBMUD regarding these programs and best management practices specific to the project area. This would be in addition to the measures that the project would implement pursuant to the City's Landscape Water Conservation requirements described on DEIR p. IV.M-12.

STATE OF CALIFORNIA—BUSINESS, TRANSPORTATION AND HOUSING AGENCY

ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION

111 GRAND AVENUE
P. O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 286-5505
FAX (510) 286-5513
TTY (800) 735-2929



*Flex your power!
Be energy efficient!*

October 21, 2005

ALA880618
ALA-880-30.37
SCH#2004062013

Ms. Margaret Stanzione
City of Oakland
Community Development Agency
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612

Dear Ms. Stanzione:

OAK TO 9TH MIXED-USE PROJECT - DRAFT ENVIRONMENTAL IMPACT REPORT

Thank you for including the California Department of Transportation (Department) in the environmental review process for the Oak to 9th Mixed-Use project. The following comments are based on the Draft Environmental Impact Report (DEIR). As lead agency, the City of Oakland is responsible for all project mitigation, including any needed improvements to state highways. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures. The project's traffic mitigation fees should be specifically identified in the DEIR. Any required roadway improvements should be completed prior to issuance of project occupancy permits. While an encroachment permit is only required when the project involves work in the State Right of Way (ROW), the Department will not issue an encroachment permit until our concerns are adequately addressed. Therefore we strongly recommend that the lead agency ensure resolution of the Department's CEQA concerns prior to submittal of the encroachment permit application. Further comments will be provided during the encroachment permit process; see the end of this letter for more information regarding the encroachment permit process.

D-1
D-2
D-3

The Department acknowledges that the Oak to 9th Street project is consistent with established state planning priorities that:

- Promote infill development and the appropriate reuse and redevelopment of previously developed land,
- Enhance landscapes, natural lands, recreation areas and other open space areas, and
- Encourage efficient development patterns by ensuring that infrastructure supports compact development adjacent to existing developed areas that are appropriately planned for growth and served by adequate transportation and other essential utilities and services.

D-4

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Forecasting

1. The DEIR does not include detailed information regarding the density (passenger cars/per mile/per lane) and level of service (LOS) on Interstate (I) 880 within the project vicinity for each of the 2010 and 2025 forecast years. We would like to ensure that the most current measure of effectiveness as shown in the Highway Capacity Manual 2000 – Basic Freeway Segments Analysis, e.g., density and its threshold, are adopted for purposes of determining LOS for freeway segments. D-5
2. I-880 on-and offramp LOS should be provided for both Year 2010 and Year 2025 scenarios, with and without the project. Figure IV.B-1. D-6
3. Average control delay values for all intersections operating at LOS F should be specified under both pre- and post-mitigation scenarios. Simply stating that delay is greater than 70 or 100 seconds per vehicle is not sufficient. D-7

Highway Operations

1. This project would further degrade the already heavily congested conditions at many study area intersections. As summarized in Table II-1, the existing LOS at locations such as 6th and Jackson Streets at the I-880 Northbound Onramp would be further impacted by this project. Since the allocation of green time for this intersection approach has not yet been determined, what is the conclusion that the impact would be less than significant (assuming implementation of Mitigation Measure B.1.c) based on? Wherever signal timing optimization is recommended mitigation, supporting Synchro analysis showing that the desired LOS improvements have been achieved through timing optimization should be provided. The analysis should comprehensively include all affected upstream and downstream intersections, rather than analyzing each intersection as an “independent free body”. Furthermore, where optimization is not available or cannot be shown to provide sufficient improvement, additional mitigation should be fully explored, given the magnitude of project impacts. For example, project phasing could be modified to coincide with the timing of roadway improvements. Pages II-7 to II-48 of Table II-1, Impact B.1c. D-8
2. Residual impacts to 6th and Jackson Streets at the I-880 northbound onramp under Long-Term 2025 project buildout are unacceptable. The analysis states that intersection operations would degrade from LOS E to LOS F during the AM peak hour under this scenario, with signal timing optimization which would have been implemented under the 2010 Phase 1 development. While the analysis states that, “No feasible mitigation measures are available”, at a minimum, additional mitigation which has been considered, but not pursued because it is infeasible, as well as phasing project buildout to coincide with available mitigation should be discussed. Page IV.B-37, Impact B.2e. D-9
3. Clarify how simple signal timing optimization could improve LOS from F to E at the I-880 southbound onramp at the 5th Street/Oak Street intersection in Year 2025. Page IV.B-48, Impact B.3d. D-10
4. Clarify how signal optimization would improve operations at the Atlantic Avenue/Webster Street intersection from LOS F to E. Operations at this intersection would degrade from LOS E to F during the AM peak hour with the addition of project buildout traffic. Pages IV.B-34,35, Impact B.2a. D-11

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5. 2025 traffic volumes for the Atlantic Avenue/Webster Street intersection should be verified. While existing volumes through the Webster Tube are in the 2000 to 3000 vehicles per hour (vph) range, the analysis forecasts volumes in the 1,000 vph range at the Webster Street approach to the Atlantic Avenue/Webster Street intersection for the Year 2025 Plus Project scenario. D-12
6. The feasibility of adding a new approach leg opposite the existing northbound offramp at the I-880 northbound offramp/Embarcadero/6th Avenue intersection should be explained in the DEIR. Impact B.1e discusses installing a traffic signal and adding a fourth leg at this intersection. Page II-7, Table II-1. D-13

Construction Scheduling

1. The proposed Caltrans projects listed below are scheduled for construction during the same time that the Oak to 9th project will be under construction. All of these projects, which will be underway from 2007 to 2014, will involve periodic overnight lane closures that could potentially impact traffic on Embarcadero. The project's Transportation Management Plan (TMP) must be coordinated with Caltrans' contractors to ensure that lane and ramp closure congestion is not exacerbated by truck and equipment movements to and from the Oak to 9th Street project. Similarly, storm water and air quality control measures for the Oak to 9th Street project must not be allowed to conflict with measures applied by Caltrans' contractors. D-14
 - High Street Overhead (OH) Seismic Retrofit which involves the complete replacement of both High Street OHs,
 - Fruitvale OH Seismic Retrofit which replaces the bridge deck,
 - I-880 Pavement Rehabilitation which involves all I-880 lanes from the High Street Overhead to Harrison Street,
 - Fifth Avenue OH Seismic Retrofit which includes replacing the entire structure, and
 - Broadway/Jackson Street project which will modify an exit ramp and add a new southbound entrance ramp.
2. Construction of the Oak to 9th project shall not involve storing materials in protected areas under the 5th Street OH during the 5th Street OH Seismic Retrofit project. No hazardous materials shall be stored within Caltrans ROW at any time. D-15
3. Caltrans will acquire access control opposite the northbound Embarcadero exit/Embarcadero intersection as part of the Fifth Avenue OH Seismic Retrofit project. For safety reasons, Caltrans will ensure that no traffic from the Oak to 9th project could accidentally enter the offramp as a wrong way movement. If the proposed intersection at 7th Avenue were to be constructed, a median with back-to-back left-turn channelization and a positive barrier against north/south crossings would be required. This would require a wider median than is currently proposed. D-16
4. Additional storage at the Embarcadero/5th Avenue intersection is needed to prevent significant queues from ever crossing the terminus of the northbound Embarcadero exit ramp. Significant queues could also prevent use of the westbound right-turn and eastbound left-turn Embarcadero lanes from increased project volumes on 5th Avenue. Project traffic impacts would be exacerbated by Union Pacific Railroad's (UPRR) anticipated increase in the number of trains on the three UPRR track crossings under the 5th Avenue OH. D-17

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5. For storage, the section of 5th Avenue near the Oakland leased commercial parcel at the 5th Avenue/I-880 intersection and the Peralta Community College Corporate Yard and business office should be re-stripped as a four-lane street with limited parking on the west side. The UPRR crossings should conform to the four-lane configuration, with sidewalks and crossing gates for pedestrians. This would minimize impacts from the increase in project traffic that would increase blockages of the driveways to these facilities. D-18
6. The relocation of the Embarcadero near 9th Avenue should include relocation of the utilities in and near the existing road, especially including PG&E's high-pressure natural gas transmission line. Anticipated construction of new freeway connections at that point would prohibit maintenance of those utilities in their current locations. Page II-47, M, Utilities and Service Systems. D-19
7. The proposed pedestrian trails on both sides of the Lake Merritt Channel must be coordinated with the Department's ROW, Landscape Architecture, and Environmental Planning Offices, in addition to local agencies such as the Bay Conservation and Development Commission (BCDC). Page III-14 and Figure III-7. D-20

Alternative Transportation

1. The project's funding and support of additional AC Transit bus service to the project site should be identified in the DEIR. To maximize convenience of the new transit service to project residents, employees and patrons, headways should be sufficient to facilitate commute and shopping trips, connectivity to BART and Amtrak should be emphasized and bus stops, pull outs, and associated facilities should be designed for maximum convenience and safety. D-21
2. Pedestrian and bicycle facilities should also be designed to ensure safety and convenience, with an emphasis on connectivity to nearby transit and rail stations. Specifically, the potential for expanded pedestrian and bicycle connectivity to the downtown area and Lake Merritt BART through enhancements to the Lake Merritt channel should be fully explored in the DEIR. These could include improvements to landscaping, sidewalks/trails and lighting. D-22
3. The DEIR should also fully explore project trip reduction through a comprehensive Travel Demand Management (TDM) program. The TDM program should include target trip reductions through maximizing alternative transportation including car-pooling, transit and bicycle and pedestrian modes. A TDM Coordinator should be identified whose responsibilities would include coordinating TDM efforts and monitoring the program's effectiveness. D-23
4. Because the DEIR concludes that several of the project's traffic impacts are significant and unavoidable, the decisionmakers must make a statement of overriding considerations to certify the DEIR. Since the statement reflects the community's desire to balance competing public objectives, every reasonable effort should be made to ensure that all available mitigation has been thoroughly explored and applied where feasible. The alternative transportation measures detailed above form an integral part of this effort by supporting the project's smart growth objectives. D-24

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COMMENT LETTER D

Parking

Many of the DEIR figures show parking under the freeway structure, but such parking is not discussed in the text of the document. Since parking under the freeway may not be appropriate and is subject to agreement with the Department, it should be discussed in detail in the DEIR.

D-25

Hydraulics

Improvements and upgrading of the storm drainage infrastructure should be part of this project as the 2005 BKF study noted that existing City drainage facilities are in poor condition. Drainage improvements should account for the tributary drainage areas located west of the project site and should extend to State ROW, and should be coordinated and compatible with the Department's drainage systems.

D-26

Access Restriction

There is a design requirement for access restriction at the northbound 6th Avenue/I-880 offramp. See Figure 504.8 in Chapter 500 of the Caltrans Highway Design Manual at the website link below for more information. Figure IV.B-3.
<http://www.dot.ca.gov/hq/oppd/hdm/hdmtoc.htm#hdm>

D-27

Encroachment Permit

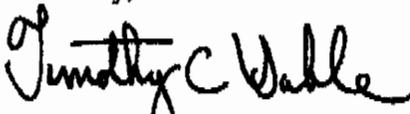
Work that encroaches onto the State ROW requires an encroachment permit that is issued by the Department. To apply, a completed encroachment permit application, environmental documentation, and five (5) sets of plans clearly indicating State ROW must be submitted to the address below. Traffic-related mitigation measures should be incorporated into the construction plans during the encroachment permit process. See the website link below for more information.
<http://www.dot.ca.gov/hq/traffops/developserv/permits/>

D-28

Sean Nozzari, District Office Chief
Office of Permits
California DOT, District 4
P.O. Box 23660
Oakland, CA 94623-0660

Please feel free to call or email Patricia Maurice of my staff at (510) 622-1644 or patricia_maurice@dot.ca.gov with any questions regarding this letter.

Sincerely,



TIMOTHY C. SABLE
District Branch Chief
IGR/CEQA

c: Ms. Terry Roberts, State Clearinghouse

Letter D – California Department of Transportation

- D-1 The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring for mitigation measures identified in the DEIR will be addressed in the Mitigation Monitoring and Reporting Program, which will be prepared as part of the project review process, and will be adopted if the project is approved. Caltrans shall be consulted about any of the mitigation measures that would require Caltrans' approval prior to implementation.
- D-2 Construction of road improvements proposed as part of the project, and those required to mitigate significant impacts, would be phased to the project development phasing as well as to when the identified impacts are expected to occur. The timing of this work will be addressed as part of the Mitigation Monitoring and Reporting Program (MMRP).
- D-3 The City of Oakland will consult with Caltrans staff to resolve concerns raised by Caltrans related to work in the State right-of-way, requiring encroachment permits.
- D-4 Comment is noted and acknowledges the project's consistency with established state planning priorities.
- D-5 Evaluation of operating conditions on freeway segments in the project vicinity with and without the proposed project was undertaken in the DEIR using the methodology required by the Alameda County Congestion Management Agency (ACCMA), i.e., using volume-to-capacity (v/c) ratios to determine levels of service in accordance with the 1985 *Highway Capacity Manual* (HCM). The commenter is correct that the freeway analysis does not report density values based on the 2000 *Highway Capacity Manual*, but in general, analyses based on v/c ratios provide more conservative results than those based on density values. For example, analysis of the segment of southbound I-880 next to the project site yields a v/c ratio of 1.15 (LOS F); see Congestion Management Program Evaluation tables in Appendix C of the DEIR. Analysis of the same volume based on density (using the 2000 Highway Capacity Software) indicated a better level of service on this freeway segment (at LOS D). The main reason for this difference is that the 1985 HCM assumed that the maximum capacity of a freeway facility was 2,000 vehicles per lane per hour, and more recent research incorporated into the 2000 HCM shows that freeway facilities may have capacities that are 2,200 vehicles per lane per hour, or even higher. Based on these considerations, the DEIR is conservative in its reported results, and its evaluation of the project's effects on freeways is reasonable.
- D-6 The DEIR analysis focused on off-ramp intersections with the local roadway network instead of the freeway ramps themselves because in the professional judgment of City staff and the EIR consultants, traffic flow conditions on a ramp are generally dependent on the level of service at the downstream connection to the local street. It is acknowledged, however, that further operational analysis may be needed to design improvements at intersections containing freeway ramps. .

D-7 The DEIR presents LOS and delay values under the various analysis scenarios in support of impact determinations. The *2000 Highway Capacity Manual* indicates that delay greater than 50 seconds for unsignalized intersections and 80 seconds for signalized intersections is LOS F, and the DEIR presents delay values to the tenth of a second unless the calculated delay is greater than 20 seconds higher than those thresholds. It is the judgment of City staff and the EIR consultants that presentation of such very high delay values in the text of the DEIR does not further an understanding of traffic conditions. The actual calculated delay values (for all analysis scenarios, including the conditions after implementation of the mitigation measures) are provided in LOS output sheets in the appendix to the technical resource document (*Oak to Ninth Project Final Traffic Study*, August 26, 2005) on-file at the City of Oakland office.

D-8 The finding of a less than significant impact if Mitigation Measure B.1c (Interim Project [2010] impact) were implemented at 6th and Jackson Streets is based on analysis of conditions with optimized signal timing. LOS output sheets for mitigated conditions are provided in the appendix to the technical resource document (*Oak to Ninth Project Final Traffic Study*, August 26, 2005) on-file at the City of Oakland office.

Regarding the request that analysis of signal retiming and optimizing should include all upstream and downstream intersections, the DEIR analysis of signal retiming took into account adjacent signals that are coordinated. For example, there is coordination between the MacArthur Boulevard and Lake Park Avenue intersections on Lakeshore Boulevard. At adjacent intersections that are currently uncoordinated, the impacts of nearby intersections were evaluated through a qualitative analysis.

See Master Response C regarding evaluation of feasible mitigation measures and the DEIR's identification of impacts as significant and unavoidable.

D-9 As stated on DEIR p. IV.B-38, mitigation possibilities beyond signal timing optimization were evaluated and the text describes how because of the constrained right-of-way at this location, addition of turn lanes or other similar improvements would not be feasible.

D-10 See Master Response E regarding optimization of signal timing, and its appropriate use as a mitigation measure.

D-11 See Master Response E regarding optimization of signal timing, and its appropriate use as a mitigation measure.

D-12 The traffic volumes at the Webster Street / Atlantic Avenue intersection are correct as reported from the manual turning movement counts conducted for the DEIR. Traffic volumes on Webster Street at Atlantic Avenue are not expected to be the same as the traffic volumes through the Webster tube because of dispersion of traffic existing the tube on various roads (e.g., Constitution Way).

- D-13 The project applicant and their representatives have met with Caltrans staff several times to discuss the configuration of the intersection at the current off-ramp location along the Embarcadero. Both the project applicant and Caltrans staff have developed design alternatives for this intersection that would prevent vehicles from inadvertently entering the on-ramp, while providing access to vehicles entering and exiting the project site. It is anticipated that these discussions would continue over the next several months as consensus is reached on an intersection design.
- D-14 As stated on DEIR p. IV.B-69, the City of Oakland would work in cooperation with Caltrans to mitigate cumulative effects that may occur during periods when the proposed project and the I-880 Seismic Retrofit project overlap. Mitigation Measure B.10 requires that the project applicant develop a Construction Traffic Management Plan and coordinate this plan with the City of Oakland. On p. IV.B-69 of the DEIR, the first sentence of Mitigation Measure B.10 is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):
- “Mitigation Measure B.10: Prior to initiation of each phase of development ~~the issuance of each building permit~~, the project applicant and construction contractor shall meet with the Traffic Engineering and Parking Division of the Oakland Public Works Agency and other appropriate City of Oakland and non-City agencies (e.g., Caltrans) to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction.”**
- D-15 The construction management plan, required by Mitigation Measure B.10 (DEIR pp. IV.B-69 and IV.B-70), requires that the project applicant provide specific locations for equipment and material storage, which must be located on the project site. As such, equipment and material storage for the project would not occur in Caltrans Right-of-Way (ROW) or under Caltrans facilities.
- D-16 See Response to Comment D-13, above.
- D-17 As stated on DEIR p. IV.B-42 (Mitigation Measure B.2m), the westbound and eastbound (5th Avenue) approaches of the signalized intersection of 5th Avenue and 7th/8th Streets would be restriped within the current paved approach, and on-street parking spaces adjacent to the intersection would be removed, to provide separate left-turn, through, and through/right-turn lanes. These changes would provide additional capacity at this intersection. Also, text on DEIR pp. IV.B-59 through IV.B-62 documents recommended changes to the intersections along Embarcadero, based on a micro-simulation analysis of the project driveways and adjacent intersections. With the implementation of these changes, queuing along Embarcadero was found to be adequate for the anticipated traffic volumes resulting from the development of the project site.
- D-18 See Response to Comment D-17, above.

- D-19 The comment points out that existing utilities in and near the Embarcadero and 9th Avenue may need to be relocated to accommodate the proposed roadway and I-880 connections in this area. For the Oak to Ninth Project, the project sponsor would coordinate the timing and requirements of all utility relocations, improvements, expansions, and protections during construction, with the applicable utility providers and agencies, including but not limited to Caltrans, EBMUD, PG&E, telecommunication providers, and the City of Oakland.
- D-20 Installation of proposed pedestrian trails along Lake Merritt Channel would be coordinated with all necessary review agencies, including Caltrans, BCDC, and the City of Oakland Public Works Agency and Parks and Recreation Department. The City of Oakland, with consideration by BCDC and to direction in the San Francisco Bay Trail Plan, shall determine and approve the appropriate and preferred trail alignment proposed by the project.
- D-21 See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures.
- D-22 See Master Response D for a description of the Transportation Demand Management Plan for the project, including bicycle facilities measures. The preferred mode of access to the Lake Merritt BART station would be through AC Transit service, which would serve the project site, the BART station, and downtown Oakland; see Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures. See Response to Comment F-10, below, regarding walking distance to the Lake Merritt BART station.
- D-23 See Master Response D for a description of the Transportation Demand Management Plan for the project, including employment of a TDM coordinator.
- D-24 See Master Response C for a description of significant and unavoidable traffic impacts.
- D-25 Parking was inadvertently shown under the freeway structure on several DEIR figures. These “typos” have been eliminated from the affected figures.
- D-26 As stated in the discussion of stormwater facility impacts (Impact E.3) on DEIR p. IV.M-14, the project will install new storm drain facilities throughout the project site in conformance with City of Oakland design criteria. The design of the new facilities would consider all drainage impacting the site, as determined by engineering studies prepared for the project and reviewed and approved by the City and all other affected agencies.
- D-27 See Response to Comment D-13, above.

D-28 Comment noted. See Response to Comment D-3 above regarding the City of Oakland's pledge to consult with Caltrans staff to resolve concerns raised by Caltrans related to work in the State right-of-way, requiring encroachment permits.



Making San Francisco Bay Better

October 24, 2005

Margaret Stanzone, Project Planner
 City of Oakland
 Community and Economic Development Agency, Planning Division
 250 Frank H. Ogawa Plaza, Suite 3315
 Oakland, California 94612

SUBJECT: Draft Environmental Impact Report (DEIR) for
 the Oak to Ninth Avenue Project
 State Clearinghouse Number 2004062013

Dear Ms. Stanzone:

On September 2, 2005, San Francisco Bay Conservation and Development Commission staff received the Draft Environmental Impact Report (DEIR) prepared for the City of Oakland for the Oak to Ninth Avenue Project, proposed along the Oakland Estuary. The project would include approximately 3,100 residential dwelling units and approximately 200,000 square feet of ground-floor retail/commercial space on 13 development parcels. Approximately 28.4 acres of the site would be developed with parks and open space. The project would demolish up to 165,000 square feet of the existing Ninth Avenue Terminal. 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. The majority of the uses and structures would be removed or demolished.

The Commission's staff has reviewed the DEIR and is submitting its comments regarding the document. Although the Commission itself has not reviewed the DEIR, the staff comments are based on the McAteer-Petris Act, the Commission's *San Francisco Bay Plan* (Bay Plan), the Commission's federally-approved management program for the San Francisco Bay, and the federal Coastal Zone Management Act (CZMA).

E-1

Jurisdiction

The Commission's jurisdiction includes all tidal areas of the Bay up to the line of mean high tide (the inland edge of marsh vegetation in marshlands), all areas formerly subject to tidal action that have been filled since September 17, 1965, and the "shoreline band," which extends 100 feet inland from and parallel to the Bay shoreline.

Commission permits are required for certain activities, including construction, changes of use, dredging, and dredged material disposal, within its area of jurisdiction. Permits are issued if the Commission finds the activities to be consistent with the McAteer-Petris Act and the policies and findings of the Bay Plan. In addition to any needed permits under its state authority, federal actions, permits, and grants that affect the Commission's jurisdiction are subject to review by the Commission, pursuant to the federal Coastal Zone Management

E-2

E

Ms. Margaret Stanzone
 October 24, 2005
 Page 2

Act (CZMA), for their consistency with the Commission's federally-approved management program for the Bay. As stated in the DEIR, much of the project would occur within the Commission's jurisdiction and require Commission authorization.

E-2,
 (CONT.)

BCDC Priority Use Areas

Bay Plan Map No. Five of the *San Francisco Bay Plan* designates a portion of land near Estuary Park (at the western end of the project site) as a Waterfront Park Priority Use Area. Within the Commission's jurisdiction at this site, the proposed development would be consistent with the priority use designation. However, the Commission has no regulatory authority landward of its 100-foot shoreline band. On February 20, 2003, the Commission adopted a resolution to amend the San Francisco Seaport Plan, the San Francisco Bay Plan and resolution 16 to delete the Port Priority Use Area and Marine Terminal designation from the Port of Oakland's Ninth Avenue break bulk terminal at the eastern end of the site. Therefore, there is no Priority Use designation for that portion of the project site.

E-3

Fill

Among other requirements, Section 66605 of the McAteer-Petris Act requires that fill in the Bay should only be authorized when: (1) the public benefits from the fill clearly exceed public detriment from the loss of water areas; (2) the fill should be limited to water-oriented uses or minor fill to improve shoreline appearance or public access; (3) there is no alternative upland location; (4) the fill is the minimum amount necessary; (5) the fill minimizes harmful effects to the bay, such as the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish and wildlife resources or other conditions impacting the environment; and (6) that the fill would, to the maximum extent feasible, establish a permanent shoreline.

The Bay Plan policies on recreation state, in part, that "small amounts of Bay filling may be allowed for shoreline parks and recreational areas that provide substantial public benefits and that cannot be developed without some filling." The Bay Plan policies on the control of filling and dredging in the Bay state in part, that "[a] proposed project should be approved if the filling is the minimum necessary to achieve its purpose, and if it meets one of the following...conditions...[t]he filling is in accord with the Bay Plan policies as to the Bay-related purposes for which filling may be needed (i.e., ports, water-related industry, and water-related recreation)...or...[t]he filling is in accord with the Bay Plan policies as to minor fills for improving shoreline appearance or public access."

E-4

Section 10700 of the Commission's regulations state that the Commission may approve the placement of minor fill to improve shoreline appearance only if: (1) the fill is necessary because the present appearance of the Bay and shoreline in the area adversely affects enjoyment of the Bay and its shoreline and it is either physically impracticable or economically infeasible to improve the appearance without filling; (2) the amount of filling is the minimum necessary to improve shoreline appearance; (3) the proposed project would improve the shoreline appearance; and (4) the fill will not adversely affect enjoyment of the Bay and the fill will not have any adverse effect on present or possible future use of the area for any designated priority water-related use or for public access.

Section 10701 of the Commission's regulations state that the Commission may approve the placement of minor fill to improve public access only if: (1) the fill is necessary because there is at present inadequate public access to the Bay shoreline in the area and it is either physically impracticable or economically infeasible to improve public access without filling; (2) the fill will improve public access to the Bay; and (3) the amount of the filling approved is the minimum necessary to provide improved public access to the Bay.

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Page 3

Page IV.I-24 of the DEIR states that the proposed project would include the removal of approximately 33,780 square feet of solid Bay fill as part of the shoreline design and the placement of 74,110 square feet of solid Bay fill for the creation of a Gateway Park at Clinton Basin. The project would also include the removal of approximately 129,920 square feet of pile-supported fill with the removal of a portion of the Ninth Avenue Terminal wharf. Additionally, floating fill would be required to create the two proposed marinas.

E-5

When the Commission reviews the proposed project, it will determine whether the proposed fill is consistent with BCDC's laws and policies regarding fill in the Bay. However, at its May 9, 2005 Design Review Board meeting, the Commission's Design Review Board was asked to advise the Commission and the project sponsors on whether the proposed fill, particularly at the proposed Gateway Park, is needed and appropriately sized to create an attractive and usable shoreline park. Also, the Board was asked to advise the Commission on whether the proposed fill is necessary to improve shoreline appearance and public access and provides substantial public benefits as part of a shoreline park or recreational area that cannot be developed without some filling. At that meeting, the Board concluded that public access could be improved with some Bay fill at the end of Clinton Basin, however, the exact amount needs studying and should be determined based, in part, on the public's sense of arrival to the park and to the Bay.

E-6

In the past, the Commission has required mitigation for some fill projects. The exact amount and type of mitigation depends, in part, on the nature, location and extent of the fill and the extent to which it would harmfully effect the Bay Area, such as, the reduction or impairment of the volume surface area or circulation of water, water quality, fertility of marshes or fish or wildlife resources, or other conditions impacting the environment.

Public Access

Section 66602 of the McAteer-Petris Act states, "...that existing public access to the shoreline and the waters of the San Francisco Bay is in adequate and that maximum feasible public access to the Bay, consistent with a proposed project, should be provided...." The Bay Plan's policies on public access state that, "...maximum feasible public access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, wildlife area or other use, except in cases where public access would be clearly inconsistent with the project because of public safety considerations or significant use conflicts, including unavoidable, significant adverse effects on Bay natural resources."

E-7

Over the years, the Commission has defined public access as including physical public access to and along the shoreline of the Bay and visual public access (views) to the Bay from other public spaces.

In addition to the comments stated above regarding fill in the Bay, the Commission's Design Review Board provided the following advice on public access issues at its May 9, 2005 meeting: (1) the project proponents should consider street geometries that relate to important views; (2) the Board has an expectation that building heights will vary; (3) eight-story buildings need to be considered as they relate to public views; (4) the urban edge of Clinton Basin would be interesting, is desirable and should be promoted; (5) public parking for open spaces and impacts on existing public parking need to be evaluated; (6) usable versus non-usable public spaces need to be better understood; and (7) increasing the height of the residential towers and lowering the podium buildings might improve public connections and views to the Bay.

E-8

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 Page 4

Page III-22 of the DEIR describes the anticipated phasing for the proposed project. Generally, it appears that public shoreline areas would be constructed when the adjacent development is built. This concept of "adjacency" is one that was authorized by the Commission for the Mission Bay project in San Francisco. However, it can also be desirable to have relatively simple interim trail improvements built along the shoreline where possible to allow public access along the Bay edge even in those areas where open space implementation is 10 or more years away. These temporary trail improvements are most effective when built with the first development phases.

E-9

Page III-16 of the DEIR describes the proposal for creating an open space and a landscaped waterfront plaza on a portion of the pile supported wharf at the Ninth Avenue Terminal. This type of structure typically requires a thorough structural analysis to better understand its life span as a public access area. Recently, the Commission's Design Review Board requested a structural assessment of a similar wharf to help in its review of that public access proposal. Ultimately, the Commission will need a thorough evaluation to determine the integrity of the structure that will be used for public access.

E-10

Figure III-7 depicts the proposed trails within the project site. No trail connection is proposed across the private lands between Channel Park and South Park. If this connection is infeasible, the project should provide a connection to Embarcadero on each side of the outparcel. Also, improved physical connections between the existing adjacent Eastlake neighborhood and the waterfront should be considered. Fifth Avenue provides the critical link between the existing neighborhoods and the shoreline and should be evaluated for public access improvement opportunities, especially at the existing railroad crossing.

E-11

E-12

The Commission routinely requires public access parking as a component of shoreline development projects. The Oak to Ninth Avenue Project should include an analysis of potential impacts to existing public shoreline parking, such as at Estuary Park, as well as the adequacy of the proposed public parking. It is possible that there is a greater need for additional, separate public parking lots near the shoreline than currently proposed.

E-13

Page III-12 describes the proposed parks, open space and trails. To fully analyze the public access proposal for this project, the Commission and its staff will need a more detailed description and set of illustrative exhibits for each of the five parks.

E-14

Construction Work Windows

Table IV-I-1 of the DEIR identifies construction work windows for in-water construction activities. Please also include in this table the construction work windows for the Least Tern.

E-15

Marina

The DEIR states that the project would rebuild the existing Clinton Basin Marina and expand the Fifth Avenue Marina. Parking and marina facilities, such as pump-out stations and restrooms, are very important to marina operations. These elements of the project should be carefully considered. The interface and any potential public access conflicts between marina tenants and shoreline visitors should be explored.

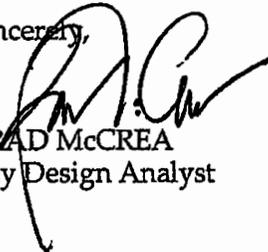
E-16

Ms. Margaret Stanzone
October 24, 2005
Page 5

Thank you for providing staff with the opportunity to review the DEIR for the proposed project. We recognize the importance of this project and are looking forward to working with your staff to develop the final document and any subsequent permit application materials. Please feel free to contact me at (415) 352-3615, or email me at bradm@bcdcc.ca.gov if you should have questions regarding this letter or the Commission's policies and permitting process.

E-17

Sincerely,



BRAD McCREA
Bay Design Analyst

cc: State Clearinghouse; Attn: Katie Shulte Joung

Letter E – San Francisco Bay Conservation and Development Commission

- E-1 Comment is noted that BCDC's comments are provided by BCDC staff and based on applicable legislation and plans that guide BCDC policy. The Commission had not yet reviewed the DEIR document as of the date of BCDC's comment letter.
- E-2 Comment is noted. The project site is within BCDC's jurisdiction and would be required to obtain BCDC permits and approvals (DEIR p. III-28; pp. IV.A-30 and IV.A-32; and throughout the DEIR where specifically relevant).
- E-3 Per the comment, the third sentence of the third paragraph under *San Francisco Bay Plan and San Francisco Bay Are Seaport Plan* on DEIR p. IV.A-30 is revised as follows (additions shown as underlined; deletions as ~~strikeout~~):

The project site is within Bay Plan Map No. Five (Center Estuary), which designates a portion of the site west of Lake Merritt Channel (near Estuary Park) as Waterfront Park Priority Use Area. BCDC has regulatory authority for all portions of the project site waterside of BCDC's 100-foot shoreline band (including that excluding portions within of the priority use area).... No port priority use area is designated for the Ninth Avenue Terminal break bulk facility on the site.

- E-4 The comment details the requirements and limitations related to bay fill within the purview of BCDC. The information provided is consistent with that summarized on DEIR pp. IV.A-32 and IV.D-9 to IV.D-10. As stated on DEIR p. IV.A-32, "the extent to which the potential new bay fill is "necessary" [pursuant to BCDC policies] would be considered by BCDC and City decisionmakers prior to acting on the project." Section IV.D (Hydrology and Water Quality) and Section IV.I (Biological Resources) of the DEIR identify and analyze potential adverse effects to water quality and biological resources that may result from the proposed bay fill (or other water-related activities). Adequate mitigation measures are identified to reduce these impacts to less-than-significant levels.
- E-5 See Response to Comment B-8.
- E-6 Consistent with the comment, DEIR pp. III-29 and IV.A-32 recognizes BCDC's purview over the project and specifically identifies the focus on the BCDC Design Review Board review that occurred on May 9, 2005. As stated in Response E-4, aspects of the project within BCDC's purview would be considered by BCDC prior to the City decisionmakers' action on the project.
- E-7 See Master Response G.
- E-8 As stated on DEIR p. IV.F-14, each development site, which includes the Ninth Avenue Terminal, will receive a site specific geotechnical investigation to determine design

specifics that would be in compliance with current California Building Code (CBC) requirements. For seismic performance, the current CBC as well as the most recent version of the Uniform Building Code (UBC) requires that all structures be designed to withstand an earthquake with a 10 percent probability of being exceeded in 50 years. As footnoted on DEIR p. IV.F- 10, “this probability level allows engineers to design buildings for larger ground motions than seismologists think will occur during a 50-year interval, making buildings safer than if they were only designed for the ground motions that are expected to occur in the 50 years.”

In regards to determining the life span, an older structure which is being rehabilitated, such as the Ninth Avenue Terminal pier, may be expected to reach a life span similar to a new structure which is approximately 50 years; however, the need for periodic inspection and repairs would be greater than for a new structure. It should be noted that with periodic repairs, the pier has lasted over 75 years and has survived through the Loma Prieta earthquake, and is still operational.

- E-9 See Response to Comment B-11 and revised (**Figure III-1**, Shoreline Parks and Trail Network, in Chapter III of this FEIR.
- E-10 The comment speaks to the need for improved physical connections between the Eastlake neighborhood and the project site and waterfront. This is discussed under the project’s consistency with Estuary Plan policies (*Land Use Continuity, Access, and Circulation Connections*) on DEIR p. IV.A-15. As stated there, I-880, rail tracks, and rail yards separate inland neighborhood (e.g., Eastlake) from the project site and the waterfront, although direct accessways do exist nearby. Increased transit services would improve access between these areas. See also Master Response F regarding railroad crossing.
- E-11 See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management measures.
- E-12 Detailed plans of each of the proposed parks would be prepared by the project sponsor as part of the Final Development Plan (FTP) submittal to the City. Park space exhibits depicted in the DEIR (DEIR Figure III-7, revised as (**Figure III-1**, Shoreline Parks and Trail Network, in Chapter III of this document) are conceptual. These exhibits are at an appropriate level of detail necessary to conduct the CEQA analysis and for the Preliminary Development Plan (PDP) approval currently sought by the project sponsor.
- E-13 DEIR Table IV.I-1 is provided to support Mitigation Measure IV.I-3 (DEIR p. IV.I-27), a measure to reduce impacts to migrating salmonid and other listed fish species that may occur within the project area within migratory periods. The proposed project are does not provide suitable breeding habitat for the least tern, and they are not anticipated to occur in the project area based on the location of recorded occurrences by the California Natural Diversity Data Base (CNDDDB) (CNDDDB, 2005). The closest known nesting location is the Alameda Naval Air Station.

Mitigation Measures I.4a through I.4b (DEIR p. IV.I-28) provide protection for the least tern providing pre-construction surveys, timing of construction, and appropriate buffer areas if nesting birds are located within project boundaries. The Long Term Management Strategy (LTMS) recommends restriction of work for least tern during March through July 31 within 3 miles of active nesting areas. Mitigation Measure I.4a states that construction activities will be conducted during August 1 through January 30, outside the breeding season for birds and raptors. The restriction period as recommended by the LTMS for the least tern falls within this period. In addition, preconstruction surveys will be conducted by a qualified biologist for all nesting birds within the project area as stated in Mitigation Measure I.4b and these surveys would include the least tern.

- E-14 Comment noted. All elements of the new and improved marina facilities proposed by the project would be reviewed in detail as part of the Final Development Plan (FTP) submittal to the City. The City and BCDC will review the detailed public access characteristics of marina uses, including the interface with non-marina visitors' access to the project site and shoreline. No pump-out stations are proposed by the project.
- E-15 Comment is noted and acknowledges the commenter's anticipated future involvement.



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October 24, 2005

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RE: COMMENTS ON DRAFT ENVIRONMENTAL IMPACT REPORT
 OAK TO NINTH MIXED USE DEVELOPMENT PROJECT

Dear Ms. Stanzione:

On behalf of the San Francisco Bay Area Rapid Transit District (BART), we are pleased to have the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Oak to Ninth Avenue Project.

Comment 1:

The proposed Oak to Ninth Project would provide 3,100 new residential units with up to 200,000 square feet of ground-floor retail/commercial space in a core urban area within a mile of a BART station. The project sets aside 44 percent of the site (28.4 acres) for parks and public open space, much of it on the waterfront. Given this mix of uses, from a transportation perspective, the development will be both an "origin" and a "regional destination." The project proponent has proposed enhanced local bus and a new shuttle service to provide access to the closest BART station as well as a network of bicycle/pedestrian paths throughout the project. Through its Strategic Plan, adopted in 1999, BART generally supports urban infill projects with a strong pedestrian orientation and connections with the local transit system.

F-1

Comment 2:

The key BART station affected by the proposed development is the Lake Merritt BART station. The analysis used by the project proponents in the DEIR to estimate the number of potential BART riders at this station when the project is completed – approximately 175 potential new riders during the a.m. peak hour – seems reasonable, and these riders can be accommodated by the BART trains and faregates.

F-2

Comment 3:

The DEIR recognizes that the project will generate demand for alternative transportation service for the area (Impact B4) and relies on transit to help mitigate the project's contribution to cumulative regional air pollution (Impact C7). To address these issues, mitigation measures B.4b (transportation) and C.7f (air quality) require the project applicant to operate a private shuttle connecting to key transit nodes. Measure C.7f requires that the shuttle serve the Lake Merritt BART station, but Measure B.4b does not. Both mitigation measures contain only a vague direction to provide an unspecified "adequate" number of onsite stops and "sufficient" frequency of service. This unspecified description is insufficient to ensure that the shuttle service will be effective as mitigation. Moreover, although other transit measures require the project applicant to coordinate with AC Transit, there is no requirement for the applicant to coordinate the shuttle service with BART. As identified in the Lake Merritt BART Access Plan, the station's access

F-3

F-4

F-5

infrastructure is currently at capacity for non-single occupancy vehicle connections. The passenger drop off/pick-up area at the Lake Merritt BART Station is one-car length along Oak Street and is inadequate to meet current demand. Typically, shuttles either need their own curb space, or improperly use AC Transit's curb space, which could impact AC Transit service. The passenger drop off area should be expanded to accommodate increased demand due to the proposed development, and the City should allocate curb space for the proposed shuttle. Effectively accommodating the shuttle service will require coordination with BART staff on scheduling and adequate street-level amenities for transferring shuttle patrons at the BART station, including transit maps, signage, and real-time shuttle arrival information.

F-5
(CONT.)

Mitigation measure B.4b should be revised to require shuttle service to the Lake Merritt BART station, consistent with measure C.7f. Both measure B.4b and C.7f should be revised to require the project applicant to coordinate with BART and to provide adequate street-level amenities for transferring shuttle patrons at the BART station, including transit maps, signage, and real-time shuttle arrival information and to require the City to expand the existing passenger drop off area and allocate curb space for the proposed shuttle.

F-6

Comment 4:

The City of Oakland's Transit First Policy, which applies to this project, favors modes that have the potential to provide the greatest mobility for people, rather than vehicles. (p. IV.A-26). BART is also seeking to encourage more patrons to access stations by walking, bicycling or on transit. Through its strategic planning process, the BART Board has developed several policies to guide and support station access near BART stations. The Strategic Plan seeks to achieve a 10 percent shift in access mode splits, by reducing the percentage of parked single occupancy vehicles (relative to other access modes). The BART Access Guidelines establish an access hierarchy that prioritizes investments in walk, transit and bicycle access to station areas. The BART Sustainability Policy has a goal to "(e)nhance the use of resource-efficient and environmentally-friendly access modes (e.g., bikes, walking, etc.), and other sustainable features at BART's new and existing stations." Finally, the BART Station Area Planning Policy has a goal to "(p)romote transit ridership and enhance quality of life by encouraging and supporting transit-oriented development within walking distance of BART Stations and along transit corridors that serve BART Stations." These policies and guidelines support investment in the facilities that encourage alternative modes of access to a station.

F-7

In this context, BART has concerns regarding how residents, visitors and employees of the proposed Oak to Ninth development will access the Lake Merritt BART Station, both during peak and off-peak periods. The DEIR analysis assumes that (i) the only potential impacts on BART are effects on standing capacity and gate capacity, disregarding impacts on access; and (ii) the project site is too far to walk to the Lake Merritt Station and that patrons will arrive at BART via automobile (pp. IV.B-53 - 54). Regarding the first assumption, as noted above, the station's access infrastructure is currently at capacity for non-single occupancy vehicle connections and the one-car-length passenger drop off/pick-up area is inadequate to meet current demand. It should also be noted that several city streets under the I-880 freeway in the vicinity project site are congested, providing another practical reason that access should focus on pedestrian, bicycle and transit opportunities. The project site is certainly within reasonable bicycling distance from the Lake Merritt Station. However, the existing bicycle racks and lockers at the station are fully utilized, with a waiting list for lockers. Given the existing constraints in automobile drop-off and bicycle parking at the Lake Merritt BART Station, a development on the scale of the Oak to Ninth project clearly will impact these facilities.

Regarding the second assumption, it is generally true that a distance of 0.75 to 1.00 mile is a little longer than most commuters will walk to the transit node. Most residents commuting to and from the project will look for other ways to get to the BART station, such as drop-off, shuttle, or bicycle. However, this development will be a regional destination including parks, open space, and retail uses. The proposed project will link two existing segments of the Bay Trail (p. IV-B-56). The DEIR also notes that currently-adopted City plans and projects will create new pedestrian and waterway connections between Lake Merritt and the Estuary, making the project site accessible from the north via Lake Merritt Channel (p. III-20) – which would also provide an attractive pedestrian path to the Lake Merritt BART Station area. Thus, pedestrian access from greater distances is clearly contemplated. Although the project sponsor itself does not propose to hold events such as concerts or festivals at the project site, the DEIR recognizes that such events would be appropriate at the large new public open spaces created by the project (pp. III 18-19). To reduce automobile trips to events, with associated environmental impacts from traffic congestion and vehicle emissions, adequate signage for pedestrians and bicyclists to and from the development is especially important.

F-8

Consistent with the City of Oakland's Transit First Policy, to help mitigate the additional transit demand generated by the project (Impact 4), the project applicant should be required to provide additional bicycle lockers at the Lake Merritt BART station, and adequate signage to direct bicycle and pedestrian traffic from the proposed development site to the BART station and back.

F-9

Comment 5

The DEIR recognizes that construction activities for the project would have a potentially significant impact by temporarily affecting traffic flow and circulation, parking and pedestrian safety. Construction activities are anticipated in phases over a period of 11 years. As mitigation, the DEIR proposes a variety of traffic control measures in a Construction Traffic Management Plan, to be prepared in consultation with the City of Oakland (mitigation measure B.10).

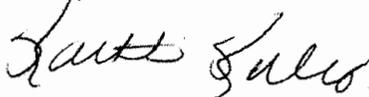
However, construction activities – and the traffic control measures instituted to manage construction activities – may impede access and safety for riders who access the Lake Merritt station by automobile, transit, bicycle or walking. Given the long duration of phased construction for this project, the inconvenience to BART patrons potentially could reduce ridership over a substantial time period. Effects that reduce public transit ridership largely divert riders to automobiles, with potentially significant secondary impacts from increased traffic congestion and vehicle emissions. The DEIR contains no analysis at all regarding these issues and as such does not support the conclusion that mitigation measure B.10 will be adequate to ensure that construction-period impacts remain less than significant. The Final EIR should acknowledge these impacts and should require consultation with BART on the Construction Traffic Management Plan as it may affect access to the Lake Merritt Station.

F-10

We appreciate your consideration of our concerns. Please contact Deidre Heitman, Senior Planner, at (510) 287-4796 or by e-mail at dheitma@bart.gov.

Thank you again for the opportunity to comment on this important project.

Sincerely,



Kathleen Kelly
Executive Manager, Planning & Budget

Letter F – Bay Area Rapid Transit

- F-1 Comment noted.
- F-2 Comment noted.
- F-3 Mitigation Measure B.4b, DEIR p. IV.B-55, is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):
- “Mitigation Measure B.4b: The project applicant shall operate a private shuttle service to complement AC Transit service that might be extended to the project site. The shuttle service shall run between the project site and nearby activity centers and transit nodes (e.g., Lake Merritt BART station) with have an adequate number of shuttle stops located onsite, and shall operate on a frequency sufficient to attract use of the service by project residents and employees.”**
- F-4 See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures.
- F-5 It is acknowledged that as part of planned service (shuttle and/or AC Transit) to BART station(s), access considerations would require coordination among the project applicant, AC Transit and BART.
- F-6 See Responses to Comments F-3 through F-5, above.
- F-7 See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures; and Response to Comment F-5, above, regarding coordination among the project applicant, AC Transit and BART concerning access considerations.
- F-8 As stated on DEIR p. IV.B-53, research indicates that most transit users prefer to access a station within one-quarter to one-half mile of their origin or destination. Providing directional signs to reach the Lake Merritt BART station one mile away (or more from many areas inside the project) would have no meaningful effect on the average person’s decision to walk or not walk.
- F-9 See Responses to Comments F-7 and F-8, above.

F-10 Given the distance between the project site and the Lake Merritt BART Station, project construction activity, and associated increased traffic, is not expected to adversely affect access to the Lake Merritt BART Station. However, the following is added to the list of items and requirements shown in bullet format on DEIR p. IV.B-69 as part of Mitigation Measure B.10:

- **Provisions for coordination with BART to reduce, as needed and as feasible, adverse effect on access to the Lake Merritt BART Station.**



City of Alameda • California

October 24, 2005

Margaret Stanzione
 Community and Economic Development Agency – Planning
 250 Frank Ogawa Plaza, Suite 3315
 Oakland, CA 94612

Re: Oak to Ninth Avenue Project Draft Environmental Impact Report

Dear Ms Stanzione:

Thank you for the opportunity to comment on the City of Oakland's Draft Environmental Impact Report for the Oak to Ninth Avenue Project.

As acknowledged in the Draft EIR, the project will have significant impacts at the intersections that provide access to the I-880 freeway for Alameda, Chinatown, and Downtown Oakland. The Draft EIR states that the project will have a significant unavoidable impact at the critical intersections at 6th Street and Jackson and Broadway and 5th Streets. These two intersections are critical gateways to I-880 and the regional freeway system for Downtown Oakland, Jack London Square, Chinatown and Alameda.

G-1

These impacts are not unexpected. This area known as the "Broadway/Jackson Study Area" has been the subject of extensive study. The City of Oakland and the City of Alameda have acknowledged through a series of agreements that the two cities must work together with the affected communities and the development community to identify and fund solutions to this regional transportation problem. Without a coordinated effort that includes the best efforts of two cities and the participation of the development community, neither community will be able to effectively achieve its redevelopment goals or effectively respond to community concerns about unacceptable congestion and traffic volumes at these critical intersections.

G-2

The Oak to Ninth EIR does provide a good example of how the development community and local agencies can work together to solve these problems. Mitigation Measure B.2.a commits the project proponent to mitigate a significant unavoidable impact at the intersection of Atlantic and Webster within the City of Alameda by providing a fair share contribution to the cost of improvements (cost to be determined). We appreciate the inclusion of this mitigation and the commitment that it represents. However, for the significant unavoidable impacts at 6th and Jackson and Broadway and 5th, the EIR does not require that the project commit a fair share contribution to Broadway Jackson improvements. In contrast, the City of Alameda's EIR for Alameda Point, which also

G-3

resulted in significant unavoidable impacts at critical intersections in “Broadway Jackson Study Area”, required that the Alameda Point Master Developer contribute a fair share contribution (cost to be determined) to future Broadway/Jackson Area improvements. In addition, the City of Alameda required the project to institute an aggressive TDM program designed to achieve a 10% reduction for residential trips and a 30% reduction for commercial trips to reduce the volume of traffic that would be generated in the impacted area. We believe that all projects in both cities that impact the Broadway Jackson area should contribute a fair share contribution to fund improvements and include an aggressive trip reduction strategy to reduce traffic volumes in the impacted area.

G-3
(CONT.)

G-4

5th and Broadway and 6th and Jackson Mitigations We respectfully request that the Oak to Ninth EIR be revised to include two additional mitigations for the significant unavoidable impacts at 6th and Jackson and 5th and Broadway:

1. The EIR should include a mitigation committing the project to a fair share contribution (cost to be determined) to future improvements in the “Broadway Jackson Study Area”.
2. The EIR should include a mitigation committing the project to an aggressive TDM program with specified trip reduction goals.

G-5

Both of these mitigation measures are feasible measures that would serve to reduce the severity of the impacts identified at the intersections providing access to the I-880 and State Route 260.

State Route 260 and Deficiency Plan. There are a number of statements in the EIR concerning the Broadway Jackson Area that should also be corrected:

On Page IV.B-1, Regional Access, paragraph 4 should be corrected as follows, “State Route 260 (SR260) is a ~~six~~ four-lane freeway controlled-access facility (classified in the highway log as a freeway) (~~three~~ two lanes in each directional tunnel).

G-6

On Page IV.B-16, Planned Roadway Improvements, the EIR should describe the Oakland and Alameda effort to address the CMA required SR 260 Deficiency Plan and various interim and future strategies that may reduce congestion at this intersection of 6th and Jackson. We would recommend the following language:

The State Route 260 Deficiency Plan was prepared after the Alameda County Congestion Management Agency identified the connection between State Route 260 Eastbound (Posey Tube) and the Interstate 880 Northbound On-ramp as operating at an unacceptable level of service. The Deficiency Plan recommended the following seven strategies, five short-term and two long-term, to improve the operations of this freeway connection:

G-7

Near-Term Improvement Strategies

Strategy A - Close 6th Street connecting ramp to Broadway and re-stripe on-ramp to I-880;

Strategy B1 - Divert southbound traffic on Jackson Street at 7th Street to eastbound 7th Street; or

Strategy B2 - Channelize southbound Jackson Street between 7th and 6th Streets;

Strategy C - Channelize right turns from Harrison to 7th Street; and

Strategy D - Implement traffic responsive signal operations in Alameda and Oakland.

G-7
(CONT.)

Long-Term Improvement Strategies

Strategy E - Construct a direct connector from the Posey Tube to 5th Street; and

Strategy F - Construct the full Jackson-Broadway interchange improvements.

Each strategy is to be implemented in sequential order if the previous strategy fails to mitigate the deficiency. The City of Oakland is proceeding with the implementation of Strategies A and B.

On Page IV.B-16, Broadway/Jackson Interchange at I-880, Paragraph 1, Sentence 3, should be corrected to say

“The preliminary studies and environmental for Phase I improvements are complete, and both PSR and PR have been completed by Caltrans. Partial funding is available for these improvements and the project is listed in the current official 2004 State Transportation Improvement Program (STIP). Additional funding is needed to accomplish all of the improvements necessary.”

G-8

Atlantic and Webster Mitigation Measure B.2a. As described above, we appreciate the project’s commitment to fund a fair share to the improvement of this intersection. However, we request that:

G-9

1. The mitigation be modified to require that the fair share contribution be provided as a condition of building permit for the project. Without a clear statement about when the funds will be made available, this mitigation cannot be effectively monitored.

2. The summary table Table II-1 on page II-17 should be modified to include the full Mitigation Measure. For some reason, the commitment to fund a fair share was eliminated from the mitigation in this table. Since these tables are often used to create the Mitigation Monitoring Program, we believe it is important to include the funding commitment and the timing of the mitigation within Table II-1.

G-10

In the Final EIR or as an appendix, please provide:

- a. Existing and future year LOS analysis Traffix output for intersections #1, Atlantic/Webster, #2, Atlantic/Constitution and #5 Broadway/5th
- b. Select link info from the model for trips to/from Alameda Traffic Analyses Zones (TAZ).

G-11

Thank you for your careful considerations of our comments. We look forward to working closely with the City of Oakland to address the deficiencies in our regional transportation system. If you have any questions, please do not hesitate to contact Andrew Thomas, Supervising Planner at 747-6881 or Virendra Patel, Assistant Engineer at 749-5852.

Sincerely,



Greg McFann
Acting Planning and Building Director

Cc: Debra Kurita, City Manager
Andrew Thomas, Supervising Planner
Virendra Patel, Assistant Engineer.

Letter G – City of Alameda

- G-1 The commenter’s characterization of the DEIR’s descriptions and findings about project impacts at 6th and Jackson Streets, and 5th Street and Broadway is noted.
- G-2 The commenter’s description of the mutual interests of the cities of Oakland and Alameda is noted.
- G-3 See Master Response C for a discussion of Significant and Unavoidable Transportation Impacts, including those in the Broadway/Jackson area.
- G-4 See Master Response D for a description of the Transportation Demand Management Plan for the project.
- G-5 See Response to Comment G-3 and Master Response D for a description of the Transportation Demand Management Plan for the project.
- G-6 The first sentence of the fourth paragraph of DEIR p. IV.B-1 is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

“State Route 260 (SR 260) is a six four-lane controlled-access facility (classified in the highway log as a freeway (three two lanes in each directional tunnel) that connects the cities of Alameda and Oakland through the Posey & Webster tubes.”

- G-7 The SR 260 Deficiency Plan, as noted by the commenter, contains a number of strategies related to improving the overall access and circulation between the cities of Oakland and Alameda. The strategies included in this Deficiency Plan attempt to improve the operations of the roadways at either end of the SR 260 tunnel, with a focus on improvements in the City of Oakland. The Deficiency Plan includes both near-term and long-term strategies. The proposed improvements studied by Caltrans as part of the Project Study Report (PSR) and Project Report (PR) process for improving the operation of the Broadway/Jackson interchange mirror several of the recommended strategies included in the Deficiency Plan. The proposed improvements for the Broadway/Jackson interchange therefore implement the Deficiency Plan. As noted on DEIR p. IV.B-17 (under Planned Roadway Improvements), the planning process for the interchange improvements are complete, but insufficient funding is available at this time to fully implement the recommendations of the PSR and the PR.
- G-8 The first paragraph under *Broadway/Jackson Interchange at I-880* on DEIR p. IV.B-16 is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

“Considerable efforts have also been made to improve operations at the Broadway / Jackson interchange at I-880. Phase I improvements would involve modifying the intersection at Broadway/5th Street and modifying the ramps at Jackson Street. The preliminary studies and environmental process for Phase I”

improvements are complete, and both Project Study Report (PSR) and Project Report (PR) have been completed by Caltrans the environmental process is still underway. Partial funding is available for these improvements, and the project is listed in the current official 2004 State Transportation Improvement Program (STIP). Additional funding is needed to accomplish all of the improvements necessary. Phase II improvements would improve access to the Posey Tube from I-880 and I-980. This phase is being funded by the Alameda County Transportation Improvement Agency and is being managed by the City of Alameda. Funding is not available for the design and construction of Phase II at this time.”

G-9 The project impact at the Atlantic Avenue / Webster Street intersection would not occur until buildout of the project. Conditions of approval for the project will require that the project’s fair share contribution to the intersection improvements (as described in the DEIR, and in the Response to Comment G-10, below) be provided prior to issuance of the building permit for full development (buildout) of the proposed project analyzed in the DEIR.

G-10 The text for Mitigation Measure B.2a in Table II-1 (Chapter II, Summary) is incorrect (i.e., does not match the true mitigation language on DEIR p. IV.B-35 in the body of the DEIR. The following full text description of Mitigation Measure B.2a replaces the text in Table II-1, p. II-8:

“B.2a: The project applicant shall pay its fair share contribution to the cost of improvements proposed by the City of Alameda at the signalized intersection of Atlantic Avenue and Webster Street. Intersection reconfiguration would consist of adding and restriping lanes to provide the following lanes per approach:

- Webster Street (from Oakland) – 1 Left-turn lane, 2 Through lanes, and 1 Right-turn lane (non-channelized right turn)
- Webster Street (to Oakland) – 2 Left-turn lanes, 1 Through lane, and 1 Through/Right-turn lane
- Atlantic Avenue (towards Alameda Point) – 1 Left-turn lane, 1 Through lane, and 1 Through/Right-turn lane
- Atlantic Avenue (away from Alameda Point) – 2 Left-turn lanes, 2 Through lanes, and 1 Right-turn lane

“This mitigation measure was identified by the City of Alameda as the required improvement to accommodate redevelopment of the former Naval Air Station. The project would contribute to the implementation of this mitigation measure through payment of a fair share cost of the improvement (to be determined). During the AM and PM peak hours, the project’s contribution to the estimated

growth in traffic between the existing and cumulative traffic volumes (including project traffic). would be 5 and 6 percent, respectively. The project applicant would pay this fair share amount to the City of Alameda, which would then be responsible for the implementation of this improvement.”

In addition, the text for Mitigation Measure B.3a in Table II-1 (Chapter II, Summary) is incorrect (i.e., does not match the true mitigation language on DEIR p. IV.B-47 in the body of the DEIR. The following full text description of Mitigation Measure B.3a replaces the text in Table II-1, p. II-9:

“B.3a: Implement Mitigation Measure B.2a (contribute fair-share contribution to intersection improvements proposed by the City of Alameda).”

- G-11 LOS output sheets for all study intersections under all analysis scenarios are provided in the appendix to the technical resource document (*Oak to Ninth Project Final Traffic Study*, August 26, 2005) on-file at the City of Oakland office. Under separate cover, the City of Oakland will transmit to the City of Alameda a plot of the distribution of project trips to and from the City of Alameda, based on the Alameda County CMA model.



ALAMEDA COUNTY
CONGESTION MANAGEMENT AGENCY

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Vice Chairperson

City of Alameda

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Beverly Johnson

City of Albany

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Alan Maris

BART

Director

Thomas Blalock

City of Berkeley

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Jeff Weller

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Jonfor Hosterman

City of San Leandro

Mayor

Shella Young

City of Union City

Mayor

Mark Green

Executive Director

October 24, 2005

Ms. Margaret Stanzione

City of Oakland Community and Economic Development Agency

Planning Division

250 Frank H. Ogawa Plaza, Suite 3330

Oakland, CA 94612

SUBJECT: Comments on the Draft Environmental Impact Report (DEIR) for the Oak to 9th Mixed Use Development Project

Dear Ms. Stanzione:

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Oak to 9th Mixed Use Development Project in the City of Oakland. The project site, approximately 62 acres of waterfront property, is bounded by Embarcadero Road, the Oakland Estuary, Fallen Street, and 10th Avenue. The proposed project includes up to 3,100 residential units, 200,000 square feet of ground-floor commercial space, 3,500 structured parking spaces, approximately 27 acres of public open space, two renovated marinas, and a wetlands restoration area. The project is proposed to be constructed in phases over approximately eleven years. The site is currently occupied by combination of commercial, warehouse and light industrial services. The existing buildings on the site will be demolished with the exception of a portion of the Ninth Avenue Terminal shed building, Estuary Park and the Jack London Aquatic Center. The General Plan land use designation is the Estuary Policy Plan's Planned Waterfront District. The construction of the proposed project will require consideration of amendments to the City of Oakland Estuary Policy Plan, a rezoning of the property, approval of a subdivision map, design review approval, a development agreement, and possibly other approvals/actions from the City and other appropriate agencies.

The ACCMA respectfully submits the following comments. Where possible, DEIR page numbers are referenced:

- Mitigation Measures- General: Signal Optimization is proposed as the major mitigation measure for almost all of the impacted intersections. Supporting documentation related to traffic analysis showing how the proposed signal optimization improves the performance of the intersections should be included in the final EIR.

Ms. Margaret Stanzione
 October 24, 2005
 Page 2

- **Mitigation Measures:** For each proposed mitigation measure, the report states that since the suggested improvements would be outside the City of Oakland's jurisdiction and would require Caltrans or City of Alameda approvals, the improvements may not be feasible and hence the impact would remain significant and unavoidable. In this regard, given the overall size and of the project and its impact on the local and regional roadway network, it is requested that the City collaborate with Caltrans and City of Alameda identifying appropriate mitigation measures and a plan for implementation. H-2
- **Traffic Impact on CMP Roadways:** Since the intersection analysis shows significant impact on Atlantic and Webster Street intersection in Alameda in both mid term and long term scenarios, traffic impact analysis on the CMP roadways of Webster Street between Atlantic and tubes, Constitution Way between Atlantic and Posey Tube, Posey Tube and Webster Tube in Alameda should be included in the final EIR document. H-3
- **Page IV B.21:** The report states that no formal Travel Demand Management (TDM) program has been adopted for this project. Given the large-scale nature of the project and type of residential units proposed (condos, townhomes and lofts), this project could be a good candidate for development and implementation of a TDM program. Further, item B.9 of Table II-1 states that this project would contribute to the traffic condition on regional and local roadways by 2025, which would be significant and unavoidable, as there is no direct mitigation measure feasible. In this context, an effective TDM program with better connectivity to BART and other transit facilities would help reduce new trips generated from the project and in turn reduce the impact on the regional and local roadways. We encourage you to develop a TDM program and identify funding and other operational arrangements. H-4
- **Page IV.B.53 – Transit Impacts –** The DEIR states that as a result of the current negotiations with AC Transit, if AC Transit were to extend service to this site, transit facilities such as bus stops/turn outs would have to be provided. Details on what will be provided and where it will be done on the site along with funding arrangements for providing those facilities should be included in the report. H-5
- **Given the limited parking available at Lake Merritt BART station,** better connection from the site to the BART station through AC Transit, shuttle service, bike etc. should be considered. H-6
- **There is a shuttle service proposed in the report.** The timeline as to when it will begin to operate and in the long run who will be responsible for the operations and maintenance of the shuttle should be included in the report. H-7

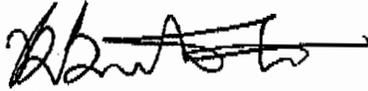
Ms. Margaret Stanzione
October 24, 2005
Page 3

- SR 260 (Posey Tube) Deficiency Plan prepared by the City of Oakland and approved by the CMA Board in 2001 should be referenced along with other studies and resulting planned and programmed transportation improvements.

H-8

Thank you for the opportunity to comment on the Draft Environmental Impact Report. Please do not hesitate to contact me at 510/836-2560 ext. 24 if you require additional information.

Sincerely,



Saravana Suthanthira
Associate Transportation Planner

cc: file: CMP - Environmental Review Opinions - Responses - 2005

Letter H – Alameda County Congestion Management Agency

- H-1 See Master Response E regarding optimization of signal timing, and its appropriate use as a mitigation measure.
- H-2 See Master Response C for a description of significant and unavoidable traffic impacts.
- H-3 The CMP analysis relied on the roadway segments defined in the *2004 CMP LOS Monitoring Report*, which did not include Webster Street, Constitution Way, the Posey Tube, or the Webster Tube. However, an analysis was prepared of these additional roadways, using the V/C ratio analysis methodology required by the ACCMA, and it was determined that the additional traffic from the project would not result in a significant impact along these roadway segments.
- H-4 See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures.
- H-5 See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures.
- H-6 See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures.
- H-7 See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures.
- H-8 See Response to Comment G-7 regarding the SR 260 Deficiency Plan.

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



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Contact FAX: 916-574-1955

October 24, 2005

File Ref: G01-04

Nadell Gayou
The Resources Agency
901 P Street
Sacramento, CA 95814

Margaret Stanzione
Community & Economic Development Agency
City of Oakland
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612

RE: Comments on Draft Environmental Impact Report, Oak to Ninth Avenue
Project - SCH #2004062013

Dear Ms Gayou and Ms. Stanzione:

The staff of the State Lands Commission (SLC) has reviewed the Draft Environmental Impact Report (DEIR) [SCH #2004062013] for the Oak to Ninth Avenue Project (Project) and submits the following comments for your consideration.

Background

When California became a state on September 9, 1850, the State acquired nearly 4 million acres of land underlying the State's navigable and tidal waterways. Known as "sovereign lands," these lands include tide and submerged lands adjacent to the entire coast, the offshore islands, and the inland bays and estuaries of the State from the ordinary high water mark to three nautical miles offshore. The SLC has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable rivers, sloughs, lakes etc. The SLC has certain residual and review authority for sovereign lands legislatively granted in trust to local jurisdictions (Public Resources Code § 6301 and § 6306). As mentioned below, in the case of the Oak to Ninth Avenue project, the SLC has statutory authority in Chapter 542, Statutes of 2004 to consider and to approve any proposed land exchange related to this Project.

Ms. Gayou and Ms. Stanzione

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October 24, 2005

All sovereign lands, granted or ungranted, as well as navigable rivers, sloughs, etc., are impressed with the common law public trust. Restrictions on the use of tide and submerged lands apply in order for the State to maintain the lands for commerce, navigation, fisheries, water-oriented recreation, and preservation in their natural condition, or for other recognized public trust uses.

The California Legislature has granted, in trust to the city of Oakland, the State's interest in filled and unfilled sovereign lands involving portions of the project area pursuant to Chapter 654, Statutes of 1911 (as amended; minerals not reserved) and Chapter 15, Statutes of 1960 (as amended; minerals reserved). Any proposed uses involving granted tidelands must be consistent with the public trust generally and with the applicable granting statute(s). Acceptable trust uses include, but are not limited to, uses that promote water-oriented or water dependent recreation and commerce, navigation, fisheries, public access, and the preservation of the land in its natural condition.

I-1
(CONT.)

Specific Comments

At pages III-28 and IV.A-33, the DEIR provides a cursory discussion of the land exchange and sale related to this development. As mentioned above, the legislation authorizing an exchange and sale is found at Chapter 542, Statutes of 2004 (the "Exchange Act"). The Exchange Act authorizes the State Lands Commission and the Port of Oakland to enter into an exchange provided that all required findings are made as set forth in sections 4 and 7 of the Act. Key to this is the acquisition of a parcel to effectuate an exchange according to a list of areas by priority. The four priority areas are: (1) a parcel within the estuary plan area; (2) a parcel contiguous to the estuary plan area; (3) a parcel within or adjacent to the Middle Harbor; and (4) a parcel within or adjacent to the Outer Harbor.

I-2

The Exchange Act also recognizes the importance of keeping land along the shoreline of the Oak to 9th site within public trust ownership, to be held by the city of Oakland and used for purposes set forth in the Act. The land to be publicly-owned is depicted in a diagram in section 12 of the Exchange Act, and constitutes the minimum of lands to be retained in the public trust. The SLC, when it considers an exchange following any city of Oakland approvals, may determine to increase the dimensions of these retained shoreline lands. As provided in the Exchange Act at section 4 (j)(1), any decision to increase the geographic configuration of these final public trust lands shall take into account the determinations of the Port and City when those entities considered similar issues in connection with entitlements for the Project.

Given the significance of the configuration and depth of public areas along the shoreline of the Project, we recommend that the DEIR be amended to include a more expansive discussion of public needs for certain uses along the shoreline and within parks. As set forth in the Exchange Act, these uses are for walkways, parks, marinas and boat launching, habitat areas, and visitor-serving commercial facilities. A more

I-3

Ms. Gayou and Ms. Stanzone

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October 24, 2005

complete discussion will better inform the Port, Council, and Planning Commission as they consider the need for and character of public improvements.

We also note that the DEIR states that the standard being used for the size of public parks within the Oak to 9th property is for a "local-serving" park within the city of Oakland. This standard in the General Plan is stated to be 4 acres per 1,000 residents. (Page IV.L-7) Properly developed, the open spaces and facilities serving visitors at Oak to 9th should be regional amenities. Over time, and with the completion of the network of pathways and parks contemplated in the Estuary Policy Plan, this will be an amenity of statewide significance. For these reasons, we ask that standards above the local-serving park levels in the General Plan be adopted.

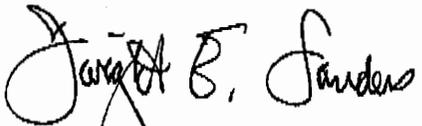
I-4

At pages IV.L-1 through 4, the DEIR outlines the current level of police and fire service within the City of Oakland. This discussion notes that the Port of Oakland currently has security officers who monitor the Oak to 9th property, but that this Port activity would stop with developer acquisition of land in this area. We want to note that this should not lead to expense to the Port of Oakland or a demand upon public trust monies from Port operations to pay for municipal police and fire services. The expenditure of public trust monies for general municipal functions such as police and fire is restricted. (See Mallon v. City of Long Beach (1955) 44 C.2d 199.)

I-5

If you have any questions or concerns, please do not hesitate to contact Ms. Grace Kato at katog@slc.ca.gov, at the above address, or by telephone at (916) 574-1227. Thank you.

Sincerely,



Dwight E. Sanders, Chief
Division of Environmental Planning
and Management

Letter I – State Lands Commission

- I-1 By Charter of the City of Oakland, the Port is the Department of the City with exclusive management and control over tidelands granted to or acquired by the City. The Board of Port Commissioners, in whom the Charter vests control of the Port Department, has the complete and exclusive power, and the duty, on behalf of the City, to manage the Port of Oakland, including all the waterfront properties and lands adjacent thereto granted to Oakland in trust by the State for promotion and accommodation of commerce and navigation.² Properties controlled by the Port include the project site.
- I-2 The comment discusses the location of an “exchange parcel” and the State Lands Commission’s (SLC) ultimate approval of the configuration of the “final trust lands,” which largely relates to a separate property transaction between the Port and the SLC. The comment does not discuss any potential environmental impacts of the project.
- I-3 The comment concerns the depth and scope of the discussion in the DEIR about public needs and desired uses along the shoreline. While such a discussion may further inform decision makers, it does not concern the environmental consequences of the project. Notably the comment does not fault the existing discussion in the DEIR nor disclose any concrete omission in the DEIR.
- I-4 The comment suggests “standards above the local serving park levels in the General Plan be established.” The comment is directed to a statement in the DEIR about the standard for park or open space acreage required by the City General Plan (OSCAR Element) for approval of a development containing a particular density of residents. The basis for this comment is the State Lands Commission’s assumption that the project parks would be regional parks not local parks, and thus will serve a larger populace.

The comment fails to note any inadequacy in the environmental document itself nor the analysis provided within the project environmental impact analysis. Nonetheless, the comment is noted. The DEIR recognizes on p. IV.L-6 that “the series of connected parks and open space proposed by the project would be region-serving as well as local-serving, given its proximity to nearby residential and mixed use neighborhoods near downtown and Lake Merritt.” Clearly, the new facilities would also meet OSCAR’s definition of region-serving parks: 25 acres or larger, citywide service area, transit-served; diverse features and functional areas

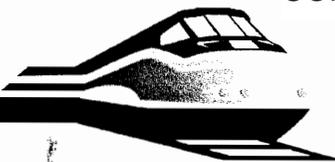
The comment asks that the City consider adopting park standards above the local-serving park level in the General Plan (since no region-serving standard currently exists). The City could entertain such an amendment to the General Plan park standards, however, this is not currently being considered in combination with the proposed project.

² Charter § 706(3). Some lands granted to the City of Oakland by the Legislature are not part of the Port of Oakland and are under the complete control of the City Council.

I-5 The comment specifically states the Port should not pay for police and fire protection for the project. Nowhere within the analysis in the DEIR is it stated or suggested that the Port would pay for these services, nor is this payment suggested by the comment. Rather the comment raises an issue relating to type of property owned by the Port and the character of and protections for the revenue generated by that property. While the Port agrees with the statements made by the State Lands Commission they have no bearing on the adequacy of the environmental analysis of the project.

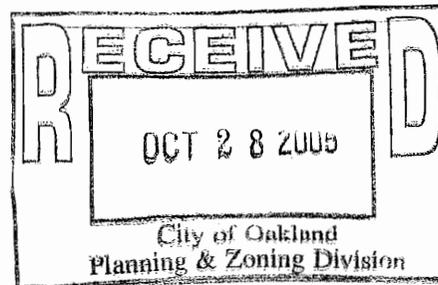
It is anticipated that the City of Oakland Police Department and Fire Department would provide services to the project site, including all private development and public areas (parks), and private police/security services would be provided to augment those services as necessary or desired by the project sponsor or project tenants. Impact L.1 (Police Service) and Impact L.2 (Fire and Emergency Service) are discussed on DEIR pp. IV.L-9 through IV.L-13 and would be less-than-significant impacts. The comment accurately states that existing Port of Oakland security monitoring of the project site would not continue after the project sponsor acquires the project site from the Port (DEIR p. IV.L-2).

CAPITOL CORRIDOR



October 24, 2005

Margaret Stanzione
 City of Oakland
 Community and Economic Development Agency - Planning
 250 Frank Ogawa Plaza, 4th Floor
 Oakland, CA 94612



Dear Ms. Stanzione:

On behalf of the Capitol Corridor Joint Powers Authority (CCJPA), I am submitting comments on the Draft Environmental Impact Report (EIR) for the Oak to Ninth Avenue Project (State Clearinghouse No. 2004082013).

- Page IV.B-11: Under "Rail Service (BART and Amtrak)", the description of the Capitol Corridor service is not correct. The service area for the trains is Auburn-Sacramento-Oakland-San Jose. Currently 24 weekday Capitol Corridor trains operate between Sacramento and Oakland Jack London Station (18 trains on weekends) with 8 of these weekday trains continuing from Oakland Jack London Square Station to/from San Jose (12 trains on weekends) along the Union Pacific Railroad (UPRR) tracks in the project area. J-1
- Page IV.B-53: The "Transit Impacts" section needs to consider the Capitol Corridor train service, as a means to mitigate traffic and as an existing public transport service that will be impacted by the development of the project. As mentioned above, 8 weekday Capitol Corridor trains (and 12 weekend trains) operate along the tracks adjacent to the project site. Also along the tracks within the project area, on weekends selected San Joaquin trains operate to the City of Oakland's new Oakland Coliseum Intercity Train Station plus Amtrak operates 2 long distance trains between Seattle and Los Angeles and UPRR is increasing its freight trains along this route due to growth at the Port of Oakland. J-2

By this time next year, service levels will increase to at least 14 daily trains between the hours of 6 a.m. and 10 p.m. According to the CCJPA's service expansion plan, over the next five to seven years, this service level will be further increased to 32 daily trains within the same operating window, which equates to a train every 30 minutes. This is a significant number of trains that will be operating on tracks near the project site. This Capitol Corridor Rail Program was initiated by the State following the enactment of Propositions 108 and 116 in 1990 and the Board of Directors of the CCJPA adopted this service expansion plan in April 2002 and reaffirmed the plan in April 2005. J-3

The Capitol Corridor service is now the 3rd busiest route in Amtrak's national system, carrying over 1.25 million riders a year with projections of up to 2.5 million under the CCJPA Board-adopted service expansion plan. The CCJPA is concerned that the draft EIR has not accounted for the current Capitol Corridor trains as well as the CCJPA's future plans for the service. As a regional passenger rail service linking the Sacramento and Bay Area metropolitan areas, the Capitol Corridor can provide benefits to those people living and working in the future project site; yet, the project plans must ensure that the existing service and future plans are incorporated into the EIR. J-4

CAPITOL CORRIDOR JOINT POWERS AUTHORITY
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- Page IV.B-55: In the "Pedestrian Safety Impacts" section, the draft EIR is silent on the impacts to pedestrian safety with respect to having this project development so close to active railroad tracks. Safety to our passengers and community is the CCJPA's top priority. The draft EIR needs to adequately recognize the interface between the project plans and the passenger (and freight) trains operating on the tracks adjacent to the project site and determine measures that will mitigate the impacts to pedestrians accessing the project site. | J-5

- Page IV.B-60: The draft EIR does not provide a concise description in the "Railroad Operations" section. The level of passenger train service in the project area has not been correctly identified in the draft EIR. While the CCJPA cannot speak on behalf of our host railroad, Union Pacific Railroad (UPRR), on more than one occasion the UPRR has indicated their plans to increase rail freight traffic along the tracks in the vicinity. Delays to vehicles waiting at the 5th Avenue railroad crossing will only increase with the expanded levels of freight and passenger rail service along the tracks. | J-6

In addition, the CCJPA has been involved in meeting with UPRR and Caltrans highway construction staff regarding the seismic construction project for I-880 and the 5th Avenue ramp system. This Caltrans project is an extensive which involves the reconfiguration (and associated disruptions) to one of the project's access road (5th Avenue) as well as the railroad tracks. | J-7

- Page IV.B-69: The CCJPA is concerned about the level of construction truck trips that will be generated by the project. The draft EIR identifies a peak of 300 truck trips per day in 2011 generated by the project. Any of these trucks using 5th Avenue and/or Oak Street will be impacted and delayed by passenger and freight trains at the associated railroad/street crossings. The draft EIR needs to provide a concise plan on how these trucks will access the site and needs to consider the expanded level of passenger train service along the tracks in the project area. | J-8

The draft EIR lacks a comprehensive understanding of the current and planned operation of Capitol Corridor passenger trains on railroad tracks adjacent to the project site. That being said, as the managing agency for the Capitol Corridor, the CCJPA is available to work with the City of Oakland to ensure that the development of this project is closely coordinated with the several railroad services and projects in the vicinity. | J-9

Thank you for the opportunity to provide comments on the draft EIR for the project and we look forward to working with the City.

Sincerely,


Eugene K. Skoropowski
Managing Director

cc: CCJPA Board of Directors
Jerry Wilmoth, Union Pacific Railroad
Bill Bronte, Caltrans Division of Rail
Stan Hall, Amtrak (Oakland Offices)

Letter J – Capitol Corridor

- J-1 On p. IV.B-11 of the DEIR, the second paragraph under *Rail Service (BART and Amtrak)* is revised to read as follows (additions shown as underlined; deletions as ~~strikeout~~):

“Amtrak provides passenger rail service at the Jack London Square station. This station is about 0.75 mile west of the project site. Several lines use this station, including the Capital Corridor (~~to Reno, Nevada, via~~ servicing Auburn-Sacramento-Oakland-San Jose), the San Joaquin (to Bakersfield via Fresno), and the Coast Starlight (between Seattle and Los Angeles). Currently 24 weekday Capitol Corridor trains operate between Sacramento and Oakland Jack London Square (18 trains on weekends), with 8 of these weekday trains continuing from Oakland Jack London Square Station to/from San Jose (12 trains on the weekends).”

- J-2 The DEIR evaluated the impact of the project on the predominant transit modes in the City of Oakland, which include BART and AC Transit. According to the 2000 Census, over 95 percent of all transit users traveling to and from work rode either BART or AC Transit. Rail service, including the Capital Corridor, represented two percent of the all transit work trips and less than one percent of all work trips.

The DEIR focused solely on transit capacity and determined whether the project would add ridership to transit systems above their current or projected capacity. Additional analysis, using mode choice data from the US Census, indicates that about 15 to 20 directional peak-hour trips from the project might use the Capitol Corridor. Under current train operations, the project could add 3 or 4 people to each peak-hour train. As the number of trains increase, the number of people added to each train could decrease.

The effect of trains limiting access to/from the project site (e.g., emergency vehicles) was addressed in the Public Services section of the DEIR (i.e., on DEIR p. IV.L-10).

- J-3 The following text is added after the second full paragraph on page IV.B-18, above Bicycle/Pedestrian Improvements

“The Capitol Corridor Joint Powers Authority (CCJPA), which operates the Capitol Corridor service along the Union Pacific Railroad (UPRR), currently operates 8 trains along the rail line adjacent to the project site. According to the CCJPA, by 2006, this number of trains is anticipated to increase to 14 trains per day, and is expected to increase further, to 32 trains per day, within the next 5 to 7 years; with these service expansions, the yearly ridership is anticipated to increase from 1.25 million riders to 2.5 million riders.”

- J-4 See Responses to Comments J-1 and J-3, above.

- J-5 See Master Response F regarding pedestrian activity at nearby rail crossings.

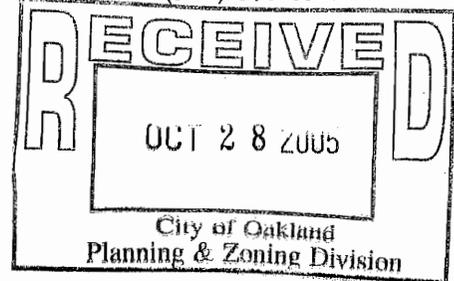
- J-6 See Responses to Comments J-1 and J-3, above. In addition, the possibility of an increase in freight rail traffic is acknowledged on DEIR p. IV.B-60.
- J-7 See Responses to Comment D-14, regarding coordination with Caltrans about the I-880 Seismic Retrofit project.
- J-8 The DEIR (pp. IV.B-65 to IV.B-70) contains an extensive discussion of possible construction traffic impacts and requires that the project applicant prepare a construction traffic management plan (CTMP), which would be reviewed by the City of Oakland. One element of the CTMP is the identification of access routes to and from the project site for construction traffic, including trucks.
- J-9 See Responses to Comments J-1 through J-6, above.

ALAMEDA COUNTY PARKS, RECREATION AND HISTORICAL COMMISSION

224 W. Winton Avenue, Room 111, Hayward, CA 94544 (510) 670-5400 FAX (510) 670-6529

October 24, 2005

Margaret Stanzione, Project Planner
City of Oakland
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612



Re: Comments to the Draft Environmental Impact Report for the project known as the Oak to Ninth Avenue Project, State Clearinghouse No. 2004062013

Dear Ms. Stanzione,

Thank you for the opportunity to respond to the Draft Environmental Impact Report (DEIR) for the project known as the Oak to Ninth Avenue Project located along the Oakland Estuary and the Embarcadero, east of Jack London Square and south of Interstate 880. At our October 6, 2005 meeting, the Alameda County Parks, Recreation and Historical Commission reviewed and discussed the project and proposed mitigation measures identified in the Draft EIR and have the following comments.

The DEIR identifies significant potential project impacts and areas of controversy, including: consistency with the Estuary Policy Plan and the Public Trust, appropriateness of scale and density of development, wetland habitat impacts, physical access to the development and connections to surrounding areas, visual access to recreational and open space, effected views to the estuary, preservation of a large municipally owned historic building (the Ninth Avenue Terminal), as well as increased demand upon public services, transit and traffic, and neighborhood air quality. As such, we strongly believe that the EIR process is not the appropriate mechanism to fully address this type or scale of project and that the City of Oakland not certify this DEIR or approve any alternative to this project. Instead, we advocate that the City of Oakland prepare a Specific Plan that will focus on the systematic implementation of the general plan for this redevelopment area. Under Section 65450 of the California Government Code, a Specific Plan and accompanying EIR must fully address major components of land use and identify programs that will adhere to the Plan's specific regulations and policies.

K-1

With regard to the historic Ninth Avenue Terminal, we concur with the Report's findings that the 1930 structure exhibits a Beaux Arts derived architecture style as applied to an otherwise utilitarian industrial municipal building. It is a rare and intact prewar structure utilized for break-bulk cargo and as stated in the report, is also an example of the early 20th century era City Beautiful Movement - which promoted the concept of embellishing utilitarian structures to convey an enhanced appearance of the urban fabric. The terminal is a key early Port of Oakland facility, constructed during the Port's major expansion period of the 1920's and 30's and it was paid for with voter approved bond funds. As such it is significant to the maritime history of Alameda County, the city of Oakland, and the Bay Area. The terminal is also an early example of an inter-modal complex, where water, rail and land transportation capability can be found in one facility. Historically the existence of this tri-part proximity has been one of Alameda County's most significant advantages with respect to its prominence in California as a center for commerce and trade. Therefore, the continued use of the terminal creates a tangible link to this important heritage.

K-2

ALAMEDA COUNTY PARKS, RECREATION AND HISTORICAL COMMISSION

Comments to the Draft Environmental Impact Report for the project known as the Oak to Ninth Avenue Project, State Clearinghouse No. 2004062013

Page 2

We are aware that the City of Oakland's Landmarks Preservation Advisory Board reviewed and unanimously adopted a resolution recommending landmark designation of this unique waterfront landmark, in March of 2004. We agree that further study is needed to see how the terminal's preservation and adaptive reuse within the boundaries of the Oak to Ninth project would foster the public link with the city and county's distinctive waterfront, past and future.

K-3

Our Commission is the public body responsible for historic oversight throughout Alameda County. Our Commission members are appointed by the County Supervisors and are selected for expertise in preservation-related issues in their respective communities. As such, we would like to respectfully request that the PRHC receive all future communications and notifications of future meetings regarding the Oak to Ninth Avenue Project. We were disappointed not to have learned about this earlier in the process.

K-4

Please feel free to call our staff, Lisa Asche at (510) 670-6515 if you have questions or would like to contact the Commission.

Sincerely,



Abe Friedman, Chair
Alameda County Parks, Recreation and Historical Commission

Letter K – Alameda County Parks, Recreation and Historical Commission

- K-1 See Master Response A.
- K-2 The comment discusses the historical and architectural significance of the Ninth Avenue Terminal building that is consistent with the discussion and conclusions in the DEIR. The comment also points out the contribution of the Terminal's continued use. Comment is noted.
- K-3 The comment states that further study is needed regarding preservation and reuse of the Terminal. The range of alternatives presented and discussed in Chapter V of the DEIR includes alternatives that retain all or part of the Ninth Avenue Terminal: Alternative 3 (Enhanced Open Space/Partial Ninth Avenue Terminal Preservation and Adaptive Reuse) and a Sub-Alternative (Full Ninth Avenue Terminal Preservation and Adaptive Reuse). The information provided in the DEIR, which as discussed in Master Response B includes a number of reuse scenarios outlined by the community, complies with CEQA mandates for examining alternative preservation alternatives of the historic resource. The City decisionmakers will consider this information before acting on the project.
- K-4 The Alameda County Parks, Recreation and Historical Commission, the commenting agency, requests to be added to the City's project mailing list for all project notices. The City has added several County staff to the project mailing list for the project. Comment is noted.



State of California – The Resources Agency

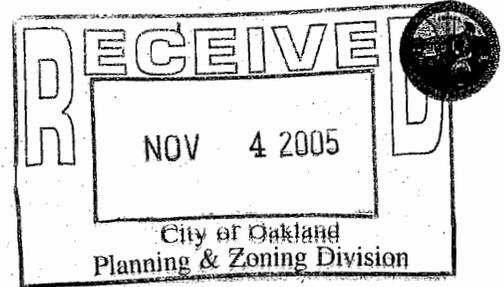
ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF FISH AND GAME

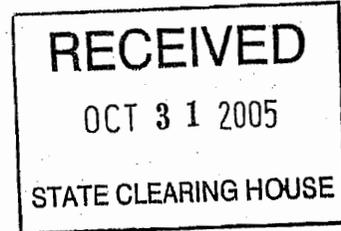
<http://www.dfg.ca.gov>

POST OFFICE BOX 47
 YOUNTVILLE, CALIFORNIA 94599
 (707) 944-5500

October 28, 2005



Ms. Margaret Stanzione
 City of Oakland
 250 Frank H. Ogawa Plaza, Suite 300
 Oakland, CA 94612



clear
 10.24.05
 late

Dear Ms. Stanzione:

Oakland Harbor Partners
 Oak to 9th Street Mixed Use Development Project
 SCH #2004062013

The Department of Fish and Game (DFG) has reviewed the document for the subject project. We do not have specific comments regarding the proposed project and its effects on biological resources. Please be advised this project may result in changes to fish and wildlife resources as described in the California Code of Regulations, Title 14, Section 753.5(d)(1)(A)-(G)¹. Therefore, a de minimis determination is not appropriate, and an environmental filing fee as required under Fish and Game Code Section 711.4(d) should be paid to the Alameda County Clerk on or before filing of the Notice of Determination for this project.

L-1

If you have any questions, please contact Mr. John Krause, Associate Wildlife Biologist, at (415) 454-8050; or Mr. Scott Wilson, Habitat Conservation Supervisor, at (707) 944-5584.

Sincerely,

Robert W. Flerke
 Robert W. Flerke
 Regional Manager
 Central Coast Region

cc: ✓ State Clearinghouse

¹ <http://ccr.oal.ca.gov/>. Find California Code of Regulations, Title 14 Natural Resources, Division 1, Section 753

Letter L – California Department of Fish and Game

- L-1 Comment is noted. The project sponsor shall remit all appropriate required environmental filing fees as required for the project.

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



December 22, 2005

Margaret Stanzione
City of Oakland Community & Economic Development Department
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Raul Godinez II
Director of Public Works
City of Oakland Public Works Agency
250 Frank H. Ogawa Plaza, Suite 4314
Oakland, CA 94612

SUBJECT: Railroad Safety Issues related to the Oak to Ninth Project

Dear Ms. Stanzione and Mr. Godinez:

As the State Agency with regulatory oversight of rail safety within California, we have major concerns related to the proposed Oak to Ninth Mixed Use Development. Staff of the Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section (RCES) recently reviewed the draft Environmental Impact Report (EIR) for the proposed project, identified by the State Clearinghouse as SCH#2004062013. Please note that our concerns regarding safety around the railroad tracks were communicated in letters dated September 20, 2005 and October 18, 2005 (see attached). We are aware that the 30-day comment period has expired, however, we believe that to ensure the safety of the motoring public it is necessary for the City to consider the issues below.

Of primary concern to us are the safety hazards inherent in at-grade highway-rail crossings (crossings) in the vicinity of this project. The EIR mentions the proximity of the Union Pacific Railroad's (UPRR) track to the Oak to Ninth project, but only as it relates to traffic congestion, delay of emergency response vehicles, and air quality. The EIR fails to recognize that at-grade highway-rail crossings present safety hazards due to the potential for collisions of trains with motorists, bicyclists, and pedestrians. These hazards can be significantly increased by development near the tracks, particularly development that leads to roadway congestion near the crossings or which brings bicyclists and pedestrians into the area around the tracks. **The issue of safety around the tracks must be addressed as part of this development.**

Current train traffic along the UPRR mainline in this area is approximately 30 trains per day, with Amtrak trains traveling up to 60 MPH. A list of the particular crossings that will be directly affected by this project is included in Appendix A. We recommend that the City hold a diagnostic review of the safety of these crossings with UPRR, CPUC staff, and other interested parties.

M-1

We also recommend that the City work with our staff and UPRR to conduct a diagnostic review of the rail corridor and establish a long-range plan for rail safety as Oakland continues to develop between the railroad tracks and the waterfront.

The EIR indicates that there will be a significant increase in traffic volumes and congestion at intersections in the vicinity of the highway-rail crossings. The proposed mitigation measures are to widen roadways, signalize intersections, and optimize timing between the signals. Our concern is that even with these mitigations, significant queuing from the intersections is still expected and this is very likely to lead to motorists stopping on the tracks. It is in the clear interest of safety to avoid such a situation, and where it cannot be avoided, to mitigate the possibility for train-vehicle collisions through improvements directly related to safety at the railroad crossing.

Our previous comments stated: "Safety factors to consider include, but are not limited to, the planning for grade separations for major thoroughfares, improvements to existing at-grade highway-rail crossings due to increase in traffic volumes and appropriate fencing to limit the access of trespassers onto the railroad right-of-way."

The following topics should be considered in an analysis of railroad crossing safety in the area. Discussion and recommendations related to these topics are included below.

1. Close existing at-grade crossings
2. Grade separate existing at-grade crossings
3. Improve safety of existing at-grade crossings
4. Construct fencing along the railroad right-of-way
5. Improve pedestrian and bicyclist safety at crossings
6. Fully consider the noise impacts
7. Follow-up appropriately on abandoned crossings

1. Closure

The most economical and sometimes easiest method of eliminating safety concerns at crossings is to remove either the roadway or track at unnecessary crossings. The City and Caltrans should consider the elimination of at-grade crossings where possible, particularly at 5th Street, the I-880 off-ramp at 6th Street at Embarcadero, and the I-880 on-ramp at 10th Street at Embarcadero. The City should talk with Caltrans and UPRR regarding the feasibility of removing the spur track running adjacent to Embarcadero, and the number of other tracks connected to it.

2. Grade Separations

The proposed major thoroughfares of Oak Avenue and 5th Avenue should be considered for grade separation. Separation of grade typically requires the construction of a roadway overpass or underpass to physically separate traffic on the roadway from trains on the tracks. Grade separations eliminate the potential for collision between trains and motorists at a crossing.

The current geometric design of Oak Avenue is conducive to the construction of a grade separation structure. This primary route to the proposed development should be considered for grade separation.

At the 5th Street crossing, the EIR notes that Caltrans is planning the reconstruction and widening of the Interstate 880 elevated structure. Such reconstruction, which may include relocation of the

M-1
(CONT.)

M-2

M-3

overhead roadway supports, could allow the opportunity for 5th Avenue to also be reconstructed at a separated grade beneath the tracks.

We strongly recommend that the City establish a transportation impact fee program that is specifically allocated to highway-rail crossing safety improvements, and that the program include this project. Such an impact fee might be best used to assist in funding the construction of grade-separated crossings, including Oak Avenue and 5th Avenue.

The following document provides a basis for analyzing the need for grade separation of highway-rail crossings: *Guidance on Traffic Control Devices at Highway-Rail Grade Crossings*, Federal Highway Administration / US DOT Highway-Rail Grade Crossing Technical Working Group, November 2002. Page 27 and 33 of the PDF discuss particular criteria that should be considered when assessing the need for grade separation.

M-3
(CONT.)

It may be possible that the developer, City, and State could together fund the cost of a grade separation project. The CPUC administers the Grade Separation Program (Section 190) which may provide up to \$20 million in funding for projects that will grade separate existing at-grade crossings. The funds are allocated based on a statewide list of crossings that is prioritized by taking into account a number of factors related to crossing safety, including Average Daily Traffic (ADT), average daily train count, accident history, and various other factors. Please contact our office for further information on the Grade Separation Program.

3. Improvements to Existing At-Grade Highway-Rail Crossings

The Transportation, Circulation, and Parking section of the EIR (Section IV.B) should have included analysis of the safety issues directly associated with the presence of railroad tracks and at-grade highway-rail crossings. Closure and grade separation must be considered, as discussed above. However, where at-grade crossings must remain, the City should ensure that the roadways and crossings are configured as safely as possible.

This project is expected to be a source and destination for significant vehicle traffic, and the Level-of-Service analysis in Table IV.B-8 shows that the Embarcadero & 5th Avenue intersection is expected to be operating at LOS D after widening of Embarcadero, meaning that queues may develop. Any queues along 5th Avenue are likely to build up onto the tracks and therefore will require that the traffic signals and crossing warning devices be well coordinated. Similarly, at other crossings in the area which may remain, such as the I-880 on- and off-ramps along Embarcadero, there may be a need to preempt the traffic signals at adjacent intersections.

M-4

It should be noted that the LOS analysis is predicated on the assumption that Embarcadero can be significantly widened as a mitigation measure. Such widening may not be possible without the elimination of the railroad track running parallel to the roadway.

Any at-grade crossings where vehicular queuing can be expected to build-up from adjacent roadway intersections should have its automatic warning devices interconnected with traffic signals at the intersection. In its most basic form, railroad crossing preemption of intersection traffic signals provides, upon the approach of a train, a green signal to motorists that may be stopped between the intersection and the crossing, or on the crossing itself. This operation allows those vehicles to proceed off of and away from the tracks. It may be necessary to provide "advance warning time,"

meaning that the traffic signal would enter into a special mode of operation prior to activation of the crossing warning devices in order to ensure that there is appropriate time for pedestrian clearance at crosswalks, transfer of right-of-way at the intersection, and queue clearance to clear vehicles from the highway-rail crossing. Providing advance warning time generally requires modification of the train detection circuitry along the track and has a cost that may need to be included in the estimate for traffic signals.

Although we strongly encourage the City to pursue closure or grade separation, in the more immediate future the City should consider the following improvements at the Oak Avenue and 5th Street crossings:

- Unmountable medians on approach to crossings to prevent motorists from circumventing the activated automatic gate arms
- Flashing light signals mounted over the roadway or in the median to provide greater visibility
- Parking prohibition in the vicinity of crossings (signage, red curbs)
- Elimination of driveways and intersections in the vicinity of at-grade crossings
- Installation of traffic signals at intersections within 200 feet of a crossings
- Interconnection of highway-rail crossing warning devices with traffic signals
- Advance preemption of traffic signals
- Pre-signal (traffic signal directed toward the crossing approach to stop vehicles before track)
- DO NOT STOP ON TRACKS signs (MUTCD R8-8)
- Flashing light signals may need an upgrade to 12-inch, LED-type signals
- Refurbishment and/or installation of railroad crossing advance warning signs and markings

M-4
(CONT.)

Due to the expected increases in traffic at all roadways in the area, any crossings that will remain should be upgraded to include, at minimum, automatic gate arms with flashing light signals.

Section III.C of the EIR lists various agencies involved in the approval process for this project. It does not, but should, mention that approval by CPUC staff is required prior to changes in the configuration of at-grade highway-rail crossings.

4. Appropriate Fencing to Limit Access of Trespassers

In recent years, fatalities of railroad trespassers have been the leading cause of railroad-related deaths in the United States. Clearly it is in the interest of public safety that pedestrians be kept off of and away from the railroad right-of-way.

The proposed development will clearly attract many people into the area around the tracks, due to the construction of residences, business, parks, and recreational paths. This additional development will lead to some people attempting to cross the tracks at unauthorized locations, and may lead to people walking or jogging along the tracks.

M-5

In order to mitigate such trespassing problems, fencing between Embarcadero and the tracks should be a requirement **for the full length of the project**. To ensure its effectiveness, the fencing should be difficult to climb and difficult to cut through (vandal resistant). Our staff can provide particular recommendations on types of fencing that have been successful in similar situations.

5. Pedestrian and Bicycle Safety

The Pedestrian Master Plan discussed in Section IV.A of the EIR includes the goal to “Improve pedestrian crossings in areas of high pedestrian activity where safety is an issue.” This area, due to the density of development, is likely to see high pedestrian activity, and therefore safety at the highway-rail grade crossings must be addressed.

For pedestrians and bicyclists, the City should consider improvements to the at-grade crossings including the following:

- automatic-gate arms specific to pedestrian warning along the sidewalks
- improved sidewalk surfacing at the crossing
- tactile warning surfaces on every pedestrian approach the the crossing
- swing gates (pull to enter, push to exit) to encourage pedestrians to pause for a moment prior to stepping onto the tracks
- additional pedestrian oriented railroad crossing warning signage
- pedestrian channelization to ensure that pedestrians follow a path that allows sufficient observation of the warning devices. Effective pedestrian channelization must include barriers and fencing to discourage entry onto the railroad right-of-way.

M-6

The Bicycle Master Plan discussed in Section IV.A states a goal to “Upgrade the existing path along the Lake Merritt Channel from Lake Merritt to the Bay Trail...” Figure III-7 shows the proposed Shoreline Parks Network which includes two paths, one on each side of the Lake Merritt Channel, both which appear to cross the railroad tracks in order to reach Embarcadero. We strongly recommend that any plans for such a path be designed with grade separated crossings at the tracks.

6. Noise Analysis

The City Planning Commission’s report of September 28, 2005 indicates that “New housing and public parks are proposed to be developed in an area where existing noise levels are above what is considered ‘normally acceptable.’” It may be necessary to stress that this is not only related to average noise levels, but also short duration, high volume sounds occurring day and night, due in part to proximity of at-grade highway-rail crossings.

M-7

Train horns are required to be sounded as trains approach at-grade crossings, and may be sounded at any time to warn somebody who is on the tracks at a crossing or along the right-of-way. The train horn is utilized by locomotive engineers to give warning of the approaching train, and is an important part of providing for safety at railroad crossings. The Federal Railroad Administration (FRA) established rules on the use of locomotive horns at highway-rail grade crossings effective June 24, 2005. Further information can be found on the FRA website (www.fra.dot.gov).

The measured noise levels provided in the noise impact analysis indicate that near the at-grade crossing of 5th Street there are consistently high peak sound levels at all hours of the day and night. It can be assumed that a number of these peak sound readings are directly related to the presence of a railroad crossing at this location, due to the bells on the warning devices and horns on the trains. A written disclosure should be made to potential residents to make them fully aware of this.

7. Abandonment

It is expected that a number of rail crossings will be abandoned as part of the redevelopment of this currently industrial area. The City should ensure that the abandoned track is removed from at least

M-8

City of Oakland re Oak to Ninth
December 22, 2005
Page 6

the sidewalk and roadway to eliminate the potential safety hazards to motorists, bicyclists, and pedestrians. Abandoned crossings can cause a multitude of concerns if left in place due to the potential for broken and rusty rail, and generally rough surfacing. Abandoned crossings left in place may also encourage a general complacency by the public about safety at the tracks.

For any crossing that is removed or closed, UPRR is required to submit a Commission Form G, Report of Changes at Highway Grade Crossings and Separations. The City should openly communicate with the railroad to ensure that this report is accurately completed. It may be helpful to reference Appendix A for a list of the affected crossings.

We request that the Planning Commission consider the above concerns when negotiating the terms of project approval. I can be contacted with any questions or concerns on this topic at (415)703-1208.

Sincerely,

K Schumacher

Kevin Schumacher

Utilities Engineer
Rail Crossings Engineering Section
California Public Utilities Commission

cc: Patrick Kerr, UPRR

M-8
(CONT.)

APPENDIX A:At-grade Highway-Rail Crossings Significantly Affected by the Oak to Ninth Project

CPUC Crossing Number*	DOT Crossing Number*	Street Name	Warning Devices*	Crossing Status
001D-7.20	749591D	Oak Street (at Embarcadero)	2 x Std No. 9-A	Active mainline
001D-7.60	749616W	5 th Avenue	2 x Std No. 9	Active mainline
001D-7.60-C	749595F	5 th Avenue (closest track to Embarcadero)	2 x Std No. 8	Active spur line
001D-7.70-C	749597U	I-880 off-ramp at 6 th Avenue / Embarcadero	2 x Std No. 8	Active spur line
001D-8.00-C	749600A	I-880 on-ramp at 10 th Avenue / Embarcadero	2 x Std No. 8	Active spur line
001D-7.40-C	749593S	Embarcadero	2 x Std No. 8	Unknown spur
001D-7.50-C	749594Y	Embarcadero	Crossbucks	Unknown spur
001D-7.65-C	749596M	Embarcadero	Crossbucks	Unknown spur
001D-7.75-C	749598B	Embarcadero	Crossbucks	Unknown spur
001D-7.95-C	749599H	Embarcadero	Crossbucks	Unknown spur

Notes:

(1) The California Public Utilities Commission (CPUC) assigned crossing number is formatted as follows:

001: identifies Union Pacific Railroad

D: identifies the Niles Subdivision

Milepost: Here between 7.20 and 8.00

Suffix: '-C' indicates that the crossing is on a spur line

(2) The US Department of Transportation (DOT) / Federal Railroad Administration assigns each railroad crossing an identifier consisting of six digits followed by a letter, e.g. 749591D.

(3) Standards for crossing warning devices are specified in Commission General Order 75-C.

Standard No. 1-R: Crossbuck assembly (MUTCD R15-1 sign only)

Standard No. 8: automatic flashing light signals

Standard No. 8-A: automatic flashing light signals, and additional flashing light signals on an overhead mast arm

Standard No. 9: automatic gate and flashing light signals

Standard No. 9-A: automatic gate and flashing light signals, and additional flashing light signals on an overhead mast arm

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 18, 2005

Margaret Stanzione
City of Oakland
250 Frank Ogawa Plaza, Ste. 3315
Oakland, CA 94612

Dear Ms. Stanzione:

Re: SCH# 2004062013; Oak to Ninth Mixed Use Development

As the state agency responsible for rail safety within California, we recommend that any development projects planned adjacent to or near the rail corridor in the County be planned with the safety of the rail corridor in mind. New developments may increase traffic volumes not only on streets and at intersections, but also at at-grade highway-rail crossings. This includes considering pedestrian circulation patterns/destinations with respect to railroad right-of-way.

Safety factors to consider include, but are not limited to, the planning for grade separations for major thoroughfares, improvements to existing at-grade highway-rail crossings due to increase in traffic volumes and appropriate fencing to limit the access of trespassers onto the railroad right-of-way.

The above-mentioned safety improvements should be considered when approval is sought for the new development. Working with Commission staff early in the conceptual design phase will help improve the safety to motorists and pedestrians in the County.

If you have any questions in this matter, please call me at (415) 703-2795.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kevin Boles".

Kevin Boles
Utilities Engineer
Rail Crossings Engineering Section
Consumer Protection and Safety Division

cc: Pat Kerr, UP

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



September 20, 2005

Margaret Stanzione
City of Oakland Com. & Eco. Dev. Agency
250 Frank H. Ogawa Plaza, Ste. 3315
Oakland, CA 94612

Dear Ms. Stanzione:

Re: SCH# 2004062013; Oak to Ninth Mixed Use Development

As the state agency responsible for rail safety within California, we recommend that any development projects planned adjacent to or near the rail corridor in the County be planned with the safety of the rail corridor in mind. New developments may increase traffic volumes not only on streets and at intersections, but also at at-grade highway-rail crossings. This includes considering pedestrian circulation patterns/destinations with respect to railroad right-of-way.

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Very truly yours,

A handwritten signature in black ink, appearing to read "Kevin Boles".

Kevin Boles
Utilities Engineer
Rail Crossings Engineering Section
Consumer Protection and Safety Division

cc: Pat Kerr, UP

Grade Separation Program

Rail Crossings Engineering Section, CPUC

August 2005

Introduction



The Grade Separation Program is a state funding program to grade separate highway-rail crossings. A highway-rail crossing is the intersection of railroad track with any type of highway or pathway used by vehicles and/or pedestrians. Crossings are classified as either grade-separated or at-grade. Grade-separated crossings are where either the highway or the railroad track crosses over or under the other at different elevations, typically using a bridge structure. The elevation difference allows trains to travel through grade-separated crossings at the same time as highway users. At-grade crossings are where the highway and

railroad tracks are at the same elevation, thereby creating a potential conflict between trains and highway users. At-grade highway-rail crossings pose significant public safety hazards to California's motorists and pedestrians.

The California Public Utilities Commission (hereinafter referred to as the Commission or CPUC) has jurisdiction over the safety of highway-rail crossings in California. The Rail Crossings Engineering Section (RCES) reviews projects for the safe design of crossings and recommends safety measures, such as automatic warning devices, to mitigate hazards for at-grade crossings users.

The optimal safety improvement for an at-grade highway-rail crossing is the complete separation of the railroad tracks from the roadway through construction of a grade-separation structure. Replacement of at-grade crossings with grade-separated crossings eliminates the fatalities and injuries that often result from collisions between train and highway users. It also eliminates blocking delays that cause traffic congestion, reduces the intrusive noise from train horns and automatic warning devices, and can improve emergency response times.

The Grade Separation Program helps local agencies finance the high costs of grade separating highway-rail crossings, thereby improving public safety and convenience throughout California.

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3. **Funding**
4. **Formulas**
5. **Current Priority List**
6. **Next Call for Projects**
7. **Commission and Caltrans Contacts**
8. **Past Allocations**
9. **Decision Tools for Grade Separations**
10. **Caltrans Guidelines for Grade Separation Allocations**
11. **Relevant Streets & Highways Code**

1. Background

The Commission establishes and furnishes to the California Transportation Commission (CTC) and the California Department of Transportation (Caltrans) a funding priority list of grade crossing projects most urgently in need of separation or alteration. Section 190 of the California Streets and Highways Code (referred to as S&H Code) requires the State's annual budget to include \$15 million for funding these projects. Section 2450 *et seq.* of the S&H Code sets out the procedure for administering these funds, and Section 2453 gives the CTC responsibility for allocating the funds to qualified projects.

S&H Code Section 2452 requires the Commission, by July 1 of each year, to establish the priority list for projects and furnish it to the CTC for use in the fiscal year beginning on that date. Our procedure is to promulgate the list for the first fiscal year by issuing an interim decision, and then to revise the list for the second year by deleting projects for which funds were actually allocated in the first. The Commission adopts the revised list by final decision in the second year of the proceeding, and begins the funding cycle again the following year by instituting a new proceeding.

In accordance with S&H Code Section 2452, the Commission is responsible for establishing criteria to be used in determining the priority of projects nominated for separation or alteration. The formula weighs vehicular and train volumes at crossings along with project costs, and considers a variety of special factors such as accident history, site visibility, the angle of the tracks to the road crossing geometry, blocking delays and other relevant factors. Staff conducts field inspections and performs safety evaluations.

Interested local agencies are responsible for submitting nominations with the required information. These agencies must be ready to share in the project's cost. The Commission requires applicants to attend the formal public hearings and provide testimony in support of their proposals.

2. Eligible Projects

The Commission will consider projects for the Grade Separation Priority List that are nominated by a city, a county, a separation-of-grade district, and any public entity providing rail passenger transportation services.

Eligible projects include: (1) projects for grade separation of existing or proposed crossings of city streets, county roads, or state highways, (2) grade crossings in need of elimination by removal or relocation of streets or railroad tracks, or (3) existing separations in need of alteration or reconstruction.

Section 2450(a) of the S&H Code states:

“Grade separation” means the structure which actually separates the vehicular roadway from the railroad tracks.

Although projects comprised of multiple grade separations are eligible, a project nomination shall not include multiple projects that are separate, distinct and clearly severable. The combination of severable projects into a single nomination would preclude the Commission from effectively determining which projects are most urgently in need of separation or alteration as required by S&H Code Section 2452. Furthermore, a single nomination cannot combine projects for both the elimination of existing grade crossings and the elimination of proposed grade crossings.

If a project qualifies as a multiple crossing or consolidation project, the overall priority is affected by a combined weighting of factors at each crossing. The factors include roadway traffic counts, number of accidents, and crossing geometrics. Multiple crossing or consolidation projects may qualify for more than the usual \$5 million maximum allocation.

3. Funding

Section 190 of the S&H Code requires the State’s annual budget to include \$15 million for funding qualified projects on the Grade Separation Priority List Program as ranked by the Commission.

For a project that eliminates an existing crossing or alters or reconstructs an existing grade separation, an allocation of 80% of the estimated cost of the project is made, with the local agency and railroad each contributing 10%. For a project that plans a grade separation of a proposed new crossing (currently no existing crossing), an allocation of 50% of the estimated project costs is made, with the remaining 50% contributed by the local agency.

Subsequent to the Commission's issuance of the Priority List, the California Department of Transportation (Caltrans) accepts applications for an allocation of funds on or before April 1 of each fiscal year. Guidelines on applying for Caltrans allocations are posted at the following website:

http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_g/g19gdsep.pdf.

Caltrans distributes the available funding according to the priority ranking established annually by the CPUC. The project on the list with the highest priority, and which also meets the requirements detailed below, has first claim to the available funds to the extent of the yearly cap. The next project in the ranking which meets the requirements receives the next allocation, and so on, until the fiscal year's funds are exhausted. Two different formulas are used to make these computations, one for existing at-grade crossings nominated for separation or elimination and another for existing separations nominated for alteration or reconstruction.

Other critical requirements to secure an allocation from the Caltrans include:

1. Application for funding must be sent to Caltrans by April 1
2. Authority to construct the project must be obtained from the Commission
3. Environmental review documents must be complete
4. Construction, maintenance, and any other necessary agreements with the railroads must be signed
5. Final plans must be complete

Applicants should be aware of the following funding limits:

- Allocations are made on the basis of estimated cost.
- An allocation to a project may not exceed \$5 million from any one fiscal year.
- Caltrans may only allocate up to 80% of the estimated cost.
- Cumulative allocations may not exceed \$20 million to any one project.
- Allocations are to be reduced or augmented after the project is completed to reflect the actual cost to construct the grade separation.
- Parties anticipating the need for an allocation greater than \$5,000,000 shall be prepared to present evidence at the hearings to justify the additional award. See S&H Code 2454 (g) and (h) for more information.

The probability of projects being funded is dependent on a number of things. The first is the amount of available funding, which is \$15 million and which does not increase from year to year. In accordance with S&H Code 2454(g), funding for an individual project is limited to one-third of the total fund or \$5 million per year (whichever is less). A project may qualify for up to 80% of the total project cost or a maximum of \$20 million funded over a multiyear period, not to exceed five years, if it shows a saving to the state as indicated in S&H Code 2454(h).

The list is dynamic, responding to local demographic changes. Some projects may drop in ranking from one year to the next, as new nominations, where factors such as rising

vehicular traffic levels, increased train activity, or recent accident history indicate a greater public need for grade separation or improvement may rise on the list.

The system is not one where the first on the list is necessarily the first to be funded. For example, in fiscal year 2002-2003, Caltrans notified the Commission that projects ranking 14, 38 and 52 had received \$6 million, \$5 million, and \$5 million, respectively in allocated funds. For fiscal year 2003-2004, no new projects received an allocation, but previously funded projects received supplemental allocations. The same is projected for fiscal year 2004-2005; allocations are to be made to supplemental requests only.

Although the priority list ranking is an important factor in determining whether a project can be funded, securing of an allocation requires a number of other requirements to be met. These requirements include completion of the design, establishment of a maintenance agreement with the affected railroad, completion of environmental review of the project, and procurement of the local funding share or remainder of the project cost. In recent years, these additional requirements have not been met by the vast majority of projects on the priority list, thereby allowing projects with what may appear to be a low ranking to be funded. If there is a possibility that a highway-rail grade separation project may be able to meet the requirements outlined above within two years of its nomination, RCES strongly recommends that the local agency apply for funding through the Grade Separation Program.

4. Formulas

There are two formulas used to rank projects: one for crossings nominated for separation or elimination and the other for existing grade separations in need of alteration or renovation.

Formula For Crossing Nominated For Separation Or Elimination

$$P = \frac{V * (T + 0.1 * LRT) * (AH + 1)}{C} + SCF$$

Formula For Existing Separations Nominated For Alteration Or Reconstruction

$$P = \frac{V * (T + 0.1 * LRT)}{C} + SF$$

Note: V- Average Daily Vehicle Traffic, T –Average Daily Freight/Commuter

Grade Separation Program
RCES Guidelines, August 2005
Page 6 of 8

Train Traffic, LRT – Average Daily Light Rail Train Traffic, C – Project Cost Share to be Allocated from Grade Separation Fund, AH – Accident History (number of accidents at crossing), SCF- Special Conditions Factor, SF - Separation Factor

Please see the current Order Instituting Investigation for more details on current Commission adopted formulas.

5. Current Priority List

Commission Decision (D.) 05-06-056, dated June 30, 2005 adopted the final order for the Section 190 Grade Separation Priority List for fiscal year 2005-2006, as required by S&H Code Section 2452. The Priority List for fiscal year 2004-2005, established by D.04-06-020, dated June 9, 2004 required no revision. D.05-06-056 also closes Investigation (I.) 03-07-009 (which established the list for 2004-2005 and revised it for 2005-2006). Decisions are published on the Commission's website: <http://www.cpuc.ca.gov>

6. Next Call for Projects

The Public Utilities Commission is responsible for ranking the nominated projects. The call for projects occurs every two years, therefore the nominated projects stand for two years, with those projects receiving an allocation during the first year being removed from the second year's list. The Commission is required to adopt a list by July 1 of each year. The list is then sent to the CTC and Caltrans. Caltrans allocates the funds.

The current call for projects opened July 21, 2005. The proceeding is online at the following site: <http://www.cpuc.ca.gov/proceedings/I0507016.htm> .

Click **COMMISSION INVESTIGATION** to download the Order Instituting Investigation and the Appendices which include the application forms and instructions. Applications are due October 21, 2005 to the Los Angeles office.

7. Commission and Caltrans Contacts

California Public Utilities Commission

Rosa Muñoz, PE
 Consumer Protection & Safety Division
 Rail Crossings Engineering Section
 320 West 4th Street, Suite 500
 Los Angeles, CA 90013-1105
 (213) 576-7078
rxm@cpuc.ca.gov

Caltrans

Lauren Clausen
 Rail Crossing Safety & Track Branch
 Caltrans - Division of Rail
 P.O. Box 942874
 Sacramento, CA 94274-0001
 (916) 653-0243
lauren_clauson@dot.ca.gov

8. Past Allocations

FY	Project	Proceeding	Rank	RR	Lead Agency	State Share
2001-02	Monte Vista Avenue	I.99-07-001	4	BNSF	City of Montclair	\$ 5,000,000.00
	Bailey Avenue & Others	I.99-07-001	16		City of San Jose	\$ 5,000,000.00
	Clovis Ave OH (1994-95)	I.93-07-032	8	UP	Fresno County	\$ 1,370,400.00
Remainder will be used up by supplemental & balance allocations						\$ 3,629,600.00
Total Allocation						\$ 15,000,000.00
2002-03	Jurupa Road UP	I.01-07-008	14	UP	City of Riverside	\$ 6,000,000.00
	P & Q Streets UP	I.95-07-003	16	BNSF	City of Bakersfield	\$ 342,894.65
	7th Standard Road OH	I.01-07-008	38	BNSF	City of Shafter	\$ 5,000,000.00
	Mohawk Street UP	I.01-07-008	52	BNSF	Kern County/City of Bakersfield	\$ 5,000,000.00
Total Allocation						\$ 16,342,894.65
2003-04	50th Ave OH	I.93-07-032	4	UP	City of Coachella	\$ 6,014,010.00
	Chestnut Avenue OH	I.97-07-014	18	UP	County of Fresno	\$ 778,748.00
	Kansas-Needham OH	I.95-07-003	1	UP	City of Modesto	\$ 3,418,631.00
	Calloway Drive UP	I.95-07-003	18	BNSF	Kern County	\$ 872,000.00
	Shaw-Marks UP	I.97-07-014	1	BNSF	City of Fresno	\$ 3,340,204.00
Total Allocation						\$ 14,423,593.00
2004-05 (preliminary)	West Capitol Ave UP-Emergency Repair	I.99-07-001	26	UP	City of West Sacramento	\$ 19,045.42
Remainder will be used up by supplemental & balance allocations						
Total Allocation						\$ 19,045.42

9. Decision Tools for Grade Separations

The topic of when to construct a grade separation is complex. The Commission does not have strict criteria that would require an existing at-grade highway-rail crossing to be grade-separated. However, resources are available which clearly specify when a grade separation should be considered, and when it may be well justified.

The Federal Highway Administration's (FHWA) Technical Working Group (TWG) published a document in November 2002 entitled 'Guidance on Traffic Control Devices at Highway-Rail Grade Crossings'. This document is available online. Page 27 and 33 of the published document discuss particular criteria that should be considered when assessing the need for grade separation.

When considering the need for grade separation of highway-rail crossings, it may be appropriate to use the Federal Railroad Administration's web-based tool "GradeDec.net". The software application, accessible at <http://GradeDec.net>, can be used to evaluate the benefits and costs of rail investment projects, specifically those involving highway-rail grade crossing improvements (including grade separation, closure, or warning device upgrades), within a risk analysis framework. GradeDec.net is particularly well-suited for analysis of rail corridors.

10. Caltrans Guidelines for Grade Separation Allocations

Please see Chapter 19 of the Local Assistance Program Guidelines published by Caltrans for further details regarding allocations from the Grade Separation Program. <http://www.dot.ca.gov/hq/LocalPrograms/lam/lapg.htm>

11. Relevant Streets & Highways Code

Funding for projects included on each annual priority list is provided by S&H Code Section 190, and the basis for allocation and state requirements are contained in S&H Code Sections 2450-2461.

Letter M – (Letter enclosures provided as Appendix D)

M-1 See Master Response F for a discussion of Pedestrian Activity at Nearby Rail Crossings, including pedestrian safety concerns and fencing to limit the access of trespassers onto the railroad right-of-way, and Response to Comment Letter A regarding comments in the commenter's letter dated September 20, 2005.

The comment addresses seven topics related to rail crossings in the study area including:

1. Close existing at-grade crossings
2. Grade separate existing at-grade crossings
3. Improve safety of existing at-grade crossings
4. Construct fencing along the railroad right-of-way
5. Improve pedestrian and bicyclist safety at crossings
6. Fully consider the noise impacts
7. Follow-up appropriately on abandoned crossings

Each of these topics is addressed in further detail below.

M-2 The closure of existing at-grade crossings can reduce or eliminate safety concerns at crossing locations. Several of the existing crossings may be removed, but the removal of such crossings requires the agreement of both UPRR and Caltrans.

The crossings that could be removed are those at 6th Avenue and 10th Avenue near Embarcadero. The removal of these crossings, across the existing spur line (also known as the drill track), would occur in conjunction with the seismic retrofit of I-880 by Caltrans. Caltrans has discussed the removal of this spur line with UPRR over the past several years. Unfortunately, no agreement has been reached regarding the disposition of the spur line at this time. Because no definitive agreement has been reached regarding the removal of the spur line, this information was not included in the DEIR.

A review of the existing roadway network indicates that removing the existing crossing at 5th Avenue is inadvisable due to the lack of alternate routes. If that crossing were to be removed, a section of the waterfront approximately 1 mile long would be separated from the rest of Oakland with access limited to the Embarcadero (I-880 limits access from the waterfront to remaining areas in the City of Oakland). Because of this lack of parallel routes, the 5th Avenue at-grade crossing needs to be maintained to provide the necessary emergency vehicle access, and to provide connectivity to the remaining areas of Oakland.

The removal of the at-grade crossing at Oak Street would also limit access to existing and future developments along Embarcadero. Removing this at-grade crossing would sever any connection between the Jack London Square area and the remaining areas of the Oakland waterfront. As with the case of the 5th Avenue crossing, removing this at-grade crossing would reduce emergency vehicle access and limit connectivity to the remaining areas of the City of Oakland.

M-3 Grade-separated crossings would improve the operation and safety of Oak Street and 5th Avenue. However, there are significant topographic, engineering, and environmental constraints that limit the ability of the project applicant or the City of Oakland to construct these grade separations. BKF Engineers analyzed the potential for grade separated crossings at both locations and has prepared schematic plan and profile drawings for both a roadway undercrossing and roadway overcrossing at each location. These are included as **Figure VI-1 through Figure VI-8** at the end of the response to this letter.

5th Avenue

At 5th Avenue, the main barrier to constructing a railroad undercrossing is the existing groundwater table. As shown in **Figure VI-2**, the groundwater table is only several feet below the existing grade. Additionally, construction of an undercrossing would require the relocation of several existing water and storm water facilities, including an 84-inch interceptor maintained EBMUD, as shown most clearly in **Figure VI-1**. An undercrossing would require a significant rerouting of Embarcadero towards the waterfront, significantly encroaching onto existing properties, many of which are currently occupied. These properties include parcels that are not included in the Oak to Ninth Project and are not anticipated to remain in use through the near future.

The main impediment to building an overcrossing is the I-880 elevated structure. As shown in **Figure VI-4**, an overcrossing would pass directly through the existing I-880 structure. With the reconstruction of I-880 as part of the I-880 Seismic Retrofit by Caltrans, this conflict remains. Given the distance between the railroad and the I-880 Structure, it is not possible to design an overcrossing that does not pass through the I-880 structures. Additionally, as shown in **Figure VI-3**, an overcrossing would require the relocation of Embarcadero towards the Estuary, which would encroach on the existing properties along the waterfront - on the project site and the adjacent Fifth Avenue Point outparcel. Because of the additional height needed to clear the rail line, the overcrossing structure would extend even further away from Embarcadero than the undercrossings. As a consequence, Embarcadero would have to be rerouted even further (as compared to the undercrossing) and a bridge would be required for the roadway as it passed of Clinton Basin.

Oak Street

An undercrossing at Oak Street would have many of the same issues as the same facility along 5th Avenue. **Figure VI-6** shows the existing groundwater table is only several feet below grade, which could lead to flooding after construction. This undercrossing would also require the relocation of the 84-inch EBMUD interceptor. **Figure VI-5** shows that constructing any grade separation at Oak Street would also remove access between 2nd Street and Oak Street. The existing intersection of 2nd Street/Oak Street would have to be removed, and 2nd Street would then have to be converted into a cul-de-sac. Several access points to existing properties would also have to be removed along the elevated structure.

Figure VI-7 and **Figure VI-8** show that an overhead crossing at Oak Street would also require the removal of the existing intersection of 2nd Street/Oak Street and the conversion of 2nd Street into a cul-de-sac. Existing properties along Embarcadero and Oak Street would also lose several access points along these roadways with the construction of the grade separated crossing.

- M-4 The commenter expresses a number of concerns regarding the operations of the Embarcadero/5th Avenue intersection. The design of the intersection is intended to limit queuing, particularly across the railroad tracks by providing multiple left-turn lanes from 5th Avenue to Embarcadero, as well as two receiving left turn lanes.

The commenter also expresses concerns regarding the ability of the project to widen the Embarcadero as a mitigation measure. The project site plan reflects this widening, and the project applicant will be reconstructing the Embarcadero in conjunction with the development of the site.

The commenter recommends a number of upgrades to the existing at-grade crossing at 5th Avenue and Oak Street. Both crossings currently have warning lights and traditional safety gates installed, and several of the recommended items could be implemented in conjunction with the installation of traffic signals at both locations (identified in the DEIR as mitigation measures for project traffic impacts), including:

- Installing additional signage, such as DO NOT STOP ON TRACKS signs (MUTCD R8-8)
- Refurbishing existing advance warning signs and markings

- M-5 See Master Response F for a discussion of Pedestrian Activity at Nearby Rail Crossings, including fencing to limit the access of trespassers onto the railroad right-of-way.
- M-6 See Master Response F for a discussion of Pedestrian Activity at Nearby Rail Crossings, including appropriate pedestrian and bicycle safety improvements.

M-7 Train horn usage near the at-grade crossing in the project vicinity would result in high volume and intermittent noise levels of short duration that could occur during the daytime and nighttime hours. The following text is added to the first paragraph on DEIR

p. IV.G-27 (additions shown as underlined; deletions as ~~strikeout~~):

Based on noise measurements in the project site vicinity (see Table IV.G-3 and Table IV.G-4), existing ground-level and aerial (elevations of 14 to 70 feet) Ldn noise levels range from 60 dBA to 80 dBA and from 62 dBA to 85 dBA, respectively. These noise levels are primarily due to the proximity of the measurement location to the Embarcadero and I-880, as well as the railroad tracks to the north, and show that project-related ground floor and non-ground floor residences in close proximity to these noise sources would be exposed to noise levels classified from “normally unacceptable” to “clearly unacceptable” for residential uses (DEIR Table IV.G-2).

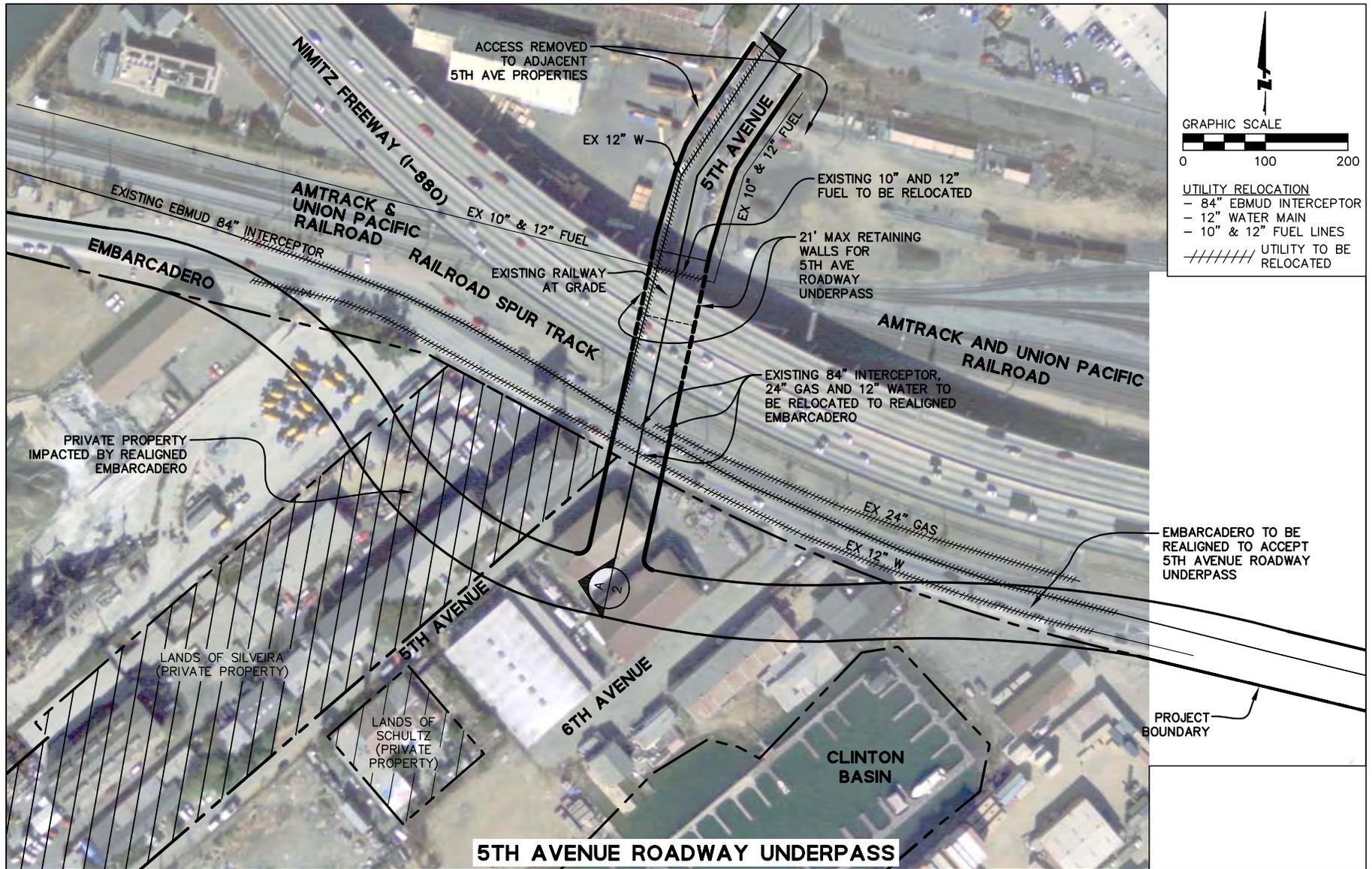
The following revisions and additions are made to Mitigation Measures for Impact G.3 on DEIR p IV.G-27 (additions shown as underlined; deletions as ~~strikeout~~):

Mitigation Measure G.3a: To comply with the requirements of Title 24 and achieve an interior noise level of less than 45 dBA, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls) shall be incorporated into project building design. Final recommendations for sound-rated assemblies will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phase.³

Mitigation Measure G.3b: Due to the proximity of the project to a railroad crossing, a written disclosure of railroad crossing noise, particularly usage of train horns and bells on warning devices during the daytime and nighttime hours, shall be provided to potential residents of the project.

M-8 The comment addresses the potential hazards of abandoned railroad crossings and tracks. The removal of any crossings or railroad tracks would be done by Caltrans in conjunction with the proposed I-880 Seismic Retrofit. Neither the project sponsor nor the City of Oakland would remove any existing crossing locations or railroad tracks as part of the proposed project.

³ *Oak to 9th Residential Development, Oakland, California, Environmental Noise Assessment* by Charles M. Salter Associates, Inc., November 2002. Table 4 of the Salter Associates document lists conceptual window and wall Sound Transmission Class (STC) ratings for different noise environments and gives an estimate of the STC requirements needed to meet interior noise criteria.



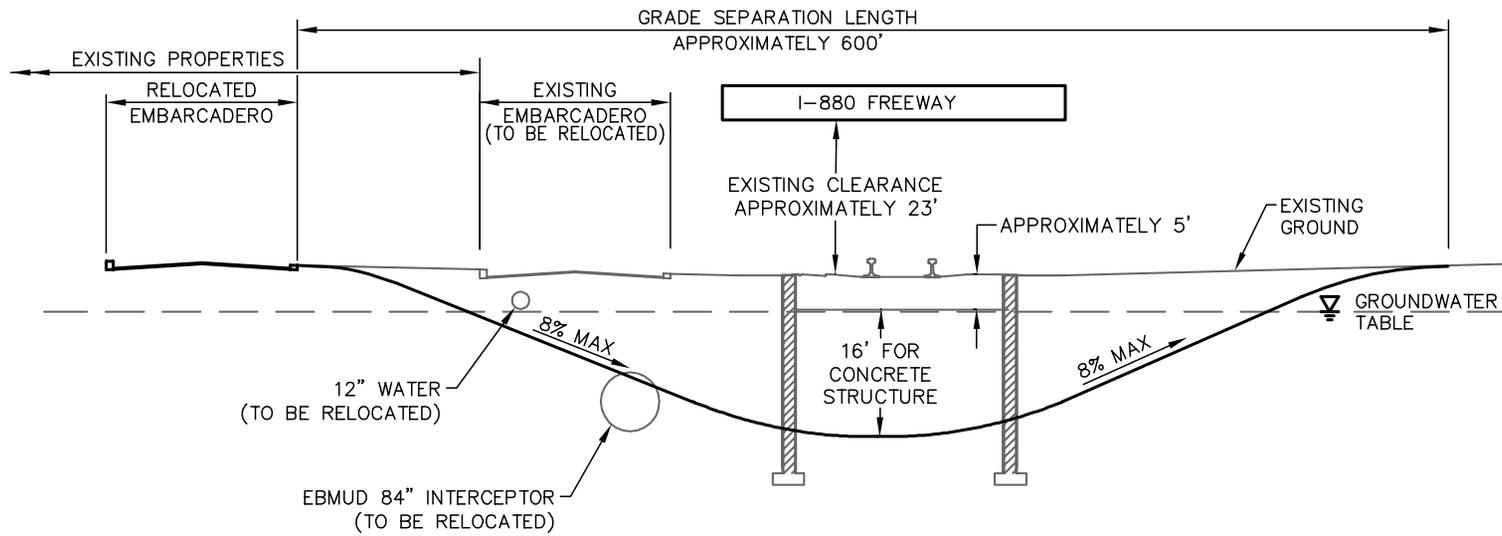
VI-153

SOURCES: BKF

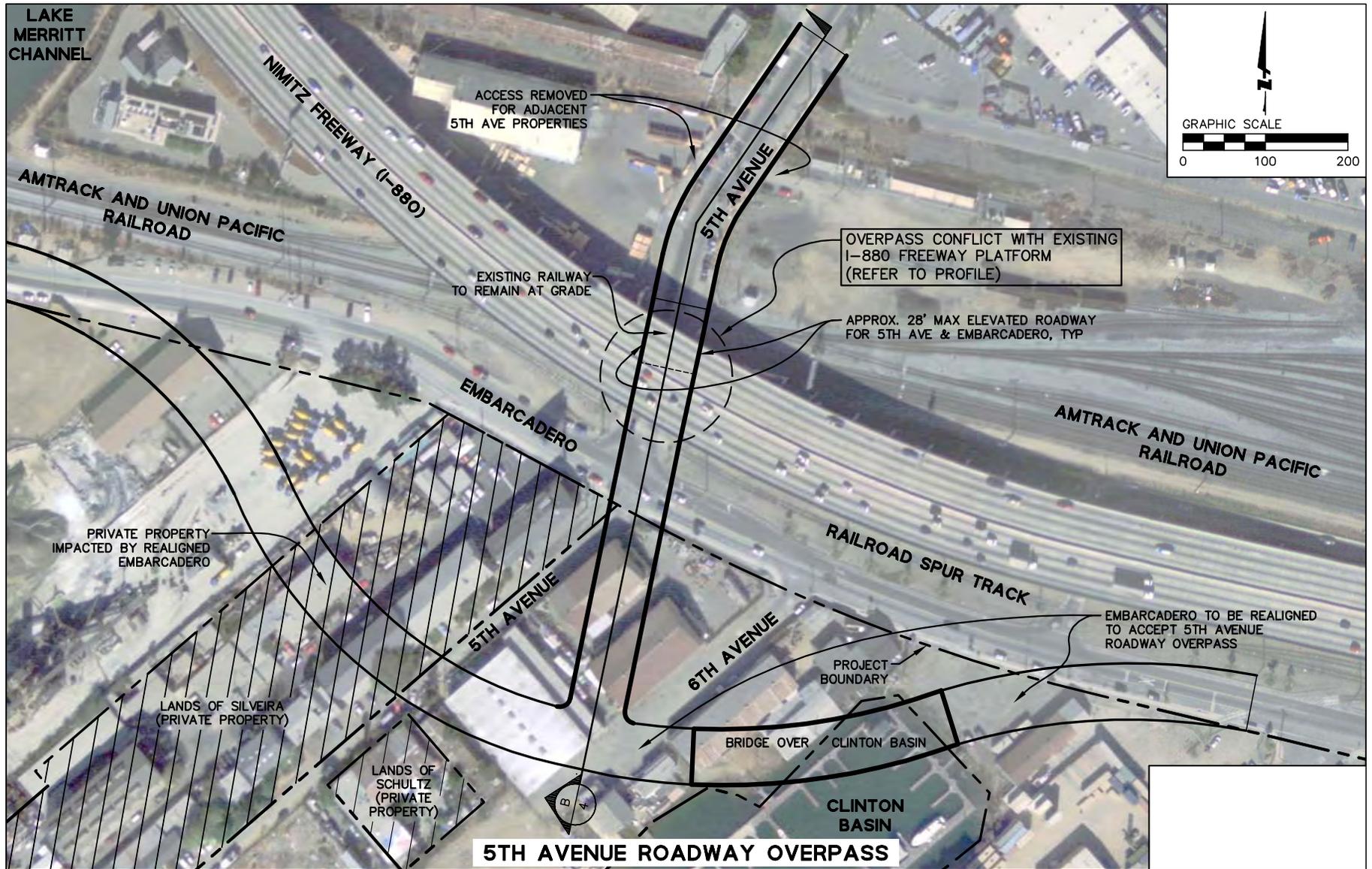
Oak to Ninth Avenue . 202622

Figure VI-1
 Conceptual Plan of Grade-Separated Underpass at 5th Avenue

VI-153



NOT TO SCALE



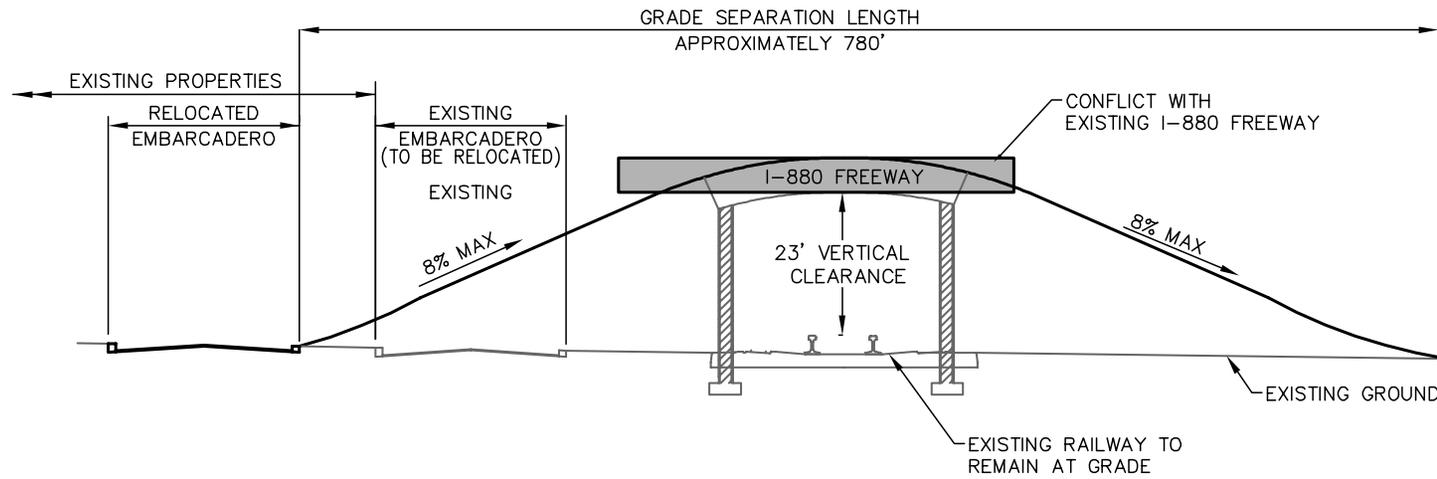
VI-153

SOURCES: BKF

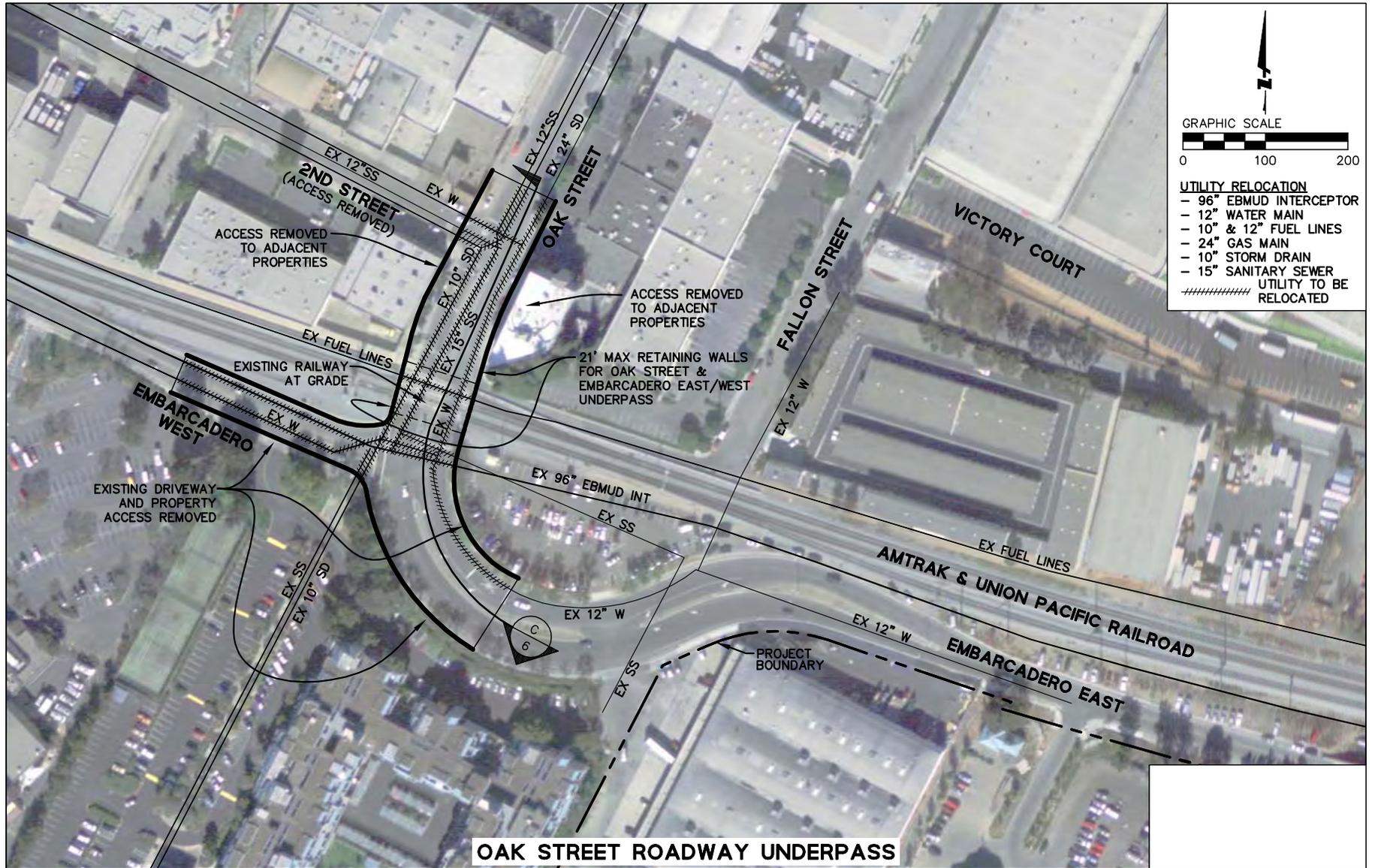
Oak to Ninth Avenue . 202622

Figure VI-3
Conceptual Plan of Grade-Separated Overpass at 5th Avenue

VI-153



NOT TO SCALE



GRAPHIC SCALE
 0 100 200

UTILITY RELOCATION

- 96" EBMUD INTERCEPTOR
- 12" WATER MAIN
- 10" & 12" FUEL LINES
- 24" GAS MAIN
- 10" STORM DRAIN
- 15" SANITARY SEWER

----- UTILITY TO BE RELOCATED

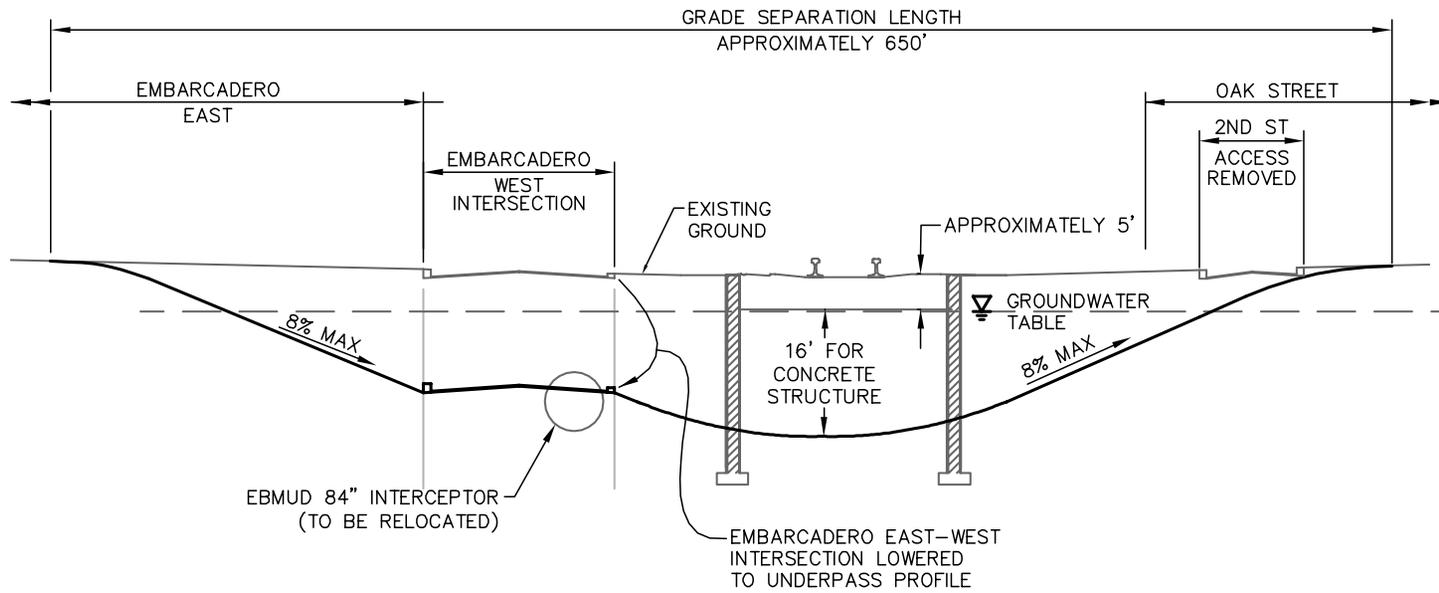
VI-153

SOURCES: BKF

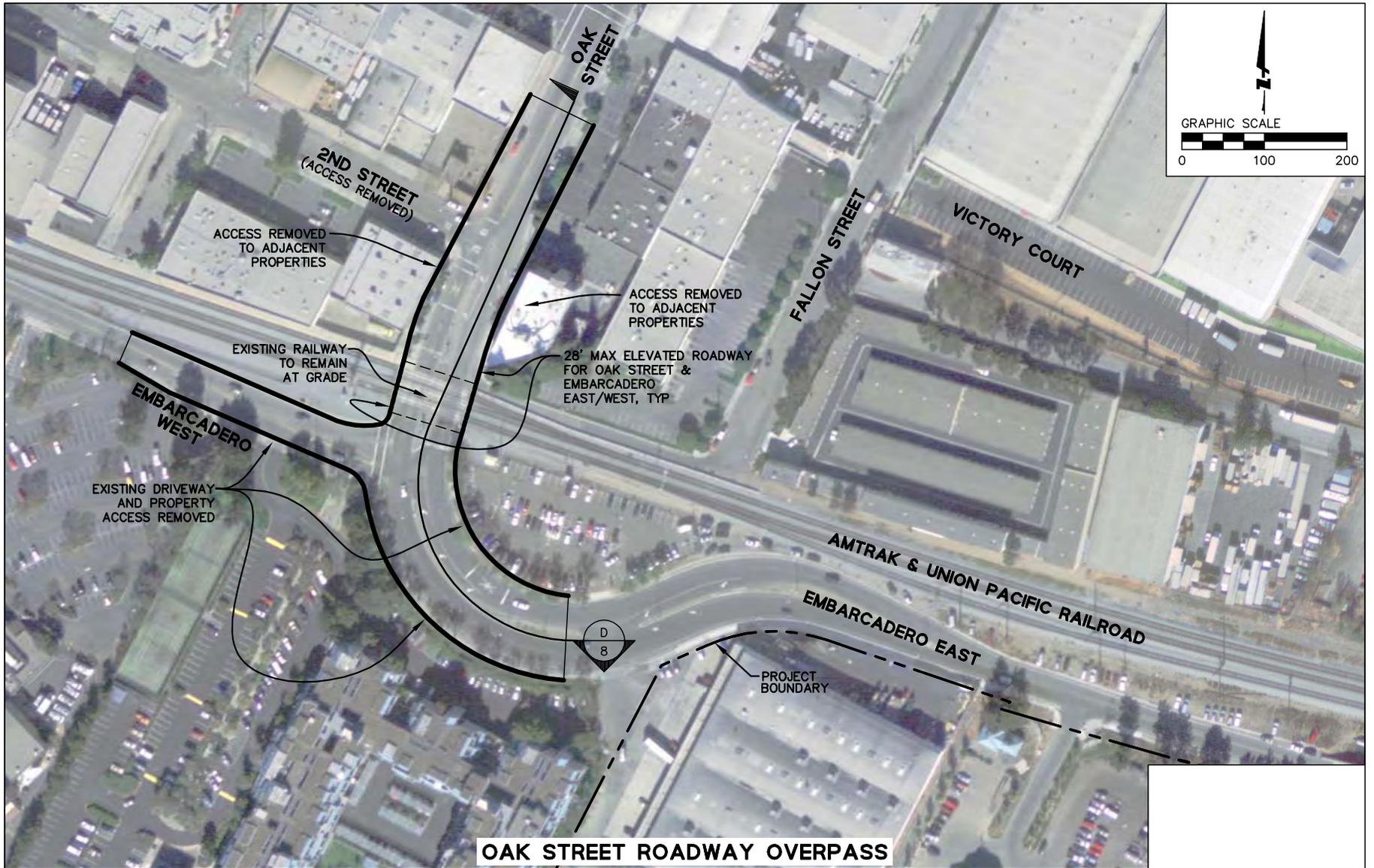
Oak to Ninth Avenue . 202622

Figure VI-5
 Conceptual Plan of Grade-Separated Underpass at Oak Street

VI-153



NOT TO SCALE



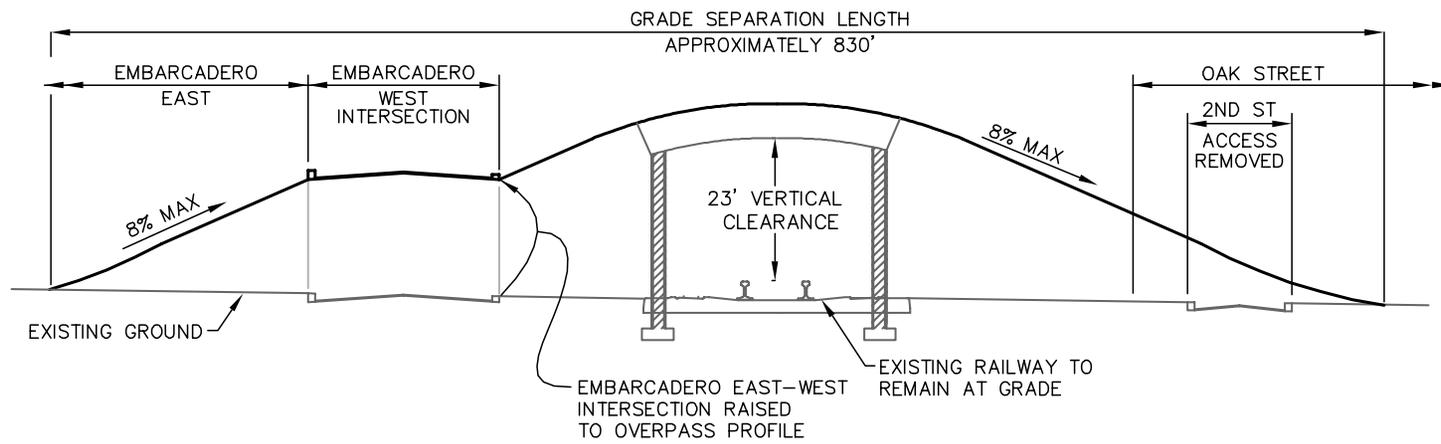
VI-153

SOURCES: BKF

Oak to Ninth Avenue . 202622

Figure VI-7

Conceptual Plan of Grade-Separated Overpass at Oak Street



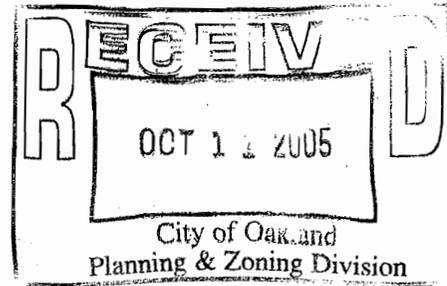
NOT TO SCALE



The League of Women Voters of Oakland

October 5, 2005

Colland Jang, Chair
Oakland Planning Commission
250 Frank Ogawa Plaza, Suite 2114
Oakland, CA 94612



Dear Mr. Jang,

The League of Women Voters of Oakland would like to request an extension of at least one week to the comment period for the Draft EIR on the Oak to Ninth Avenue Project. While the DEIR was available on line from the beginning of the comment period, it was very difficult to find, even for those familiar with the City website. It required numerous links, none of which was immediately obvious. Even when the main link to the DEIR was placed on the City's main web page, it was put under the heading "Events" (where it remains today). Additionally, there is no link from the Commission's online agenda for the September 28 discussion of the DEIR to the DEIR itself.

We hope that the Planning Commission will act to extend the comment period to ensure that everyone who wishes to comment has the opportunity to do so. In addition, we suggest that the link to the DEIR on the City's main website be moved from the "Events" heading to the "News" column, and that links to the DEIR be added wherever people might logically look for it – including the CEDA page and the Planning Commission page.

Sincerely,

Helen Hutchison
President
League of Women Voters of Oakland

cc: Claudia Cappio, Development Directory
Gary Patton, Deputy Director of Planning and Zoning
John Russo, Oakland City Attorney

1305 Franklin Street, Suite 311 • Oakland, California 94612-3222 • (510) 834-7640
Email: lwvoakland@earthlink.net
www.lwvoakland.org

N-1

Letter N – League of Women Voters

N-1 The City issued the first Notice of Preparation (NOP) for the DEIR on May 28, 2004. As is standard, the NOP was sent to all governmental agencies and organizations and persons interested in the project.

Section 15105 of the CEQA Guidelines states, “*The public review period for a draft EIR should not be less than 30 days or longer than 60 days except in unusual circumstances. When a draft EIR is submitted to the State Clearinghouse for review by state agencies, the public review period shall not be less than 45 days, unless a shorter period, not less than 30 days, is approved by the State Clearinghouse.*” The Oak to Ninth Project DEIR was published on September 1, 2005, beginning a 54-day public comment and review period that ended at 4:00 p.m. October 24, 2005. As was stated in the Notice of Availability that the City mailed to governmental agencies, organizations, and persons interested in the project, and/or who had responded to the NOP, any person could review or obtain a copy of the DEIR. Copies of the DEIR were available on-line and in the Community and Economic Development Agency office and the Main Oakland Library.

As detailed in Master Response A, to date, the review process for the project has involved meetings with more than 100 groups and organizations, which has resulted in the project sponsor speaking directly to over 4,000 people and to groups representing over 20,000 people about the project. Information about the project exists on over 10 internet websites. In addition, a community outreach process was conducted by Circlepoint on behalf of the City and involved nine small-group meetings and two community-wide meetings. Public hearings occurred at the Landmarks Preservation Advisory Board, the Park and Recreation Advisory Commission, the Planning Commission, a joint special hearing of the Planning Commission, Landmarks Preservation Advisory Board (LPAB), Park and Recreation Advisory Commission (PRAC), the Redevelopment Agency and the City Council for a tour of the project site, and subcommittee meetings of the Planning Commission and the LPAB. As of preparation of this additional meetings are anticipated before the LPAB. Both the Planning Commission and the City Council will hold additional hearings prior to acting on the project proposal. Thus, the Planning Commission has determined that the 54-day comment and review period on the DEIR is adequate and would not be extended

The comment’s suggestions for the City of Oakland website are noted.



EAST ELEVATION.
Scale 1/8"

FRIENDS OF NINTH AVENUE TERMINAL

October 21, 2005

Marge Stanzione, Project Planner
City of Oakland
Community & Economic Development Agency
Planning Division
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, California 94612

RE: Oak to 9th Avenue Project

The letter is in response to the Draft Environmental Impact Report for the project, and specifically on the analysis of 603 Embarcadero East, also known as Philbrick Boat Works.

The Drafty E.I.R. [DEIR] erroneously categorizes this building as not a historic resource per "CEQA." The DEIR also incorrectly lists the build date as 1947. In fact the construction date is much earlier. Also, there is a landmarks application before the Oakland Landmarks Preservation Advisory Board [LPAB].

The DEIR must be corrected and this building must be evaluated as the historic resource according to the LPAB. To properly evaluate this building, an additional hearing -or more- is needed to properly evaluate this historic resource.

This building has participated in Oakland waterfront industry for the good part of a century. The business itself, Philbrick Boat Works, has been the primary tenant of this building for almost half a century. This is a business is a historic cultural resource. The DEIR does not note any of this and it must.

The EIR must also include the saving of this building and its present use as part of the proposed project, as well as in other alternative. The DEIR is in error to label this building as a NOT a historic resource. The landmark application and all attendant resources submitted for the landmarking of this building to the city of Oakland must also be included as part of the EIR.

Also, in the 'Project Description' the city uses to characterize this project, it does not clearly state that city-owned historic resources are to be demolished; it only notes 'demolition of structures' which does not convey the amount of historic resources that would be lost should the project proceed as presented.

Sincerely,


Leal Charonnat, Secretary
Friends of Ninth Avenue Terminal

Enclosure - The Landmarks Application document on file with city of Oakland is hereby incorporated as part of this letter and must be attached to this letter when included in the EIR.]



Oakland Landmarks Preservation Advisory Board

NOTICE OF INTENT TO SUBMIT AN OAKLAND LANDMARK AND S-7 PRESERVATION COMBINING ZONE APPLICATION FORM

The undersigned proposed that the Oakland Landmarks Preservation Advisory Board initiate, pursuant to Section 9502 of the Zoning Regulations, designation of the below described property as an Oakland landmark or to rezone such property to the S-7 Preservation Combining Zone. If after reviewing this proposal and requesting and considering comments from the property owner(s) the Board determines to proceed with the proposal, the undersigned intends to submit a completed Oakland Landmark and S-7 Preservation Combining Zone Application Form within six (6) months from the date of such determination.

1. TYPE OF APPLICATION: Oakland Landmark S-7 Zone

2. IDENTIFICATION

A. Historic name if known: FOET OF OAKLAND BLDG. # H-103 1935 TO PRESENT

B. Common Name: PHILBEICK BOAT WORKS - CONTINUOUS AT SITE SINCE 1946

3. ADDRESS/LOCATION (List all addresses and attach map if more than one address): _____

603 EMBARCADERO, OAKLAND, CA 94606 (A SECOND HISTORIC ADDRESS OF 400 SIXTH AVENUE, OAKLAND, CA 94606)

4. OWNER OF PROPERTY (Use attached sheet if multiple parcels with separate owners):

Name: FOET OF OAKLAND

Address: 530 WATER STREET

City: OAKLAND State: CA Zip Code: 94607

Assessor's Parcel Number: 2914



5. SIGNIFICANCE

- A. Date constructed or established, if know: 1935
- B. Builder, architect and/or designer, if know: UNKNOWN
- C. Summary statement of significance (Please clearly explain why the property is significant and why it merits landmark or S-7 Zone designation) THE PORT OF OAKLAND BLDG. #H-103 WAS THE OAKLAND PRODUCE BUILDING FROM 1935 TO 1940. IT WAS USED AS A SHIPPING WAREHOUSE FOR THE WAR EFFORT THROUGH 1945. FROM 1946 TO PRESENT THE BLDG. HAS HOUSED "PHILBRICK BOAT WORKS." H-103 IS THE ONLY REMAINING "TIMBER FRAME" WAREHOUSE AND "PHILBRICK BOAT WORKS" IS THE ONLY REMAINING WOODEN BOAT BUILDING & REPAIR FACILITIES IN OAKLAND. SIX DECADES OF OAKLAND'S RICH MARINE HERITAGE IS REPRESENTED BY THIS PROPERTY AND THIS BUSINESS LOCATED IN #H-103. PLEASE SEE THE ATTACHED HISTORICAL STATEMENT, SUPPORTIVE LITERATURE AND PICTURES.

6. NOTICE SUBMITTED BY

Signature: Russ Donovan Date: 6/14/05

Name/Title: RUSS DONOVAN / OWNER

Organization: PHILBRICK BOAT WORKS

Address: 603 EMBARCADERO, OAKLAND 94606 Telephone: 510.893.9443

DEPARTMENTAL USE ONLY

Accepted by: _____ Date: _____

Included in Oakland Cultural Heritage Survey: Yes No Survey rating:

State Historical Resources Inventory Form prepared: Yes No

Included in Preliminary Citywide Historical and Architectural Inventory:

Yes No; Preliminary rating:

Philbrick Boat Works Since 1934

STOCK • CUSTOM BUILT • INBOARD RUNABOUTS

803 EMBARCADERO • OAKLAND, CA. 94608-5118 • (510) 893-8449

The "Philbrick Boat Works" ^{inc} has occupied and built boats in Port of Oakland Building H-103 since 1946. This warehouse built on Clinton Wharf in 1935 is 90 feet long by 45 feet wide and 24 feet tall and constructed of "old growth" Douglas Fir. It has pier block timbers 14in by 14 inches; floor joist supports 12 inch wide by 12 in thick and floor joists 12 inches wide by 2 1/2 inches thick, in twenty-foot lengths. The floorboards are 2 inches thick by 12 inch wide also running twenty feet in length. The walls and roof structures are "timber frame construction" and covered in the original galvanized corrugated sheet metal. Building H-103 served as the City of Oakland Produce Warehouse until World War II when it was turned over to the war effort. It is unaltered and the last remaining example of the working wharf warehouse district that was critical to Oakland's maritime history.

Don Philbrick started the "Philbrick Boat Works" ^{inc} in 1934. He moved his boat building business to POA Warehouse Bld H-103 in 1946 and has manufactured, repaired and restored wooden boats continuously at this site. Philbrick Boat Works ^{inc} are part of a long Oakland boating history. Lake Merritt and the Municipal Boat house encourage aquatic sports. It was in Warehouse H-103 that Philbrick Boats built all of the "El Toro's" and "Melodies" sail boats used for recreation on Lake Merritt. The Boat Works has also built plywood outboard boats, mahogany runabouts, mahogany utility boats, cabin cruisers and four record holding race boats. The design of Warehouse bldg H-103, its adjoining boat storage yard, launch ramp and Clinton wharf is a protected environment allowing work to progress on boats that vary in length from 8 ft to 35ft long year round. Philbrick Boat Works ^{inc} still manufactures, repairs and restores wooden boats and is known nationally for their brand new boats as well as their award winning concours restorations. Philbrick boats are prized as examples of craftsmanship and the boat builder's art and have been the subject Oakland Museum displays. Philbrick Boat Works ^{inc} is the last remaining original wooden boat builder left in Oakland. Its workshops in OPA Warehouse bldg H-103 still operate in ways little changed in over 150 years. They build wooden boats based on designs developed in Oakland but sought after by collectors around the world. The boat works has produced over 5,000 handcrafted runabouts using tools, patterns, techniques materials and personal care more common to history than modern mass production. They are all that remains of a rich Oakland Estuary marine history of boatbuilding activities that predates the arrival of the Spanish.

The marsh upon which the boat works sits is part of land created in 1900 and is an early example of pile-stabilized fill. This semi-submerged tideland supplied the Ohlone with the tule, reeds and grass needed to build their boats and the small sandy beaches offered launch sites. With fill and construction of the 200 ft by 20 ft Clinton Wharf this site became the primary shipping point through which the great wealth of produce grown in the central Valley passed. With the arrival of the Rail Road tons of fresh farm goods arrived and were shipped daily. This continued an Estuary activity of the Spanish who shipped produce grown near Fruitvale to the San Francisco Mission in small flat-bottomed wooden boats made by local craftsman. When the 1906 San Francisco Earthquake struck, the warehouses on Clinton wharf were critical to the relief effort, using their capacity to send supplies. Along side the shipping activities the Oakland Estuary provided all of the shipbuilding and marine services needed. The immediate area on both the Alameda and Oakland shores became known for modern shipbuilding and convenient hauling out. Hanlon's Boat Yards, Hurley Marine Works, Pacific Dry Docks, Merritt Shipyards, Swanson's Yard, Moor's Boats, Crowley Brothers; all are part of the maritime history which continues today in the operations of the historic Philbrick Boat Works.

Preserving Philbrick Boat Works, and the building it has occupied for sixty years, POA Warehouse Bldg #H-103, is an opportunity to save two important pieces of the disappearing Oakland water front history; The last remaining wooden boat builder on the Oakland water front operating in the last remaining original Port of Oakland Warehouse building. Together the boat works site and the warehouse building provide visitors and customers alike with a walk back in time. Not a frozen museum but a living example of Oakland's boat building and waterfront history just beyond the front door of Philbrick Boat Works, on the Oakland Embarcadero.

INBOARDS

OUTBOARDS

Don Philbrick Boat Works

STOCK - CUSTOM BUILT



400 - 6th Avenue

Oakland,

California

Bus. TW. 3-9443

Res. LA. 3-1430

Philbrick Boat Works Since 1934

STOCK • CUSTOM BUILT • INBOARD RUNABOUTS

RUSS DONOVAN

Oakland General Plan
Historic Preservation Element

Appendix D

LPAS FORM 3.3

City of Oakland -- Landmarks Preservation Advisory Board
EVALUATION SHEET FOR LANDMARK ELIGIBILITY

Address 603 Embarcadero
Name Philbrick Boat Works - Port of Oak. Produce Wh - Bldg H-103

- A. ARCHITECTURE
 - 1. Exterior/Design _____ E VG #
 - 2. Interior _____ E VG #
 - 3. Construction _____ E G #
 - 4. Designer/Builder _____ E VG #
 - 5. Style/Type _____ E E #
- B. HISTORY
 - 6. Person/Organization Post of Oak. Produce Wh Philbrick Boat Works, since 1946, known E VG #
worldwide
 - 7. Event _____ E VG #
 - 8. Patterns boatbuilding/maritime industry on estuary - rare survivor E G #
site
 - 9. Age 1935 _____ E VG #
 - 10. Site _____ VG #
- C. CONTEXT
 - 11. Continuity supports Clinton Basin, 9th Av. Terminal, 5th Av. district E VG #
 - 12. Familiarity visually notable from water the inconspic from Embarc. E VG #
business & its boats are widely known
- D. INTEGRITY
 - 13. Condition _____ E VG #
 - 14. Exterior Alterations _____ VG #

Evaluated by _____ Date _____

STATUS

Ratings _____

City Landmark Eligibility: Eligible Not eligible

National Register Status: Listed In process

Determined eligible Appears eligible

Appears ineligible

Site of Opportunity

This evaluation sheet was accepted by the Landmarks Preservation Advisory Board at its meeting of _____ (Date)

Attest: _____ (Secretary)

Appendix D

Oakland General Plan
Historic Preservation Element

LPAB FORM 3.2

City of Oakland -- Landmarks Preservation Advisory Board
EVALUATION TALLY SHEET FOR LANDMARK ELIGIBILITY

Address _____

Name _____

12	6	3	0	1. Exterior/Design	
6	3	2	0	2. Interior	
4	3	2	0	3. Construction	
4	2	1	0	4. Designer/Builder	
6	3	2	0	5. Style/Type	
				A. ARCHITECTURE TOTAL	9 (max. 26)
30	15	8	0	6. Person/Organization	
30	15	8	0	7. Event	
18	9	5	0	8. Patterns	
8	4	2	0	9. Age	
4	2	1	0	10. Site	
				B. HISTORY TOTAL	23 (max. 60)
4	2	0	0	11. Continuity	
14	7	0	0	12. Familiarity	
				C. CONTEXT TOTAL	5 (max. 14)
PRELIMINARY TOTAL (Sum of A, B and C)					36 (max. 100)
0	-3%	-5%	-10%	13. Condition (From A,B and C total)	-1.8
0	-25%	-50%	-75%	14. Exterior Alterations (From A,B and C total excluding 2)	-
				D. INTEGRITY	
ADJUSTED TOTAL (Preliminary total minus Integrity)					

STATUS/RATING

Present Rating (Adjusted Total): A(35+) B(23-34) C(11-22) D(0-10)

Contingency Rating (Preliminary Total): A(35+) B(23-34) C(11-22) D(0-10)

City Landmark Eligibility: Eligible (Present Rating is A or B)
 Not eligible

F-116 3EVALTAL.CB

Letter O– Friends of the Ninth Avenue Terminal

- O-1 The comment challenges the DEIR conclusion that the building at 603 Embarcadero, the Philbrick Boat Works, is not a historic resource per CEQA, as well as its construction date, and acknowledgment of a preliminary landmarks application before the Oakland Landmarks Preservation Advisory Board (LPAB). The comment includes a copy of the landmarks application and supporting materials.

Information Provided in the Draft EIR

The Cultural Resources section of the Oak to Ninth Avenue Project DEIR (Table IV.E-1, p. IV.E-14) stated that the building at 603 Embarcadero (the Philbrick Boat Works building) is not a historic resource for CEQA purposes, and states that it was constructed in 1947. The DEIR also stated that among other non-historic buildings on the project site, the proposed removal of 603 Embarcadero would constitute a less-than-significant impact to historic resources (p. IV.E-29).

These statements and conclusions in the DEIR were made after all buildings and structures on the project site were reviewed under federal, state, and local evaluation criteria for their potential historic significance by Carey & Co., consulting architectural historians for the proposed project. Specifically, Carey & Co. found that the Philbrick Boat Works building did not meet the federal or state criteria for listing on the National Register of Historic Places (NRHP) or California Register of Historical Resources (CRHR). The building was not rated in the Oakland Cultural Heritage Survey (OCHS). In Carey & Co.'s opinion the property at 603 Embarcadero does not appear to be of Oakland Landmark quality because it is not an outstanding or especially fine architectural example and it does not possess extreme or major historical importance.” (DEIR Appendix G)

Preliminary Evaluations & Additional Detailed History

In June, 2005, the tenant who leases 603 Embarcadero (Philbrick Boat Works) from the Port of Oakland, submitted a Notice of Intent to Submit an Oakland Landmark Application form to the Oakland LPAB, as well as a detailed history of the building prepared by the tenant. OCHS staff and the tenant/applicant prepared a preliminary landmarks evaluation tally worksheet in a pre-application discussion of the nomination, which, based on the information provided by the tenant/applicant, gave the building high marks for cultural significance.

Both the preliminary evaluation prepared by OCHS and the detailed history of the building prepared by its tenant suggest that the Philbrick Boat Works could be considered a historical resource because it is the site of the “last remaining wooden boat builder on the Oakland Waterfront operating in the last remaining original Port of Oakland warehouse.” The application materials also indicate that the building was constructed in 1935, not 1947, as described in the DEIR.

While the building may pre-date 1947, Port documents state that it was built in 1947. Therefore, the building was assigned this construction date. The possibility that the building may have been constructed up to 12 years earlier has little or no bearing on its historical significance, since Carey & Co.'s evaluation considered the building to be 45-50 years old or older regardless of its actual date of construction. Age is only one of many considerations used to evaluate a building and would not alone determine its historic significance.

A determination of the accuracy of the tenant's assertion that the building houses the "last remaining wooden boat builder on the Oakland Waterfront operating in the last remaining original Port of Oakland warehouse" would require a full investigation of the existence of all other wooden boat builders in Oakland, as well as all other Port of Oakland warehouses dating from this time period (circa 1935) and the various maritime activities that occur within them. The tenant has not provided this documentation to the City.

Philbrick Boat Works was one of many maritime enterprises that operated along the Oakland waterfront, including Hurley Marine Works, Hanlon's Boat Yards Pacific Drydocks, Merritt Shipyards and others. The building's association with Oakland's maritime industry as a long-time builder of wooden boats, while likely rare and somewhat interesting, would not alone qualify it as a historic resource on an individual level. Moreover, the building is not located in a historic district.

Landmark and Heritage Property Eligibility and Evaluation

In order to determine whether a property is eligible as a landmark, the property is rated under the City's evaluation criteria on an evaluation tally sheet. The tally sheet uses numerical scores that are added together to form a total score that is converted into an alphabetical rating; A, B, C, or D. Properties receiving an A or B rating are considered eligible landmarks. Properties rated C or D would not be considered eligible landmarks. On the preliminary evaluation work sheet, Staff assigned the building with a rating of B (23-34 points), which indicates that the building could be eligible as an Oakland landmark.

In December, 2005, Carey and Co., completed a subsequent review of the property to confirm the OCHS staff's preliminary findings about the building's potential historical significance and to reevaluate the building for landmark eligibility using the city's evaluation tally sheet. Carey and Co., reviewed the Notice of Intent Form and supporting materials, conducted a site visit and reviewed additional archival research and based on this additional information not available during its initial investigation conducted for the DEIR. (This review is provided as **Appendix B** to this FEIR). In Carey & Co.'s subsequent review, the total numerical score on the evaluation tally sheet did not rise above a C rating. Therefore, the Philbrick Boat Works building would not qualify as an Oakland landmark under the city's landmark evaluation criteria. In addition, Carey & Co. found no evidence that Philbrick Boat Works helped establish the Oakland waterfront or that its founder, Don Philbrick, helped establish, promote, or develop even the local boat

building industry. At the peak of Philbrick's business in the 1950s, he employed only six people, and therefore, had a relatively minor role in the history of Oakland's waterfront when compared to the larger and more established boat manufacturers in the area.

At the January 9, 2006 LPAB hearing on the landmark application, the Board adopted the finding that the Philbrick Boat Works did not meet the City's landmark eligibility requirements.

Carey & Co. also evaluated the building based on the OCHS evaluation tally sheet and concluded that it would not qualify as a Heritage Property because its rating did not rise above a D rating. Staff's preliminary total on the OCHS tally sheet resulted in a C rating. At the January 9, 2006 LPAB hearing, the board adopted the finding that the Philbrick Boat Works did not meet the City's criteria for a Heritage Property designation.

In summary, based on a review of the Notice of Intent Form and supporting materials, a site visit, photographic documentation, additional archival research conducted at local libraries and other depositories of historical information, and completion of Oakland's evaluation tally sheets, Carey & Co. confirmed that the building does not warrant Oakland landmark or heritage status. Carey & Co.'s determination has been confirmed by the LPAB determination that the building does not meet either the City's landmark or heritage designation criteria. As such, the assertion in the DEIR that the Philbrick Boat Works building is not a historic resource for CEQA purposes and that its potential demolition resulting from the proposed project would be a less-than-significant impact, is accurate and supported by the evidence provided herein.

- O-2 The comment is related to the description of the project rather than the adequacy of the environmental evaluation. CEQA does not require the disclosure of ownership of historic buildings that would be demolished as part of a proposed project (i.e., public vs. private ownership). CEQA does, however, require disclosure of a proposed project's potential effects to such resources, including demolition. These potential effects are described in DEIR Section IV.E (Cultural Resources).

350 Frank H. Ogawa Plaza, Suite 900
Oakland, CA 94612-2016

t. 510.452.9261
f. 510.452.9266

www.savethebay.org

October 19, 2005

Margaret Stanzione, Project Planner
City of Oakland
Community and Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

RE: Comments on DEIR, Oak to Ninth Avenue

Dear Ms. Stanzione:

These comments are submitted on the Draft Environmental Impact Report (DEIR) for the proposed Oak to Ninth Avenue development of Oakland Harbor Partners.

Save The Bay is the oldest and largest organization working to protect and restore San Francisco Bay and promote public access to its shoreline. Save The Bay's 10,000 members have worked throughout the region since 1961, led the campaign to establish the San Francisco Bay Conservation and Development Commission, and have been active in efforts to reconnect the people of Oakland to their Bay shoreline for decades. Save The Bay campaigned for Measure DD to provide resources for improvement of Oakland shoreline parks and public access, and annually engages thousands of Oakland students and adults in Bay restoration, stewardship, and on-the-water education.

The DEIR incorrectly asserts that the project would be consistent with most Estuary Plan policies (IV.A-13).

The Oakland Estuary Policy Plan (EPP) was produced by a thorough public process, adopted by the City Council and incorporated in the General Plan in 1999, and states, in part:

"Shoreline access and public space policies are intended to establish this area of the Estuary as the major recreational destination in the city. The Plan recommends a series of large open spaces, intended to provide for a wide variety of recreational experiences. Developing a series of well-defined open spaces would change the entire nature of the waterfront in this area, transforming it from an industrial backwater into a recreational centerpiece of the city. In total, these sites would represent one of the most significant additions of urban parkland within the entire Bay Area. They would create both a regional and local asset of major proportions."

P-1

SAVE THE BAY

In fact, the project described in the DEIR is inconsistent with the EPP in several significant ways:

P-1
(CONT.)

- 1. The EPP called for the dominant purpose of this site to be recreation and commercial. The proposed project emphasizes residential use instead. P-2
- 2. Most of the alternatives described in this DEIR provide significantly less open space and public use than established in the EPP, which was itself the result of a compromise. The DEIR admits that the project would provide only 40 percent of the open space delineated in the EPP (IV.L-16). The open space that is provided is designed to benefit condominium owners, not to encourage and invite use by the public. The project significantly defers completion of Bay Trail segments until as late as 2018. These critical public access components should be required at the outset of any project on the site. The EPP required creation of festival areas, but those would be precluded by the project and its 3,100 residential units. These aspects of the proposal are also inconsistent with the San Francisco Bay Plan's requirements for maximum feasible public access. P-3
P-4
P-5
P-6
P-7
- 3. The development's design is of significantly greater bulk, height and density that established in the EPP, and "walls off" the estuary by blocking visibility of the water and Estuary Park from public view, rather than reconnecting the people of Oakland to their shoreline. The EPP requires opening the water to the public, in part, by ensuring views from the streets off the Embarcadero. These aspects of the proposal are also inconsistent with the San Francisco Bay Plan's requirement that views of the Bay be maintained, especially from new streets. The DEIR should not compare these aspects of the project to the current site use, but instead to the profile of future use articulated in the EPP. P-8
P-9

The DEIR incorrectly asserts that it may serve as a substitute for the Oak to Ninth area Specific Plan required by the EPP.

The project proponent is impermissibly ignoring a mandated Specific Plan process that would have permitted extensive input and scrutiny from the public, Planning Commission and City council of any attempt to undermine the EPP's requirements regarding open space, public access, density and views.

As noted above, the project is inconsistent with the Estuary Plan, and the DEIR's assertion that it may substitute for a Specific Plan is erroneous in several respects:

P-10

- 1. A Specific Plan should describe optimal development of the Oak to Ninth area consistent with the EPP, not erode the EPP to endorse a developer's preferred project.
- 2. A Specific Plan should be developed through a focused community planning effort and through city-sponsored public hearings, not "declared" by blessing a specific developer's proposal.

- 3. The City and the Port of Oakland are mandated by the EPP within the General Plan to prepare a Specific Plan, and have taken no affirmative action to eliminate that mandate. Because the General Plan has not been duly amended, this mandate stands.

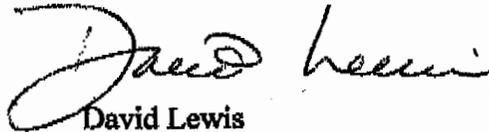
P-10
(CONT.)

Oakland should be reclaiming its waterfront for the benefit of all residents of the city, after so much of it has been off limits to generations of people. Any project at the Oak to Ninth street site must be consistent with the EPP and create the "major recreational destination in the City" envisioned by the plan, which was developed with and for all the people of Oakland and is enshrined in the city's General Plan. Elements of Project Alternatives 2 and 3 come the closest to achieving this vision and implementing the city's General Plan.

P-11

Thank you for your consideration of these comments.

Sincerely,



David Lewis
Executive Director

Letter P– Save the Bay

P-1 A comprehensive discussion of how the project relates to the Estuary Policy Plan is provided on DEIR pp. IV.A-11 through IV.A-17, and under Impact A.2 on pp. IV.A-36 and IV.A-37. As concluded there, the project would not conflict with Estuary Plan policies. The project is consistent with the overall goal cited by the commenter: “the project would introduce a series of large open spaces along the waterfront that would be a major recreation designation in the city”; would transform the area from an industrial backwater to a recreational centerpiece and a regional and local asset. The DEIR also discusses that the project would be consistent with policies that address the need for improved environmental conditions of the site (biological resources, remediation, and shoreline improvements).

The DEIR clarifies that conflict with a General Plan policy does not inherently result in a significant impact on the environment within the context of CEQA (DEIR pp. IV.A-6 and IV.A-36). City decisionmakers, in deciding whether to approve the project, will assess whether the project is consistent with the overall policies of the General Plan and must balance competing General Plan goals and objectives as part of its consideration.

P-2 Impact A.2 identifies the potentially significant impact from the project’s proposed residential land use component, which the Estuary Policy Plan does not explicitly identify as an encouraged or envisioned land use for the Oak-to-Ninth District (although it establishes a maximum residential density). The project proposes a General Plan Amendment (Mitigation A.2a) to create a new Planned Waterfront Development-1 (PWD-1) land use classification and incorporate it into the Zoning Regulations and map. Among other things, approval of the proposed amendment would include establishing “residential” as a permitted land use for the project area.

P-3 Comment is noted. The project would provide a total of 20.7 acres of new open space. The Estuary Plan does not provide open space acreage assumptions, however, a total of 35.7 acres of new open space was analyzed in the Estuary Plan EIR and illustrated in the Estuary Policy Plan (DEIR p. IV.L-16 and Table IV.L-2). City decisionmakers of the project will ultimately consider the adequacy of the proposed new parks and open space acreage.

P-4 The comment suggests that the proposed open space design aims to benefit condominium owners and would not encourage and invite use by the public. The comment does not elaborate, therefore this response assumes the comment refers to the location of residential (and retail) development against the Embarcadero (except for Channel Park at Lake Merritt Channel and Gateway Park at Clinton Basin) and that may limit visual access to some of the proposed new open spaces from the Embarcadero thoroughfare. To some extent, as discussed in Master Response H, this is a design consideration of the project, which the City will consider in its deliberations beyond its consideration of CEQA impacts to physical environment. To the extent that this is a “views” issue, it is addressed in Section IV.K (Visual Quality and Shadow) of the DEIR.

To assist the City decisionmakers, as required by CEQA, the DEIR analyzes a reasonable range of project alternatives. Alternative 2 (Enhanced Open Space / Partial Ninth Avenue Terminal Preservation and Adaptive Reuses) depicted in Figure V-2 on DEIR p. V-23 is provided to allow an alternative site layout (among other characteristics). Alternative 2 realigns the Embarcadero to run adjacent to new waterfront open space and locates new residential and commercial uses north of the Embarcadero. This configuration would allow additional visual access to the new open spaces (as would the project), however, other considerations include that locating open space adjacent to a major road (such as the Embarcadero) could discourage use of the space for certain users and activities. Additionally, a comprehensive signage program would guide the public to the new park/open space and trail system..

P-5 See Master Response G.

P-6 The comment suggests that the proposed residential use would preclude the creation of festival areas called for by the Estuary Policy Plan. The proposed land use would not preclude the use of existing or new open spaces for festivals or any public special event. As stated starting on DEIR p. III-18, “The project sponsor is not proposing to hold events (such as concerts or festivals) at the project site. However, it is possible that in the future, upon further review and approval by the City of Oakland, entities could sponsor such organized events at the new public open spaces created by the project.” Parks and open spaces likely would be owned and operated by the City of Oakland which would consider and grant/permit special activities. The ownership and maintenance responsibilities of parks and open spaces do not affect the project’s impacts on the physical environment under CEQA. The project sponsor would be responsible for installing improvements and maintenance of parks/open spaces in the project area.

P-7 See Response to Comment B-8.

P-8 See Response to Comment B-8.

P-9 The comment states that the DEIR should not compare the project to the current site use, but instead to the “profile of future use articulated in the EPP [Estuary Policy Plan].” The alternatives analysis provided in Chapter V of the DEIR describes and analyzes a no project scenario that generally compares the project to existing conditions (Alternative 1A: No Project). Additionally, as required by CEQA for a project proposing a General Plan change, the DEIR describes and analyzes a no project scenario that compares the project to the buildout envisioned in the Estuary Policy Plan (Alternative 1B: No Project / Estuary Policy Plan).

P-10 See Master Response A.

P-11 The comment expresses an opinion about what development plan should be approved and is noted. See Response P-1 through P-9. Additionally, prior to its action on the project, City decisionmakers will evaluate the project alternatives analyzed in Chapter V of the

EIR and ultimately reject these alternatives and adopted the proposed project, or alternatively elect one of the alternatives analyzed instead of the project.



**SIERRA
CLUB**
FOUNDED 1892

Northern Alameda County Regional Group

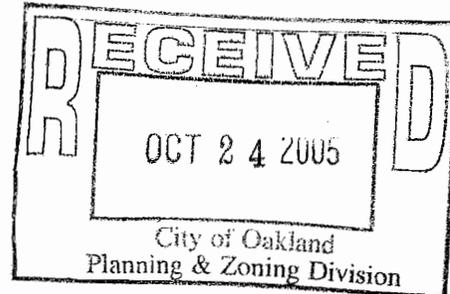
(Alameda-Albany-Berkeley-Emeryville-Oakland-Piedmont-San Leandro)

2530 San Pablo Avenue, Suite I, Berkeley, CA 94702

510-848-0800 (voice) · 510-848-3383 (fax)

October 24, 2005

Margaret Stanzione, Project Planner
City of Oakland
Community and Economic Development Agency
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612



Re: Comments on DEIR for Oak to Ninth Avenue Project

Dear Ms. Stanzione,

Our major overall concern regarding this project is the loss of public lands on the estuary for private development after years of a public process that designated the majority of the site for public open space. And there was no Specific Plan process as called for in the adopted Estuary Policy Plan **BEFORE** this project was presented.

Q-1

We would like to point out the following ways that the DEIR is inadequate and misleading.

Missing Alternative

The obvious alternative that needs to be studied is a version of the Estuary Policy Plan that replaces the commercial development designated around the Crescent Park with housing. With most of this housing in widely spaced slender towers ala Vancouver in addition to the 42 units of work/live adjacent to Fifth Avenue Point, a reasonable number of units between 1200 to 1800 could be accommodated. The Crescent Park facing the 1920's portion of the Ninth Avenue Terminal and part of the 50's portion remaining as an open shed would clearly delineate the public space. The 32' platform between the Terminal and the water with activity spilling out from it would serve as a lively, popular boardwalk for the Bay Trail. The 40' high Ninth Avenue Terminal will be lower than most of the residences since their first few levels need to accommodate retail and parking.

Q-2

Traffic Impacts Based on Fallacious Assumptions

The data generated for traffic impacts and air quality is based on the unrealistic premise described in "Evaluation of Project's Proposed Parking Supply" beginning on page IV.B-70, that each household will have only one car. It is hard enough to get banks to finance a 1:1 parking ratio near good transit but this is like a suburban development where you have to drive to transit and so the suburban standard of 1:1.46 is the relevant one. This would mean the addition of 1426 cars. The increased auto use will affect the Level of Service at each intersection as well as air quality and will change it from unacceptable to horrendous.

Q-3

Q

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Actually a project of 1800 units with a ratio of 1:1.46, that is, 2628 parking spaces plus 434 for commercial and the marina and 472 for events would be equal to the 3534 spaces studied for the proposed project. So the traffic impacts studied would be correct for a project of 1800 units.

Transportation Mitigations:

The development will generate significant impacts that are not mitigated. Mitigation measures include: providing an HOV/bus bypass lane from the project towards other transit connections, constructing a pedestrian overpass over the train tracks, constructing a Class 2 bike lane as designated in the Oakland bike plan that would connect with the city bike networks, and funding peak hour 15 minute headway transit service to the International Boulevard AC Transit trunk route and Lake Merritt BART station, including the estimated capital and maintenance costs for purchasing additional buses to serve the project.

Q-4

Without these mitigations, the project will contribute to non-attainment of the Clean Air Plan, will shift the area's mode share to more single-occupant vehicles, and generate significant traffic and air pollution. Cars will idle and be stuck in traffic during the many train stops during the day. The project is also not walking distance to BART or transit, so occupants will mostly use cars unless adequate transit, pedestrian, and bike infrastructure and transit level of service is provided.

Air Quality Data is Irrelevant

The air quality data is irrelevant because it is not based on monitoring at this site adjacent to the I-880 freeway. The data is taken from too great a distance, the Alice Street and West Oakland monitoring stations.

Q-5

No Analysis of the Health Impacts to Residents at this Site

There is some allusion to safety risk in case of medical emergencies and fire due to the poor accessibility of this site but **NO** chapter on the health risks of residing next to a heavily used freeway.

In April 2005, the California Air Resources Board published an Air Quality and Land Use Handbook in which they recommended to "avoid siting new sensitive land uses within 500 feet of a freeway." Sensitive land uses are defined as "residences, schools, daycare centers, playgrounds, or medical facilities." About half of the units are within 500 feet of the Nimitz Freeway. (The relevant pages from the Air Board Handbook are attached.)

Q-6

University of Southern California researchers concluded "children who lived a quarter mile from a freeway, for example, had an 89% higher risk of asthma than children living about a mile from a freeway." The whole site is within one-quarter mile of the freeway. Furthermore another team of researchers at USC found "that the chronic health effects of smog among adults are two to three times greater than earlier research showed." (Quotes are from attached article.)

Yet there has been no monitoring of air quality at this site. Not only is data required for this Environmental Impact Report but, if people are to reside on this site, constant monitoring will be needed to warn sensitive

Q-7

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individuals (i.e., children, the elderly, and those with pre-existing serious health problems affected by air quality) when it is above an acceptable level.

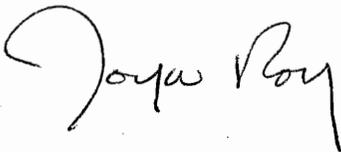
The Open Space Only Meets the Needs for Local-Serving Parkland.

Even by counting the site of the Ninth Avenue Terminal, the parkland of 20.7 acres only meets the standard of the Open Space, Conservation, and Recreation (OSCAR) Element of the General Plan for local-serving parkland, 4 acres / 1000 residents. For the citywide use visualized for this site, OSCAR calls for 10 acres of total parkland per 1,000 residents. With 5,000 anticipated residents that would be 50 acres of new parkland, more than twice the proposed park area. This belies the claim that the park area on this land owned by the public would benefit the larger citywide population.

Q-8

It is time to go back to the drawing board and engage in a citywide Specific Plan process.

Sincerely,



Joyce Roy
Member of Executive Committee
Northern Alameda County Group

Attachments:

Excerpts from California Air Resources Board "Air Quality and Land Use Handbook
Sept. 21, 2005 Los Angeles Times article titled "Study Links Freeways to Asthma Risk."

**AIR QUALITY AND LAND USE HANDBOOK:
A COMMUNITY HEALTH PERSPECTIVE**



April 2005

California Environmental Protection Agency
California Air Resources Board



Table 1-1

**Recommendations on Siting New Sensitive Land Uses
Such As Residences, Schools, Daycare Centers, Playgrounds, or Medical
Facilities***

Source Category	Advisory Recommendations
Freeways and High-Traffic Roads	<ul style="list-style-type: none"> • Avoid siting new sensitive land uses within 500 feet of a freeway, urban roads with 100,000 vehicles/day, or rural roads with 50,000 vehicles/day.
Distribution Centers	<ul style="list-style-type: none"> • Avoid siting new sensitive land uses within 1,000 feet of a distribution center (that accommodates more than 100 trucks per day, more than 40 trucks with operating transport refrigeration units (TRUs) per day, or where TRU unit operations exceed 300 hours per week). • Take into account the configuration of existing distribution centers and avoid locating residences and other new sensitive land uses near entry and exit points.
Rail Yards	<ul style="list-style-type: none"> • Avoid siting new sensitive land uses within 1,000 feet of a major service and maintenance rail yard. • Within one mile of a rail yard, consider possible siting limitations and mitigation approaches.
Ports	<ul style="list-style-type: none"> • Avoid siting of new sensitive land uses immediately downwind of ports in the most heavily impacted zones. Consult local air districts or the ARB on the status of pending analyses of health risks.
Refineries	<ul style="list-style-type: none"> • Avoid siting new sensitive land uses immediately downwind of petroleum refineries. Consult with local air districts and other local agencies to determine an appropriate separation.
Chrome Platers	<ul style="list-style-type: none"> • Avoid siting new sensitive land uses within 1,000 feet of a chrome plater.
Dry Cleaners Using Perchloroethylene	<ul style="list-style-type: none"> • Avoid siting new sensitive land uses within 300 feet of any dry cleaning operation. For operations with two or more machines, provide 500 feet. For operations with 3 or more machines, consult with the local air district. • Do not site new sensitive land uses in the same building with perc dry cleaning operations.
Gasoline Dispensing Facilities	<ul style="list-style-type: none"> • Avoid siting new sensitive land uses within 300 feet of a large gas station (defined as a facility with a throughput of 3.6 million gallons per year or greater). A 50 foot separation is recommended for typical gas dispensing facilities.

***Notes:**

- These recommendations are advisory. Land use agencies have to balance other considerations, including housing and transportation needs, economic development priorities, and other quality of life issues.

Table 1-2

Summary of Basis for Advisory Recommendations

Source Category	Range of Relative Cancer Risk ^{1,2}	Summary of Basis for Advisory Recommendations
Freeways and High-Traffic Roads	300 – 1,700	<ul style="list-style-type: none"> In traffic-related studies, the additional non-cancer health risk attributable to proximity was seen within 1,000 feet and was strongest within 300 feet. California freeway studies show about a 70% drop off in particulate pollution levels at 500 feet.
Distribution Centers ³	Up to 500	<ul style="list-style-type: none"> Because ARB regulations will restrict truck idling at distribution centers, transport refrigeration unit (TRU) operations are the largest onsite diesel PM emission source followed by truck travel in and out of distribution centers. Based on ARB and South Coast District emissions and modeling analyses, we estimate an 80 percent drop-off in pollutant concentrations at approximately 1,000 feet from a distribution center.
Rail Yards	Up to 500	<ul style="list-style-type: none"> The air quality modeling conducted for the Roseville Rail Yard Study predicted the highest impact is within 1,000 feet of the Yard, and is associated with service and maintenance activities. The next highest impact is between a half to one mile of the Yard, depending on wind direction and intensity.
Ports	Studies underway	<ul style="list-style-type: none"> ARB will evaluate the impacts of ports and develop a new comprehensive plan that will describe the steps needed to reduce public health impacts from port and rail activities in California. In the interim, a general advisory is appropriate based on the magnitude of diesel PM emissions associated with ports.
Refineries	Under 10	<ul style="list-style-type: none"> Risk assessments conducted at California refineries show risks from air toxics to be under 10 chances of cancer per million.⁴ Distance recommendations were based on the amount and potentially hazardous nature of many of the pollutants released as part of the refinery process, particularly during non-routine emissions releases.
Chrome Platers	10-100	<ul style="list-style-type: none"> ARB modeling and monitoring studies show localized risk of hexavalent chromium diminishing significantly at 300 feet. There are data limitations in both the modeling and monitoring studies. These include variability of plating activities and uncertainty of emissions such as fugitive dust. Hexavalent chromium is one of the most potent toxic air contaminants. Considering these factors, a distance of 1,000 feet was used as a precautionary measure.
Dry Cleaners Using Perchloroethylene (perc)	15-150	<ul style="list-style-type: none"> Local air district studies indicate that individual cancer risk can be reduced by as much as 75 percent by establishing a 300 foot separation between a sensitive land use and a one-machine perc dry cleaning operation. For larger operations (2 machines or more), a separation of 500 feet can reduce risk by over 85 percent.

Freeways and High Traffic Roads

Air pollution studies indicate that living close to high traffic and the associated emissions may lead to adverse health effects beyond those associated with regional air pollution in urban areas. Many of these epidemiological studies have focused on children. A number of studies identify an association between adverse non-cancer health effects and living or attending school near heavily traveled roadways (see findings below). These studies have reported associations between residential proximity to high traffic roadways and a variety of respiratory symptoms, asthma exacerbations, and decreases in lung function in children.

One such study that found an association between traffic and respiratory symptoms in children was conducted in the San Francisco Bay Area. Measurements of traffic-related pollutants showed concentrations within 300 meters (approximately 1,000 feet) downwind of freeways were higher than regional values. Most other studies have assessed exposure based on proximity factors such as distance to freeways or traffic density.

These studies linking traffic emissions with health impacts build on a wealth of data on the adverse health effects of ambient air pollution. The data on the effects of proximity to traffic-related emissions provides additional information that can be used in land use siting and regulatory actions by air agencies. The key observation in these studies is that close proximity increases both exposure and the potential for adverse health effects. Other effects associated with traffic emissions include premature death in elderly individuals with heart disease.

Key Health Findings

- Reduced lung function in children was associated with traffic density, especially trucks, within 1,000 feet and the association was strongest within 300 feet. (Brunekreef, 1997)
- Increased asthma hospitalizations were associated with living within 650 feet of heavy traffic and heavy truck volume. (Lin, 2000)
- Asthma symptoms increased with proximity to roadways and the risk was greatest within 300 feet. (Venn, 2001)
- Asthma and bronchitis symptoms in children were associated with proximity to high traffic in a San Francisco Bay Area community with good overall regional air quality. (Kim, 2004)
- A San Diego study found increased medical visits in children living within 550 feet of heavy traffic. (English, 1999)

In these and other proximity studies, the distance from the roadway and truck traffic densities were key factors affecting the strength of the association with adverse health effects. In the above health studies, the association of traffic-related emissions with adverse health effects was seen within 1,000 feet and was

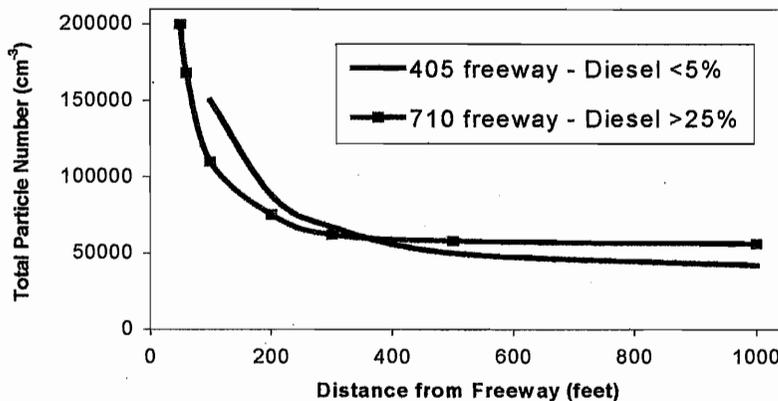
strongest within 300 feet. This demonstrates that the adverse effects diminished with distance.

In addition to the respiratory health effects in children, proximity to freeways increases potential cancer risk and contributes to total particulate matter exposure. There are three carcinogenic toxic air contaminants that constitute the majority of the known health risk from motor vehicle traffic – diesel particulate matter (diesel PM) from trucks, and benzene and 1,3-butadiene from passenger vehicles. On a typical urban freeway (truck traffic of 10,000-20,000/day), diesel PM represents about 70 percent of the potential cancer risk from the vehicle traffic. Diesel particulate emissions are also of special concern because health studies show an association between particulate matter and premature mortality in those with existing cardiovascular disease.

Distance Related Findings

A southern California study (Zhu, 2002) showed measured concentrations of vehicle-related pollutants, including ultra-fine particles, decreased dramatically within approximately 300 feet of the 710 and 405 freeways. Another study looked at the validity of using distance from a roadway as a measure of exposure

**Figure 1-1
Decrease In Concentration of Freeway Diesel PM Emissions
With Distance**



to traffic related air pollution (Knape, 1999). This study showed that concentrations of traffic related pollutants declined with distance from the road, primarily in the first 500 feet.

These findings are consistent with air quality modeling and risk analyses done by ARB staff that show an estimated range of potential cancer risk that decreases with distance from freeways. The estimated risk varies with the local meteorology, including wind pattern. As an example, at 300 feet downwind from a freeway (Interstate 80) with truck traffic of 10,000 trucks per day, the potential cancer risk was as high as 100 in one million (ARB Roseville Rail Yard Study). The cancer health risk at 300 feet on the upwind side of the freeway was much

less. The risk at that distance for other freeways will vary based on local conditions – it may be higher or lower. However, in all these analyses the relative exposure and health risk dropped substantially within the first 300 feet. This phenomenon is illustrated in Figure 1-1.

State law restricts the siting of new schools within 500 feet of a freeway, urban roadways with 100,000 vehicles/day, or rural roadways with 50,000 vehicles with some exceptions.² However, no such requirements apply to the siting of residences, day care centers, playgrounds, or medical facilities. The available data show that exposure is greatly reduced at approximately 300 feet. In the traffic-related studies the additional health risk attributable to the proximity effect was strongest within 1,000 feet.

The combination of the children's health studies and the distance related findings suggests that it is important to avoid exposing children to elevated air pollution levels immediately downwind of freeways and high traffic roadways. These studies suggest a substantial benefit to a 500-foot separation.

The impact of traffic emissions is on a gradient that at some point becomes indistinguishable from the regional air pollution problem. As air agencies work to reduce the underlying regional health risk from diesel PM and other pollutants, the impact of proximity will also be reduced. In the meantime, as a preventative measure, we hope to avoid exposing more children and other vulnerable individuals to the highest concentrations of traffic-related emissions.

Recommendation

- Avoid siting new sensitive land uses within 500 feet of a freeway, urban roads with 100,000 vehicles/day, or rural roads with 50,000 vehicles/day.

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- Lin, S. et al. "Childhood asthma hospitalization and residential exposure to state route traffic." Environ Res. 2002;88:73-81
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- Kim, J. et al. "Traffic-related air pollution and respiratory health: East Bay Children's Respiratory Health Study." American Journal of Respiratory and Critical Care Medicine 2004; Vol. 170. pp. 520-526

² Section 17213 of the California Education Code and section 21151.8 of the California Public Resources Code. See also Appendix E for a description of special processes that apply to school siting.

- Zhu, Y et al. "Study of Ultra-Fine Particles Near A Major Highway With Heavy-Duty Diesel Traffic." Atmospheric Environment. 2002 ; 36:4323-4335
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- English P., Neutra R., Scalf R. Sullivan M. Waller L. Zhu L. "Examining Associations Between Childhood Asthma and Traffic Flow Using a Geographic Information System." (1999) Environmental Health Perspectives 107(9): 761-767

Distribution Centers

Distribution centers or warehouses are facilities that serve as a distribution point for the transfer of goods. Such facilities include cold storage warehouses, goods transfer facilities, and inter-modal facilities such as ports. These operations involve trucks, trailers, shipping containers, and other equipment with diesel engines. A distribution center can be comprised of multiple centers or warehouses within an area. The size can range from several to hundreds of acres, involving a number of different transfer operations and long waiting periods. A distribution center can accommodate hundreds of diesel trucks a day that deliver, load, and/or unload goods up to seven days a week. To the extent that these trucks are transporting perishable goods, they are equipped with diesel-powered transport refrigeration units (TRUs) or TRU generator sets.

The activities associated with delivering, storing, and loading freight produces diesel PM emissions. Although TRUs have relatively small diesel-powered engines, in the normal course of business, their emissions can pose a significant health risk to those nearby. In addition to onsite emissions, truck travel in and out of distribution centers contributes to the local pollution impact.

ARB is working to reduce diesel PM emissions through regulations, financial incentives, and enforcement programs. In 2004, ARB adopted two airborne toxic control measures that will reduce diesel PM emissions associated with distribution centers. The first will limit nonessential (or unnecessary) idling of diesel-fueled commercial vehicles, including those entering from other states or countries. This statewide measure, effective in 2005, prohibits idling of a vehicle more than five minutes at any one location.³ The elimination of unnecessary idling will reduce the localized impacts caused by diesel PM and other air toxics

³ For further information on the Anti-Idling ATCM, please click on: <http://www.arb.ca.gov/toxics/idling/outreach/factsheet.pdf>

For Your Information from the Sierra Club

Published Wednesday, September 21, 2005, in the Los Angeles Times

Study Links Freeways to Asthma Risk

USC research adds to evidence that air pollution can cause respiratory problems.

By Deborah Schoch

The closer that children live to Southern California freeways, the greater their risk of being diagnosed with asthma, USC researchers have found in a study that bolsters growing evidence that air pollution can cause asthma.

Children who lived a quarter mile from a freeway, for example, had an 89% higher risk of asthma than children living about a mile from a freeway, according to the new research.

Even in areas such as Santa Maria, with generally good air quality, the researchers found that the risk of asthma increased for children who lived near freeways.

Separately, a different team of University of Southern California researchers has concluded that the chronic health effects of smog among adults are two to three times greater than earlier research showed. The team pinpointed a link between the tiny particles contained in air pollution and increased deaths from heart disease.

Articles on the two studies, conducted in Southern California, appear in the November issue of the journal *Epidemiology*.

USC released the findings Tuesday.

The freeway article is part of an ongoing landmark study of how air pollution affects children's respiratory health. That study, which began in 1993, produced findings last fall that showed smog can permanently stunt lung growth in children and lead to lifelong health problems.

Dr. Elisa Nicholas, project director for the Long Beach Alliance for Children with Asthma, called the freeway study significant. "There's increasing evidence demonstrating a link between air pollution and the development of asthma," Nicholas said Tuesday. "The more evidence we have, the more political will there will be to clean up emissions from the freeways."

Earlier studies have demonstrated a relationship between children's asthma and traffic exposure, but results have not been consistent as to whether air pollution causes asthma, according to the article by a team of seven researchers at the USC Keck School of Medicine.

Nor has research been conducted in Southern California, said lead author James Gauderman, a USC associate professor of preventive medicine.

So researchers tracked 208 children living in 10 cities in the region, including 31 children, or 15%, with asthma.

They installed air samplers outside the children's homes to measure nitrogen dioxide for two-week periods in the summer and fall of 2000. Nitrogen dioxide is produced by pollutants from cars and trucks.

Researchers measured the distance between each home and freeways, and counted how many vehicles traveled within 164 yards of the homes.

They found that children with higher levels of nitrogen dioxide near their homes were more likely to have asthma. For each increase of 5.7 parts per billion of the pollutant, the risk of asthma increased by 83%, the study states.

The researchers have not determined that nitrogen dioxide is causing asthma, but it is found with other pollutants -- including particulate matter that has been tied to other diseases.

Researchers also found that air pollution from freeways influenced nitrogen dioxide levels more strongly than pollution from smaller roads. Gauderman said that the current findings do not allow researchers to determine at what distance from a freeway children can avoid an increased asthma risk.

He emphasized that the study does not show that every child living near a freeway gets asthma. "We have to realize that even for a kid to live very close to a freeway, odds are that they're not going to get asthma. There's only a fraction of kids that get asthma," he said Tuesday.

Gauderman also said the study does not provide the type of information that researchers can use to advise individual parents.

"The message is probably more general, in terms of thinking about not planning tracts or schools close to a major freeway," he said. The findings might also be useful for government regulators studying the impacts of air pollution.

"From a regulatory standpoint, it might suggest that we need to look not only at background air quality but also the more local exposures that one might have by living next to a major roadway," Gauderman said.

The study involved children living in the cities of Alpine, Atascadero, Lake Elsinore, Lancaster, Long Beach, Mira Loma, Riverside, San Dimas, Santa Maria and Upland.

[press release <http://www.usc.edu/uscnews/stories/10555.html>]

Letter Q– Sierra Club

Q-1 The project would contain a mix of private development areas (residential and retail/commercial development, marinas) and public areas that the City would likely own (parks, open spaces, Ninth Avenue Terminal Bulkhead Building, streets and public paths). Although the project sponsor, a private entity, would acquire the project site from the Port of Oakland, a public entity, the project would not result in a loss of public lands on the Estuary in terms of areas that are publicly accessible for purposes of recreation and open space enjoyment. In fact, the project site would be more accessible after implementation of that project than it is today. Additionally, pursuant to Senate Bill 1622 (Exchange Act), an exchange parcel for lands to be removed from the Tidelands Trust designation on the project site, and would be acquired somewhere in Oakland in accordance with the terms of SB 1622. Therefore, it is not anticipated that there would be a loss of lands as a result of the project. See Master Response A regarding preparation of a specific plan.

Q-2 The comment proposes an additional alternative to the project that is a version of the Estuary Policy Plan that retains the 1920s portion of the Ninth Avenue Terminal, maintains the 1950s portion as an open shed and replaces the commercial development designated around the Crescent Park with housing. Chapter V (Alternatives) of the DEIR analyze Alternative 2 (Enhanced Open Space / Partial Ninth Avenue Terminal Preservation and Adaptive Reuse); Alternative 3 (Reduced Development/ Ninth Avenue Terminal Preservation); and a Full Ninth Avenue Terminal Preservation and Adaptive Reuse Sub-Alternative. These alternatives provide the City with the basic range of preservation scenarios to consider as it evaluates the proposed project. It is not necessary or required to address every variation that could occur within the range of alternatives. Additionally, the comment suggests an alternative that is a variation of the Estuary Policy Plan (residential use around Crescent Park). The alternatives in the DEIR specifically represent feasible alternatives to the proposed project.

In summary, the alternative characteristics described by the comment are incorporated in the alternatives analyzed in the DEIR. Additionally, as discussed in detail in Master Response B, the selected alternatives analyzed in the DEIR constitute ‘a range of reasonable alternatives to the project...which would feasibly attain most of the basic objectives of the project’ (CEQA Guidelines Section 15126[a]).” City decisionmakers will ultimately decide on the adequacy of the range of alternatives included in the DEIR.

Q-3 See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management measures. In addition, factors that affect peak parking demand and factors that affect vehicle trip generation are not the same, particularly peak-hour trip generation, and therefore, the commenter is mistaken in linking these two analyses. For example, peak-hour trip generation is influenced by a person’s purpose and timing of the trip, which is not linked to a vehicle parked in the garage. Also of note is that the ITE-published traffic generation rates are taken from numerous surveys of similar land use types, and the condominium/townhouse sites in the

surveys average about two cars per unit (i.e., more than assumed in the project's parking supply). As a result, a change in estimated parking demand does not trigger a corresponding change in the estimated trip generation.

- Q-4 See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures.
- Q-5 The comment asserts that the air quality data is irrelevant because it is not based on monitoring at the site adjacent to the I-880 freeway, but on data taken from too great a distance from the project site. The information contained in DEIR Table IV.C-3 represents the most current and regionally specific air quality monitoring data available. Although the data may not describe the air quality onsite at the project location, the Alice Street and West Oakland monitoring stations are the closest stations to the project and effectively establish the background ambient air quality and air quality trends for criteria pollutants in the general project vicinity. Furthermore, localized air quality concerns near I-880 would be for carbon monoxide and diesel particulate Matter (DPM). The impact of carbon monoxide is analyzed in Impact C.3, and the impact of DPM is analyzed in Impact C.5. Both of these localized air quality impacts were determined to be less than significant.
- Q-6 The health risks from exposure to diesel exhaust are reported in the Air Quality Section of the DEIR, starting on p. IV.C-21, *Toxic Air Contaminants*. The health risks from project emissions were evaluated, as well as health risks at the project site from exposure to diesel emissions on I-880, the rail line north of the site, and from boats in the Estuary, south of the site.

The statements in the comment about siting facilities near freeways (and that were taken from the Air Quality Land Use Handbook [ARB]), are recommendations based on the assumption that a facility would be located in the prevailing (downwind) direction of a freeway. The DEIR analysis agrees with the recommendation in the Handbook for cases where a project would be located in the prevailing downwind direction of the freeway. However, meteorological data from Oakland Airport, and which are representative of the project site, indicate that the proposed project site is upwind of the freeway and upwind of the rail line for a considerable portion of the time (about 90 percent of the time), and downwind less than 10 percent of the time. The Handbook states on Page 9:

“The cancer health risk at 300 feet on the upwind side of the freeway was much less.”

The DEIR took into consideration site specific meteorological conditions when evaluating exposure to diesel exhaust, and it concluded that the freeway would have a much smaller effect on air quality at the project site than the condition described in the Handbook.

The comment quotes the University of Southern California (USC) Study about children having higher risks of asthma if they are located near freeways. The Study again assumes

that the children would be downwind of the freeways for a considerable portion of time. Again, the project site is located upwind of major freeways. Since there are no major diesel emission sources in the upwind direction of the project site, the conditions are better than those assumed in the USC Study. In addition, the measured ozone levels (the key ingredient in smog) at the monitoring stations that are most representative of the project site (DEIR Table IV.C-3) indicate that ozone levels over five years have been below both the state and federal standards. This indicates that, although there are areas in the region that exceed these standards, the levels at the project site are better than conditions referred to in the USC Study.

- Q-7 The DEIR adequately describes existing air quality at the site on DEIR p. IV.C-6, and it relies on monitoring data from several stations near the Project site. One monitoring station is one half mile away and two other stations are two and three miles away. The data from these stations, which are reported in Table IV.C-3 of the DEIR, show the measured long-term average levels as well as the highest short-term average levels for the area near the Project site. Since air quality will continue to be monitored at these stations in the future, and since these measured levels are reasonably representative of the Project site, air quality conditions at the Project site will continue to be monitored in the future.

In addition, future concentrations of pollutants near the Project were evaluated in the DEIR through dispersion modeling of future pollutant emissions. The concentrations estimated from the modeling, which are reported in the DEIR, show that future concentrations and health risks at the Project site would be lower than levels at locations east of the freeway, mainly because the Project site is located upwind of the freeway because of prevailing wind conditions.

- Q-8 As discussed in Response B-2, the proposed resident population and park acreage would exceed the City's adopted service standard for local-serving parks (4 acres per 1,000 residents) established by the OSCAR. The comment inappropriately applies the City's proposed "total park acreage standard of 10 acres of total park acres per 1,000 residents" to the project site, concluding that 50 acres of park land would be required to serve the project's projected approximately 5,000 residents. As stated on page 4-9 of the OSCAR, this standard "should only be applied for the city as a whole and should be based on all parkland in the city, regardless of function or ownership. Oakland currently has 8.26 acres of parkland per 1,000 residents."

Whereas the 20.7 acres of new open space (and trail facilities) proposed by the project would augment the city's park acreage, the citywide service level would remain below the goal of 10 acres per 1,000 residents. To demonstrate the project's contribution to the city's citywide service level, assuming the current total citywide park acreage (3,073 acres) the projected 2025 citywide population without the project (448,460)⁴, the citywide ratio would be 6.85 acres per 1,000 residents. With the 20.7 new acres proposed

⁴ Total citywide projected population without the Oak to Ninth Project, as stated in DEIR Table IV.J-5, Trends for Surrounding Areas and the City of Oakland, 2000, 2005, and 2025, on page IV.J-8 of the DEIR.

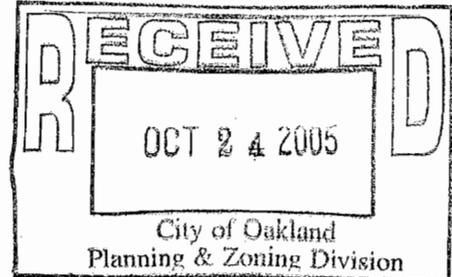
by the project (for 3,094 citywide acres total) and the projected citywide population with the project (453,520)⁵, the citywide ratio would be 6.82 acres per 1,000 residents. This is a highly conservative assessment since it assumes that no other future development projects in the city would provide open space, and that the numerous park and open space strategies in the OSCAR Element of the General Plan or the many improvement strategies for new and existing parks, open spaces and trail facilities (funded or not-yet-funded) that exist in community-based and regional plans would not be implemented in the future to the benefit of Oakland residents. It is important in this response to reclarify that the service standards outlined by the OSCAR are “a way to measure the need for parks and figure out where deficiencies exist (OSCAR p. 4-40).” And most importantly, the service standards are not significance criteria to determine the project’s impact on the physical environment under CEQA.

⁵ Total citywide projected population with the Oak to Ninth Project is 453,520, as stated in DEIR Table IV.J-11, Housing, Households, Population and Employment for Oakland with the Oak to Ninth Avenue Project, on page IV.J-22 of the DEIR.

Jack London 
Aquatic Center

October 24, 2005

Margaret Stanzione
 Project Planner
 City of Oakland
 Community and Economic Development Agency
 Planning Division
 250 Ogawa Plaza Ste. 3315
 Oakland CA 94612



**Re: Comments of Jack London Aquatic Center, Inc.
 Oak-to-Ninth Mixed Use Development Project
 Case No. ER 04-0009 (State Clearinghouse Number 2004062013)
 Oakland Harbor Partners, Project Sponsor**

Ms. Stanzione:

Please consider the following comments of Jack London Aquatic Center, Inc. ("JLAC")¹ to the above-referenced Draft Environmental Impact Report ("EIR"), authorized by the JLAC Board of Directors.

A. The limited focus of these comments.

The JLAC operates the Jack London Aquatic Center ("the Aquatic Center"), which is located in Estuary Park, at the northwestern end of the proposed project. See EIR Figure III-3.

¹ JLAC is a community-based, Section 501(c)(3)-qualified, non-profit corporation, founded in 1993. JLAC is governed by a board of directors. It is lead by its executive director DeDe Birch and the president of its Board of Directors Robert Kidd.

In 1997, the City of Oakland engaged JLAC to build an aquatic center ("the Aquatic Center") in Oakland's Estuary Park. The cost was underwritten by the City of Oakland (primarily Measure K Open Space bond funds), the Port of Oakland, the California Coastal Conservancy, and numerous individuals and local businesses. The facility was dedicated in October 2000.

JLAC has operated the Aquatic Center since January 2002, under a management-agreement with the City of Oakland. The Aquatic Center is a public facility, operated for the benefit of the public, in pursuit of the City's recreational goals. JLAC submits herewith a copy of its 2004 annual report, which provides an overview of the Aquatic Center and its activities.

Comments of JLAC to Oak-to-Ninth EIR
 October 24, 2005
 Page 2

The project proposes to develop housing on the 2.41 acre site of the Jetro Cash & Cash warehouse, designated as "Parcel N" in the EIR. Parcel N is located immediately adjacent to the Aquatic Center.

R-1
(CONT.)

The comments below focus on the impacts that the project will have on public access to and enjoyment of *both* the Jack London Aquatic Center *and* Estuary Park.

JLAC appreciates that *some* of the comments below may be premature; *some* of the comments below may be more-appropriately raised when the developer presents its proposed designs for the project. *All* of the comments below are inspired by the draft EIR, however, and therefore JLAC takes this opportunity to raise them.

R-2

B. Comments regarding the impacts of Parcel N housing.

1. Estuary Park and the General Plan.

(a) The issues.

The General Plan of the City of Oakland currently designates Parcel N as appropriate for an expansion of Estuary Park. *If* Estuary Park were expanded to include Parcel N, the park would reach from Embarcadero to the shores of the Oakland-Alameda Estuary, thereby increasing the park's size and enhancing its access.

R-3

It is JLAC's understanding that the City of Oakland has had *no* current plans to develop Parcel N in this manner, to finance such development or to underwrite the maintenance of a park expanded in such manner.

(b) Potential mitigations.

Parcel N design opportunities. If the City amends its General Plan to allow housing on Parcel N, it should condition such amendment on site-specific design features that maximize park-related and recreation-related usages of Parcel N's ground-floor space.

R-4

By way of example, the project proponent has already suggested the development of space in Parcel N for: (i) retail canoe/kayaking activities; and (ii) low-cost space that would serve and complement the program needs of the Aquatic Center.

Comments of JLAC to Oak-to-Ninth EIR
 October 24, 2005
 Page 3

While JLAC does not underestimate the challenge of designing Parcel N to accommodate both the private expectations of residents and the public expectations of park-users, (i) the project proponent has previously demonstrated its ability to rise to such challenge, and (ii) the amendment of the General Plan should include such express conditions.

R-4
 (CONT.)

Aquatic Center design opportunities. If the City amends its General Plan to allow housing on Parcel N, it should condition such amendment on the completion of the public-access improvements related to the Aquatic Center.

These improvements include: (i) the completion of the sixth boat-bay at the Aquatic Center (for which the pilings are already in place); (ii) installation of public toilets (perhaps as an element of the sixth boat bay), which installation is currently required under existing permits of the Bay Conservation and Development Commission; and (iii) the upgrading of other elements to improve public access to and to enhance public participation at the Aquatic Center.

R-5

Timing. If the City imposes such mitigation conditions, JLAC urges that such measures be implemented at the *beginning* of the project, rather than at the end. This is a critical consideration, because the EIR suggests that Parcel N will be the *last* of the parcels to be developed.

2. Parking impacts.

(a) The issues.

Both the Aquatic Center *and* Estuary Park are serviced by a public parking lot ("the East Lot") of about 69 spaces, including a number of over-sized spaces to accommodate the boat-trailers that use the public boat-launch ramp. The park is also serviced by a second parking lot ("the West Lot") of about 15 spaces, adjacent to the Portobello Condominium project.

These 84 *existing* spaces are frequently *insufficient* to serve the *current* usages of the park and the Aquatic Center. When the parking-spaces are filled, visitors are forced to park-as-park-can, up and down the Embarcadero.

R-6

JLAC anticipates that housing on Parcel N will exacerbate this parking shortage. JLAC anticipates that residents and their guests will tend to park in the East Lot whenever space is available, thereby making the Aquatic Center and Estuary Park less-accessible to other members of the public. Further, it is JLAC's understanding that the proposed project will eliminate the West Lot.

Comments of JLAC to Oak-to-Ninth EIR
 October 24, 2005
 Page 4

(b) **Potential mitigations.**

East Lot design opportunities. *First*, the streets of Parcel N should *not* directly access the East Lot. That is to say, a driver should not be able to drive his/her car directly from the East Lot into the southeastern side of Parcel N. *Second*, access to the East Lot must be controlled at the Embarcadero entrance to the lot, to prevent Parcel N residents and guests from parking in the East Lot. (At the present, the locked park-lot gate is jointly controlled by Public Works Agency and JLAC.) *Third*, planners must appreciate that *ad hoc* police action (i.e., the issuing of parking citations) will *not* provide a viable solution to these anticipated problems.

R-7

Additional parking. JLAC understands that the project proposes to develop additional public-parking spaces around the periphery of the project. JLAC encourages such additional parking, but does not consider that such, without the suggestions noted above, will adequately address to the serious parking-pressures that Parcel N will impose on Estuary Park and the Aquatic Center.

3. **Visual aesthetics.**

(a) **The issues.**

The EIR reports that the project proposes that the height of Parcel N housing will range between 65 feet and 86 feet. See EIR Figure IIII-5. Because the EIR is a preliminary planning document, it does not specify the actual height of the construction, does not distinguish between VARYING heights within the construction, and does not set forth a proposed design of the construction.

(b) **Potential mitigations.**

The Parcel N construction should be designed so as *not* to overwhelm the Aquatic Center or Estuary Park, visually or physically.

JLAC fully anticipates that the *project proponent* can design Parcel N in a manner that is appropriate to its site and context. JLAC notes, however, that Parcel N will be the last of the parcels developed, and, as a consequence, Parcel N may well be developed by a different developer, to which the project proponent sells the development pad.

R-8

Comments of JLAC to Oak-to-Ninth EIR
October 24, 2005
Page 5

4. The Supervision and Maintenance of Estuary Park.

(a) The issues.

Estuary Park is currently *supervised* by the Office of Parks & Recreation and *maintained* by the Public Works Agency. The project proposes that: (i) the Office of Parks & Recreation will continue to supervise Estuary Park; but (ii) the park will be maintained by a special-assessment district, a property-owners association, or a similar entity. JLAC observes that while such special-purpose entities frequently serve their purposes well, they sometimes develop to a *private* rather than a *public* focus.

(b) Possible mitigations.

When constituted, any maintenance-entity should have a significant, continuing number of public members, including representatives of the JLAC.

When constituted, any maintenance-entity should seek to engage community-based entities (such as Peralta Service Corporation, etc.) to provide maintenance services.

5. The Supervision and Maintenance of the Aquatic Center.

(a) The issues.

The Aquatic Center is currently *supervised and maintained* by the JLAC, pursuant to the management agreement between JLAC and the City of Oakland. The current iteration of the management agreement has a three-year term, ending in December 2007; the agreement is renewable at the pleasure of the City of Oakland. Under the agreement, the City of Oakland pays JLAC \$160,000 *per annum*, and authorizes JLAC to retain storage- and use-fees generated by third-party users of the facility.

Any realistic assessment of the future costs of operating and maintaining the Aquatic Center will demonstrate that these *current* levels of income will be *insufficient* to operate and to maintain the Aquatic Center in the *future*.

Moreover, it is not clear whether the City of Oakland will continue *any* future support of the Aquatic Center or its mission. JLAC is familiar with the City of Oakland's general financial circumstances, and the conflicting needs of Oakland's other parks and recreational facilities. JLAC anticipates the *possibility* that the City of Oakland's future support of the Aquatic Center will wane, particularly because the project proposes that entities *other* than the City of Oakland will be responsible for future maintenance of Estuary Park and related park spaces within the project.

R-9

R-10

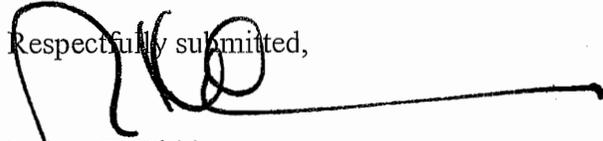
Comments of JLAC to Oak-to-Ninth EIR
October 24, 2005
Page 6

Uncertainty about maintenance-responsibility and maintenance-funding will tend to result in: (i) the deterioration of the Aquatic Center's physical plant, (ii) the restriction of the Aquatic Center's outreach to the Oakland public, and (iii) the greater possibility that the Aquatic Center will be used only by its immediate neighbors.

(b) **Possible mitigations.**

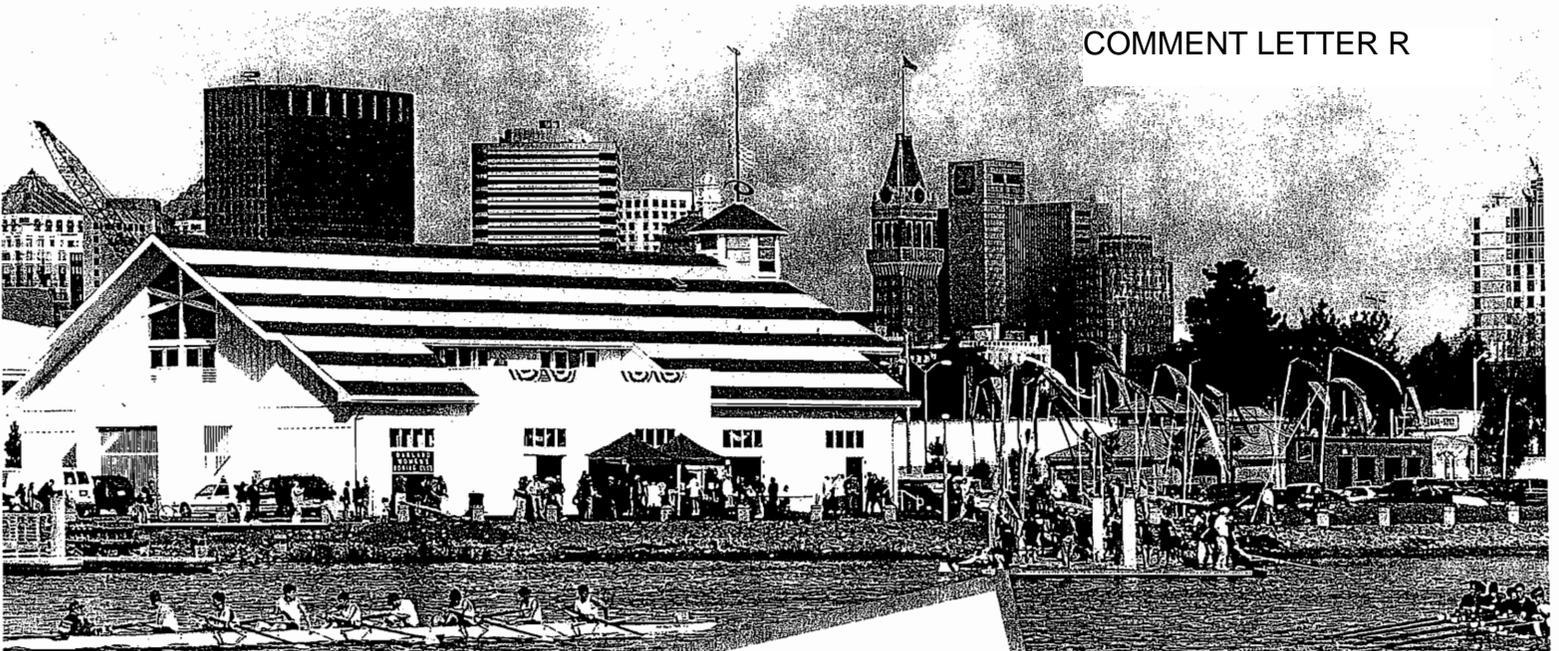
JLAC urges that in these *fiscal* concerns be addressed *early in the development process*, perhaps even as part of the EIR process. JLAC believes that the addressing of these fiscal concerns *early* is necessary to assure that the Aquatic Center will continue to serve its mission of bringing *all* of the diverse communities of Oakland – and particularly the *youth* of Oakland – to the waterfront, for recreation, competition and education.

Respectfully submitted,


Robert F. Kidd
President
Jack London Aquatic Center, Inc.

Enclosure

R-10
(CONT.)



Jack London
Aquatic Center

January 31, 2005

Hon. Jerry Brown
Mayor of the City of Oakland

Hon. Ignacio de la Fuente
President of the Oakland City Council
and Honorable Members of the Oakland City Council

Ms. Deborah Edgerly
City Administrator of the City of Oakland

Director Audree Jones-Taylor
Oakland Office of Parks and Recreation

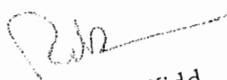
2004 Annual Report of Jack London Aquatic Center, Inc.

Jack London Aquatic Center, Inc. ("JLAC") operates the Jack London Aquatic Center ("the Aquatic Center") at Oakland's Estuary Park, under an agreement with the City of Oakland. JLAC submits this annual report pursuant to that agreement.

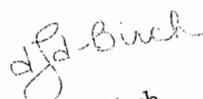
JLAC hosts a variety of rowing and paddling programs, in pursuit of its mission to serve the residents—and especially the youth—of Oakland. The Aquatic Center is no ordinary boathouse. Some of the JLAC's programs have never been done before, anywhere. At the same time, we are impatient. Every small success opens our eyes to even greater opportunities and even greater needs.

We invite your questions and comments, and we look forward to engaging you in activities at the Aquatic Center.

Sincerely,


Robert F. Kidd
President


Wil Hobbs, Jr.
Vice President


DeDe Birch
Executive Director

P.O. Box 72347
Oakland, CA 94612
(510) 208-6060
E-Mail: info@jlac.org
Website: www.jlac.org

Jack London
Aquatic Center
Annual
Report
2004

A Short History of the JLAC and the Aquatic Center.

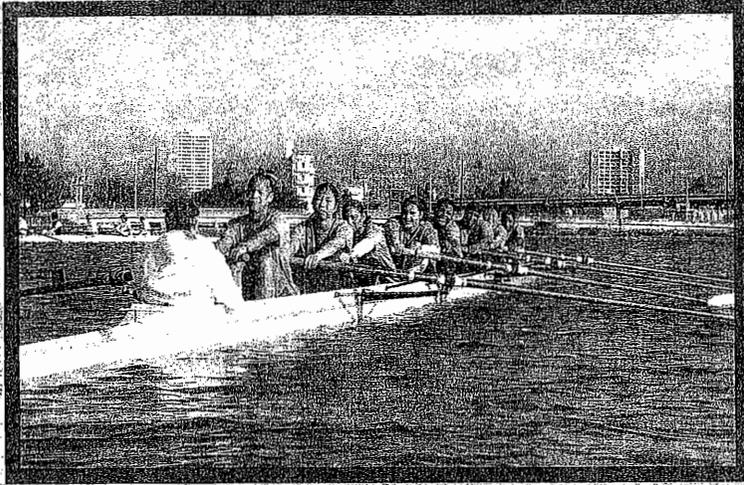


Photo by Peggy Johnston

The JLAC.

The Jack London Aquatic Center, Inc. ("JLAC") is a 501(c)(3) non-profit corporation. It was founded by Vincent Horpel 1994, at the suggestion of the late Cleve Williams, then the Director of Oakland's Office of Parks & Recreation.

JLAC operates the Jack London Aquatic Center ("the Aquatic Center"), located in Estuary Park, on the Embarcadero, between Oak Street and 5th Avenue, about one mile southeast of Jack London Square.

JLAC is lead by its executive director DeDe Birch, and is governed by a community-based board of directors. A roster of officers, directors and staff is set forth on the final page of this report.

The JLAC's Mission.

JLAC's mission is to inspire the diverse communities of Oakland—and especially the youth of Oakland—to experience the Oakland-Alameda Estuary waterfront, for recreation, education and competition.

The Vision. For generations, Oaklanders have been cut off from their waterfront. In 1992, the Oakland League of Women Voters commissioned then-former City Attorney Richard Winnie to explore the waterfront's opportunities. His report emphasized the needs to open the waterfront to the public and to connect the waterfront to Oakland's neighborhoods. This vision continued to develop, during monthly meetings of the Waterfront Coalition (convened by Oakland citizen Sandy Threlfall), and through the work of the Port of Oakland, and Oakland City Council and the Port/City Liaison Committee.

Design and Construction. In June 1997, Oakland's City Council authorized JLAC to construct an aquatic center in Estuary Park. The initial grant from Oakland's Measure K Open Space bond fund was complemented by grants from the City, the Port of Oakland, the California Coastal Conservancy, the Waterfront Plaza Hotel, Victoriana of San Francisco, Inc., VBN Architects, Concept Marine Associates and others.

Construction began in January 2000, and was completed ten months later. JLAC managed all aspects of design and construction, without compensation. VBN Architects and Alan Dreyfuss AIA were the design architects; Hanson-Murikami-Eshima and J.H. Fitzmaurice, Inc., were the design-build team for the boathouse; Concept Marine Associates and Peak Engineering were the design-build team for the docks. Mayor Jerry Brown presided over dedication ceremonies on October 28, 2000.

The City/JLAC Management Agreement. Effective January 1, 2002, the City engaged JLAC to operate the Aquatic Center, on behalf of the City and in pursuit of City purposes. Through the good offices of City Administrator Deborah Edgerly and Parks & Recreation Director Audree Jones-Taylor, the management agreement has been renewed for the period 2005-2007.

Programs at the Aquatic Center.

2005 Program Information On-Line.

Program information for spring and summer 2005 is available at the JLAC's website at www.jlac.org.

Our First Concern: Safety.

While the Estuary is one of the Bay Area's great "open spaces," it is *not* a playground. It is a navigable waterway, used by thousands of yachts, jet-skis, motorboats, container-ships, tugboats and barges. As a consequence, JLAC does not offer unsupervised recreation at the Aquatic Center. To maximize safety, we organize our rowing, kayaking and dragon-boat paddling activities through supervised groups. All coaches are instructed in first-aid, safety and rescue protocols.

The Vision: Every Oakland Kid's Access to Oakland's Best.

JLAC believes that Oakland owes its kids the right to engage in activities associated with its waterfront. JLAC started with kayaking for Oakland youth in 2002; added single-sculling in 2003 and girls' rowing in 2004; and will add dragon-boat paddling in 2005. While JLAC offers its activities to all Oaklanders, we focus on the kids who live in Oakland's flatland neighborhoods. In 2004, we collaborated with the following community youth groups: East Bay Asian Youth Council; St. Paul's Episcopal School Aim-High; Oakland Housing Authority; Oakland Unified School District; Upward Bound and The Unity Council.

Our Greatest Challenge: Transporting Youth to the Aquatic Center.

While the Aquatic Center solves the challenge of getting Oakland youth from land to water, there remains the challenge of getting Oakland youth *to* the Aquatic Center. Most Oakland youth do not have access to cars during the day; the schools have no buses; BART and AC Transit nodes are just a little too far away. In December 2003, AC Transit donated a 12-person bus-van to the JLAC. Using it, JLAC was able in 2004 to bring Oakland students to the Aquatic Center both *during and after* school. The challenge remains, however: getting *to* the Aquatic Center is still the most difficult obstacle to delivering JLAC's services to Oakland youth.



Photo by Peggy Johnston

Kayak PE Classes.

JLAC continues its collaboration with *OUSD's Life Academy*, which began in 2002. In 2004, nine juniors and seniors kayaked for P.E. credit during spring semester; then sixty students (the entire first-year class) kayaked for P.E. credit during the autumn semester. By its AC Transit bus-described on this page, JLAC provided transportation between school and Aquatic Center, during the school day. In addition, JLAC offers kayaking classes to *Laney College* students each spring and summer.

JLAC thanks: Life Academy (Principal Allison McDonald, teacher Erik Rice) and Laney College (President Odell Johnson, Vice President Jose Ortiz, Athletic Director Jay Uchiumi).

Opportunities/challenges in 2005: JLAC seeks opportunities to offer P.E. kayaking classes to the students of *all* of Oakland's high schools.

JLAC Junior Women's Rowing Program.

In Spring 2004, twenty-one Oakland high school girls began a *revolution* in the sport of rowing. As members of the first JLAC Junior Women's Rowing Team, an after-school, competitive rowing program, they demolished the social and cultural barriers that have historically limited access to the sport of rowing. During spring 2004, the crew raced against other Bay Area high school crews, and competed in the State championship regatta at Sacramento.

The 2004-2005 crew has increased to 28 rowers: 26 are African American, Asian American or Latina; they study at six of Oakland's public high schools (Oakland, Oakland Tech, Skyline, McClymonds, Fremont

Continued on page 6...

2004 Kayak Programs at JLAC, Sponsored by JLAC

Total Kayak Participants: 474
 Total Kayak Participant Days: 1,621

St. Paul School Aim High
 Summer 2004. One-day activities for OUSD 8th graders.  Total Participants: 43
 Total Participant Days: 43

East Bay Asian Youth Center
 Five-day/one-week class.  Total Participants: 20
 Total Participant Days: 100

Friday Twilight Kayaking
 One-evening, eight nights for adults offered to the public. 

JLAC Kids-In-Kayaks
 Summer 2004. Three five-day/one-week classes.  Total Participants: 21
 Total Participant Days: 105

Laney College
 Spring 2004. One-day-per-week/sixteen-week PE class.  Total Participants: 9
 Total Participant Days: 144

Laney College
 Summer 2004. Two-days-per-week/eight-week PE class.  Total Participants: 12
 Total Participant Days: 100

Oakland Housing Authority
 Summer 2004. Three one-week programs for teenagers.  Total Participants: 35
 Total Participant Days: 35

OUSD Life Academy
 Spring 2004. One-day-per-week/ten-week PE class.  Total Participants: 7
 Total Participant Days: 77

OUSD Life Academy
 Autumn 2004. One-day-per-week/eight-week PE class.  Total Participants: 62
 Total Participant Days: 500

Unity Council
 Three one-day sessions.  Total Participants: 12
 Total Participant Days: 36

2004 Rowing Programs at JLAC, Sponsored by JLAC

Total Rowing Participants: 93
 Total Rowing Participant Days: 3,450

JLAC Junior Girls Rowing Crew
 February-May 2004. Daily. OUSD high school girls.  Total Participants: 22
 Total Participant Days: 154

JLAC Junior Girls Rowing Crew
 September-December 2004. Daily. OUSD high school girls.  Total Participants: 26
 Total Participant Days: 260

Single-Sculling Classes
 Spring-summer 2004. Two-day introductory classes.  Total Participants: 45
 Total Participant Days: 90

BAY AREA Business Woman
 Vol. 11 No. 12 September 2004
Different Strokes: Oakland Girls' Rowing Team Breaks Stereotypes
 —By Marilee McLeod Santoyo



Mention rowing on a crew team and the first image that comes to many minds is the famed 150+ year-old Harvard-Vale Regatta. One of the oldest college regattas in the nation, the annual race pits privileged rowers from elite prep schools against others for the pride of their schools.

Jenny Hale aims to break that rowing stereotype with the Oakland girls' rowing team, the first image that comes to many minds is the famed 150+ year-old Harvard-Vale Regatta. One of the oldest college regattas in the nation, the annual race pits privileged rowers from elite prep schools against others for the pride of their schools.

Throughout the school year, Hale focuses on not just the techniques of rowing but also on leadership and self-esteem. "What's interesting is that the history of rowing is not just the techniques of rowing but also on leadership and self-esteem."

"Any time any young kids can be involved in sports where their success is based on their own effort, that's something that everyone is in the same boat."

Total Participants: 253

Total Participant Days: 253

San Francisco Chronicle
 NORTH BAY CALIFORNIA'S LARGEST NEWSPAPER
 FRIDAY, MAY 14, 2004

Public school girls find joy in rowing
 Oakland program offers teens benefits of sport traditionally reserved for elite

By Patrick Hogg
 Consultant, Career Writers



High school girls from Oakland rowed in their first major regatta competition last weekend at Lake Natoma in Rancho Cordova near Sacramento.

After all, when the Oakland girls first met on Jan. 28, a half-dozen of them didn't even know how to swim. Plus, the girls did not get started until after other notice teams had already had around five months to learn the basics of team rowing and to get in shape.

The program they helped pioneer was put together with a shrewd string and a lot of heart by the Jack London Aquatic Center, a nonprofit agency that runs a 2.5-acre waterfront on the Oakland-Alameda estuary in an area Berkeley place to row, and UC Berkeley has used the waterway for competitive rowing since the 19th century.

But to the frustration of the Aquatic Center's board of directors, the boathouse has not been used by many Oakland youth. Berkeley High School's crew team practice there, though, and a large, expensive private program uses the area.

Given the last number of college scholarships available, particularly in women's rowing, Berkeley has long attracted mostly relatively well-to-do Californians, said Jack London Aquatic Center president Robert Kobb.

Kobb said the Oakland Aquatic Center's board of directors. One factor is cost: a boat typically costing \$30,000. The private Oakland Aquatic Center paid for most of the new program, along with contributions from the Lake Merritt Rowing Club and the nonprofit Team Up For Youth program in San Francisco, which works to bring sports to underserved communities. Lake Merritt Rowing Club also donated a used boat.

"If we end up with a beautiful boathouse like this with only a few kids and lots of means having a 'what Oakland needs is to become a waterfront city again for the kids that live here.'"

The Oakland Aquatic Center paid for most of the new program, along with contributions from the Lake Merritt Rowing Club and the nonprofit Team Up For Youth program in San Francisco, which works to bring sports to underserved communities. Lake Merritt Rowing Club also donated a used boat.

Total Participant Days: 496

OHIA NEWS IN BRIEF
 September 2004

Row Row Row Your Boat Gently Down the Stream!



Over 35 youth from various Oakland Housing Authority sites enjoyed a week of kayaking this past summer, through a one-week camp held at Jack London Aquatic Center (JLAC). Three sets of camps were held in the Oakland Estuary Park. It was a different kind of experience for the youth. Participants did not have to know how to swim to be able to participate at the beginning, but by the fifth day, they were all very good at kayaking. Jon Greasley, Executive Director of Housing Authority, got into the action and spent a day with the kayakers. The Oakland Housing Authority would like to thank Rotary Club of Oakland and JLAC for initiating this fun activity for the youth.

Right photos, top to bottom: OHIA Kayakers "Crash!" Youth Kayaker helping OHIA staff get in; Above: Youth emerging their kayaks.

Total Participant Days: 1,540

Total Participant Days: 1,820



Continued from page 3...

and Life Academy). The nominal \$75 participation fee is underwritten by a grant from Team-Up for Youth and by the JLAC; a work/grant program is available for those who cannot afford this fee. Through a collaboration with the Undercurrents Swim Team, swimming classes are incorporated into the rowing program, to remove the fear of water as a barrier to rowing. The crew was the subject of many stories in the media: the *San Francisco Chronicle* (May 14); *Bay Area Business Woman* (September 12) KTVU 10 O'Clock News (May 13); *OHA News in Brief* (September); a 30-minute DVD produced by students of the Laney College media arts department.

JLAC thanks: Team Up for Youth Foundation (Executive Director Tim Johnson, Carilee Pang Chen); Lake Merritt Rowing Club (President Brian Birch); Marin Rowing Association (Executive Director Sandy Anderson); U.C. Santa Barbara crew (Coach Mike Holmes); JLAC Junior Committee chair Peggy Johnston; recruiter Dr. Linda Ricketts; Head Coach Jenny Hale; Assistant Coaches Scott Hinckley and Hilary Meu; Upward Bound (Romeo Garcia); Undercurrents Swim Team (Ben Shepard); Soroptomist International Oakland (President Carolyn Bolton); Medco Media Group (Jennifer Ongri, John Razzano, Dale Nabeta); Oakland Rotary Club No. 3 (President Dr. Tom Schmitz, Lori Sinclair, Paul Cummings).

Opportunities/challenges in 2005: *First*, JLAC will continue to grow the Junior Girls' Rowing Team, by implementing an aggressive recruiting program at the beginning of the 2005–2006 school year. *Second*, JLAC will commence planning a JLAC Junior Boys' Rowing Team, to assure be "launched" in September 2006; *Third*, to assure access through a sustainable business model.



Summer Programs.

JLAC's summer programs are accessible both through open-enrollment and through partner community-groups. Participation fees are intentionally kept low, and cover only the cost of instruction; even these fees are frequently waived, to assure that lack of means does not bar participation. Programs are tailored to fit the schedules and the special agendas of our partner community-groups.

JLAC thanks: St. Paul's School Aim High program (Head of School Karen Merry, Program Director Love Winestock); East Bay Asian Youth Center (President David Kakashiba, Program Director Peter Kim); Oakland Housing Authority (Executive Director Jon Gresley, Program Director Patricia Ison); The Unity Council (CEO Gilda Gonzales, former CEO Arabella Martinez, Program Director Rita Torres); International Dragon Boat Association (President Shirley Gee).

Opportunities/challenges in 2005: *First*, JLAC looks forward this summer to collaborating with four neighborhood recreation centers of Oakland's Office of Parks & Recreation. *Second*, we seek introductions to more community-groups. *Third*, JLAC looks forward to collaborating with community groups to fill the two dragon boats which the International Dragon Boat Association donated to JLAC in 2004.



Single-Sculling.

With its fleet of five "Aeros," JLAC teaches the joys of single-sculling on the Oakland-Alameda Estuary. Back-to-back classes are offered on Saturdays and Sundays. These classes are open to both youths and adults.

Opportunities/challenges in 2005: The number of classes will increase in 2005. JLAC anticipates that the graduates of these classes will become sustaining members of the JLAC community.

Friday Twilight Kayaking.

To introduce the citizens of Oakland the mysteries of the Oakland-Alameda Estuary, the JLAC organizes Friday after-work kayak trips into Embarcadero Cove and around Government Island. These "expeditions" last about two hours, and frequently conclude at a nearby restaurant.

Opportunities/challenges in 2005: Similar trips can be specially organized on other evenings and on weekends for community-, church- and work-groups.

Programs Offered by Others at the Aquatic Center.

JLAC licenses Aquatic Center space to independent programs. The resulting license-fees help underwrite JLAC's programs at the Aquatic Center. The **Oakland Strokes** program serves 250 high school boys and girls, about ten percent of whom are Oakland residents. At the US Rowing Junior Championship at Cincinnati in May 2004, Strokes "eights" won one gold medal and two silver medals. The **Berkeley High School** rowing program serves 110 boys and girls; the BHS boys' lightweight "eight" finished fifth at Cincinnati, the highest finish by a public high school crew. The **University of California Lightweight Crew Club** serves 100 men and women from the Berkeley campus of U.C. This program is a club program, under the supervision of the U.C. Department of Recreational Sports, and is distinct from the Golden Bear intercollegiate crews that row out of the new Gary Rogers boathouse. **Oakland Parks & Recreation Sailing** offers intermediate and advanced classes, to complement beginning classes offered on Lake Merritt. Members of the **Oakland Parks & Recreation Sailing Club** are entitled to sail the OPR sailboats anchored at the Aquatic Center.

The Community Room.

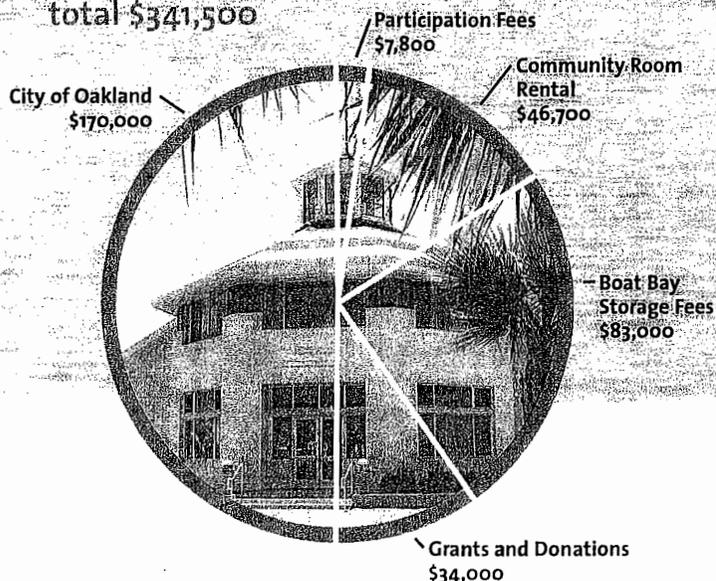
You can rent the second floor community room of the Aquatic Center, with its balconies overlooking Lake Merritt Channel and the Estuary, for your party, wedding, special event or business meeting. The room accommodates up to 185 guests, and is serviced by a commercial-grade catering kitchen. Under the City/JLAC management agreement, this room is made available to the City of Oakland and the Port of Oakland *gratis* ten days each year. In addition, JLAC's access grant program underwrites community-groups' uses of the room. For more information about the community room, click onto www.jlac.org/communityroom.

Finances.

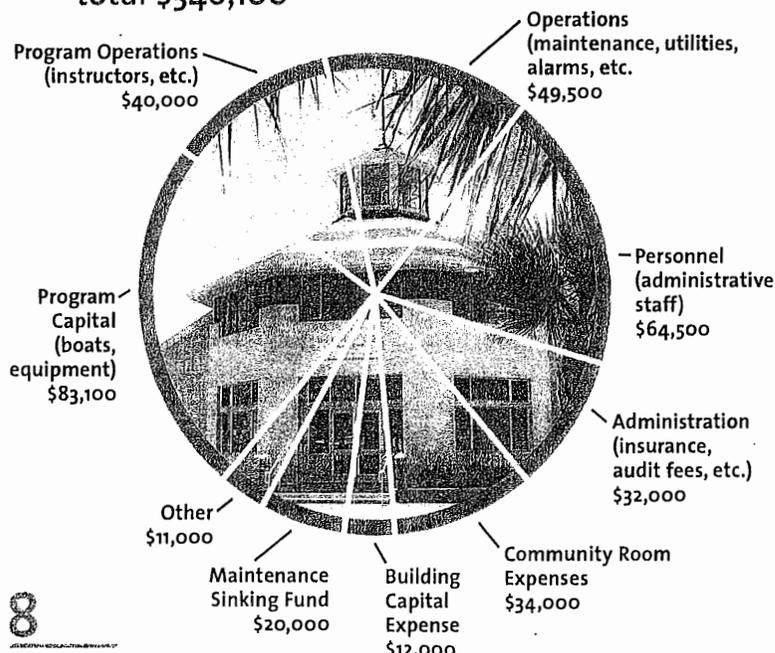
The JLAC "Pie."

Under the City/JLAC management agreement, the City provides \$170,000 per annum. In addition, JLAC retains revenues derived from the rentals of the second-floor community room and of four of the ground-floor boat-bays (to the Oakland Strokes, Berkeley High School crew, the University of California Lightweight Crew Club and individuals). JLAC receives no revenue from the fifth boat-bay, which is occupied by the Oakland Office of Parks & Recreation. The following charts are for Fiscal Year 2003-2004 (July 1, 2003-June 30, 2004).

Income and Grants— total \$341,500



Operating and Capital Disbursements— total \$346,100



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Assistant Rowing Coach Hilary Meu.

Letter R– Jack London Aquatic Center

- R-1 Comment is noted and accurately describes the proposed development on Parcel N adjacent to the Aquatic Center.
- R-2 Comment is noted and acknowledges that some comments may pertain to the proposed project designs.
- R-3 The City’s plan that depicts the expansion of Estuary Park north to the Embarcadero is the Estuary Policy Plan, as depicted in DEIR Figure V-1 and discussed in the context of Estuary Plan Policies on DEIR pp. IV.A-13 to 14 (*Open Space and Recreation*). The Measure DD bond measure to finance a series of improvements and maintenance related to parks and open spaces specifically identifies improvements to Estuary waterfront parks, including the expansion of Estuary Park. The project sponsor’s proposal to develop 20.7 acres of new public waterfront parks along the Estuary does not preclude the future use of Measure DD funds for improvements in the project area.
- R-4 The comment suggests conditions of approval related to the Parcel N development that do not pertain to CEQA issues but with the use of ground-floor retail space within the project.
- R-5 The comment suggests potential improvements to Aquatic Center facilities that do not pertain to CEQA issues. To the extent that the project is required to provide facilities that will encourage and facilitate public access to the waterfront area (such as public toilets or additional boat bays), the City and BCDC will make these determinations prior to acting on the project. The City would also consider the timing of any such improvements as it considers the appropriate overall phasing of the project.
- R-6 The proposed project parking supply on Parcel N is 300 off-street spaces and 34 on-street spaces. As stated on DEIR p. IV.A-32, the project would incorporate a parking control and management program that would ensure available public, street parking for park and open space users as well as visitors of the onsite retail/commercial uses. See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management measures. As stated on DEIR p. IV.D-19, no changes are proposed to the Aquatic Center *and related parking areas* that make up approximately three acres of impervious surface (*emphasis added*).
- R-7 The streets of Parcel N are designed to directly access the East lot, in part to facilitate shared parking for the Aquatic Center and Estuary Park. This would allow visitors to take advantage of on-street parking around the Parcel N frontage if the Aquatic Center lot were to be full. Interconnected streets of this nature also improve the quality of the pedestrian environment.

The Draft Transportation Demand Management (TDM) Plan forecasts peak parking demand for Parcel N at about 314 spaces, through the use of shared parking and other

strategies; see Master Response D for a discussion of proposed parking management measures. The peak demand would occur during the weekday evenings. At times when Aquatic Center and other recreational demand would be higher, demand from Parcel N uses would be lower (i.e., about 209 and 243 spaces on weekday and Saturday afternoons, respectively). The project would provide 300 off-street parking spaces on Parcel N, plus 83 metered on-street parking spaces around the perimeter. A management plan would also provide for overflow parking.

The on-street parking spaces would be available to all members of the public, including recreational users and Aquatic Center visitors. Only a small number of these on-street spaces are expected to be used by the project. Therefore, the project would increase the supply of available parking around Parcel N. Given the ample supply of parking in the project's garage and around the perimeter, there is no reason to believe that residents or guests would park in the East Lot.

Parking pricing, enforcement and other management strategies are an important component of the Oak to Ninth Project, and a dedicated transportation coordinator is planned to oversee the parking system. JLAC may wish to consider adopting similar strategies (e.g., metering or time limits) for the East Lot, instead of, or in addition to, access controls, such as a locked gate. There may also be opportunities for shared enforcement and management should JLAC wish to pursue them.

- R-8 To the extent that the location, design, height, bulk and orientation of the proposed building on Parcel N is incompatible with Aquatic Center or Estuary Park from a CEQA standpoint, these impacts are addressed in Section IV.K (Visual Quality) of the DEIR. From a design perspective, the City decisionmakers will evaluate the project through the Preliminary Design Plan (PDP) currently proposed.

An additional project variant is introduced in Chapter II of this document to explore an alternative site configuration of Parcel N. As depicted in **Figure II-1** in this document, the variant changes the site configuration to allow less paving, efficient circulation and open space around the building. The distribution of heights on the Parcel N building would be varied from the project, with the overall maximum height being 185 feet (new tower) with the podium heights varied and up to 64 feet. This information and analysis is provided in this document to allow City decisionmakers to consider this alternative layout around the Aquatic Center and Estuary Park.

- R-9 The comment suggests possible entities that should be included as part of any park maintenance entity that the project sponsor may establish. This is not a CEQA issue pertaining to the physical environmental impacts of the project. As discussed in Master Response H, the DEIR (pp. III-18 and IV.L-17 and IV.L-18) explains that the project sponsor will be responsible for providing for the maintenance of the open spaces. It continues that the project sponsor could do so through the establishment of 1) a project homeowners association, 2) a Community Facilities District or Community Services District (in conjunction with the City), or 3) other mechanism approved by the City. The

specifics of a maintenance mechanism would be established through the required conditions of approval for the project or a Development Agreement between the City and the project sponsor.

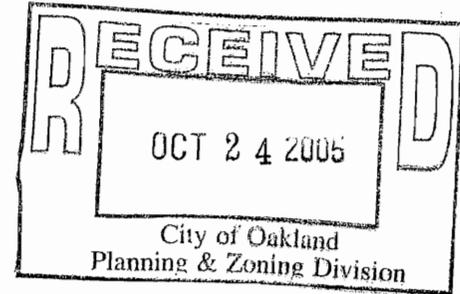
- R-10 The comment raises potential impacts that the project could have on the management and funding of the Aquatic Center. The project does not propose any physical changes to the Aquatic Center facilities or its existing mechanisms and arrangements for ownership, management, operation, or maintenance. Furthermore, the proposed maintenance responsibility of Estuary Park by some maintenance entity, as described in Master Response H and above in Response R-9, does not have implications for the City's continued financial support of the Aquatic Center. This is not a CEQA issue addressing the physical environmental impacts of the project.



October 24, 2005

Margaret Stanzione, Project Planner
 City of Oakland
 Community and Economic Development Agency
 250 Frank H. Ogawa Plaza, Suite 3315
 Oakland, CA 94612

RE: Draft EIR, Oak to Ninth Avenue



Dear Ms. Stanzione,

Oakland Heritage Alliance, a twenty-five year old organization with more than a thousand members, appreciates the opportunity to comment on the DEIR for the Oak to Ninth Avenue project.

The first section of these comments covers our primary questions about the DEIR and related project issues. The second section discusses the project alternatives presented. The third section details additional observations and questions that arise from the report.

PART I: MAJOR CONCERNS

NINTH AVENUE TERMINAL IS A VALUABLE HISTORIC BUILDING

The DEIR recognizes that Ninth Avenue Terminal is a highly rated historic building, likely eligible for the National Register of Historic Places (IV.E-13 et seq). Its rehabilitation could generate tax credits if the building were to be preserved. Can the EIR include an objective study of potential reuse and adaptive reuse possibilities for the Ninth Avenue terminal structure (the platform and shed), and how to incorporate it into the project? Include fuller study of any alternative partial preservation measures, with the understanding that full preservation is the best way to avoid negative impacts to the cultural resource.

S-1

TERMINAL DEMOLITION NOT NECESSARY FOR CARRYING OUT ANY OF THE DEIR VERSIONS OF THE PROJECT

Why is the substantial demolition of the Terminal and its platform included in the project? The EIR admits that full preservation would have little impact on the rest of the project, and could go on no matter how many units or how much parkland is included elsewhere. A complete reuse of the Terminal is compatible with most of the goals of the project ("... could be combined with the proposed project and other alternatives." V-38.)

S-2

OHA asked a structural engineer to do a brief on-site visual inspection. This thoroughly experienced, independent licensed engineer felt that the building was eminently reusable, that there was no evidence of serious sinking, buckling, cracking or warping in the shed, that the walls were constructed to be strong, and the roof light, so that rehabilitation is reasonable. The openness of the structure, he said, would make any required seismic strengthening relatively simple, and the steel trusses were a good method of giving the building rigidity. He declared his readiness to move his office into the Terminal building as soon as it becomes available for use.

S-3

THE SUBALTERNATIVE, THE PROPOSED PROJECT AND ALL THE DEMOLITION OR PARTIAL DEMOLITION ALTERNATIVES

The brief DEIR sub-alternative discussion at V-38 is inadequate, and contains an erroneous or garbled statement of impact.

What is the rationale for the demolition or partial demolition of the Terminal? What reason would rise above the threshold required for a "finding of overriding considerations?"

a) that demolition would increase the acreage called open space, a "park" on a concrete platform above water? (III-16)

b) that a small façade or bulkhead preservation project (II-1: ". . . 15,000 square feet of the Terminal's Bulkhead Building . . .") would rise to the level required under CEQA of a design of equal or better quality?

S-4

c) that if the terminal were retained "the amount of pervious surface that would be removed would be less than with the project and each development alternative that propose large, new open space area in where the wharf currently exists" (V-39)?

d) that the wharf is more structurally unsound with the terminal shed on it than it would be with a load of grass and dirt?

The above four points do not add up to a rationale for demolition of an important cultural resource.

a) appears an attempt to compensate for the large reduction in open space as compared to the Estuary Policy Plan, which requires a much fuller discussion, as commented upon by others such as John Sutter, Waterfront Action, and the League of Women Voters;

S-5

b) does not adequately mitigate for loss of the historic building:

Retention of 7% of the building is *not* a serious mitigation, and may give dangerous currency to the idea that façade retention is a city-sanctioned or federally-sanctioned approach to historic preservation, which it is not. Can the EIR preparers discuss how retention of 7% of a building could be done consistent with the Secretary of Interior Standards? Which of the general standards would it follow? How can retention of a thin slice wider than it is long can convey any sense of the scale of the building or of the maritime and industrial history of the area?

S-6

FROM SECRETARY OF INTERIOR STANDARDS: "The first treatment, Preservation, places a high premium on the retention of all historic fabric through conservation, maintenance and repair. It reflects a building's continuum over time, through successive occupancies, and the respectful changes and alterations that are made.

"Rehabilitation, the second treatment, emphasizes the retention and repair of historic materials, but more latitude is provided for replacement because it is assumed the property is more deteriorated prior to work. (Both Preservation and Rehabilitation standards focus attention on the preservation of those materials, features, finishes, spaces, and spatial relationships that, together, give a property its historic character.)

“Restoration, the third treatment, focuses on the retention of materials from the most significant time in a property’s history, while permitting the removal of materials from other periods.

S-6
(CONT.)

“Reconstruction, the fourth treatment, establishes limited opportunities to re-create a non-surviving site, landscape, building, structure, or object in all new materials. ”

c) seems to assume that the new “parkland” would be an earthen structure, when the developer has said much of it would be constituted of earth and turfgrass atop the extant concrete platform on pilings. Contrary to the DEIR “impacts” at V-39, then, would it contribute any permeable land? Is this intended as bay fill? It is difficult to discern from the DEIR, and needs clearer description.

S-7

d) From a structural point of view, a load of earth, water, grass, tree planters, pesticides and park benches might well weigh more and require more maintenance than the existing sturdily built and comparatively lightweight shed.

S-8

INADEQUATE DISCUSSION OF CONTINUED USE OR ADAPTIVE REUSE OF THE TERMINAL BUILDING

The EIR should analyze sources of funding which might support reuse of the Terminal, its relationship to the development of usable open space as called for in the Estuary Policy Plan, and how to maintain this historic asset. Consider:

a) Measure DD funding, already allocated for use in the area, and a reasonable public investment which could be put toward public facilities, and cannot be repurposed for use elsewhere

b) Federal historic tax credits (20% of value of rehabilitation cost could be substantial) if all or most of the building is retained

S-9

c) Savings, tax deductions or benefits if all or some of the building can be used for alternative energy projects

d) Potential for community reinvestment credits or other means to fund a viable project.

e) A green building analysis: would adaptive reuse keep material out of the waste stream, save the energy expended to create new building materials, and reduce the need for hauling debris to land-fill and new materials onto the site?

f) What flexibility might be forthcoming in uses allowed in a historic building, as compared to new construction? A consultation with State Lands Commission, State Office of Historic Preservation, and BCDC might clarify potential uses allowable. At II-1, Paragraph four: “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” However, such a “token” preservation of a small bit of the building would irrevocably damage a historic resource. The State Lands Commission might consider historic preservation as an allowable activity, thus giving a bit more scope for potential uses inside the building.

S-10

g) What are some possible alternative uses for the building? Might they include any of these: marine use, marine services, ferry stop, docking facility, boat hoists, commercial and tourist busi-

S-11

ness, sports activities, film businesses, arts businesses, farmer's market, parking, alternative transportation? Could it house design, historic preservation, planning, engineering, architecture, and similar businesses complementary to those located in the Fifth Avenue area? Could some limited use for loading and unloading of small shipments be maintained? Could tugboats continue to tie up there? Could the terminal building house businesses which could both serve tourism and the new residents? If there are to be 5000 new residents, how many hotel rooms will be needed to accommodate their visitors? Could a modest waterfront hotel or inn locate in the Terminal building? With the approval of regulatory authorities, could a work-live studio facility be incorporated?

S-11
(CONT.)

h) Governmental and nongovernmental funding sources, such as state bond monies.

i) Income generated from new uses (or old ones) and how they might contribute to the upkeep of the building. The building is currently in use, and is not abandoned.

MITIGATIONS FOR DAMAGE TO CULTURAL RESOURCES ARE INADEQUATE

The mitigations described in the DEIR are minimal and verge on nonexistent (II-13, IV.E-22) unless a preservation alternative is followed. If the project does demolish all or most of the terminal, then what is appropriate mitigation? Demolition of all or 93% of a huge historic building results in a serious adverse impact. Examples of appropriate mitigation might include:

S-12

-funding for rehabilitation or restoration of an equivalent 4-acre historic area elsewhere

-rehabilitation of another similar large publicly-owned marine building within Oakland

-rehabilitation funds for historic restoration of buildings in the Central City East Redevelopment Area, to an amount at least equal to the estimated cost of a rehab of the Ninth Avenue Terminal.

VIEWS: HISTORIC STRUCTURES PROVIDE IMPORTANT VISUAL KEYS AND CONTEXT

At IV.K-9, The DEIR asserts "that the proposed buildings would not result in a substantial, demonstrable negative aesthetic effect." However, demolition of the Terminal does result in an important negative effect, that is, the disappearance of an important visual cue and reminder of Oakland's maritime history. This is particularly evident from the water side of the Terminal, where a thirty-two-foot wide walk along the platform would make an excellent segment of Bay Trail, running alongside the big loading doors, and giving a sense of the scale of shipping operations.

S-13

Include discussion of:

-views of historic Ninth Avenue Terminal from other stretches of the bay trail

-views of historic Ninth Avenue Terminal from Alameda

-views of historic Ninth Avenue Terminal from the estuary

-views of estuary from the water edge of the wharf, with the historic Ninth Avenue Terminal on one side (shielding one from the presence and noise of the freeway) and water on the other

-views of historic Ninth Avenue Terminal from residential units

-views over historic Ninth Avenue Terminal from higher residential floors

-views of the whole area from outside its limits, such as from public areas in the hills, public parks in adjoining neighborhoods, and so on.

In San Francisco, The California State Lands Commission stated that the historic preservation of Piers 1 1/2, 3 and 5 "is a Public Trust activity, given that significant Public Trust uses and public

access, including access to view historic maritime structures, are incorporated into the project.” (2003)

S-13
(CONT.)

ALTERNATIVES DISCUSSION INADEQUATE

All the alternatives require further study and reworking. Please see the discussion following. Additional alternatives should be presented, perhaps some that do not give the developer or residents’ association control of the open space and historic building.

S-14

DESIGN COMPATIBILITY AND ACCESS TO NEIGHBORING AREAS

The issues of compatibility and access to neighboring communities are insufficiently studied, in particular design compatibility with Fifth Avenue artisan colony and access to and links with the adjoining inland neighborhoods.

S-15

PROCESS INADEQUATE

How does this EIR approval provide enough discussion to fulfill the functions of a Specific Plan (IV.A-16) or give enough equivalent public discussion to allow for a general plan amendment? Moving toward a DDA simultaneously with reworking all zoning and general plan provisions, and reducing public participation to a series of formal hearings, is a deficient public process. We support the idea that our city should plan first, and build developments second. Separate these functions. A better process might in the end be a faster and less acrimonious one too. The city and Port may assert the technical legality of this process, but it is unwise and short-sighted; nor is it conducive to future public participation in urban planning efforts to short-circuit a community discussion of what we should do with this large parcel of publicly-owned waterfront. In general we support the comments by the League of Women Voters and by John Sutter, in addressing procedural issues.

S-16

IS PHILBRICK BOATWORKS A HISTORIC RESOURCE?

We believe that the Philbrick Boatworks assessment may not be adequate. Please do further research into the historic, architectural and cultural importance of this longstanding and well-known boatbuilding operation. Due to the short time allotted for comment, we have not had the opportunity to research this one, but we beg the indulgence of the preparers: if more information or leads become available in the next week or so, we would like to submit it.

S-17

ARCHAEOLOGY

We concur with the views of Anna Naruta that the archaeological mitigations mentioned in the DEIR are extremely inadequate (II-29, IV.E-1). This project requires a proper archaeological assessment well before construction begins; people operating heavy equipment cannot be expected to fill in for trained personnel, and have little incentive to be on the lookout. It is likely that there was Native American use of this area. Rewrite the mitigation to do the archaeological procedures professionally and early, and avoid costly delays.

S-18

PHASING, PHASING, PHASING

Page III-22 says that 1,139 units, more than a third of the project units, would be constructed by 2010. However, the first open space components don’t show up until 2012, and an early piece of the Bay Trail until 2014. For the last of the Bay Trail segments, the proposal is to wait until 2018. On this schedule, Oakland will lag behind many other Bay Trail projects.

S-19

In that amount of time, a good adaptive reuse of the Ninth Avenue Terminal could very likely be achieved, with a segment of Bay Trail running along its platform.

Where are the guarantees? In other Oakland projects, later phases are sometimes transformed into unrecognizability, or don't happen at all. Promises made are not necessarily carried out. Mitigation and monitoring often are not carried out, either through a lack of institutional memory or because of staffing shortage. Property and development rights change hands, often more than once.

-How can the phasing be improved such that preservation of Ninth Avenue Terminal, open space development, and other public benefits progress along with the development rather than waiting for its completion?

-Can this project be monitored in an ongoing way by a dedicated assigned staffperson, for the life of the project?

-Can the entire Ninth Avenue Terminal and wharf be retained and continue to function until a complete, funded, approved and achievable building scheme is ready to go forward on that site, whether it is a rehabilitation project, or a partial demolition?

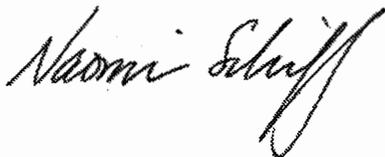
-Can some form of completion bond be instituted, so that we do not suffer a change of course that results in an irremediable loss to the historic resource without a concomitant benefit to the public?

S-20

Historically, this is public land reclaimed with difficulty from private entrepreneurs with private profits at heart. Can the EIR compare the impacts if all this land were transferred into private control, and if the public areas identified in the EPP (and where Ninth Avenue Terminal still functions) were to remain in public ownership for publicly-oriented re-use? Within Oakland's borders, there are many informants who could do such an analysis, including those with proven experience in putting together funding packages, taking bond measures to voters, and finding government funds for projects. Can we explore some of these avenues before jumping into an irrevocable land deal, putting public land into private control forever?

S-21

Sincerely,



Naomi Schiff
President

The DEIR's Project Alternatives Discussion Is Deficient

CEQA requires the EIR to “describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” *CEQA Guidelines § 15126.6(a)*. The purpose of this requirement is to “foster informed decisionmaking and public participation.” *Id.*

The DEIR does not satisfy these requirements. The selected project alternatives do not include any development alternative that is both comparable to the project and does not include demolition a substantial portion of the Ninth Avenue Terminal. The preservation alternatives are based on open space and housing density assumptions that are markedly different from the proposed project. The preservation alternatives therefore do not fairly and impartially present the feasibility of preserving the Terminal.

“‘Feasible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.” *CEQA Guidelines § 15364*. Because open space and density considerations will likely be significant to the City’s assessment of the economic feasibility of preserving the Terminal, the absence of a preservation alternative with open space and density characteristics comparable to the project disables the City from fairly making the feasibility assessments that CEQA requires.

The DEIR identifies five alternatives to the project:

<u>No.</u>	<u>Name</u>	<u>Description</u>
1A	No Project	Status quo
1B	No Project/Estuary Policy Plan	Development in accordance with the EPP (no residential)
2	Enhanced Open Space/Partial Ninth Avenue Terminal Preservation and Reuse	Mixed use development, including residential, with preservation of only the 1920s portion of the Terminal
3A	Reduced Development/ Partial Ninth Avenue Terminal Preservation and Reuse	Mixed use development, including residential, with preservation of only the Terminal building
3B	Full Ninth Avenue Terminal Preservation and Reuse	Mixed use development, including residential, with preservation of the

		Terminal building and the wharf
--	--	---------------------------------

The DEIR identifies project characteristics “that are assumed to occur with each of the alternatives (except the no project alternative).” *DEIR at pp. V-3 to -4.* This list omits open space characteristics. Each of the alternatives other than the no project alternative is assumed to include open space consistent with the Estuary Policy Plan (“EPP”). But the project itself does not include open space consistent with the EPP.

Each of the alternatives other than the no project alternative assumes open space substantially greater than the project:

Alternative	Description	Open Space (including Estuary Park)
--	Project	28.38
1A	No Project	7.1
1B	Estuary Policy Plan	41.5
2	Preservation of 1920s Terminal	40.6
3A	Preservation of entire Terminal	39.92
3B	Preservation of entire Terminal and wharf	39.92

Each of the alternatives other than the no project alternative has approximately 12 more acres of open space than the project, the equivalent of over 40% more open space than the proposed project. By way of specific comparison, the project contemplates about 28 acres of open space, including about four acres due to the demolition of 90% of the Ninth Avenue Terminal. Thus, the project includes about

24 acres of open space that the Terminal does not currently occupy. On the other hand, the full preservation alternatives (3A, 3B) envision preservation of the entire Terminal, or the equivalent almost 40 acres of open space not occupied by the Terminal. The DEIR thus compares the project with full preservation alternatives that utilize 6 more acres of existing open space than the project; nearly 70% more open space than the project.

Each of the alternatives selected other than the no project alternative respects the open space requirements of the EPP, while the project does not. The DEIR does not explain the rationale for making an assumption in each of the alternatives that does not hold for the project itself. Since the project does not comply with the EPP, there is no reason why the preservation alternatives must be subject to the EPP's open space requirements.

This unexplained disparity in open space assumptions between the project and the proposed alternatives contributes to disparities in the residential densities between the project and the various project alternatives. These are summarized in the following table:

Alternative	Description	Total Dwelling Units in Project	Total Dwelling Units in Subarea 5	Maximum Building Height in Subarea 5
--	Project	3,100	2012	65/240
1A	No Project	0	0	65/240
1B	Estuary Policy Plan		0	60
2	Preservation of 1920s Terminal	1,800	1550	65/240
3A	Preservation of entire Terminal	540	432	50
3B	Preservation of entire Terminal and wharf	540	432	50

The proposed number of dwelling units falls precipitously from the project to the full preservation alternatives (3A, 3B). This is not explained. It appears to be the combined result of the increase in open space discussed above and a similarly unexplained reduction in building masses. The full preservation alternatives have only 17% of the number of units proposed for the project. Subarea 5 is the most intensive residential part of the project. The proposed building heights in subarea 5 for the full preservation alternatives (50 feet) are considerably lower than those proposed for the project (65 feet up to 90, plus 240-foot towers). This difference in heights, as well as likely differences in the size of the building footprints, dramatically affects the density of the full preservation alternatives, as well as the partial preservation alternative.

The DEIR provides no explanation of why a density that will permit 1800 dwelling units is proposed for Alternative 2, which proposes to demolish only the 1950s portion of the Terminal, while only 540 units are proposed for Alternative 3, which proposes to retain that portion of the Terminal. There is no discussion why the retention of the 1950s portion of the Terminal necessitates such a dramatic reduction in the residential potential of the project. Nor is there any consideration of increasing the residential densities in subareas other than subarea 5 to compensate for loss of density in subarea 5 due to the preservation of the Terminal, even assuming that such a loss was necessary.

The DEIR's alternatives discussion is also deficient in the following respects:

- Failing to explain why only approximately 120,000 square feet of the Terminal is proposed for reuse under the full preservation alternatives, when the Terminal includes 165,000 square feet;
- Omitting discussion of the potential for public access and views from the Terminal under the partial and full preservation alternatives;
- Stating that the EPP assumes that the Terminal would be completely demolished and the wharf partially demolished (DEIR at p. V-11), when the EPP states that the "City will make all reasonable efforts to avoid or minimize adverse affects on the Character-Defining elements of Potential Designated

S-22
(CONT.)

Historic Properties which could result from private or public projects requiring discretionary City actions (*id.* at p. F-11).

S-22
(CONT.)

* * * * *

The DEIR must adequately describe the rationale for selecting the alternatives, and identify alternatives that were considered but were rejected as infeasible during the scoping. The DEIR fails in each of these respects. It provides no explanation for varying open space and residential densities so that the City cannot make a meaningful apples-to-apples comparison of the preservation alternatives with the project. The alternatives discussion implies that historic preservation will necessitate sacrificing the residential potential of the project. In fact, this is merely an assumption of the DEIR, not a proposition for which it provides any analysis.

The DEIR is deficient because it does not include adequate alternatives that will enable the City to evaluate the feasibility of preserving the Ninth Avenue Terminal and wharf. Reasonable alternatives based on comparable assumptions regarding open space and density are needed to enable the City to make this impartial analysis.



Margaret Stanzione, Project Planner
 City of Oakland
 Community and Economic Development Agency
 250 Frank H. Ogawa Plaza, Suite 3315
 Oakland, CA 94612

RE: Draft EIR, Oak to Ninth Avenue

Dear Ms. Stanzione,

Below are additional comments to the DEIR. While these may seem somewhat repetitive, others are not repeated elsewhere in our main letter. The structure of the DEIR causes elements to occur and recur in a scattered fashion making a highly structured comment letter difficult.

S-23

PAGE II-2:

"dredging activities and straightening the existing undulating and unprotected condition of Clinton Basin's shoreline." Is undulation bad? It is hard to understand how there could be marsh habitats in a marina. What are the locations of proposed marsh habitats?

S-24

S-25

Page II-2:

"3,534 onsite parking spaces. . ." "Approximately 450 spaces for use by park and marina users." Where would visitors to the 3100 units (perhaps 5000 residents?) park? If condos are inhabited by more than one person, might some of them have two cars? In Adams Point, with much better access to transit, new construction is required to build 1.1 spaces/unit. At 1.1, 3410 spaces would be needed by residents, leaving too few spaces for commercial visitors, for visitors to residents, and for visitors to the open space and historic terminal building.

S-26

II-5

Under the Environmentally Superior Alternative, the assertion "it is recognized..." makes some assumptions that might be worthy of further discussion. In particular, one might question the idea of "provide housing with access to alternative modes of transportation" (3) since this proposed housing is not particularly convenient from the transportation point of view. It is not served by transit lines, and the distance to BART is much greater than the distance assumed in transportation planning literature that people are willing to walk. In addition, there are difficulties to overcome in crossing the quite-active railroad tracks. Related questions:

S-27

a) If the developer enters into some agreement to provide shuttle service or to work with AC Transit in some way, what is the duration of such service? Can it be guaranteed in perpetuity? There have been examples of terminated shuttles in Oakland in the past. How is the city protected from such termination?

S-28

b) Where is an analysis of a pedestrian/bicycle footbridge or other mechanism for safely traversing the railroad tracks?

S-29

How would schoolchildren be able to get to schools without being in mortal danger?

MITIGATIONS TABLE

Page II-12 something seems to be missing from C-7 mitigation measures.

S-30

Page II-12

E.3: Mitigation measures for demolition of the terminal are extremely inadequate and must be reworked.

S-31

Photography and recordation of the resource is required, but it is not really a mitigation at all. It does not mitigate the loss.

E.5: If the terminal were to be preserved, surely there would be a way to design a compatible nearby use, contrary to the assertion of E.5. Does this mean that because a building would come close to it, demolition would be an appropriate response? To meet Secretary of Interior Standards one might recommend a compatible design, rather than to advocate demolition of an important resource.

S-32

Page II-15:

G.4: Retention of the Ninth Avenue Terminal could protect Bay Trail users from the loud freeway noise at the site; on the seaward side of the building, the building provides baffling from the at-grade portion of the freeway. This should be included in a discussion of the value of retention of the entire building.

S-33

A-2: No mention is made of the lengthy public process which contributed to the current EPP plan. A joint set of approvals of many different regulatory actions tends to obscure the lack of planning and the nonconformance of the project with a more open and representative process. In two-minute meeting testimony, it is not reasonable to expect sufficient public participation to arrive at a project plan which has the public interest at its core. While this might not be of critical concern in a private development, since the public IS the landowner, it seems here inappropriate to give short shrift to their involvement. How can the interests of the public in what amounts to a general plan amendment be served by this EIR process, which is not a planning process, but an environmental assessment?

S-34

II-17

B Transportation

Are the transportation, circulation and parking mitigations adequate? We are concerned that historic areas of the city such as Chinatown, the Produce Market, the Waterfront Warehouse area, and our soon-to-be-built southwest end of Lake Merritt may be adversely affected. These areas of the city must be made inviting for pedestrians in order to continue to function in a way that will draw visitors and residents onto the streets. We doubt that retiming signals will make the traffic situation acceptable. Many of the mitigations seem to be conditions upon actions of other entities, such as CalTrans and perhaps Union Pacific, who may or may not be willing to commit to mitigation measures. Address the mechanism for enforcement of such mitigation measures, other than faith.

S-35

The mitigations should include means for real substantial progress in getting residents and visitors out of their cars, to wit:

a) electric vehicles for short hops such as to Jack London Square (perhaps powered by solar energy generated by solar roofing panels on a preserved Ninth Ave. Terminal), so that residents can carry groceries and so on.

S-36

- b) shuttle service IN PERPETUITY, established by funding to AC Transit or equivalent transit agency, on a permanent basis.
- c) special bike and pedestrian accommodations for train and road crossings for greater protection.
- d) carshare station (perhaps at Ninth Avenue Terminal, which could accommodate indoor parking easily)
- e) appropriate pedestrian/bike bridge or other protected crossing to avoid traffic, train, and pedestrian accidents.

S-36
(CONT.)

Page II-43

F. Geology, Soils and Seismicity:

Does the city or the port have liability in case the assessment in this EIR of the liquefaction and other dangers is wrong?

S-37

Due to the freeway and train tracks potentially blocking access in an emergency, should the development provide boats as emergency equipment?

S-38

I. Filling at Clinton Basin: Is this filling necessary?

S-39

III-8. Might it be appropriate to consider reuse of Ninth Ave. Terminal to provide neighborhood serving retail and commercial as well as visitor-serving commercial and retail for the development, rather than parceling out small amounts of commercial throughout the development, if State Land Commission concurred?

S-40

Area south and west of Terminal building would be a great forecourt for the development and should definitely be retained. No explanation is given for why it should be removed; it does not seem to hurt anything by being retained.

S-41

Any Planned Waterfront Zoning District should incorporate standards for historic preservation.

S-42

PROJECT PHASING

III-22

Park areas and historic preservation project should begin in Phase I, not Phase IV.

Phases IV and V:

Retain all of Ninth Avenue Terminal until such time as absolutely final permits and plans are in place, financing secured, and guarantees are in place. In the meantime, investigate feasibility of doing a LEED project in the terminal, study feasibility of having it supply solar energy for alternative transit or adaptive reuse in the building, and to seek funding for adaptive reuse of the building.

S-43

The Phase VIII park improvements occur much too late; no building should occur on the estuary park site, and the park should be developed in Phase I, perhaps with Port or City control of the parkland.

B. PROJECT OBJECTIVES (III-24):

Whence come the objectives? Perhaps there should be a statement explaining who sets the objectives and what the basis is. | S-44

Bullet point two: "Provide a mixture of dwelling sizes and types. . ." should generate a discussion of affordable housing in the EIR. | S-45

Bullet point three: "Provide a range of commercial uses. . ." Coordinate the commercial program with that of the San Antonio district, and attempt not to further damage the central business district by duplicating services with those offered there. | S-46

Include historic preservation in the project objectives. | S-47

The claim of close proximity to abundant transit opportunities ignores train tracks, overstates the convenience of the location, overestimates people's willingness to walk, overestimates their capacity to carry their shopping bags, and doesn't take into consideration that there can be inclement weather or late night personal security issues. | S-48

At III-25, bullet 10: "Provide infill development in furtherance of Smart Growth principles" Reuse of historic buildings is considered to be a component of smart growth. This should be explicitly stated. | S-49

IV.A-3: DOES THE PORT OF OAKLAND OWN THE PROJECT SITE PROPERTY?
We were under the impression that Trust Lands are owned by the public and administered by the Port on their behalf. Please clarify. | S-50

IV.B-60
The discussion of railroad operations and their impact on vehicular traffic (including any potential bus traffic) is deficient. The three paragraphs are inadequate to the amount of impact the railroad has and will have on the area. Did the preparers consult with planning staff at Union Pacific? Did they take into consideration the increase in train frequency generated by a planned rail link between Sacramento and San Jose? With the current rise in fuel costs, it would be reasonable to expect increases—not decreases—in rail freight. Surely the Port itself would be able to provide information on this topic. Particularly weak: "Because no set schedule exists. . . more or fewer trains could operate along this line in the future." By consultation with Union Pacific, more specific information should be obtained. The rail traffic does already have an impact on vehicular traffic crossing the tracks at Jack London Square and at Fifth Avenue. This is unlikely to lessen. | S-51

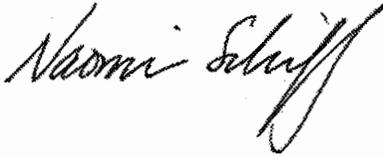
Additionally, what provision is to be made for pedestrian and bicycle safety across these at-grade train crossings? The EIR should study options for protected crossings. It is particularly hard to envision children walking to La Escuelita from the development. Even if the very low ratio proposed in the DEIR, .1 student per household, is accurate, that generates 310 students. Even if some of them get rides some of the time, additional study is required to address the issues of children traversing the tracks on a daily basis. Since the DEIR is promising us a "transit-oriented" lifestyle, it must be assumed that some adults, too, are pedestrians walking to BART, for which they must also cross the tracks. The 13% of children expected to attend private school may also be expected to use transit or walking to get to school or home from school, even if they bus or BART part of the way. Either architectural protection (a pedestrian overpass) or a some other protective mechanism (fulltime crossing guards?) must be provided. | S-52

Page 18 of Carey & Co. report:

Oakland Heritage Alliance questions the finding that the Philbrick Boatworks is not of historic interest, and we request further study of the resource, and the history of the enterprise, at 603 Embarcadero. Again, we request that the EIR preparers accept any late information we can find about this property.

S-53

Sincerely,

A handwritten signature in cursive script that reads "Naomi Schiff". The signature is written in black ink and is positioned below the word "Sincerely,".

Naomi Schiff
President

Letter S – Oakland Heritage Alliance

- S-1 See Master Response B and Response to Comment Q-2.
- S-2 The comment asks “Why is the substantial demolition of the Terminal and its platform included in the project?” The fundamentals of the proposed project are found in the project objectives that start on DEIR p. III-24. The alternatives analysis provided in DEIR Chapter V provides the environmental analysis of a range of alternatives to the project, including varying levels of preservation of the Ninth Avenue Terminal. City decisionmakers will ultimately decide on the adequacy of the range of alternatives included in the DEIR as well as a preferred alternative.
- S-3 See Response to Comment E-8. Additionally, the comment relays determinations made by a licensed structural engineer about the Terminal building’s structural condition, scope of rehabilitation necessary, and the extent of seismic strengthening required. According to the comment, these determinations are based on a brief visual inspection of the building. The proposed project design to date relies on confirmed findings prepared after extensive, site-specific structural and geotechnical investigations cited in the DEIR. Furthermore, the preliminary analysis of the shed building conducted by Rutherford & Chekene indicates that while the concrete walls and steel truss frames are in generally good condition, they do not have adequate capacity to resist seismic forces and do not meet governing building codes. Any portion of the building that would remain under the proposed plan would have to be rehabilitated to bring it to current building code standards. Consistent with information provided in Response to Comment E-8, the design and seismic upgrades for all aspects of the project will be in compliance with all current and applicable building codes for building and seismic performance.
- S-4 The DEIR alternatives analysis in Chapter V, and specifically, the Full Ninth Avenue Terminal and Adaptive Reuse Preservation Sub-Alternative starting on DEIR p. V-38, are not intended to provide “a rationale for demolition” of the Terminal. The alternatives are provided in the DEIR, as required by CEQA, to “compare the effects of a reasonable range of project alternatives to the effects of the project.” (CEQA Guidelines 15126.5) This analysis provides City decisionmakers the ability to make an informed and reasoned choice about the project. If the City chooses to allow full or partial demolition of the Terminal, it would be required to prepare and adopt statement of overriding considerations in support of its choice, as it previously did prior to adoption of the Estuary Policy Plan for which a significant unavoidable cultural resources impact was identified for full or partial demolition of the Terminal.

In response to the four questions posed in the comment: a) Demolition of the Terminal would allow the proposed 9.74-acre Shoreline Park to occur generally within the existing footprint of the Terminal; b) Prior to acting on the project, the City would determine whether affirmative findings (overriding considerations) for the project could be made under Historic Preservation Element Policy 3.5, which considers the design of the retained structure and the public benefit of the project compared to preservation of the

- existing structures. c) Removal of the Terminal to provide the proposed 9.74 acres of grass-covered open space would reduce the impervious surface area in this area of the site. d) The DEIR does not (nor is it required to) compare the structural capacity of the existing wharf with the Terminal to that of the existing wharf with park facilities (see Response to Comment E-8).
- S-5 The project would provide a total of 20.7 acres of new open space. The Estuary Plan does not provide open space acreage assumptions, however, a total of 35.7 acres of new open space was analyzed in the Estuary Plan EIR and illustrated in the Estuary Policy Plan (DEIR p. IV.L-16 and Table IV.L-2). The open space configuration in the Estuary Plan (Figure III-10: Oak to 9th District Illustrative Open Space Key Map) is similar to that of the proposed project. Open spaces would line the entire waterfront, and a large new open space would be located at the east end of the site where the Ninth Avenue Terminal currently exists. Unlike the project, unpaved open space would occur along Clinton Basin and along the entire length of the Embarcadero, except generally east of Clinton Basin.
- The alternatives in the DEIR demonstrate a range of varying open space scenarios ranging from 7.7 *total* acres (Alternative 1A: No Project) to 41.5 *total* acres (Alternative 1B: No Project / Estuary Policy Plan Alternative). Also, the Estuary Policy Plan open space configuration is addressed in Alternative 1B (No Project / Estuary Policy Plan). Additionally, a full discussion and analysis of the proposed park facilities is provided under Impact L.4 starting on DEIR p. IV.L-15. No further discussion or analysis of the proposed reduction in open space compared to the Estuary Policy Plan is warranted.
- S-6 The comment seems to overlook that the DEIR has determined that substantial demolition of the Ninth Avenue Terminal would remain significant and unavoidable even with application of the identified mitigation measures (Impact E.3 and Mitigation Measures E.3a through E.c). Retaining the Bulkhead Building is not identified as a mitigation measure. Regarding Mitigation Measure E.3b, which requires that the Bulkhead Building's reuse and rehabilitation comply with the Secretary of the Interior's Standards for Treatment of Historic Properties, the mitigation clearly states that further review of detailed final design plans (including, but not limited to, proposed window treatments, materials palette, awnings, signage, and interior configurations) by a qualified professional must occur. This process would establish which standards the project would follow, based on the final approved project, and to what extent. Subsequently, the findings would be subject to review and final approval by the City. Since compliance with the standards is required by the project if any portion of the Terminal is retained, identification of specific standards is not required for purposes of adequately identifying the impact or adequate mitigation measures to reduce the project impact to the extent feasible.
- S-7 As described on DEIR p. IV.D-20, the project would remove a portion of the pile-supported pier along the southernmost edge of the Ninth Avenue Terminal. The existing pile supported pier along the eastern shoreline of the site (beneath a portion of the

Terminal) would be retained and improved with earth and grass over the existing concrete pier. This is depicted in DEIR Figure IV.D-3 on DEIR p.IV.D-22. Newly created earthen and grass areas, even atop a subsurface pier, would allow for increased infiltration and reduced stormwater runoff. The runoff from this area would infiltrate into surface soils and eventually flow into the Estuary via a new stormwater collection system proposed by the project.

In contrast, the Sub-Alternative discussed on DEIR p. V-39 would not remove the portion of the pile-supported pier along the southernmost edge of the Ninth Avenue Terminal. This is because, as described on DEIR p. V-38, the entire Ninth Avenue Terminal building and its related wharf form an intact historic resource. As a result, less existing impervious surface would be removed, which means less reduction in the speed and amount of stormwater runoff from the site.

- S-8 As stated in Response to Comment S-4, the DEIR does not compare the structural capacity of the existing wharf with the Terminal to that of the existing wharf with park facilities. Similarly, the DEIR does not compare the potential weight of park facilities with the Terminal structure. Consistent with the comment, the DEIR is not required to analyze such comparisons to assess the physical environmental impacts under CEQA. Nonetheless, as with the shed building, preliminary engineering analysis indicates that while the pier structure appears capable of supporting public open space improvements, the seismic performance would not satisfy governing building code standards. The pier would need to be rehabilitated regardless of proposed use. Depending on thickness, soil may add more load to the structure than that imposed by the building. However, the proposed rehabilitation scheme could be devised to accommodate the thin lift of proposed lightweight soil without a significant change in design strategy or cost. Regarding maintenance, the effort to inspect and maintain a building would be more than an open space. The frequency and type of maintenance of the pier structure would not be different if the building is retained or an open space is constructed.
- S-9 An analysis of possible sources of funding that might support reuse and maintenance of the Terminal is beyond the appropriate scope of the DEIR as it pertains to an array of funding opportunities and not to the physical environmental impacts of the project. This does not preclude the City from requesting information on how these sources could be applied to the Ninth Avenue Terminal should it be retained. To the extent that fiscal considerations may be relevant to the City's deliberations on the project or its alternatives, the project sponsor has prepared an economic feasibility and constraints report (capital and operational) on retaining all or parts of the Ninth Avenue Terminal.
- S-10 The DEIR analysis is based on the existing information provided by the State Lands Commission regarding allowable Tidelands Trust-consistent uses that could occur on the project site. Any future consultation among agencies regarding increasing the scope of potential uses that could occur within Trust lands would be considered by the City

decisionmakers of the project as they consider the appropriate land use mix for the project. See Master Response G, which discusses public trust use restrictions.

Also, to counter an erroneous assertion in the comment, the DEIR does not conclude or suggest that preservation of the Bulkhead Building (as proposed by the project) would “irrevocably damage a historic resource.”

S-11 See Master Response B and Response to Comment S-9.

S-12 As stated in the discussion of Impact E.3 regarding substantial demolition of the Ninth Avenue Terminal (DEIR p. IV.E-26), “Implementation of Mitigation Measures E.3a and E.3b would somewhat reduce this impact as much as feasible. However, because the demolition of substantial portions of an historical resource represents an irreversible change to the historical resource, this impact would remain significant and unavoidable, even after mitigation.” These mitigations are consistent “other potential measures” identified in the Historic Preservation Element of the General Plan.

If the City chooses to approve the project and allow full or partial demolition of the Terminal, it have to find the mitigation measures identified in the EIR to be adequate and would be required to prepare and adopt statement of overriding considerations in support of its choice, as it previously did prior to adoption of the Estuary Policy Plan for which a significant unavoidable cultural resources impact was identified for full or partial demolition of the Terminal.

S-13 The conclusion of the project’s less-than-significant impact on visual character and quality is based on the comprehensive analysis provided in Section IV.K (Visual Quality and Shadow) of the DEIR. Numerous simulations are provided to support this finding. Most importantly, the DEIR conclusion is based on an assessment of the project compared to the significance criteria provided in City of Oakland’s 2004 CEQA Thresholds/Criteria of Significance Guidelines: “Substantially degrade the existing visual character of quality of the site and its surroundings.” The comment asserts that demolition of the Terminal would result in an important negative effect – the disappearance of an important visual cue and reminder of Oakland’s maritime history. While the removal of the Terminal would result in a noticeable change in the visual character of the area, there are two key points in response to the comment. First, the Terminal’s removal, with respect to it being an *historic reminder*, is captured by the significant and unavoidable impact resulting from its substantial demolition (Impact E.3). Second, acknowledging the subjective topic of visual quality (as stated on p. IV.K-9 of the DEIR), the DEIR reasonably concludes that the project would not result in a “substantial adverse effect” - the existing conditions include industrial, manufacturing, and service uses, industrial shed buildings, shoreline debris, limited physical and visual access to the water, minimal usable open space. Project conditions would provide open spaces, shoreline improvements and access, new mixed-use development, right-of-way improvements, landscaping and amenities.

The comment suggests several additional views to be analyzed in the DEIR. Of this list, DEIR Figure IV.K-2 shows the historic Ninth Avenue Terminal from Alameda. A view “of the whole area from outside its limits” is provided in Figure IV.K-13, which shows the project site from San Antonio Park located approximately 1.5 miles northeast of the site. The 15 total viewpoints simulated for the DEIR analysis were selected by the City to represent an array of short-, medium-, and long-range views of and across the site, from exterior *public* viewpoints and from within the site. The visual simulations are considered adequate to conduct the CEQA analysis provided in the DEIR and to assist City decisionmakers as they evaluate the project impact on visual character and views and scenic vistas.

- S-14 As discussed in detail in Master Response B and summarized in Response to Comment M-3, the City of Oakland has considered the selected alternatives to constitute ‘a range of reasonable alternatives to the project...which would feasibly attain most of the basic objectives of the project’ (CEQA Guidelines Section 15126(a)).” The alternatives in the DEIR are considered to generally align with the overall goals and policies of the Estuary Policy Plan, present possible project alternatives. The alternatives reflect input received from the community and Planning Commission during the EIR scoping process, public hearings on the DEIR, and the City’s community design process that has occurred separate from the environmental review process. The DEIR alternatives analysis is provided to show the physical environmental impacts of a range of alternatives to the project primarily with respect to site configuration, density, preservation of the Ninth Avenue Terminal. City decisionmakers will ultimately decide on the adequacy of the range of alternatives included in the DEIR.

The comment incorrectly presumes that the developer or residents association could have “control” of the open space and historic building. As stated on DEIR pp. III-18 and IV.L-18, the project sponsor would be responsible for installing improvements and maintenance of parks/open spaces in the project area, with the appropriate maintenance mechanism to be established through an agreement with the City. The City or Port would own the open spaces, and the City would be responsible for approving park improvements, programming allowable park uses, and granting/permitting activities within parks. The ownership and maintenance responsibilities of parks and open spaces, however, do not affect the project’s impacts on the physical environment under CEQA.

- S-15 Impact A.1 and Impact A.3 identify, discuss, and provide appropriate mitigation measures that address the design and land use compatibility of the project with adjacent and nearby areas, as well as access between these areas. Discussion is also provided on DEIR pp. IV.A-15 (*Land Use Continuity, Access, and Circulation Connections*) and IV.A-16 (*Fifth Avenue Point*) within the discussion of Estuary Policy Plan policies. Thus, adequate discussion is provided in the DEIR to address the potential impacts of the project. In Chapter V of the DEIR, the effect of each project alternative on these topics is discussed under A. *Land Use, Plans and Policies* to a level of detail appropriate for the alternatives impact under CEQA.

S-16 See Master Response A.

S-17 As described above under Response to Comment O-1, the historic significance of the Philbrick Boat Works building was reviewed under federal, state, and local evaluation criteria for its potential historic significance by Carey & Co., consulting architectural historians for the proposed project. Carey & Co. found that while the building has been in use as a long-term boatbuilding operation, it does not qualify as a historic resource under federal, state, or local evaluation criteria, and therefore would not be considered a historic resource for CEQA purposes. As such, the amount of review and research into the building's cultural importance for CEQA purposes was adequately provided in the DEIR.

S-18 As discussed in the DEIR, the project site is considerably developed with artificial fill material and built structures, concrete, and asphalt. An archaeological field reconnaissance was conducted despite the lack of visible native surface or native topography. The utility of pedestrian survey techniques is highly dependent on 1) how visible the site is to allow detection the presence of archaeological materials at or below a given place, and 2) the site obtrusiveness, or the ease by which the materials can be discerned by the archaeologist. Both of these conditions are minimal at the project site. However, in the opinion of the registered archaeologist conducting the DEIR assessment, full testing survey does not appear warranted based on the following facts:

- The project site is either in bay waters or consists of considerable artificial fill material. While it is always possible that re-deposited archaeological remains may be present in the fill, the probability is low enough not to warrant extensive discovery techniques.
- Given the conditions of the project area, a regime of test-pitting to identify archaeological material, e.g., organic residues or artifacts associated with cultural activity, would require the use of chemical or instrument anomalies gained from remote sensing devices or through actual hand test-pitting. The probability of detecting site elements is a function of the number of test pits used and/or the sensitivity of the equipment used. Both methods are expensive and time-consuming processes that do not appear needed given the low probability of discovering sites in the artificial fill.

See Response to Comment BB-8 for additions and revisions proposed to mitigation measures identified in the DEIR for Impact E.3

S-19 See Master Response G.

S-20 A Mitigation Monitoring and Reporting Program (MMRP) will be prepared for the project and must be adopted as part of project approval. The MMRP will identify each mitigation measure, the party(ies) responsible for implementing the mitigation measure, and the timeframe for implementation. The City shall require implementation of these

measures as conditions of project approval, and their implementation will be monitored through the Mitigation Monitoring and Reporting Program (MMRP).

The comment poses four questions related to the phasing and monitoring of the project, none of which address issues pertinent to the environmental analysis of the DEIR. The City could choose to consider alternative phasing of any aspect of the project, and its monitoring, or implementation of a completion bond in its deliberations beyond the scope of the physical environment impacts of the project under CEQA.

- S-21 Ultimate ownership of the project site would not affect the physical environmental impacts resulting from the project. Alternative 1B: No Project / Estuary Policy Plan reflects the scenario described by the comment in which public ownership and publicly oriented reuse would occur.
- S-22: The comment asserts that the alternatives analysis in the DEIR do not meet the CEQA requirements to describe a range of reasonable alternatives to the project, because the density and open space characteristics of the preservation alternatives are not comparable to the project. As a result, the comment concludes that the City cannot undertake a fair feasibility analysis. The fundamental purpose of the alternatives analysis is to examine project alternatives that would feasibly attain most of the project objectives while avoiding or substantially lessening the significant adverse impacts of the project.

For the Oak to Ninth Avenue Project, significant impacts are not limited to the Ninth Avenue Terminal Building and preservation concerns. Members of the community have called for examination of alternatives with greater open space and reduced density in order to reduce other significant impacts of the project. In fact, other than the No Project alternative, both the alternative with a reduction in density to 540 units and a reduction to 1,800 units would avoid or lessen a number of the project's significant impacts unrelated to historic resources. The range of alternatives covered in the document includes Alternative 3 (Enhanced Open Space/Partial Ninth Avenue Terminal Preservation and Adaptive Reuse), which was suggested by OHA including their suggestions for open space and density. Additionally, the alternatives discussion includes a Sub-Alternative "Full Ninth Avenue Terminal Preservation and Adaptive Reuse" that could be implemented in conjunction with the project or any of the alternatives. This broad range of alternatives, and in particular the range of alternatives for preserving all or a portion of the Terminal building, meets the goal of promoting informed public participation and the decision-making. Thus, the DEIR complies with CEQA mandates for examining a reasonable range of alternatives.

Moreover, there is no requirement under CEQA that the alternatives analyzed must be economically comparable. Such a requirement would constrain the analysis of alternatives that could avoid or substantially lessen the project's significant adverse impacts. The economic feasibility of the alternatives will be examined in the context of the City's consideration of the project approvals.

- S-23 Comment is noted and acknowledges that the following comments may be repetitive to some addressed above within Letter O.
- S-24 The DEIR statement does not intent to imply that the existing undulating aspect of the Clinton Basin's shoreline is "bad". As described on DEIR pp. III-18 and IV.D-20 (in greater detail than on DEIR p. II-2 of the Summary chapter cited by the comment), the proposed improvements in Clinton Basin are to allow rebuilding and expansion of the existing marina facilities, and create a new retaining wall-like edge that will provide a pedestrian promenade along its perimeter.
- S-25 The comment's question about how marsh habitat could exist in a marina indicates a misinterpretation of the text on DEIR p. II-2: "The project would improve the existing shoreline along the project site with varying treatments, including marsh habitats, and riprap, and bulkhead walls." Figure IV.D-3 on DEIR p. IV.D-22 shows the existing wetland/marsh restoration area as well as proposed new vegetated shorelines where new marsh habitat could emerge. These areas are primarily at South Park adjacent to the wetland restoration area and along Channel Park along the east shore of Lake Merritt Channel.
- S-26 See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management measures.
- S-27 See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures.
- S-28 See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures.
- S-29 See Master Response F.
- S-30 The comment points out that the complete Mitigation Measure text for Impact C.7, as stated starting on DEIR p. IV.C-30, is omitted from p. II-12 of the summary table of impacts and mitigation measures. The complete text of Mitigation Measures C.7a through C.7k is added to the summary text. As there are no revisions to that text, this addition is indicated in Chapter IV of this document, Changes to the DEIR.
- S-31 The comment asserts that the mitigation measures for demolition of the Ninth Avenue Terminal are extremely inadequate. As described on DEIR pp. IV.E-26 – 27, Mitigation Measures E.3a (photography) and E.3b (adaptive reuse of the terminal bulkhead) "would somewhat reduce this impact [of demolition] as much as feasible. However, because the demolition of substantial portions of an historical resource represents an irreversible change to the historical resource, this impact would remain significant and unavoidable." As such, the DEIR acknowledges that mitigation measures identified would not fully reduce the impact to a less-than-significant level, and that the loss of substantial portions of the terminal would be significant and unavoidable.

- The DEIR also notes that, “CEQA requires an analysis of preservation alternatives(s) in order to ascertain whether there are feasible options to the project that would lessen the significant unavoidable impacts to less than significant. A series of preservation alternatives to the project are included in Chapter V of this EIR, including an alternative that would preserve the entire Terminal building and its associated wharf structure.” Only selection of a project alternative that would maintain the entire terminal building and its associated wharf would fully mitigate the potential loss of the building.
- S-32 The comment asserts that if the Terminal were to be preserved that there would be a way to design a compatible use nearby. This assertion is contrary to significant and unavoidable Impact E.5. As discussed under Impact E.5 (p. IV.E-28 of the DEIR), “The City should continue to pursue landmark nomination of the Bulkhead Building and delineate the S-7 Preservation Combining Zone immediately around it to ensure its long-term protection as a representation of Oakland’s important maritime past. If designated as a landmark in the future, the proposed project may affect this building’s historical setting through potentially incompatible or incongruous adjacent new construction. As the designs of the proposed mixed use, multi-story project have not been finalized, it is possible that the project could affect its historic setting as an Oakland City Landmark. This would be considered a significant and unavoidable impact.” The DEIR also notes that, “a series of preservation alternatives to the project is included in Chapter V of this EIR, including an alternative that would preserve the entire Terminal building.” As such, the DEIR adequately addressed potential compatibility of new structures adjacent to the terminal bulkhead building, were it to be designated as a landmark in the future.
- S-33 As asserted in the comment, it is possible, though not documented, that the existing Ninth Avenue Terminal structure could reduce freeway noise as perceived by future Bay Trail users as they pass along the seaward side of the building. For the CEQA analyses conducted for the DEIR, Impact G.4 recognizes the significant and unavoidable impact that would result from the project locating public parks (and residential uses) in a noise environment where outdoor noise levels are above what is considered “normally acceptable” for these uses (pursuant to the City’s Noise Element). The impact discussion on DEIR p. IV.G-28 acknowledges that sound attenuation can occur for area located away from I-880, with some sound blockage *potentially* attributable to buildings between the receptor and I-880.
- S-34 As is pertinent to the DEIR analysis, a description of the Estuary Policy Plan and its relationship to other elements of the General Plan is provided on DEIR p. IV.A-11. With regard to the review process that the City has elected in lieu of the specific planning process, see Master Response A.
- S-35 See Master Response C for a description of significant and unavoidable traffic impacts.
- S-36 See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures.

- S-37 The comment raises a question of liability responsibility in case the assessments in the EIR for the project are incorrect. The comment does not discuss any potential environmental impacts of the project or adequacy of the analysis in the DEIR. All engineering and development activities on the site would occur according to specific engineering documents and plans prepared, reviewed, and approved by qualified licensed and certified professionals as required by law. See also Response to Comment II-6, below.
- S-38 The discussion of emergency access/railroad operations on DEIR p. IV.B-60 recognizes that long freight train could limit access to the site to the 16th Avenue alternative route. However, the City has indicated that the availability of alternative routes would minimize any significant delay in response time, given the relative frequency and duration of train obstructions at both 5th Avenue and Oak Street crossings. Potential environmental impacts that would require additional services/facilities (per CEQA significance criteria) are discussed in Section IV.L of the DEIR (Public Services and Recreational Facilities). As discussed on DEIR pp. IV.L-10 and IV.L-13, the Oakland Police Department and Oakland Fire Department indicate that any anticipated delay in response would not require the construction of new or physically altered facilities in order to maintain acceptable response time.
- S-39 See Response to Comment E-4.
- S-40 See Response to Comment S-10 and Master Response B.
- S-41 The project proposes to remove a portion of the pile-supported pier along the southernmost edge of the Ninth Avenue Terminal. The substructure of the southernmost portion of the pier was constructed later than the northern sections, and initial engineering investigations show that this portion is substantially more damaged than the northern portions to be retained and improved as part of the project.
- S-42 Comment is noted. The City decisionmakers can consider the inclusion of historic preservation standards as it deliberates the proposed Planned Waterfront Zoning District (PWD-1).
- S-43 The comment suggests shifts in the project phasing of the project and recommends activities that could occur within the revised phasing, specifically related to demolition of the Terminal and phasing of park areas. The City could choose to consider an alternative phasing of any aspect of the project in its deliberations, however, this aspect of the project does not address a physical environmental impact over CEQA. See Master Response G regarding the phasing of park space in particular.
- S-44 The project objectives presented in Chapter III (Project Description) of the DEIR (pp. III-24 through III-25) are the result of collaboration between the City and the project sponsor. As directed by Section 15124(b) of the CEQA Guidelines, the Project Description in the EIR shall include “a statement of the objectives sought by the proposed

- project.” The objectives help guide the development of alternatives in the EIR and will help the preparation of findings or a statement of overriding considerations, if necessary. The City (as Lead Agency) has the discretion to determine if the project objectives are appropriate. It is also up to the City and the project sponsor to determine whether or not the project adequately meets the stated objectives.
- S-45 The DEIR provides discussion of affordable housing on DEIR pp. IV.A-28 and IV.A-29 within the context of the *Central City East Redevelopment Plan* and the *Central City Urban Renewal Plan*. Additional detail is provided on DEIR p. IV.J-42 within the detailed analysis of Potential for Indirect Physical Impacts (*Development of Affordable Housing*).
- S-46 Starting on DEIR p. IV.J-33 (*Potential Indirect Impacts of Proposed Retail Development*), the DEIR provides a detailed discussion of the project’s relationship to adjacent commercial uses. In response to comments received on the Notice of Preparation (NOP) of the EIR, the DEIR includes an analysis that addresses the retail market effects of the project and whether the proposed retail/commercial space in the project could cause ripple effects of store closures and consequential long-term vacancies that would result in physical deterioration and urban decay. On DEIR pp. IV.J-33 through IV.J-40, the DEIR discusses the existing underserved Oakland retail market, the type of retailing envisioned for the project, the anticipated additional retail spending from project residents, comparative retail spending and sales for the project, the complementary relationships of the project retailing and that in nearby neighborhoods, and the contribution of other new retailing citywide. The DEIR concludes that the project would not lead to significant indirect physical impacts related to retail markets, including existing neighborhood commercial districts and corridors in surrounding areas of Oakland, and specifically not on the Eastlake District.
- S-47 See Response to Comment S-44.
- S-48 The comment speaks to the project objective “develop housing in close proximity to abundant transit opportunities, including BART, Amtrak, the San Francisco Bay Regional Ferry, and AC Transit.” The comment suggests that this objective ignores existing obstacles (rail tracks) and considerations relative to the user preferences and behavior. The comment is noted. See also Response to Comment S-44, Master Response D (*Transit Measures and Bicycle Measures*), and Master Response F.
- S-49 The project sponsor’s objective to Further Smart Growth principles is based primarily on the development of 3,100 new housing units within the City of Oakland, in proximity to major employment centers rather than in outlying communities that result in increased traffic congestion, lengthy commutes, and fuel consumption, etc. See Response to Comment S-44.
- S-50 The Port of Oakland is the property owner of all property on the project site, including trust lands.

S-51 See Responses to Comment Letter A.

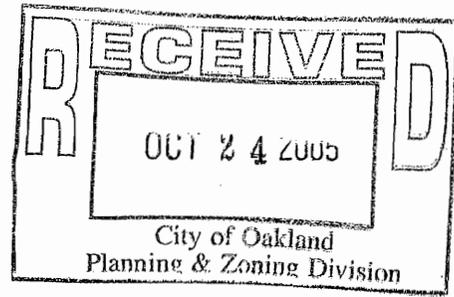
S-52 See Master Response F.

S-53 See Response to Comment O-1.



October 24, 2005

Margaret Stanzione
City of Oakland
Community and Economic Development Agency
Planning Division
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612



Subject: Draft Environmental Impact Report for the Oak-to-Ninth Mixed Use Development Project

Dear Ms. Stanzione:

On behalf of the San Francisco Bay Trail Project, I am writing to submit comments on the Draft Environmental Impact Report (DEIR) for the Oak-to-Ninth Mixed Use Development Project (Oak-to-Ninth Project) located in the City of Oakland. The Bay Trail Project is a nonprofit organization administered by the Association of Bay Area Governments (ABAG) that plans, promotes, and advocates for the implementation of the Bay Trail. The Bay Trail is a planned 500-mile continuous network of multi-use bicycling and hiking paths that, when complete, will encircle San Francisco and San Pablo Bays in their entirety. It will link the shoreline of all nine Bay Area counties, as well as 47 cities. To date, more than half the length of the proposed Bay Trail system has been developed.

T-1

The Bay Trail alignment runs along the entire waterfront and shoreline's edge of the proposed project area and along the entire length of Embarcadero to the north of the project area. Completed Bay Trail segments currently exist along Embarcadero, at Estuary Park towards the West, and at Brooklyn Basin towards the East. The Bay Trail Project is very pleased that the Oak-to-Ninth Project proposes to develop and maintain the Bay Trail alignment along the entire waterfront and shoreline's edge of the project area. Although the DEIR does discuss the Bay Trail, we have the following comments to strengthen the DEIR's discussion and analysis of the Oak-to-Ninth Project's impacts and mitigation related to the Bay Trail.

1. The Bay Trail Plan is discussed in the *Land Use, Plans, and Policies Section*, however a detailed analysis of the Oak-to-Ninth Project's consistency with the Bay Trail Plan, Bay Trail alignment, and Bay Trail Design Guidelines is not included in this Section. The *Land Use, Plans, and Policies Section* should be revised to provide a more detailed discussion and analysis of the proposed Oak-to-Ninth Project's consistency with the Bay Trail Plan, Bay Trail alignment, and Bay Trail Design Guidelines. Any inconsistencies should be mitigated, and the proposed mitigation should be identified and discussed in the DEIR. Currently, the DEIR provides very general information on the alignment and design of the proposed Bay Trail segments. As a result, we are not able to provide detailed comments on the specific alignment and design of the Bay Trail proposed with the Oak-to-Ninth Project.

T-2

T-3

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October 24, 2005

2. The mitigation analysis for both the project-specific and cumulative impacts of the Oak-to-Ninth Project on Parks and Recreation simply states "Mitigation: None Required". Although it is not explicit, we assume that the no-mitigation-required determination was made based on the public open space and Bay Trail that would be provided as a part of the proposed development project. The *Parks and Recreation Impacts Section* does provide a discussion of the parks, open space, and Bay Trail proposed with the Oak-to-Ninth Project. Since the proposed project would create significant impacts to Parks and Recreation without the Bay Trail segments and associated open spaces proposed with the project, either the proposed Bay Trail segments and associated open space should be identified as mitigation for Parks and Recreation impacts, or the mitigation summary language should be modified to read "Mitigation: None required as long as the Bay Trail segments and open spaces proposed with the project are implemented by the project sponsor." T-4
3. Since the Bay Trail is a planned regional trail that will encircle the entire San Francisco Bay and connect communities along its shoreline, it serves as an important commuter alternative. This is further demonstrated by the Bay Trail's inclusion in the Metropolitan Transportation Commission's 2001 Regional Bicycle Plan. As such, the development of the Bay Trail segment proposed with the Oak-to-Ninth Project should be included as mitigation for the transportation, air quality, and noise impacts related to the increased traffic created by the proposed project. Commuters choosing to utilize the Bay Trail rather than automobile roadways would reduce the impacts related to increased automobile traffic and congestion. T-5
4. The location of the Bay Trail segments proposed with the project along the entire shoreline should be identified as mitigation for the visual and aesthetic impacts created by the buildings and other structures proposed with the Oak-to-Ninth Project. T-6
5. Although the DEIR states that the Oak-to-Ninth Project would include a **continuous** public pedestrian trail and Class I bicycle facility along the entirety of the project's waterfront as part of the Bay Trail, all of the Figures in Chapter III of the DEIR show a gap in the Bay Trail along the waterfront at the property identified as "Private Lands: Not a Part of Project". This gap is located between the proposed Channel Park and South Park. The proposed Bay Trail development along the waterfront of the project site should include the development of the Bay Trail along this gap area as mitigation for park, recreation, transportation, air quality, noise, visual, and aesthetic impacts. The DEIR should be clarified to include the development the Bay Trail along this gap. T-7
6. The DEIR should include a discussion and analysis of the expected lifespan or longevity of the wharf areas that would accommodate the proposed Bay Trail and associated open space areas. Any impacts that would result from this analysis including maintenance impacts should be mitigated, and the proposed mitigation should be identified and discussed in the DEIR. T-8
7. On page III-18, the *Channel Park and South Park Section* should include a discussion that the Bay Trail would be developed as a part of these parks. The *Estuary Park and Jack London Aquatic Center Section* should clarify whether the existing Bay Trail facilities would remain the same in Estuary Park or be improved as a part of the project. The DEIR should also provide language that clearly states that the proposed Oak-to-Ninth Project would connect the proposed Bay Trail segments to the existing Bay Trail segments at Estuary Park to the West and at Brooklyn Basin near the Oyster Reef Restaurant to the East. T-9
8. Since the Bay Trail segments and open spaces proposed with the Oak-to-Ninth Project are mitigation for the project impacts to Parks and Recreation resources, the proposed Bay Trail segments and open spaces should be completed prior to the occupancy of the first residential or T-10

COMMENT LETTER T

Margaret Stanzione
October 24, 2005

commercial unit. The language under the *Project Phasing Section* of Chapter III should be changed to state that the proposed Bay Trail segments and open spaces for the entire project area must be completed prior to the occupancy of any residential or commercial unit completed as part of the Oak-to-Ninth Project.

T-10
(CONT.)

9. On page III-28, the section on BCDC should include a discussion that projects subject to BCDC approval must provide maximum feasible public access under State law.

T-11

The Bay Trail Plan and Policies and Bay Trail Design Guidelines may be obtained on our website at <http://baytrail.abag.ca.gov/>, or by contacting me at the telephone number below.

The Bay Trail Project appreciates the opportunity to comment on the DEIR for the Oak-to-Ninth Project and looks forward to working with you on this project. Please do not hesitate to call me at (510) 464-7915 if you have any questions regarding the above comments or the Bay Trail.

Sincerely,



Lee Chien Huo
Bay Trail Planner

Cc: Kathryn Hughes, City of Oakland, Public Works Department

Letter T– San Francisco Bay Trail

T-1 Comment is noted. The comment provides context for the Bay Trail Project organization and the Bay Trail alignment

T-2 The DEIR describes the *San Francisco Bay Trail Plan* and the City’s *Oakland Waterfront Promenade and Bay Trail Alignment Feasibility Study Design Standards* that are based on the Bay Trail Plan policies and design guidelines. The following discussion is provided after the second paragraph of the San Francisco Bay Trail Plan on DEIR p. IV.A-33:

“The Bay Plan contains policies that guide future uses of the bay and shoreline and encourage new shoreline development to provide public access to the bay, to the maximum extent feasible. It incorporates a series of Bay Plan Maps of specific areas along the shoreline, and these maps are based on, and show how to apply, the Bay Plan policies. The project site is within Bay Plan Map No. Five (Central Estuary), which designates a portion of the site west of Lake Merritt Channel as a Waterfront Park Priority Use Area. BCDC has regulatory authority for all portions of the project site waterside of BCDC’s 100-foot shoreline band (including that portion of the priority use area), and the project uses and facilities within the 100-foot shoreline band would be subject to approval by BCDC’s Design Review Board to ensure compatibility with policies for public access, appearance, design, and scenic views.”

The DEIR text outlined above provides the level of discussion appropriate for inclusion in the DEIR. Overall, the project’s proposed waterfront Bay Trail alignment is consistent with the goals of the Bay Trail Plan.

T-3 To the extent that the project complies with or is consistent with the specific alignment and design guidelines of the Bay Trail, the City will assess the project’s consistency with such guidelines (as outlined in its draft design standards) as a part of its discretionary design review of the project and is not included in the DEIR. As stated in Response to Comment E-12, detailed plans of each of the proposed parks (including trail alignments) would be prepared by the project sponsor as part of the Final Development Plan (FTP) submittal to the City. Park space and trail exhibits depicted in the DEIR (DEIR Figure III-7, revised as **Figure III-1**, Shoreline Parks and Trail Network, in Chapter III of this document) are conceptual. These exhibits are at an appropriate level of detail necessary to conduct the CEQA analysis and for the Preliminary Development Plan (PDP) approval currently sought by the project sponsor.

T-4 The analysis of parks and recreation impacts discussed on DEIR pp. IV.L-15 through IV.L-18 and on DEIR p. IV.L-22 are evaluated pursuant to significance criteria provided in the City of Oakland’s 2004 CEQA Thresholds/Criteria of Significance Guidelines and stated on DEIR p. IV.L-9. In short, the project would not result in or require new or altered facilities to maintain park service ratios, increase the use of parks or recreational facilities to result in substantial physical deterioration of the facility, or construct park or

- recreational facilities that would have an adverse physical effect on the environment. As a result, the project would not result in a significant impact, and therefore no mitigation is required.
- T-5 Development of segments of the Bay Trail as part of the project precludes the need to include such an action as a mitigation measure.
- T-6 The comment states that Bay Trail segments along the entire shoreline should be identified as mitigation for visual and aesthetic impacts created by the buildings and other structures proposed by the project. As analyzed in detail in Section IV.K of the DEIR (Visual Quality and Shadow), the project would not result in a significant impact on aesthetics (Impact K.1) analyzed on pp. IV.K-7 through IV.K-9, or on views/scenic vistas (Impact K.2) discussed on pp. IV.K-10 through IV.K-39. The less-than-significant impact findings are based on the significance criteria provided in the City of Oakland's 2004 CEQA Thresholds/Criteria of Significance Guidelines and stated on DEIR p. IV.K-6: essentially, "the project would not have a substantial adverse effect on a scenic vista or substantially degrade the existing visual character of quality of the site and its surroundings." Therefore, no mitigation is required.
- T-7 As stated in Response to Comment B-11, the proposed trail alignment is modified in this document (**Figure III-1**, Shoreline Parks and Trail Network, in Chapter III) to depict the additional continuous alignment that would occur with respect to the outparcel in a way that would not require "closure" of the 200-foot gap across the outparcel. Although a continuous shoreline trail alignment would be most fully consistent with policies and visions in the City's General Plan (and a number of other plans associated with access to the waterfront), the project sponsor does not own, and does not intend to acquire, the outparcel, therefore the trail segment over the "gap" cannot be proposed as part of this project.
- T-8 Consistent with information provided in Response to Comment E-8 and stated in Response to Comment S-3, the design and seismic upgrades for all aspects of the project will be in compliance with all current and applicable building codes for building and seismic performance. Analysis regarding the expected structural lifespan of the wharf areas is not within the purview of the DEIR, except to the extent that maintenance activities would pose potential adverse environmental impacts, which are already addressed throughout Chapter IV of the DEIR (Setting and Impact Analysis). See also Response to Comment E-8.
- T-9 As mentioned in Response to Comment B-9, the following is stated on DEIR p. III-14:
- "These improvements would include the continuous public pedestrian trail and Class I bicycle facility along the entirety of the project's waterfront, linking an existing Bay Trail segment that currently ends at Estuary Park to Brooklyn Basin where the trail currently continues east to the Martin Luther King Regional Shoreline and beyond. The trail would also follow both sides of Lake Merritt Channel, crossing east-west over Lake Merritt

Channel Bridge (over the Embarcadero), allow for extension for future City projects aimed at improved connections between Lake Merritt and the Estuary. The trail would accommodate pedestrians and bicycles and a variety of users within a maximum 40-foot-wide right-of-way along the waterfront of the project site.”

Supported by Figure III-7 in the DEIR (which is modified in this document as **Figure III-1**, Shoreline Parks and Trail Network, in Chapter III), the information regarding the alignment of the proposed trail is already provided.

The following text is provided under the *Estuary Park and Jack London Aquatic Center* on DEIR p. III-18 to clarify the proposed improvements to the existing Bay Trail segment along Estuary Park:

Estuary Park and Jack London Aquatic Center

The project would improve the existing Estuary Park through re-vegetation of the approximately 3.5-acre lawn/play field, shoreline protection (discussed below), and extending the waterfront Bay Trail that would edge the park and Lake Merritt Channel. The project would not change the existing picnic table/seating area pavilion and waterfront access facilities adjacent to the park and the Aquatic Center (boating and fishing docks and boat launch), and no new structures are proposed. The existing Bay Trail facilities along the shoreline of Estuary Park would be removed and replaced with a segment of the continuous public pedestrian trail and bicycle facility that would line the project’s waterfront to the extent feasible.

T-10 As stated in Master Response G, the new and improved parks/opens spaces and trail segments are proposed as part of the project and are not required a mitigation measures to reduce significant project impacts to parks and recreational facilities, as the comment asserts. The project would result in a less than significant impact on this topic, as discussed on DEIR pp. IV.L-15 through 18, and requires no mitigation. See Master Response G for a complete discussion of the phasing of open space and trail improvements.

T-11 Recognition and discussion of the BCDC’s charge to ensure public access...” to the maximum extent feasible,” is appropriately stated on DEIR p. IV.A-30 under the discussion of *San Francisco Bay Plan and San Francisco Bay Area Seaport Plan*. The following text is added to DEIR p. III-28 under *San Francisco Bay Conservation and Development Commission*:

- **San Francisco Bay Conservation and Development Commission (BCDC)**
- The project would be subject to review by the San Francisco Bay Conservation and Development Commission (BCDC), a state agency. The project would be required to obtain BCDC permits and approvals for all development proposed within the Agency’s jurisdiction, including

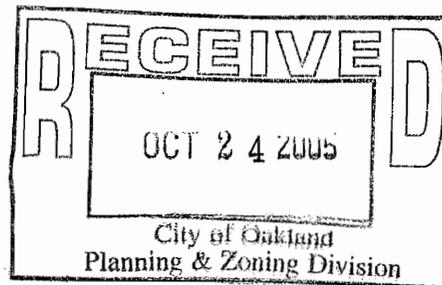
filling, dredging, and shoreline alteration, and waterfront development that requires public access.



P.O. BOX 11456
OAKLAND, CA 94611-0456

October 23, 2005

Margaret Stanzione, Project Planner
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250 Frank Ogawa Plaza, Suite 3315
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RE: Comments on the Oak to Ninth Avenue Project DEIR
Sent via e-mail: mstanzione@oaklandnet.com

Dear Ms. Stanzione:

This is Waterfront Action, Inc.'s response to the Draft Environmental Impact Report for the Oak to Ninth Avenue Project.

Waterfront Action is a citizen-based non-profit organization. Our mission is to promote full implementation of the Estuary Policy Plan and the Lake Merritt Park Master Plan; to protect the public trust; and to educate the citizens about the region's waterfront and its assets. As Executive Director, I bring my experience of historic waterfront processes to the organization. I worked on the League of Women Voters of Oakland Waterfront Study in 1992-1993, and I attended the two day charette workshop (funded jointly by the City and Port) in June of 1995 to dream the vision for the waterfront. In addition I served on the Estuary Advisory Committee for two years, and worked with other committee members to support passage of the Estuary Policy Plan (EPP) by the Planning Commission, the Port Commission and the City Council in June 1999, thereby incorporating it into the City's General Plan.

U-1

Waterfront Action's response includes the following position points:

- **The June 8, 1999 EPP should serve the base line against which the project is measured in the DEIR.** The EPP has been adopted as part of the City's General Plan, and as noted below, SB1622 calls for consistency with it.
- **The DEIR appropriately recognizes that the project must conform to the provisions of SB 1622, as adopted:** "The City's approval of the project will be conditioned upon subsequent compliance with the provisions of SB1622 [p. IV.A-33].
- **The DEIR does not provide a clear analysis of the project's conformance with EPP policies.** From the DEIR discussion of the EPP [IV.A-11 through IV.A-14], it is difficult to understand how the proposed project conforms to policies OAK-1 through OAK-12. Indeed, it entirely fails to address several policies. Waterfront Action believes that the DEIR should show for each EPP policy, how the project: **a)** is consistent with the policy, **b)** conflicts with the policy, or **c)** does not address the policy, which should then be addressed through alternate implementation planning.

U-2

U-3

U-4

- **The project's non-conformance to the EPP cannot properly be addressed by future amendments to the City's general plan;** SB 1622 calls for the project's proposed land-swap to "effectuate the principles and objectives contained in regional and local land use plans, especially the estuary plan..."[Sec 3(a)] SB1622 refers to the EPP in its form in 2004, when the legislation was passed. Similarly, it calls for "public access consistent with policies OAK-9, OAK-10, OAK-11, and OAK-12 of the estuary plan in effect on June 1, 2004..."[Sec 4(D)(h)]. If the project is proposed to conform to some other, future amended EPP and General Plan, then the provisions of 1622 are not satisfied and further legislation will be required to address these new circumstances.

U-5

Following are Waterfront Action's detailed comments and questions regarding the DEIR's conformance with a range of EPP policies. Each comment identifies the relevant EPP policy number:

U-6

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

The Ninth Avenue Terminal Shed is a historic element reflecting the long history of waterfront industry that continues to bring commerce to Oakland. To reduce it to a shadow would not "protect and enhance...the built components" existing on the site. Filbrick's Boat Works, founded in 1934 and located in a historic building, is one of the few remaining wooden boat builders. This is both a historic and public trust use. It is slated to be demolished.

U-7

How does the project address the following specific EPP policies?

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.*

U-8

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.*

By creating streets that do not connect to the Embarcadero at right angles, the developer is blocking the view corridors necessary for the public to see not only the water but the parks scheduled in the project.

U-9

How does the project address the following specific EPP policies?

OAK-2.1: *Expand Estuary Park. Encourage aquatic sports within the mouth of Lake Merritt Channel. Expand & Rehabilitate Estuary Park. Develop the Jack London Aquatic Center. Develop the mouth of Lake Merritt Channel as a protected water space for aquatic sports.*

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. Rehabilitate the marina. Establish a linear open space composed of a series of smaller parks around Clinton Basin. Provide for a limited number of new recreational slips east of Fifth Avenue.*

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.*

Recognize that the Ninth Avenue Terminal shed, or portions thereof, may be suitable for rehabilitation and adaptive reuse. (Page 91)

OAK-3: *Link the estuary to Lake Merritt by enhancing the Lake Merritt Channel.*
 It appears that this goal is outside the scope of this project.

U-9
 (CONT.)

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

Housing adjacent to open spaces can privatize or otherwise restrict the public celebration space anticipated in the EPP. There would need to be the caveat about public parks and potential events written into the disclosures of every for-sale unit in the project.

U-10

How does the project address the following specific EPP policies?

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 relocation 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.*

U-11

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

The Port and the City jointly decided not to do a Specific Plan. Why was this action not brought before City Council? Response to a specific project cannot substitute for a Specific Plan (IVA-16).

U-12

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

This is outside the scope of this project.

U-13

OAK-7: *Coordinate with CalTrans on the upgrade of the I-880 Freeway to improve regional access to the waterfront.*

The City is the lead agency for this effort.

U-14

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.*

This is a critical piece in terms of public safety that is not discussed in the DEIR. How does the proposed project address this policy?

Points of concern:

II-43 B.6 The "project would increase potential for pedestrian safety conflicts.

Mitigation: none required"

IV.A-15: "Stronger physical circulation connections to nearby areas are not likely to occur."

U-16

When adding over 3,000 people to an area, is there not an obligation to enhance pedestrian safety? Fifth Avenue, as currently configured, is a dangerous intersection at the Embarcadero. This will be the main ingress and egress from the development. Pedestrians must have safe alternatives to get over the Embarcadero roadway.

IV.B-8: "The Embarcadero/Fifth Avenue intersection operates under stop sign control on three approaches;...The heavy eastbound traffic flow (about 500 vehicles during each peak hour) is forced to stop and can often experience long delays."

IV.B-60: "Railroad Operations: Because no set schedule exists for freight rail operations, more or fewer trains could operate along this line in the future."

There is no mention of Amtrak's Capitol Corridor plans for significantly increasing the number of Oakland to San Jose commuter trains. Where is the analysis of future plans of both Amtrak and Union Pacific affecting this significant Fifth Avenue corridor?

This single intersection Fifth Avenue at the Embarcadero has a number of issues that will significantly impact automobile traffic, bicycle and pedestrian crossings. Who will provide a full assessment of railroad impacts including traffic studies at Fifth Avenue and Oak to determine the most effective mechanisms for providing safe passage to and from the proposed project?

U-15
(CONT.)

Key elements in the EPP were incorporated into the legislation (SB1622) necessary for the Public Trust trade to move forward. These elements include OAK-9 through OAK-12:

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

Is the proposed project consistent with this policy? How?

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

The EPP specifies: *"The configuration of streets should be aligned to promote views and access to the shoreline, provide convenient access to and parking for open spaces, and discourage fast-moving through traffic. Streets should include generous provisions for pedestrians and be landscaped in a manner that extends the open space amenity inland from the shoreline."* (p. 98)

By creating streets that do not connect to the Embarcadero at right angles, is the proposed project is blocking the view corridors necessary for the public to see not only the water but the parks scheduled in the project?

Is the proposed project consistent with this policy?

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

Points of concern:

Page IV.B-71(footnote 18) "The proposed project would provide covered parking at minimum rates of one space per residential unit, one space per 500 sq. ft. of commercial space, and one space per five boat slips. The project also would provide parking in surface lots in the open space acres of the site (about 75 spaces for project build out), and on-street parking within the project site (about 375 spaces for project build out). The surface lot spaces and on-street spaces do not count toward satisfying the Code requirement."

U-16

U-17

U-19

The parking requirements listed do not reflect the reality of multiple bedrooms generally having multiple cars. A current example of the City permitting one space per unit is the Jack London (loft) District between Alice and Oak, 2nd and 4th Streets. There is no street parking available to support the commercial uses. The Jack London District Neighborhood Association did a survey after completion of the loft developments, and parking demand worked out to be approximately 1.46 spaces (urban housing standard) per unit. For 3100 units, that would use up 4526 spaces which would still result in a shortfall of 542 spaces (when you add the 3534 plus 375 on-street plus 75 for open space).

U-18
(CONT.)

Will there be sufficient parking for public access areas?

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

These policies are not being met by the present proposed project. All large open spaces have housing adjacent to them. To avoid privatizing or otherwise restricting the public celebration space anticipated there should be a requirement that the public parks and potential events should be written into the disclosures for every for sale unit in the project.

U-19

Page III-22 Project Phasing

"The project would be remediated and developed over a period of approximately 11 years...Improvements (re-vegetation) of Estuary Park and the adjacent Bay Trail would occur by 2018."

U-20

The improvements should occur as the staging occurs, so that the first phase of approximately 1,100 units would be accompanied by a functioning Bay Trail and open space area.

Note: this is the approach that the Mission Bay Project in San Francisco is using.

Thank you for your review and consideration of these comments.

Sincerely,



Sandra Threlfall
Executive Director

Letter U – Waterfront Action

- U-1 Comment is noted and introduces the commenting organization and participation on the Estuary Advisory Committee.
- U-2 Alternative 1B: No Project / Estuary Policy Plan allows the impacts of the proposed project to be compared with that of future possible development under the Estuary Policy Plan. CEQA requires a no project alternative to allow decision makers to compare the impacts of approving the project with the impacts of not approving the project. According to Section 15125(e), “Where a proposed project is compared with an adopted plan, the analysis shall examine the existing physical conditions at the time the notice of preparation is published, or if no notice of preparation is published...as well as the potential future conditions discussed in the plan. Alternative 1B analyzed in the EIR provided the analysis of “potential future conditions” under the Estuary Policy Plan.
- U-3 Comment is noted and accurately states that the project approval will be conditioned upon subsequent compliance with the provisions of SB1622, as indicated in the DEIR (p. IV.A-33).
- U-4 As stated on DEIR p. IV.A-5, CEQA does not require that the DEIR include every General Plan policy that *could* apply to the project. However, all of the Estuary Policy Plan objectives and policies that most directly pertain to the project are included and discussed at length. The policy discussion in Section IV.A of the DEIR (Land Use, Plans and Policies) is consistent with the City’s position that the General Plan necessarily contains competing policies and that it must determine whether “on balance” the project is consistent (i.e., in general harmony) with the General Plan. Further, the City’s approach to the land use discussion in the DEIR emphasizes its assertion (through adopted City Resolution No. 79312) that “the fact that a specific project does not meet all General Plan goals, policies, and objectives does not inherently result in a significant effect on the environment within the context of CEQA.”

Starting on DEIR p. IV.A-13, the extensive discussion of the project’s relationship to Estuary Plan policies is organized by the following major themes pertinent to the project: *Open Space and Recreation; Wetland and Marsh Habitats; Ninth Avenue Terminal; Land Use Continuity, Access, and Circulation Connections; Fifth Avenue Point; and Specific Planning*. Policy references are cited throughout the narrative discussion in order to clearly connect each discussion point back to its applicable policy.

Oak to Ninth Avenue District policies in the Estuary Policy Plan that are not discussed in the Land Use, Plans and Policies section of the DEIR address issues outside the scope of the project (OAK Policy 6, New BART Station; OAK Policy 7, Special Events Management Program) or are intended for action by the City (OAK Policy 12, Coordination with Caltrans on I-880 Upgrade). See Responses to Comments A-20 and U-13 and U-14, below.

- U-5 The comment asserts that the proposed amendments to the Estuary Policy Plan and General Plan would fail to satisfy the provisions of Senate Bill 1622 which calls for the proposed Tidelands Trust State Lands exchange to be consistent with the “principles and objectives” of the Estuary Policy Plan. Since the trust exchange is not part of the proposed project, it is premature to assume this trust exchange would not be consistent with the Estuary Policy Plan as proposed for amendment. The SB 1622 legislation requires that the exchange parcel to be acquired be consistent.
- U-6 Discussion of the potential demolition of the Ninth Avenue Terminal, as it addresses Estuary Plan Policy (EPP) OAK-1, is provided on DEIR page IV.A-15. The EIR concluded that the Philbrick Boat Works building at 603 Embarcadero was not a historic resource under CEQA. New information regarding this buildings was provided subsequent the publication of the DEIR, and Response to Comment O-1 presents further evaluation of the Philbrick Boat Works and the building and maintains that the property is not a historic resource under CEQA.
- U-7 The DEIR discusses the project’s consistency with EPP OAK-1.1 (wetland preservation and enhancement) on DEIR p. IV.A-14, under *Wetland and Marsh Habitat*, and wetland impacts and mitigation measures (Impact I.2) are discussed on DEIR pp. IV.I-21 through IV.I-26.

As stated on DEIR p. IV.A-12, “Many objectives and policies in the Estuary Plan are addressed by policies in the LUTE and discussed under *Project Consistency with LUTE Policies*, above. Overall, these include the project’s consistency with policies that encourage mixed-use development on the waterfront, improved public access to the shoreline for multiple users (pedestrians, bicycles, etc), expanded parks and large open spaces, opportunities to use alternative modes of transportation (including transit), as well as the preservation and sensitivity of new development to adjacent communities and sensitive environments.” The DEIR discusses the project’s consistency with EPP Policy OAK-1.2 (provide for continuous pedestrian and bicycle movement along the waters edge) on DEIR p. IV.A-10, within the discussion of General Plan Land Use and Transportation Element (LUTE) Policies, *Open Space and Access*. See also Response to Comment B-11 and **Figure II-1** in this document which shows the modified proposed trail alignment.

The DEIR discusses how the project will “undertake remediation of contaminants in conjunction with development and/or improvement of relevant sites” (consistent with EPP Policy OAK-1.3) starting on page III-20. Related impacts and mitigation measures are addressed in Section IV.H (Hazardous Materials) of the DEIR.

- U-8 The DEIR discusses how the proposed project would create a “system of major recreation facilities...and promote a variety of recreational experiences,” (EPP Policy OAK-2), as well as how the project relates to “expanding and rehabilitation Estuary Park...develop the mouth of Lake Merritt Channel as a protected water space for aquatic sports,” (EPP Policy OAK-2.1) is discussed starting on page IV.A-13, *Open Space and Recreation*.

Additional discussion of the project's proposed improvements in and around Estuary Park and the Jack London Aquatic Center and to facilitate water activities is on DEIR pp. III-12 and III-14, *Proposed Parks, Open Space and Trails*, and the discussion of parks and recreation impacts (Impact L.4) starting on DEIR p. IV.L-15. The project does not propose changes to the Jack London Aquatic Center facility.

A description of the "major new park on the east side of the mouth of the Lake Merritt Channel" (EPP Policy OAK-2.2) is provided on DEIR p. III-18 under Channel Park and South Park, and depicted in Figure III-7 (on DEIR p. III-17). Additional discussion is presented in the analysis of parks and recreation impacts (Impact L.4) starting on DEIR p. IV.L-15.

Proposed improvements at Clinton Basin and the provision of new recreational slips in this area (EPP Policy OAK-2.3) are discussed on DEIR p. III-19 under *Proposed Marinas, Shoreline Improvements, and Water Orientation*; the discussion of *Open Space and Recreation* Estuary Plan Policies starting on DEIR p. IV.A-13; and the discussion of parks and recreation impacts (Impact L.4) starting on DEIR p. IV.L-15.

A description of the "large park in the area of the existing Ninth Avenue Terminal" (EPP Policy OAK-2.2) is provided on DEIR p. III-16 under *Shoreline Park / Ninth Avenue Terminal Bulkhead Building*, and covered further within the policy discussion under *Ninth Avenue Terminal*, on DEIR p. IV.A-15. Recognition that that Terminal may be suitable for rehabilitation and adaptive reuse is addressed in the range of project alternatives analyzed in Chapter V (Alternatives), which includes Alternative 2, Enhanced Open Space / Partial Ninth Avenue Terminal Preservation and Adaptive Reuse; Alternative 3 (Reduced Development/ Ninth Avenue Terminal Preservation); and a Full Ninth Avenue Terminal Preservation and Adaptive Reuse Sub-Alternative.

"Linking the Estuary to Lake Merritt by enhancing Lake Merritt Channel," is, as the comment states, outside the scope of the proposed project. However, the DEIR discusses the proposed trail improvements that would facilitate future connections along Lake Merritt Channel, as would the creation of new Channel Park.

- U-10 Regarding EPP Policy OAK-4 (provide for lively, publicly oriented activities that complement the waterfront spaces), the DEIR states on p. III-18, that "the project sponsor is not proposing to hold events (such as concerts or festivals) at the project site. However, it is possible that in the future, upon further review and approval by the City of Oakland, entities could sponsor such organized events at the new public open spaces created by the project." Additionally, the City would consider this policy as it collaborates with the project sponsor and other pertinent agencies (e.g., EBRPD, BCDC) on the specific programming of the new parks space. The comment regarding for-sale unit disclosures regarding potential events does not address the adequacy of the Draft EIR or potential impacts on the physical environment under CEQA. The City may consider this as a condition of approval for the project or Development Agreement.

- U-11 A description of the project's relationship to Fifth Avenue Point (EPP Policy OAK-4.1) is provided on DEIR p. IV.A-16, *Fifth Avenue Point*, and further in the discussion of Impact A.1 (physical division of an established community) on DEIR p. IV.A-35, and Impact A.3 (land use compatibility / Change in environment) on DEIR p. IV.A-40. See also Response to Comment S-15.

With regard to EPP Policy OAK 4.2 (educational and cultural interpretive facilities), all proposed reuses in the retained and rehabilitated Bulkhead Building or either of the full and partial preservation alternatives would include "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 retained and rehabilitated Bulkhead Building of the Ninth Avenue Terminal is described on DEIR p. III-16 and within the Estuary Plan Policies discussion under *Ninth Avenue Terminal* (DEIR p. IV.A-15). The full and partial preservation alternatives are described and analyzed in Chapter V (Alternatives).

The relocation of existing businesses on the project site (EPP Policy OAK-4.3) is not a topic addressed by CEQA to the extent that no change in the physical environment would occur. However, the DEIR provides informational discussion regarding issues facing the City regarding the relocation of waterfront industrial uses on p. IV.J-29. Further, Impact J.2 (DEIR p. IV.A-28) concludes that the project would not have a significant impact related to the displacement of existing businesses or jobs from the project site.

The proposed commercial and recreation uses that would be located near Crescent Park and Clinton Basin (as encouraged by EPP Policy OAK-4.4) is described on DEIR p. III-8 under Proposed Residential and Retail Uses. Greater detail of the proposed retail uses is provided in Section J (Population, Employment and Housing) on DEIR Table IV.J-12 (Retail/Commercial Uses and Employment Estimates) on p. IV.J-23.

The project site does not include area north of the Embarcadero that are addressed by EPP Policy OAK-4.5.

- U-12 See Master Response A.
- U-13 The project site does not include property north of the Embarcadero for consideration of a new BART station (EPP Policy OAK-6). Furthermore, establishing a new BART station would be considered a long-range endeavor that would be driven by policy- and decisionmakers beyond the scope of this project.
- U-14 Development of the Oak to Ninth Project would be in compliance with EPP Policy OAK-7 because it would not prevent Caltrans from upgrading the I-880 freeway, and would in fact help facilitate possible reconfiguration of freeway ramps by realignment of The Embarcadero away from the freeway near 9th Avenue.

- U-15 The comment raises concern with the DEIR’s less-than-significant finding of Impact B.6 (pedestrian safety), which is discussed in detail in the context of existing traffic control devices and the relationship of vehicular traffic volumes and pedestrian safety starting on DEIR p. IV.B-55. Also, see Master Response F for a discussion of issues associated with pedestrian activity at nearby railroad crossings.

The comment raises concern with the DEIR statement that “stronger physical circulation connections to nearby areas are not likely to occur.” The comment has removed the statement from its DEIR context, which states that “Without removal of I-880 and rail yards, which is not foreseeable, stronger physical circulation connections to nearby areas are not likely to occur.”

The comment raises concern with the traffic delays at Embarcadero / 5th Avenue under existing conditions, and the comment is noted. The project’s impact on traffic delays at Embarcadero / 5th Avenue is discussed in Impact B.2c, Impact B.1d, and Impact B.3i in Section IV.B (Transportation, Circulation and Parking). See also Response to Comments J-1 and J-3 regarding Capitol Corridor operations.

- U-16 The DEIR states that “the project would improve and widen segments of the Embarcadero into a landscaped parkway along the frontage of the project site,” within the Estuary Policy Plan discussion under Open Space and Recreational (DEIR p. IV.A-13), consistent with EPP Policy OAK-9. See also Response to Comment B-11 and **Figure II-1** on page II-3 of this document which shows the modified proposed trail alignment which includes the Embarcadero.

- U-17 The comment asks whether creating streets that do not connect to the Embarcadero at right angles would block view corridors to the water and proposed parks. This consideration is discussed in the DEIR within the discussion of LUTE Waterfront Policies (specifically Policy W3.4), which states, “The design and layout of the project would consider potential effects on adjacent uses. Existing views of the Estuary from public vantage points, as well as from points inside the project site, are nonexistent or limited due to the location of existing buildings, including the Ninth Avenue Terminal. The proposed street alignments coupled with the siting of new buildings of varied heights, would allow for additional and expanded views of open spaces and the Estuary from onsite and offsite locations.” (DEIR p. IV.A-9). This is echoed in the DEIR discussion of Open Space, Conservation and Recreation Element (OSCAR) policies on DEIR p. IV.A-20.

The visual simulations are considered adequate to conduct the CEQA analysis provided in the DEIR and to assist City decisionmakers as they evaluate the project impact on visual character and views and scenic vistas. Additionally, as analyzed in detail in Section IV.K of the DEIR (Visual Quality and Shadow), the project would not result in a significant impact on views/scenic vistas (Impact K.2), as discussed on DEIR pp. IV.K-10 through IV.K-39. The related analysis is supported by photo simulations that

depict views from the Embarcadero as well as along proposed internal streets (DEIR pp. IV.K-10 through IV.K-39).

Prior to acting on the proposed project, the City and BCDC will consider the extent to which the proposed street configuration on the site facilitates new views of the waterfront and open spaces, and thus satisfies relevant waterfront access (visual and physical) policies, specifically EPP Policy OAK-10 raised by the comment.

U-18 See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management measures.

U-19 See Response to Comment U-10.

U-20 See Master Response G.

Friends OF OAKLAND PARKS AND RECREATION

A Non-Profit Corporation Since 1981 • Office at the Lakeside Park Garden Center

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Friends of Oakland Parks and Recreation ("Friends") is a not for profit, dedicated to improving parks and recreation activities in the City of Oakland. The mission of Friends includes the development and maintenance of new park and recreation space.

The disposition of the Oak Street to 9th Avenue area (Oak-to-Ninth) represents an important park and recreation opportunity for Oakland.

The current financial landscape of the City has made the creating and maintaining of new park and recreation areas increasingly difficult.

Financial difficulties have lead to public-private partnerships, resulting in successful urban waterfront developments that properly balance the public interests with the practicalities of private residential-commercial development.

"Friends" supports the project given the following conditions:

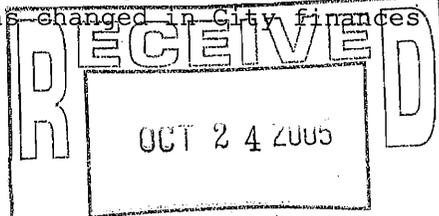
1. Sufficient open space/parkland be provided to establish a major recreation destination able to support a wide variety of inviting recreational activities and spaces - the largest of these along the lines of a community music festival or other community event.
2. The entire "Cash & Carry" site should be set aside to connect with Estuary Park for additional open space/parkland.
3. The plan establishes and incorporates strategies to attract the general public to use this newly created recreation space.
4. A number of visual corridors are incorporated into the plan in order to create a strong connectivity between the waterfront open space/parkland and the rest of Oakland.

Background and comment:

The Estuary Policy Plan (EPP) was adopted in 1999 by the City Council and, after a lengthy public process, was incorporated in the General Plan. The vision of the EPP, as expressed and illustrated in the Plan:

"Shoreline access and public space policies are intended to establish this area of the Estuary as the major recreational destination in the city. The Plan recommends a series of large open spaces, intended to provide for a wide variety of recreational experiences. Developing a series of well-defined open spaces would change the entire nature of the waterfront in this area, transforming it from an industrial backwater into a recreational centerpiece of the city. In total, these sites would represent one of the most significant additions of urban parkland within the entire Bay Area. They would create both a regional and local asset of major proportions."

Friends believes that the intent of the EPP embodies an important public policy. However, Friends also recognizes that much has been learned about waterfront planning and much has changed in City finances since the EPP was adopted.



V-1

V-2

V-3

2

Therefore, Friends supports the maintenance of the intent of the EPP in terms of creating public access and significant new recreational opportunities.

1. Encourage Awareness of the Park and Open Space Elements of the Development. In developing park and open space, one goal should be to encourage the use of the space. This goal requires consideration of many elements, including the size of the space, visual access, structure of the space and the sensory experience of the park user. The Oak to Ninth site poses unique challenges and opportunities in this regard. Visual access from and the visual site lines looking toward the City side of the project are impacted by the presence of the freeway. Care needs to be taken to balance the value of letting passersby's know of the park, while at the same time not adversely affecting the experience of park users. Innovative approaches in signage, street design, landscaping, pedestrian and bicycle access, transit stops, related amenities attractive gateways and pathways to and within the development will support this goal. Exactly how this is accomplished should be carefully considered.

V-3
(CONT.)

The developer should work with the City, and other interested parties to assure that this part of the Estuary will be designed to encourage use and enjoyment of the area.

2. Maximize Both the Existence and Use of Park and Open Space. The amount of open space is a significant concern to Friends. Also of concern is that the overall project functions in a way that encourages use of the park space. The location of the project is such that it will need to have amenities that encourage its use as a destination park. Certainly, the waterfront itself will do this to a degree. The presence of restaurants, coffee shops and other amenities will also facilitate the use, as demonstrated in other urban locations such as Marina Green, Vancouver and Portland. We know that if density is too low, it becomes difficult to maintain other amenities. We do not feel that we have the expertise to determine what the perfect balance should be. However, we do feel strongly that in considering the layout and the density of the project, the objectives should include:
 - a. Maximizing open space.
 - b. Creating multiple park uses, such as walking, play areas for children and community gathering areas.
 - c. Ensuring that non park amenities that encourage and are complimentary with park use will be present.

V-4

The redevelopment of our waterfront is currently the most important land use decision before the city. As Oakland's last massive parcel for a long, long time, the City must ensure that the development of Oak-to-Ninth is nothing less than the best it can be. The new development should have the look and feel of an open waterfront park, perhaps with point towers set apart in large open spaces. Generous vistas should be available from all vantages. The renewed area should provide attractive amenities, and should be inviting for walking, biking, jogging, sitting, and enjoying new experiences.

V-5

Oakland is a waterfront city, but many are hardly aware of that fact because, for so long, so much of our waterfront has been off limits to the public. With the availability of the Oak-to-Ninth area, Oakland is provided the unusual opportunity to open the waterfront to its people and leave - or not leave - a legacy to our children and grandchildren. Oakland should work cooperatively with the Port's chosen developer to assure that our Estuary is an Oakland jewel for generations to come. Moreover, Oakland must ensure that "the public good"

V-6

is a guiding principle in our collective decisions about how best to balance the beauty of the Estuary with public access and private investment.

Respectfully submitted,

A handwritten signature in cursive script that reads "Tom Guarino". The signature is written in dark ink and is positioned above the typed name.

Tom Guarino
President, FOPR

Letter V– Friends of Oakland Parks and Recreation

- V-1 Comment is noted and introduces the commenting organization, and acknowledges the financial difficulties associated with the creation and maintenance of new park and recreation areas.
- V-2 The comment identifies four conditions of project support. The City may consider each of the conditions as it deliberates its action on the project and formulates its conditions of approval. Generally, the conditions raised in the comment concern 1) sufficient provision of open space/parkland, 2) Expansion of Estuary Park to the Embarcadero, 3) strategies to attract the public to new open spaces, and 4) visual corridors between the waterfront, open space/parkland, and the rest of Oakland. Adequate information and analysis regarding each of these conditions is provided in the DEIR. Conditions 1 through 3 related to open space and parkland are discussed on DEIR pp. III-12 through III-19 and analyzed as Impact L.4 on pp IV.L-15 through IV.L-18. Condition 4 related to visual accesses is analyzed as Impact K.2 on pp. IV.K-10 through K-39.
- V-3 The comment recommends topics for which “innovative approaches” will “let passersby know of the park, while....not adversely affecting the experience of park users.” Topics raised by the comment (signage, street design, landscaping, pedestrian and bicycle access, transit stops, related amenities, attractive gateways and pathways to and within the development) are all aspects of the proposed project design which the City decisionmakers will review, and as necessary, modify prior to its action on the project. To the extent that any of these aspects poses a potential impact on the physical environment under CEQA, the impacts are addressed in the Chapter IV (Setting and Impact Analysis) of the DEIR. See also Master Response H regarding Non-CEQA Topics and Considerations.
- V-4 The comment identifies three objectives that should influence the “layout and density” of the project: a) maximize the amount of open space, b) create multiple park uses, and c) complementary non-park amenities. As stated in Response to Comment V-3, the City will consider each of these objectives prior to acting on the project. The DEIR discusses each of these topics on DEIR pp. III-12 through III-19 and under Impact L.4 (Parks and Recreational Facilities) on pp. IV.L-15 through IV.L-18.
- V-5 The comment addressed topics related to the design of the project, which the City will consider during its design review of the project. The comment does not address the adequacy of the Draft EIR or CEQA issues, except that the DEIR analyzes the project impact on existing views and scenic vistas under Impact K.2 on DEIR pp. IV.K-10 through IV.K-39.
- V-6 Comment is noted and does not address issues concerning the adequacy of the Draft EIR of the topics pertinent to CEQA.

The Jack London District Association
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info@jlida.org
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October 24th 2005

Margaret Stanzione,
Project Planner,
City of Oakland CEDA Planning Division,
250 Frank H. Ogawa Plaza,
Suite 3315,
Oakland, California 94612

RE: Draft EIR for the Oak to 9th Avenue project

Dear Ms Stanzione

The Jack London District Association (JLDA) would like to make the following comments on the Oak to Ninth Avenue Draft EIR document.

1. Measure DD Coalition statement support

As members of the Measure DD Coalition we support their statement on this project. While it does not specifically cite the DEIR (it was drafted before DEIR publication) we believe it identifies several general issues that are at odds with the main project described.

W-1

We feel that the adopted 1999 Estuary Policy Plan (EPP) document represents the most recent expression of the wishes of a very broad range of Oakland's community for this area. Therefore without further study and public comment, e.g. a site specific plan as identified in the EPP, the planning commission should not recommend a project that is at odds with the EPP.

W-2

The alternative projects described in the DEIR do seem to offer some hope of reconciling the developer's wishes with the EPP and as such we would strongly encourage the alternatives to be considered.

W-3

For reference the three main points from the Measure DD coalition statement are repeated below:

The Measure DD Coalition strongly urges close adherence to primary EPP objectives by any development plan being considered for adoption, namely:

i) Assure maximum physical and visual access for the public to the Estuary and the surrounding parks from the Embarcadero and from interior streets.

W-4

Visual access is a major organizing feature of the EPP, in which all roadways and view corridors provide direct vistas to the water. In the developer's plan, visibility of the water is blocked from the Embarcadero, and from practically all streets within the development. Visibility, of course, is vital for parks, and encourages their use. Lake Merritt's parks are heavily used because they are so visible. At minimum, the developer should work with

W

the City, the Coalition, and other interested parties to assure that this part of the Estuary will – to the greatest extent possible – be “opened up” in the similar ways.

ii). Maximize “open space” in the proposed development consistent with the Estuary Policy Plan.

The EPP calls for a beautifully designed and sited 11-acre park landward of the 9th Avenue Terminal. In the developer’s plan, the 11-acre park is replaced by an approximate 4-acre pier resulting from demolition of the 9th Avenue Terminal’ thus losing both a major proposed park, and an historic building. Also, the present General Plan policy to demolish the warehouse at Oak Street and replace it with 5 acres of open space should be enforced. The development of Oak-to-Ninth should invite, not exclude, the public from Oakland’s waterfront. It should benefit all Oakland residents, not just those who are sufficiently privileged to live there.

W-5

iii). Foster innovative approaches (in signage, street design, landscaping, pedestrian and bicycle access, transit stops, related amenities) to ensure maximum visibility of the Estuary, and attractive gateways and pathways to and within the development.

The redevelopment of our waterfront is currently the most important land use decision before the city. As Oakland’s last massive parcel for a long, long time, the City must ensure that the development of Oak-to-Ninth is nothing less than the best it can be. The new development should have the look and feel of an open waterfront park, perhaps with point towers set apart in large open spaces. Generous vistas should be available from all vantages. The re-newed area should provide attractive amenities, and should be inviting for walking, biking, jogging, sitting, and enjoying new experiences.

W-6

2. Traffic impacts in the Jack London District

JLDA has noted that the DEIR includes numerous significant and unavoidable impacts on key traffic intersections within and boarding our district, most importantly 5th & Oak, 5th & Broadway and 6th and Jackson. These intersections are the same ones already forecast to be significantly impacted by the Jack London Square redevelopment project, and the Oak to 9th Avenue project will only serve to compound the issues. Our main concern is that now the mitigations are readily admitted to have no way to solve the traffic problems, especially in the 2025 projection. With the continued development of residential housing projects in our area we can only see further exasperation of the traffic problems bringing gridlock in the future.

W-7

Even worse, the mitigations that are suggested all require “optimization” of the flow where the optimization is simply to get more traffic onto the 880 freeway. As was previously noted in comments on the Jack London Square Redevelopment DEIR by CalTrans the freeway south on ramp at Oak is currently operating “at capacity”. The response to this comment was only that the project did not add a significant amount of traffic to 880 flow. But it failed to address the specific 880-S on-ramp at Oak Street, and since the JLS Redevelopment final EIR traffic has become even worse. A virtual standstill off traffic on 880-S from Jackson St and for several miles south is now a daily phenomenon between 4pm and 6pm.

W-8

3. Proposed demolition of most of the Ninth Avenue terminal

We urge you to head the comments made at the recent Landmarks Preservation Advisory Board meeting on October 17th. The board members expressed unanimous disapproval of the substantial demolition of this building, favoring keeping a much greater extent of the building with adaptive reuse.

W-9

We feel that this is in line with the Measure DD coalition comments regarding this building, and as such it is a strong endorsement for considering the alternatives in the DEIR which do not include the demolition of most of the terminal building.

W-9
(CONT.)

4. Provisions for public use of park areas

We feel that the project provides inadequate parking for public use of the open spaces, and for visitors to even the remnant of the terminal building. Even the proposed 450 spaces includes a substantial number of spaces of on street parking within the project – the community of Jack London District knows that on street parking will be heavily utilized by residents and business users to park extra cars. This especially true since the parking space allocation for residents falls far short of the average use – given this projects distance from BART, lack of bus service, and its proximity to the freeway it is extremely likely that residents there will have two vehicles per household. Thus all those extra cars will be parked on-street when not utilized which will effectively exclude the majority of those spaces from being used by visitors. This is exactly the situation experienced within the Jack London District and is caused by inadequate provision of off-street parking, and the false expectation that merely building residential developments with approximately 1.00 spaces per household will magically limited private individuals vehicle ownership.

W-10

Therefore while developers are free to continue their experiment on influencing vehicle ownership by limit parking we believe this main project must address the provision of dedicated parking for visitors. If they do not the public spaces will become unusable by people from the surrounding communities and the public space will have effectively been annexed for private use by those living within the development – something that is clearly unacceptable.

Thank you for this opportunity to make comments,

Sincerely

Simon Waddington

Secretary,
Jack London District Association
248 3rd St., #845
Oakland, CA 94607
info@jlida.org
www.jlida.org

STATEMENT OF THE MEASURE DD COMMUNITY COALITION**ON****PROPOSED DEVELOPMENT OF THE OAK – TO – NINTH AREA**

The Measure DD Community Coalition is a broadly representative body of 150 concerned citizens, organizations, and dedicated staff. The Coalition was sanctioned by the City Council to monitor the progress of activity, and to oversee the financial integrity of the myriad of parks, open space, and waterways developments authorized under the Measure DD bond referendum, overwhelmingly adopted in 2002 by the Oakland electorate.

The Coalition has a special interest in the impending development of the Oak Street to 9th Avenue area (Oak-to-Ninth), not only for its projected magnitude, but particularly the project's potential impact on open space, Estuary access, visibility, and questions of level of development appropriate to the largest undeveloped waterfront area remaining in the city.

The Coalition also recognizes a variety of successfully developed urban waterfront developments in the United States and that, in large measure; these successes result from viable partnerships of public interests together with private residential-commercial developers. In appreciation of this fact, and that significant public resources are provided by Measure DD to develop usable, attractive open space, the Coalition strongly urges that public policy must insist on development that augments and encourages public access to the Estuary, and which assures that the "public interest" is paramount in decisions affecting the development of Oak-to-Ninth.

The Port of Oakland's selected developer for the Oak-to-Ninth area proposes development that differs greatly from the Estuary Policy Plan (EPP). The EPP was adopted in 1999 by the City Council and, after a lengthy public process, was incorporated in the General Plan. The vision of the EPP, as expressed and illustrated in the Plan:

"Shoreline access and public space policies are intended to establish this area of the Estuary as the major recreational destination in the city. The Plan recommends a series of large open spaces, intended to provide for a wide variety of recreational experiences. Developing a series of well-defined open spaces would change the entire nature of the waterfront in this area, transforming it from an industrial backwater into a recreational centerpiece of the city. In total, these sites would represent one of the most significant additions of urban parkland within the entire Bay Area. They would create both a regional and local asset of major proportions."

Given the current financial landscape of the city, achieving these goals makes public-private partnership all the more important. However, it is equally important to not allow development that will squander open space or implement designs that fail to serve the interests of all of Oakland. Innovative development adjacent to the Estuary has the potential to enhance the long-term vitality of Oakland's waterfront. However, it is equally essential that the public must not lose in the process.

Under the developer's proposal, 42% of the open space called for in the EPP (approximately 12-14 acres) is eliminated (excluding Estuary Park, an existing City park). The EPP "envisioned" opening up Estuary Park (now a "stealth" park) to public view from the Embarcadero, by demolishing a large warehouse and replacing it with 5 acres of open space. The developer's plan would build a large residential complex at the warehouse site, thereby forever hindering Estuary Park from public view.

The Measure DD Coalition strongly urges close adherence to primary EPP objectives by any development plan being considered for adoption, namely:

1. *Assure maximum physical and visual access for the public to the Estuary and the surrounding parks from the Embarcadero and from interior streets.*

Visual access is a major organizing feature of the EPP, in which all roadways and view corridors provide direct vistas to the water. In the developer's plan, visibility of the water is blocked from the Embarcadero, and from practically all streets within the development. Visibility, of course, is vital for parks, and encourages their use. Lake Merritt's parks are heavily used because they are so visible. At minimum, the developer should work with the City, the Coalition, and other interested parties to assure that this part of the Estuary will – to the greatest extent possible – be "opened up" in the similar ways.

2. *Maximize "open space" in the proposed development consistent with the Estuary Policy Plan.*

The EPP calls for a beautifully designed and sited 11-acre park landward of the 9th Avenue Terminal. In the developer's plan, the 11-acre park is replaced by an approximate 4-acre pier resulting from demolition of the 9th Avenue Terminal, thus losing both a major proposed park, and an historic building. Also, the present General Plan policy to demolish the warehouse at Oak Street and replace it with 5 acres of open space should be enforced. The development of Oak-to-Ninth should invite, not exclude, the public from Oakland's waterfront. It should benefit all Oakland residents, not just those who are sufficiently privileged to live there.

3. *Foster innovative approaches (in signage, street design, landscaping, pedestrian and bicycle access, transit stops, related amenities) to ensure maximum visibility of the Estuary, and attractive gateways and pathways to and within the development.*

The redevelopment of our waterfront is currently the most important land use decision before the city. As Oakland's last massive parcel for a long, long time, the City must ensure that the development of Oak-to-Ninth is nothing less than the best it can be. The new development should have the look and feel of an open waterfront park, perhaps with point towers set apart in large open spaces. Generous vistas should be available from all vantages. The re-newed area should provide attractive amenities, and should be inviting for walking, biking, jogging, sitting, and enjoying new experiences.

Oakland is a waterfront city, but many are hardly aware of that fact because, for so long, so much of our waterfront has been off limits to the public. With thanks to Measure DD and the availability of the Oak-to-Ninth area, Oakland is provided the unusual opportunity to open the waterfront to its people: an historic opportunity to leave – or not leave – a legacy to our children and grandchildren. Oakland lost its waterfront to rapacious politicians in the 1850s; it took 60 years of litigation to get it back. The City should not now lose it again. Oakland should work cooperatively with the Port's chosen developer to assure that our Estuary is an Oakland jewel for generations to come. Moreover, Oakland must ensure that "the public good" is a guiding principle in our collective decisions about how best to balance the beauty of the Estuary with public access and private investment.

The statement above represents the consensus of representatives and attendees at Measure DD Coalition meetings held in May, June, and July 2005 , and is thus a statement of the "sense" and "will" of the Coalition's active attendees.

Letter W– Jack London District Association

- W-1 The comment is noted and states support of the Measure DD Coalition statement, which is provided as an attachment to the comment letter and included as part of Comment Letter 7 (Coalition of Advocates for Lake Merritt).
- W-2 See Master Response A.
- W-3 The comment encourages consideration of the project alternatives [by the City]. Prior to its action on the project, City decisionmakers will evaluate the project alternatives analyzed in Chapter V of the EIR and determine whether to approve the project, an alternative or a combination of these.
- W-4 See Response to Comment U-17.
- W-5 The Estuary Policy Plan depicts an 11-acre Crescent Park on land created by demolition of the Ninth Avenue Terminal. The comment erroneously states the project would create a “4-acre pier resulting from demolition of the 9th Avenue Terminal...” As described on DEIR p. III-16 (and depicted in Figure III-7 on p.III-17) and on Table IV.L-2 (DEIR p. IV.L-17), the proposed Shoreline Park would be 9.74 acres created in the location of the demolished Terminal. The comment describes the expansion of Estuary Park north to the Embarcadero and encourages the project’s compliance with this Estuary Plan vision. The DEIR presents and analyzes alternatives (Chapter V) that consider this expansion of Estuary Park as described in the Estuary Plan. City decisionmakers will consider this information as they evaluate the project and the project alternatives in their deliberations on the project.
- W-6 See Response to Comment V-3.
- W-7 See Master Response C for a description of significant and unavoidable traffic impacts. The commenter’s concern, given the best available information and the professional judgment of City staff and the EIR consultants, is adequately addressed in the DEIR.
- W-8 See Master Response E regarding optimization of signal timing, and its appropriate use as a mitigation measure. The purpose of an EIR is to analyze the potential impacts associated with the project seeking approval by the Lead Agency, not to solve problems that the project would not create nor significantly contribute to. As stated on DEIR p. IV.B-37, the EIR analysis considers the project impact at the intersection of 5th and Oak Streets at the I-880 Southbound On-Ramp to be significant and unavoidable because it is not certain that the mitigation measure (signal optimization) could be implemented because the City of Oakland, as lead agency, could not implement the mitigation measure without the approval of Caltrans. However, in the event that the mitigation measure could be implemented, the project impact would be less than significant.

- W-9 Comment is noted and encourages the City to consider the full and partial Ninth Avenue Terminal preservation alternatives presented and analyzed in the DEIR (Chapter V, Alternatives).
- W-10 See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management measures.

Oakland Planning Commissioners
City of Oakland
250 Frank Ogawa Plaza
Oakland, CA 94612

RECEIVED

OCT 24 2005

CITY PLANNING COMMISSION
ZONING DIVISION

Dear Planning Commissioners:

On behalf of the Eastlake Revitalization Initiative (ERI), a program of the East Bay Asian Local Development Corporation (EBALDC), and The Eastlake Merchant's Association (ELMA), we are writing to comment on the Oak to 9th future development and emphasize how, if planned and executed thoughtfully, the project can positively impact the Eastlake community.

The new Oak to 9th development provides Oakland with an important opportunity to transform our shared public land into a new waterfront neighborhood that all of Oakland can enjoy and benefit from. We are asking for a truly integrated neighborhood that will be incorporated into the surrounding community, especially the neighboring commercial district Eastlake.

X-1

The Eastlake Neighborhood is located within the San Antonio District of Oakland along International Boulevard and East 12th Street, from 1st to 14th Avenue and lies only 5 blocks north of the future Oak to 9th Development. Eastlake is multi-cultural commercial district mostly comprised of South East Asian and Latino business owners who serve a multiracial working class neighborhood.

ELMA and ERI advocate for maximizing integration of the future development by making a physical and commercial connection. This can be accomplished by:

1) Increasing public access to the waterfront. An appropriate design will make 5th Ave a working link between the Oak to 9th development and the surrounding neighborhoods through streetscaping, pedestrian and bike paths and signage. This project offers an opportunity to both bring Oakland residents to the waterfront and to bring the waterfront's new residents to shop and experience adjacent Oakland neighborhoods, such as Eastlake. Having parking areas and facilities that facilitate customer movement between Eastlake and Oak to 9th will aid in maximizing the number of people who use both spaces.

X-2

2) Pedestrian safety mitigations around key streets and intersections, such as 5th Avenue, Oak Street, 14th Avenue, etc. There is concern especially for children and seniors as they may cross back and forth between East Lake, Chinatown, and Oak to 9th.

X-3

3) An integrated marketing strategy that includes Eastlake. Promoting Eastlake caterers and other contractors for First Source contracting lists and highlighting the Eastlake commercial corridor (i.e. "we are near the Eastlake Neighborhood") would be the beginning.

X-4

3) Active outreach by the developer to ELMA and local chambers to offer them information about leasing opportunities at Oak to 9th and to offer the right of First Refusal for those leasing opportunities in Eastlake.

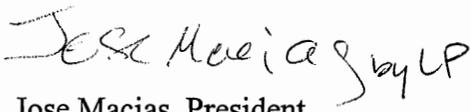
X-4
(CONT.)

ELMA and ERI are asking for a clear and strong integration of the Oak to Ninth development with Eastlake. Our comments are based on several meetings that provided input from Eastlake commercial and neighborhood residents. We would welcome inclusion in comment processes in the future.

X-5

Sincerely,


Lynette Lee, Executive Director
East Bay Asian Local Development
Corporation

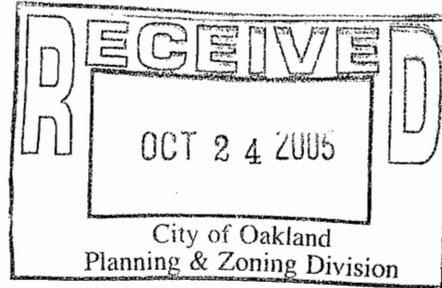

Jose Macias, President
East Lake Merchants Association

Letter X– East Bay Asian Local Development Corporation and East Lake Merchants Association

- X-1 Comment is noted and introduces the commenting organization and goals for the project.
- X-2 See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management and public access measures.
- X-3 As described on DEIR pp. IV.B-55 to IV.B-57, the proposed project would include a continuous public Class I trail along the entirety of the project shoreline, linking an existing Bay Trail segment, which ends at Estuary Park, to 10th Avenue, where the trail currently continues east to the Martin Luther King Regional Shoreline and beyond. As further described on those pages, traffic control devices (traffic signals with pedestrian signal heads), as well as striped crosswalks, would safely accommodate the added vehicular and pedestrian traffic by controlling the flow of the traffic streams through positive guidance. The Pedestrian Master Plan (PMP), which is part of the City’s General Plan, includes PMP Policy 1.2, which recommends use of traffic signals and their associated features (e.g., pedestrian signal heads) to improve pedestrian safety. The DEIR also discusses pedestrian safety as an issue of concern to the City of Oakland, adoption of the above-cited Pedestrian Master Plan, and the Revive Chinatown Streetscape and Pedestrian Improvement Project that will improve pedestrian safety by reducing conflicts with vehicles and by providing pedestrians with better information about safely crossing streets. On that basis, the project would have a less-than-significant impact on pedestrian safety, and no added measures beyond those identified in the DEIR would be required.
- T-4 The comment recommends an “integrated marketing strategy” specifically identifies “first source” contracting and promotion of the Eastlake commercial corridor. This comment does not address the issues addressed by the DEIR or that are pertinent under CEQA. The DEIR does, however, discuss the potential indirect impacts that the project could have on nearby retail markets and areas, starting on DEIR p. IV.J-33. The comment similarly raises topics regarding leasing opportunity information and outreach desired by the project sponsor, which is not addressed in the DEIR under CEQA. See also Master Response H.
- T-5 The comment is noted and restates the commenting organizations’ goals for the project and future participate.

FIFTH AVENUE INSTITUTE

**#3 Fifth Avenue
Oakland, CA 94606**



October 23, 2005

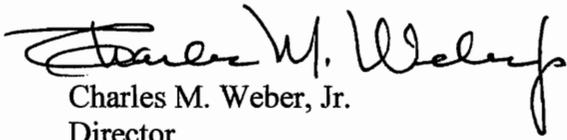
Margaret Stanzione
Project Planner
City of Oakland
Community and Economic Development
Agency
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Re: Comments on DEIR, Oak to Ninth Avenue Project
State Clearinghouse No. 2004062013

Dear Ms Stanzione:

Enclosed please find the comments of the Fifth Avenue Institute to the Draft Environmental Impact Report for Oak to Ninth.

Sincerely,


Charles M. Weber, Jr.
Director

**COMMENTS OF FIFTH AVENUE INSTITUTE UPON DRAFT
ENVIRONMENTAL IMPACT REPORT OF THE OAK TO NINTH AVENUE
PROJECT: STATE CLEARING HOUSE NO.: 2004062013 (AUGUST, 2005)**

- | | | |
|----|--|-----|
| 1. | The Notice of Preparation of an Environmental Impact Report was not posted as required by law. | Y-1 |
| 2. | The project site admittedly contains “wetlands”, and is immediately adjacent to the navigable waters of the Oakland Estuary. Portions of the site are clearly within the province of the U.S. Army Corps of Engineers. However, apparently no Notice of the Preparation or participation therein has been given to Federal Agencies, specifically the Corps of Engineers, U.S. Fish and Wildlife Service, etc. | Y-2 |
| 3. | There is no discussion of why a combined EIR/EIS is not being prepared. | |
| 4. | For projects that must comply with both CEQA and NEPA, the guidelines and NEPA regulations strongly urge local, State and Federal Agencies to work together to prepare single documents that will satisfy both State and Federal law. (Section 21083.5; Guidelines, Section 15222; 40 C.F.R. Part 1506, Section 1506.2). The resulting documents, of course, will be inadequate if they only satisfy one or another Statute or set of regulations or guidelines. (Section 21083.5; Guidelines, Section 15221, Subdivision A) | Y-3 |
| 5. | Section 21061 of the Capital Public Resources Code states, “The purpose an Environmental Impact Report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects such a project might be minimized; and to indicate alternatives to such a project.” | |
| | Thus, <u>detailed</u> information is what is to be sought. Detailed information in the form of a specific plan is clearly absent. | |
| 6. | In April, 2001, the Port of Oakland published a “Request for Developer Qualifications: Oak to 9 th District properties.” A binder which commences with the words, “Pleased to announce a unique and existing waterfront development opportunity. The Port of Oakland is inviting highly qualified developers to submit information on their ability to partner in a specific plan process, and to design and develop a first-class mixed use project on Oakland’s largest remaining waterfront development site: the specific plan area is the Oak to 9 th District” | Y-4 |
| | The “Response to the Request for Qualifications” submitted by Oakland Harbor Partners, LLC for the Oak to 9 th mixed use development, beautifully | |

printed and widely circulated, referred to the Specific Plan process at some length. It was pointed out that “Under California law, a Specific Plan is intended to implement the policies of the community’s General Plan, by providing more specific direction on the location, type, mix and intensity of the land uses and open space, the configuration and pattern of transportation facilities; the public services, facilities and infrastructure necessary to support new development; standard and guidelines to promote community design objectives; and an implementation program that describes the phasing, financing and regulatory actions necessary to realize the plan. An accompanying Environmental Impact Report is required under the California Environmental Quality Act (CEQA).”

Y-4
(CONT.)

For the Oak to 9th area, the Specific Plan will include the entire 120 acre planning on both sides of the Embarcadero. “The Specific Plan process involves the opportunity to create a meaningful dialogue with the Oakland community regarding the future of this key waterfront asset. Community outreach will be an important aspect of our Specific Plan process.”

In other words, it has been widely represented to the community at large that a Specific Plan will be prepared and that its preparation will involve significant community input. It appears that no Specific Plan has been prepared in direct violation of the promises to the community referred to above. The Specific Plan process would permit community input into the Plan, rather than simply community comment on an EIR.

7. It is clear that the project would generate a vast amount of traffic, and that the street pattern of the adjacent areas is in no way competent to deal with such traffic.

Y-5

8. Section 21092.4 requires that for a project of Statewide, regional or area wide significance, the lead Agency shall consult with transportation planning Agencies and public Agencies which have transportation facilities within their jurisdiction which Agencies could be affected by the project. As used in this Section, “transportation facilities” includes major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within ten miles of the project site.” The I-880 freeway, at peak hours, is presently clogged in the entire 5th Avenue area. Traffic envisioned by the project cannot be handled without an examination of transit solutions and significant offsite traffic modifications, far beyond those proposed. On-loading and off-loading of the adjacent freeway would become extremely dangerous. Much of the project traffic would utilize the freeway at least two times a day, as there are no nearby work places. Further, the impact of the I-880 retrofit project at the same time as project construction would appear to create even more significant impact, which has not been discussed. The traffic section is vastly inadequate. Has Cal Trans engineering staff been involved?

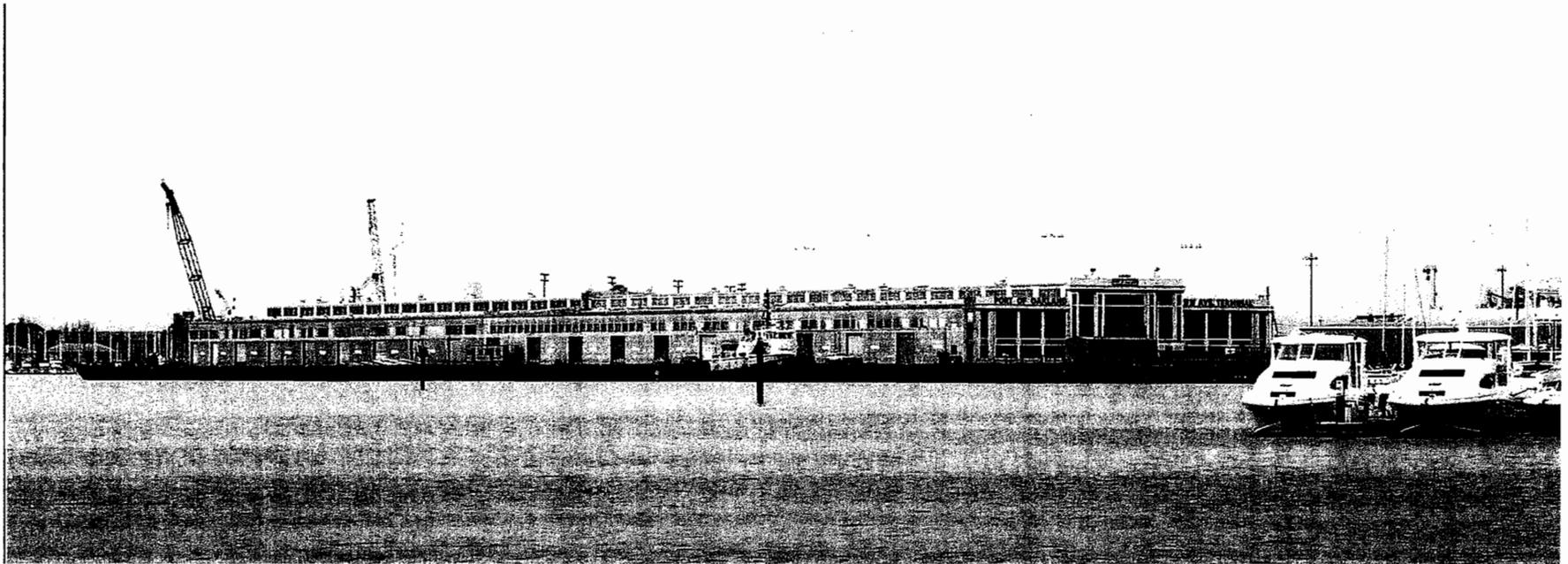
Y-8

Y-7

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|-----|---|------|
| 9. | The Oakland Estuary Plan: The City of Oakland expended substantial funds, and many local individuals and groups spent significant amounts of time, in preparation of detailed Oakland Estuary Plan. This Plan was prepared for the Port of Oakland and the City of Oakland by Roma Design Group in association with others, in February, 1998. This time, energy, funding and effort was expended over a two year period, ending just five years prior to the preparation of the Draft EIR. The nine page discussion of the Oakland Estuary Plan, labeled as a “no project alternative” is confusing. The document does not answer why the Oakland Estuary Plan has been substantially disregarded. | Y-8 |
| 10. | As pointed out in the Oakland Estuary Plan, view corridors should be created. Impact upon parks and the project’s impact upon the Bay Trail should be studied. The existing document does not adequately discuss the Bay Trail. | Y-9 |
| 11. | Preservation of a greater portion of 9 th Avenue Terminal should be studied, and alternative re-use of significant portions of the facility should be studied.

The Fifth Avenue Institute prepared a plan for the adaptive reuse of the Ninth Avenue Terminal and presented it to the members of the Landmarks Preservation Advisory Board for consideration. A copy of that plan is attached. | Y-10 |
| 12. | A community inclusive iterative planning process should be utilized, rather than simply permitting the public to comment upon a fait accompli. E.g., Specific Plan. | Y-11 |
| 13. | Marine related uses should be studied. | Y-12 |
| 14. | Tidelands Trust issues should be completely analyzed as part of the Environment Impact process, e.g., lands exchanged for what? | Y-13 |
| 15. | Health and Safety Code Section 33367(d)(4) requires that a redevelopment plan conform to the jurisdiction’s adopted General Plan. This being the case, in view of the Estuary Policy Plan, in view of the promise that a specific plan would be prepared, the vague generality and ambiguity of the existing proposal is vastly insufficient to formulate specific responses. No where are the ambiguities more demonstrated in that the Estuary Policy Plan is designated “no project”. | Y-14 |
| 16. | The Bay Trail appears to be deferred until 2018. Since the Bay Trail is primarily a product of legislation, deferring a portion of it until 2018 does not seem up to the whim of a private developer. | Y-15 |

- | | | |
|-----|--|------|
| 17. | SB 1622 requires public meetings to review the Trust Lands Exchange. The DEIR does not mention when these public meetings will occur, if ever. | Y-16 |
| 18. | The DEIR appears to be silent on any actual plan to preserve public view. | Y-7 |
| 19. | The DEIR has a great many general statements, but lacks specifics. E.g., “the project would encourage public access”. “The project would be consistent with most Estuary Plan policies”. “The project would be consistent with most applicable General Plan policies”. “Therefore, the project’s effect on scenic vistas would be less than significant”. Such general statements are not only unspecific, they tend to be false and misleading. | Y-18 |
| 20. | Soils instability is observable in the immediate area of the proposed development. Liquefaction is clearly a strong probability, in the event of earthquake. “According to maps, the project site is in an area expected to have a very high potential to experience liquefaction.” The DEIR is silent as to any meaningful response to this issue | Y-19 |



Proposal for Preservation Ninth Avenue Terminal Oakland, California

Prepared by:
Fifth Avenue Institute
October, 2005

Proposal

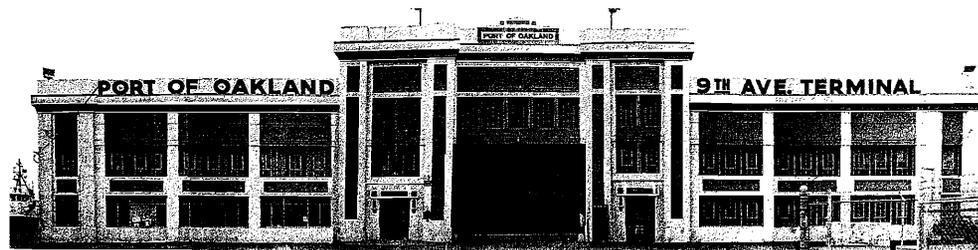
This proposal is submitted in accordance with the Draft Environmental Impact Report pertinent to Case File Number ER 04-0009 relative to the following categories:

Land Use, Plans and Policies
Cultural Resources
Public Services and Recreation

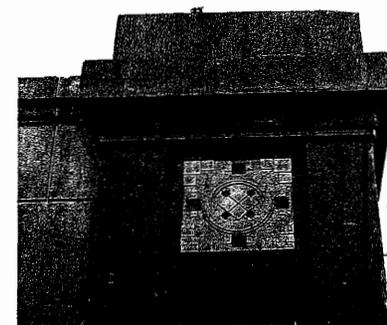
Proposal

Preserve the Ninth Avenue Terminal to create a cultural, educational and recreational center that reflects the unique history, talents and interests of people of Oakland and the East Bay.

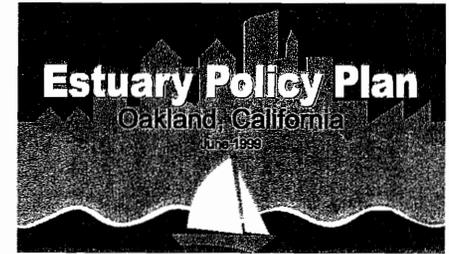
Y-20



History and Statistics



- Built in 1930 as a state of the art harbor improvement, with a 500' addition in 1951.
- Last surviving maritime terminal financed by the 1925 harbor bond.
- Strongly linked to the establishment of the Board of Port of Oakland Commissioners, sworn in February 12, 1927, that was a requirement of the bond.
- Last surviving break-bulk cargo terminal on the Oakland waterfront.
- Continuous operation since October, 1930
- Size: 1,004' long, 180' wide, 47' in height.
- Supported by approximately 1,000 wood pilings.

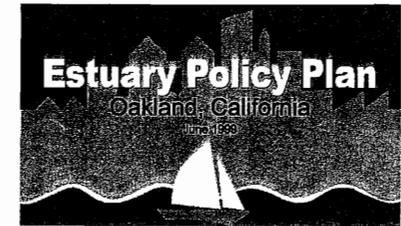


Ninth Avenue Terminal

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. Maritime activities and support services that operate in and around the terminal shed should be relocated. (See Policies OAK-4.3)

The park is envisioned as primarily an open, unobstructed green field that is flexible in use. It should be large enough to accommodate large numbers of people associated with special events, cultural activities, city festivals, etc.; yet, at the same time be designed to be attractive to individuals or small groups of people on a more regular basis.

The park should be oriented to maximize access and views of the Estuary. It should be adjoined by commercial, hotels, and public uses, which can benefit from the civic events and cultural activity programming. (See Policy OAK-4.2)



The 9th Avenue Terminal provides an exciting opportunity for public-oriented activities and open spaces. Recognize that the Ninth Avenue Terminal shed, or portions thereof, may be suitable for rehabilitation and adaptive reuse. However, the terminal building impedes public access to and views of a key area of the Estuary.

The Port and City should investigate the feasibility of keeping and reusing the building (or portions thereof). A Specific Plan for the entire District should be initiated prior to development. (See Policy Oak 5)

Encourage the mooring of vessels adjacent to the Ninth Avenue Terminal. Along the southern boundary of the Ninth Avenue Terminal, a limited amount of vessel mooring is encouraged to complement the recreational and cultural uses of the area.

Y-22
(CONT.)

Landmark Status



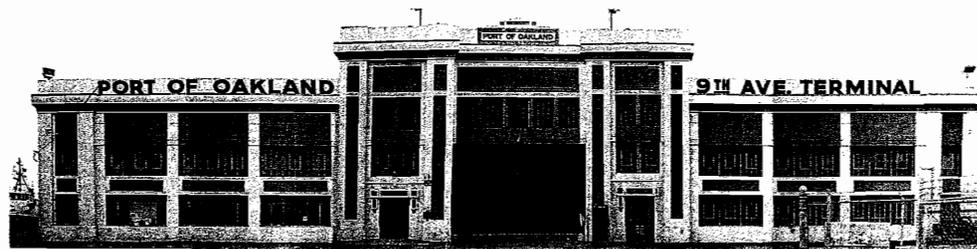
- The City of Oakland's Landmarks Preservation Advisory Board on March 8, 2004 reviewed and unanimously adopted the resolution recommending landmark designation of this unique waterfront landmark.
- The preservation and adaptive reuse of the Terminal as a centerpiece of Oak to Ninth would foster the public link with the City's distinctive waterfront, past and future.

Proposal to Preserve Ninth Avenue Terminal

Develop the facility to take advantage of its waterfront location, restricting 80% of the uses to nonprofit water-oriented businesses, organizations and events, such as:

- Boat racing headquarters
- Maritime Museum
- Sailing School
- Junior Yacht club

Y-24

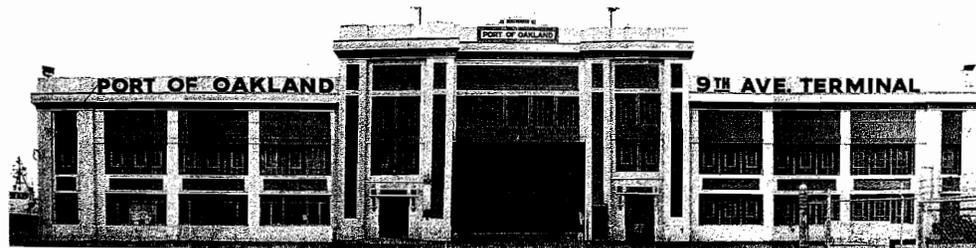


Proposal to Preserve Ninth Avenue Terminal

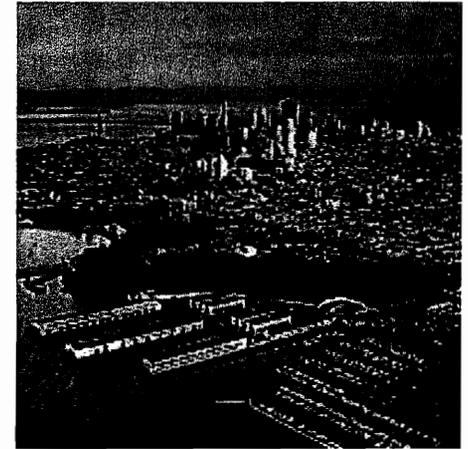
Facilities

- Festival Pavilion
- Theater
- Conference Center
- Exhibition Hall
- Meeting spaces
- Gallery
- Resident spaces for non-profit organizations

Y-24,
(CONT.)



Model for Development – Fort Mason (San Francisco)



- Landmarked facility on 13 acres of San Francisco Waterfront
- Fort Mason Foundation created in 1976 to establish cultural center
- Opened to the public in 1977
- Facilities include Herbst Pavilion, a festival pavilion, Cowell Theater, a conference center, meeting and activity facilities and spaces rented to 35 resident non-profit organizations
- 1.6 million visitors per year
- 15,000 meetings or events per year

Financial Model – Fort Mason (San Francisco)

2004 Income

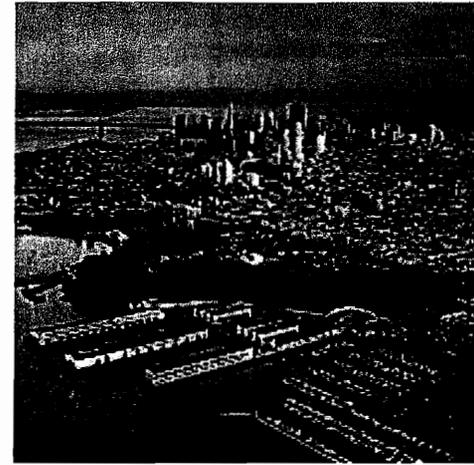
<u>Facility</u>	<u>Area</u>	<u>Rental Income</u>
Pavilion	30,000 sq ft	463,323
Theater	437 seats	407,048
Festival Pavilion	50,000 sq ft	1,292,498
Conference Center	10,000 sq ft	331,900
Separate Building	1,188 sq ft	180,990
Meetings/Activities		418,001
Resident Rents		1,184,688 *
Total		4,278,448

* \$300,000 income from restaurant



Y-25
(CONT.)

Fort Mason Events



- Zinfandel Advocates and Producers holds an annual wine-and-food tasting event at Fort Mason. 9,000 people attend the two-day event. Tickets are \$50.
- The Friends of the Public Library hold a book fair at Fort Mason every year and in 2004 raised \$238,000 for San Francisco public libraries.
- Corporate meetings: A Japanese car company rented the exhibition hall for 10 days in 2004.

Proposal to Preserve Ninth Avenue Terminal

Y-26



Proposal to Preserve Ninth Avenue Terminal

Financing

- Central City East Redevelopment Incremental Funds
- Measure DD funds
- Grants from federal government and other non-profit foundations
- Financable leases
- Memberships
 - Corporate
 - Individual

Y-26
(CONT.)

Recommendation

Y-27

Landmark the Ninth Avenue Terminal to ensure its permanency on the Oakland Waterfront.

Fifth Avenue Institute
#3 Fifth Avenue
Oakland, CA 94606

10/17/05



Letter Y– Fifth Avenue Institute

- Y-1 As required by Section 21092.3 of the CEQA Guidelines, the City of Oakland mailed a Notice of Preparation (NOP) of an Environment Impact Report for the project to the Alameda County Clerk's Office prior to May 28, 2004 (date of the NOP) for a minimum 30-day posting.
- Y-2 The CEQA Guidelines (Section 15082) require the lead agency to provide the Notice of Preparation to federal agencies "involved in approving or funding the project." No federal agencies will either approve or fund the project. Certain aspects of the planned shoreline improvements and dredging may require a permit from the Army Corp of Engineers, but this permit does not constitute approval of the project. As part of the review of the Corps permit, the U. S. Fish and Wildlife Service may review these activities for impacts to species protected under the Federal Endangered Species Act but will not be approving the project. Thus, it was not necessary to provide these federal agencies with the NOP. The Notice of Available (NOA) of the DEIR was mailed to the Army Corps of Engineers and the US Coast Guard. No comments were received from either agency.
- Y-3 A joint EIRs/EIR has not been prepared for the project for several reasons. First no federal agency has determined that the project requires an EIS. Under NEPA an EIS is prepared only for "major federal actions significantly affecting the quality of the human environment." The Corps permit that may be required for certain shoreline improvements and dredging proposed in connection with the project are unlikely to qualify as either (1) a major federal action or (2) an action that will significantly affect the environment. Thus, it is unlikely that an EIS would be required for any federal permits that may be necessary for these shoreline improvements. Second, there is no requirement under CEQA that joint federal and state documents must be prepared, even in cases that involve the likelihood of some federal environmental review. The CEQA and CEQA Guidelines sections cited by the comment do not mandate preparation of joint documents.
- Y-4 See Master Response A regarding preparation of a specific plan.
- Y-5 The commenter's concern, given the best available information and the professional judgment of City staff and the EIR consultants, is adequately addressed in the DEIR.
- Y-6 The commenter's concern, given the best available information and the professional judgment of City staff and the EIR consultants, is adequately addressed in the DEIR. See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures.
- Y-7 The proposed project would neither change the physical characteristics of the I-880 freeway ramps, nor generate traffic that is incompatible with existing traffic patterns, and there is no reason to believe entering or exiting the freeway would be made dangerous by

- the project. The I-880 seismic retrofit project is described on DEIR pp. IV.B-16 and IV.B-69. As a reviewing agency, Caltrans staff has reviewed and commented on the DEIR traffic analysis. See Response to Comment D-13 regarding interactions the project applicant and their representatives have had with Caltrans staff.
- Y-8 The comment claims that, with the proposed project, the Oakland Estuary Plan (Estuary Policy Plan) has been “substantially disregarded.” The DEIR acknowledges the Estuary Policy Plan in a number of ways. Primarily, the alternatives analysis provided in Chapter V of the DEIR describes and analyzes a No Project / Estuary Policy Plan scenario (Alternative 1B) that considers development depicted in the Estuary Policy Plan (DEIR p. V-10 through V-19). As discussed in Response to Comment U-2, this alternative allows the impacts of the proposed project to be compared with that of future possible development under the Estuary Policy Plan. Additionally, the DEIR presents an extensive discussion of the project’s compliance or conflict with applicable policies in the Estuary Policy Plan and specifically those that address the Oak to Ninth Avenue District. The City will also consider this policy analysis as it deliberates the project and balances the many policies pertinent to the project.
- Y-9 See Responses to Comments B-8 through B-11.
- Y-10 Given the proposed substantial demolition of an historic resource (Ninth Avenue Terminal, CEQA requires an analysis of preservation alternatives(s) in order to ascertain whether there are feasible options to the project that would lessen the significant unavoidable impacts to less than significant. A series of preservation alternatives to the project are included in Chapter V of the EIR, including an alternative that would preserve part of all of the Terminal building and its associated wharf structure. These include Alternative 2 (Enhanced Open Space / Partial Ninth Avenue Terminal Preservation and Adaptive Reuses) depicted in Figure V-2 on DEIR p. V-23); Alternative 3 (Enhanced Open space/Partial Ninth Avenue Terminal Preservation and Adaptive Reuse) depicted in Figure V-3 on DEIR p. V-22); and a Sub-Alternative (Full Ninth Avenue Terminal Preservation and Adaptive Reuse) depicted in Figure V-3 on DEIR p. V-23).
- See Master Response B regarding further analysis of reuse alternatives for the Ninth Avenue Terminal.
- Y-11 See Master Response A regarding preparation of a specific plan.
- Y-12 The comment states “marine related uses should be studied.” Without additional context, the response assumes that the comment suggests that additional project alternatives or Ninth Avenue reuse alternatives be considered in the DEIR. The range of project alternatives covered in the DEIR addresses various scenarios primarily for open space, density, site and street layout, and various levels of preservation of the Ninth Avenue Terminal. Consistent with CEQA, the City selected the alternatives (including Terminal reuse alternatives) for analysis in the DEIR based on the significant impacts resulting from the project (as identified in the DEIR analysis) and the project objectives, with

- consideration given to information provided by the public during the EIR scoping process, public hearings on the DEIR, and other public input opportunities not related to the environmental review process. As such, the range of project alternatives are considered to meet the goal of promoting informed public participation and decision making by the City. See also Master Response B.
- Y-13 See Response to Comment GG-18. In addition, the comment implies that a complete analysis of Tidelands Trust issues should be completely analyzed as part of the EIR process. Tidelands Trust issues are not an environmental impact. Rather such issues arise from the nature of the land title held by the Port as the manager of the lands granted by the state or acquired by the Port or its predecessors.
- Y-14 See Master Response A regarding preparation of a specific plan and Response to Comment U-2 for clarification of the purposes of the designation of the Estuary Policy Plan scenario as “no project.”
- Y-15 See Master Response G regarding the phasing of open space and trail improvements.
- Y-16 See Response to Comment GG-18.
- Y-17 See Response to Comment S-13.
- Y-18 The DEIR contains a detailed discussion and analysis on several environmental topics (and policies) throughout Chapter IV (Setting and Impacts). The comment cites a number of summary statements found in the discussion of Land Use, Plans and Policies (Section IV.A) and the summary of the view impacts (Section IV.K, Impact K.2). The out-of-context summary statements reflect the culmination of a wealth of detailed discussion in the DEIR. For example, the discussion of the project’s relationship to *City Plans, Policies, and Regulations* and *Other Applicable Plans and Policies* is discussed on DEIR pp. IV.A-5 through IV.A-39, and then summarized under Impact A.2 on pp. IV.A-36 through IV.A-38. Similarly, the DEIR impact analysis of Views and Scenic Vistas is detailed on pp. IV.K-10 through IV.K-38, and then summarized on p. IV.K-39. Summary statements in the DEIR are not “false” or intended to be “misleading.” They are intended to support the DEIR’s purpose of objectively presenting information to the public and decisionmakers regarding the potential impacts of the project, and presenting that information in a way that is easily readable and digestible.

Regarding the comments specific examples cited by the comment (shown bolded below):

- Page IV.A-10 of the DEIR states “Proposed as a new neighborhood on a grid of new public streets intersecting with the Embarcadero, **the project would encourage public access** through the area and toward the waterfront where major new public open spaces would exist. Continuous sidewalks and pedestrian and bicycle linkages from the Embarcadero and throughout the site would also lead to the water and open space areas.

- The introductory statement provided on DEIR p. IV.A-13 that “**the project would be consistent with most Estuary Plan policies**” is, in fact, conservative since the impact analysis does not conclude that the project would conflict with any Estuary Plan Policies (as discussed on DEIR pp. IV.A-13 through IV.A-17).
- As discussed under Impact A.2 (DEIR p. IV.A-36), “**The project would be consistent with most of the applicable General Plan policies.** However, the project would potentially conflict with Historic Preservation Element (HPE) Policy 3.1 Also, the project would potentially conflict with Noise Element Policy 1....” Both issues are discussed in detail in Section IV.E (Cultural Resources) and Section IV.G (Noise) of the DEIR.
- “**Therefore, the project’s effect on scenic vistas would less than significant,**” is a culminating statement of a detailed summary (on DEIR p. IV.K-39) of a lengthy analysis that starts on DEIR p. IV.K-12.

Y-19 See Responses to Comments II-6 and GG-41. The discussion for the potential impact as a result of liquefaction is discussed on DEIR p. IV.F-15. Mitigation Measure F.2 on DEIR p. IV.F-16 presents comprehensive measures for mitigating this potential significant impact to a less than significant level. Included in Mitigation Measure F.2 is a list of various engineering methods that are recommended by the California Geological Survey to mitigate the effects of liquefaction.

Y-20 The comment includes a “Proposal for Preservation of the Ninth Avenue Terminal, Oakland, California,” prepared by the Fifth Avenue Institute, October 2005. The remaining comments address the information presented in the proposal.

Y-21 The history and statistics provided are consistent with the discussion of the *Ninth Avenue Terminal and Wharf* (starting on DEIR p. IV.E-15), as well as under Impact E.3 and Impact E.4 (starting on DEIR p. IV.E-25). Additionally, the proposal is consistent with information provided in the Historic Resources Evaluation of the Ninth Avenue Terminal included as Appendix G to the DEIR. No statements in the DEIR are contradictory to the proposal information.

Y-22 The proposal cites Estuary Policy Plan policies and related plan discussions regarding the Ninth Avenue Terminal. The DEIR identifies all of the relevant Estuary Policy Plan objectives starting on DEIR p. IV.A-11 (and in DEIR Appendix F) and discusses at length the project’s relationship to Estuary Plan policies that most directly pertain to the project starting on DEIR p. IV.A-13.

Y-23 The proposal correctly cites information regarding the landmark status of the Ninth Avenue Terminal.

- Y-24 The proposal suggests a scenario of reuses for the fully-retained Ninth Avenue Terminal. See Master Response B regarding further analysis of reuse alternatives for the Ninth Avenue Terminal.
- Y-25 The proposal provides historical, economic, and operational information regarding the Fort Mason facility in San Francisco as a “model for development.” The comment is noted and does not address issues pertinent to environmental issues of the adequacy of the analysis in the DEIR.
- Y-26 The proposal outlines financing options for preservation of the Terminal and is noted, but the comment does not address environmental issues pertinent to the DEIR analysis. If the City approves an alternative that retains the Ninth Avenue Terminal, the City and project sponsor could consider viable mechanisms to finance preservation of the facility.
- Y-27 The Landmark’s Preservation Advisory Board (LPAB) has previously recommended landmark designation of the Ninth Avenue Terminal, and the City Planning Commission will consider the LPAB’s recommendation as it considers its action on the proposed project.

**PIEDMONT AVENUE
NEIGHBORHOOD IMPROVEMENT LEAGUE**

Please reply to:

Valerie Winemiller
PANIL
P.O. Box 20375
Oakland, CA 94620
(510)653-4552 or 387-9609

October 17, 2005

Landmarks Board
250 Frank Ogawa Plaza
Oakland, CA 94612-2031

Re: Case File No. ER04-0009
Oak to 9th project
Applicant: Cingular Wireless

Members of the Landmarks Board,

PANIL wishes to express its support for both:

- 1) the preservation of the 9th Street Terminal and any related historic resources, and
- 2) the inclusion of more public open space in the plan for this project, as well as open sight lines connecting the entry roads to the waterfront.

Z-1

PANIL supports the thoughtful and detailed comments of Oakland Heritage Alliance on preservation issues.

PANIL endorsed Measure DD with the understanding that some monies would go to implementing the Waterfront Plan for this area. We do not consider a patch of grass on top of a pier to be in the spirit or the letter of open space plans for an area of the city seriously under-served in open space and for one of the last large parcels of undeveloped land suitable for a park on the waterfront. We watched the controversy regarding Festival at the Lake and the conflicts it generated being so close to a heavily populated neighborhood. The Waterfront Plan designated this as the prime location for such large outdoor festivals with potential noise and traffic impacts. We wish to see much more respect for the public open space use of the waterfront area.

Z-2

Very truly yours,

PANIL
Valerie Winemiller
by Valerie Winemiller, Steering Committee

Letter Z – Piedmont Avenue Neighborhood Improvement League

- Z-1 Comment is noted and states the commenting organization's support for the preservation of historic resources, more public open space, open sight lines to the waterfront, and the comments of Oakland Heritage Alliance (Comment Letter O).
- Z-2 Comment is noted and does not address the adequacy of the analysis in the Draft EIR. In response to the comments suggestion that the site would no longer be a location for large outdoor festivals, while the project sponsor is not proposing to hold events (such as concerts or festivals) at the project site (as discussed on DEIR p. III-18), the project would not preclude the use of existing or new open spaces for festivals or any public special event by other entities or community groups that may apply for the appropriate City permits and approvals to conduct these types of community events at the open space in the project site.

Coalition of Advocates for Lake Merritt

C/O 446 17TH ST. #301, OAKLAND, CA 94612 • 510-763-9218

28 September 2005

To: Oakland City Planning Commission

Subject: **Statement of the Coalition of Advocates for Lake Merritt (CALM)**
Draft Environmental Impact Report for the
Oak-to-Ninth Mixed Use development Project

The Coalition of Advocates for Lake Merritt (CALM) is a multi-alliance of groups and individuals who hold an endearing interest in the general betterment of the "jewel" of Oakland -- Lake Merritt and its environs. Four years ago, CALM developed the 12th Street re-design plan, development strategy, and cost estimates, which was adopted essentially in its entirety by the City Council, and which plan became the basis for reconstructing 12th Street at the south terminus of the lake -- soon to be "Lake Merritt Blvd."

AA-1

CALM is an active member of the Measure DD Community Coalition, a broadly representative coalition, sanctioned and charged by the City Council to provide monitoring and fiscal oversight of projects under the \$198 million ballot referendum, approved in 2002 by 80% of Oakland voters. \$22 million of Measure DD funds are earmarked toward developing the Oak-to-Ninth area as a major recreation designation. The Coalition is committed to being an active participant in how these funds are spent.

As a diligent member of the DD coalition, CALM strongly endorses the Coalition's position statement (below) on the proposed Oak-to-Ninth development, a statement that was adopted, without opposition, after an extended period of dialogue and consideration at the Coalition's meeting of July 28.

In particular, CALM urges the Planning Commission,-- and the City Council -- to assure, throughout the various processes, hearings, and considerations, that development of the precious, priceless, and irreplaceable Oak-to-Ninth parcel will:

- (a) provide the maximum of open space -- a minimum of 30 acres -- with major development focused perhaps in strategically-sited point towers;
- (b) assure maximum vistas directly through and to the Estuary from the Embarcadero and from accessible bicycle, pedestrian, and vehicle ways adjacent to the development -- in fact, CALM strongly encourages that the vistas defined in the Estuary Policy Plan be mandated provisions of any Oak-to-Ninth project design;
- (c) require that site amenities, furnishings, and appurtenances of the development must be "world class" in quality, adequately befitting the beauty and irreplaceableness of Oakland's rare and last possibility to salvage its long-neglected waterfront for the use and enjoyment of Oaklanders for generations to come;
- (d) incorporate major demands of the 'Community Benefits Agreement,' namely, significant affordable housing and local hiring obligations: and
- (e) require adherence to Oakland Heritage Alliance's noble insistence that at least the original portion of the historic Ninth Avenue Terminal be preserved and incorporated into the development.

AA-2

The Position Statement of the Measure DD Community Coalition follows:

17

Statement of The Measure DD Community Coalition

The Measure DD Community Coalition is a broadly representative body of 150 concerned citizens, organizations, and dedicated staff. In 2004, the Coalition was sanctioned by the City Council to monitor the progress of activity and oversee the financial integrity of the myriad of parks, open space, and waterways developments authorized under the Measure DD bond referendum, overwhelmingly adopted in 2002 by the Oakland electorate.

The Coalition has a special interest in the impending development of the Oak Street to 9th Avenue area (Oak-to-Ninth), not only its projected magnitude, but particularly its potential impact on open space, Estuary access, visibility, and intensity of development appropriate to the largest undeveloped waterfront area remaining in the city.

The Coalition also recognizes a variety of successfully built waterfront developments in urban areas of the U.S. and that, in large measure, these successes result from viable partnerships of public interests together with private developers. In appreciation of this fact, and that significant public resources are provided by Measure DD to develop usable, attractive open space, the Coalition strongly urges that public policy must insist on development that augments and encourages access for the many to the Estuary, and which assures that the "public interest" is paramount in decisions affecting the development of Oak-to-Ninth.

AA-3

The development proposed by the Port of Oakland's selected developer for the Oak-to-Ninth area differs greatly from the Estuary Policy Plan (EPP). After a lengthy public process, the EPP was unanimously adopted in 1999 by the City Council, and was incorporated in the General Plan. As expressed and illustrated in the Plan, the EPP envisioned that:

"Shoreline access and public space policies are intended to establish this area of the Estuary as the major recreational destination in the city. The Plan recommends a series of large open spaces, intended to provide for a wide variety of recreational experiences. Developing a series of well-defined open spaces would change the entire nature of the waterfront in this area, transforming it from an industrial backwater into a recreational centerpiece of the city. In total, these sites would represent one of the most significant additions of urban parkland within the entire Bay Area. They would create both a regional and local asset of major proportions."

Given the current financial landscape of the city, achieving these goals makes public-private partnership all the more important. Similarly, it is important to not allow development that will squander open space, nor implement designs that fail to serve the interests of all of Oakland. Innovative development adjacent to the Estuary has the potential to enhance the long-term vitality of Oakland's waterfront. It is equally essential, however, that the public must not lose in the process.

Under the developer's proposal, 42% of the open space called for in the EPP (approximately 12-14 acres) is eliminated (excluding Estuary Park, an existing City park). The EPP "envisioned" opening up Estuary Park (now a "stealth" park) to public view from the Embarcadero, by demolishing a large warehouse and replacing it with 5 acres of open space. The developer's plan would build a large residential complex at the warehouse site, thereby forever closing Estuary Park from public view.

AA-4

The Measure DD Coalition strongly urges close adherence to primary EPP objectives for any development plan considered for adoption, namely:

1. *Assure maximum physical and visual access for the public to the Estuary and the surrounding parks from the Embarcadero and from interior streets.*

Visual access is a major organizing feature of the EPP, in which all roadways and view corridors provide direct vistas to the water. In the developer's plan, visibility of the water is blocked from the Embarcadero, and from practically all streets within the development. Visibility, of course, is vital for parks, and encourages their use. Lake Merritt's parks are heavily used because they are so visible. At minimum, the developer should work with the City, the Coalition, and other interested parties to assure that the Estuary – to the greatest extent possible – will be "opened up" in similar ways.

AA-5

2. *Maximize "open space" in the proposed development consistent with the Estuary Policy Plan.*

The EPP calls for a beautifully designed and sited 11-acre park landward of the 9th Avenue Terminal. In the developer's plan, the 11-acre park is replaced by an approximate 4-acre pier by demolishing the 9th Avenue Terminal, thus losing both a major proposed park, and an historic building. Also, the present General Plan policy to demolish the warehouse at Oak Street and replace it with 5 acres of open space should be enforced. Development of Oak-to-Ninth should invite, not exclude, the public from Oakland's waterfront. It should benefit all Oakland residents, not just those sufficiently privileged to live there.

AA-6

3. *Foster innovative approaches (in signage, street design, landscaping, pedestrian and bicycle access, transit stops, exterior furnishings, related amenities) to ensure maximum quality and enjoyment of the Estuary, including attractive gateways and pathways to and within the development.*

The redevelopment of our waterfront is currently the most important land use decision before the city. As Oakland's last massive parcel for a long, long time, the City must ensure that the development of Oak-to-Ninth is nothing less than the best it can be. The new development should have the look and feel of an open waterfront park, perhaps with point towers set apart in large open spaces. Generous vistas should be available from all vantages. The re-newed area should provide attractive amenities, and should be inviting for walking, biking, jogging, sitting, and enjoying new experiences.

AA-7

Oakland is a waterfront city, but many are hardly aware of that fact because, for so long, much of our waterfront has been off limits to the public. With thanks to Measure DD and the availability of the Oak-to-Ninth area, Oakland is provided the unusual opportunity to open the waterfront to its people: an historic opportunity to leave – or not leave – a legacy to our children and grandchildren. Oakland lost its waterfront to rapacious politicians in the 1850s; it took 60 years of litigation to get it back. The City should not now lose it again. Oakland should work cooperatively with the Port's chosen developer to assure that our Estuary is an Oakland jewel for generations to come. Moreover, Oakland must ensure that "the public good" is a guiding principle in collective decisions of how best to balance the beauty of the Estuary with public access and private investment.

AA-8

Submitted by:
 James E Vann, on behalf of
 The Measure DD Community Coalition & The Coalition of Advocates for Lake Merritt (CALM)

Letter AA – Coalition of Advocates for Lake Merritt

AA-1 Comment is noted and introduces the commenting organization and purpose.

AA-2 The comment identifies five goals for development of the Oak to Ninth Avenue project site. This response focuses on those that pertain to issues addressed in the DEIR pursuant to CEQA.

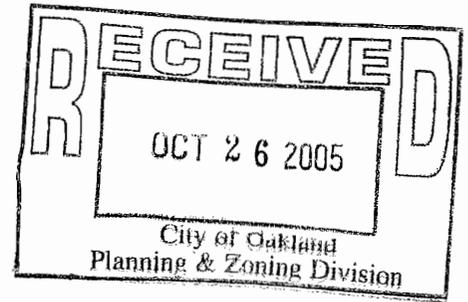
- a) *Provide minimum 30 acres of open space / focus development in strategically sited point towers:* The project will provide 20.7 acres (not including the 7.7-acre Estuary Park and Jack London Aquatic Center) of permanent open space that does not currently exist. The City decisionmakers will consider the adequacy of the proposed acreage, as well as the appropriateness of the proposed site layout and building forms, including the location of the five proposed towers, as it deliberates the project prior to action.
- b) *Assure maximum vistas directly through and to the Estuary from the Embarcadero ...mandate vistas defined in the Estuary Policy Plan:* The comment likely refers to the Illustrative Shoreline Access & Public Space Plan (Figure II-3 in the Estuary Policy Plan), which indicates “view corridors” that project along existing streets to the waterfront. Projections are shown along Fallon Street, the west edge from Lake Merritt Channel, streets including and between 5th Avenue and both sides of Clinton Basin. Additional view corridors are shown along and intersecting a new curvilinear street that would create the boundary of Crescent Park (where the Ninth Avenue Terminal current exists) and that do not align with existing street rights-of-way. The Estuary Policy Plan also anticipated that the possible configuration of new streets that might meet key objectives for internal circulation and site design might not necessary follow the existing street grid. In fact, only a view corridors extending along a virtual extension of 6th Avenue (as shown in Estuary Policy Plan Figure II-3) would not occur with the project due to proposed building development of Parcels K and L. The project would not obstruct view corridors to the Estuary down Fallon Street, the west shore of Lake Merritt Channel, 5th Avenue, either side of Clinton Basin, or from new streets bordering or intersecting the new large open space on the site of the Terminal.

Consistent with Objective SA-3 (Shoreline Access & Public Space) on Estuary Policy Plan page 39, the project would “enhance the connection between inland areas and the water” by virtue of the transformation of the waterfront site to a publicly-accessible area that would accessed by a new, clearly marked systems of trails, open spaces, and new public streets. Also, the series of open spaces proposed along the waterfront would create viewing opportunities that currently do not exist and would, consistent with Objective SA, “extend outward to the Estuary itself, to provide viewing experiences that are unique to the Estuary.”

- c) *Require quality site amenities, furnishings, and appurtenances:* The comment does not address an environmental impact of the project or the adequacy of the DEIR. The comment is noted.
 - d) *Community Benefits Agreement...affordable housing and local hiring obligations:* See Master Response H.
 - e) *At least original portion of Terminal preserved and incorporated:* See Response to Comment K-3.
- AA-3 The comment is noted and does not address the adequacy of the analysis in the DEIR or issues under CEQA. The comment speaks to the public policy matters before the City related to the “public interest” nature of the decisions about the project site development.
- AA-4 See Response to Comment W-5.
- AA-5 See Response to Comment U-17.
- AA-6 See Response to Comment W-5.
- AA-7 See Response to Comment V-3.
- AA-8 The comment is noted and does not address the adequacy of the analysis in the DEIR or issues under CEQA.

October 24, 2005

Margaret Stanzione, Project Planner
 City of Oakland
 Community and Economic Development Agency
 250 Frank Ogawa Plaza, Suite 3315
 Oakland, CA 94612



Subject: Oak to Ninth Avenue Development Project

Dear Ms. Stanzione:

California Dog Owner's Group (CalDOG) has reviewed your agency's Draft Environmental Impact Report (DEIR) for the Oak to Ninth Avenue Project (project) and would like to provide some comments about the parks and open space section of this project. The project consists of an approximately 3,100 residential units (or households), 200,000 square feet of commercial uses, as well as approximately 28.4 acres of new and improved parks and open space. We recommend that a portion of the project's open space and park area be dedicated as a dog park and that the City allow dogs off-leash in the other park and open space areas whenever feasible.

Off-leash recreation offers exercise for people and their dogs. The daily dog walk gives people a chance exercise, to be out in nature, to meet with others and to create a community. Dog walkers find friends at off-leash parks; they also monitor each other and spread the word about courtesy, clean-up, and control. A strong argument in favor of creating off-leash spaces is that availability of legal off-leash areas cuts down on illegal off-leash use, making dog-averse people more comfortable in public spaces because there is less chance of encountering off-leash dogs in unauthorized places. It would also promote pet behavioral socialization, making dogs safer around other dogs and people.

CalDOG recommends that the project explicitly include a fenced dog park at least one acre in size as part of this project (or 3.5 percent of the total area dedicated to parks and open space). Many project residents may ultimately own dogs, which would contribute to a more active lifestyle and a higher quality of life for residents in general. The American Veterinary Medical Association estimates that the average dog ownership rate in the United States is 0.58 dogs per household, which means that the project could have as many as 1,798 dogs. Further, existing Oakland residents who own or care for dogs have relatively few places to take them in that part of Oakland since Oakland has only one dedicated dog park (Hardy Park in District 1) and most other parks either prohibit dogs being off-leash or prohibit dogs altogether. We believe it is vital to include dedicated space for dogs as part of this project to enhance livability in Oakland and to increase the project's appeal to future residents.

The dog park can be located close to the freeway to buffer residents from any barking originating from the park. The park should also include trash receptacles, benches, lighting and water faucets for both people and dogs. Ideally, this dog park would include two fenced areas – one for all dogs and one just for small dogs. Furthermore, we recommend that the City allow dog owners to let their dogs off-leash in other appropriate

BB-1

open space and park areas so long as those dogs are licensed and obey voice command. If this is not included as

We would like the Final Environmental Impact Report (FEIR) to include this option as part of the project's conditions of approval. If this option is found to be infeasible, we would like the FEIR to provide a qualitative and quantitative (as applicable) analysis that justifies this conclusion.

If you have any questions about these comments, please feel free to contact me at 1-800-466-8446.

Sincerely,



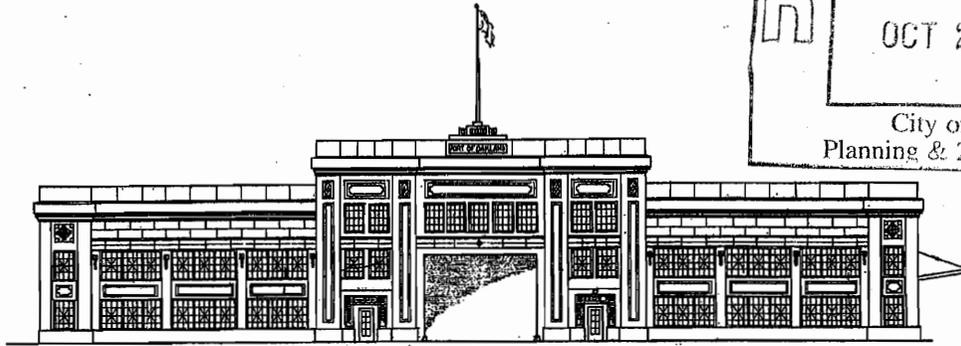
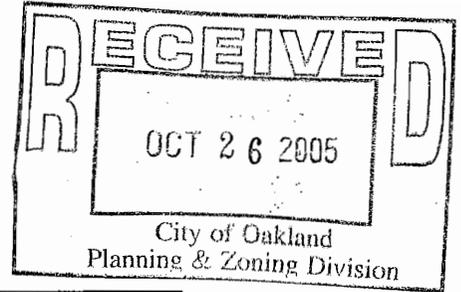
Karin Mac Donald
President, CalDOG

cc. Councilmember Nancy Nadel
Oakland Dog Owner's Group (ODOG)
Oakland Animal Welfare Group (OAWG)

BB-1
(CONT.)

Letter BB – California Dog Owners Group

BB-1 The comment is noted and does not address the adequacy of the analysis in the DEIR or issues under CEQA. The comment does call for area of the project's open space and park areas to be dedicated as a dog park. The City would consider this as it collaborates with the project sponsor and other pertinent agencies (e.g., EBRPD, BCDC) on the specific programming of the new parks space.



EAST ELEVATION.
Scale 1"=20'

FRIENDS OF NINTH AVENUE TERMINAL

October 18, 2005

Marge Stanzione, Project Planner
City of Oakland
Community & Economic Development Agency
Planning Division
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, California 94612

RE: Oak to 9th Avenue Project

The letter is in response to the Draft Environmental Impact Report for the project, and specifically on the treatment and use of the Ninth Avenue Terminal.

CONDITION OF BUILDING First, lets be clear, this building is in good shape. It is still rented out by the Port of Oakland for storage. It is not condemned.

CC-1

NO DEMOLITION OPTION – *It is the official policy of Friends of Ninth Avenue Terminal that no demolition is done to the building. Slight modifications may be made, but the building is to remain 100% intact. Any modifications to this building must follow National Park Guidelines for Historic Preservation such that the historical integrity of this building is maintained, no matter what reuse may come. After all, any 'reuse' is only temporal by its very nature. Through time, other needs and uses may come to be more important or desired. In that case, having 'lost' some of the building one particular tenants needs or desires is completely unacceptable.*

CC-2

DEMOLITION OF BUILDING SUPERSTRUCTURE - We strenuously object to the demolition of most of the superstructure (the building shell above the structural floor slab) building, while the proposed project intends to keep the structural slab and 'landscape' it to be used as a 'park'.

CONDITION FOR ISSUING A DEMOLITION CONTRACT – If there for some reason, demolition of any or part of this building is approved by the any public agency, we insist that the following conditions be met prior to the issuance of a demolition permit. (Too often in the past in Oakland, a developer has demolished a building in order to 'make way' for his project, only to have the project stopped [for various reasons] and not continue, leaving the community with a loss resource of a historic building and no project.)

CC-3

cc

FRIENDS OF NINTH AVENUE TERMINAL – RESPONSE TO DRAFT EIR FOR OAK-TO-NINTH AVENUE PROJECT

1. **Certificate of Occupancy** – No demolition permit for any portion or all of the building is to be issued until the project is 75% completed; and by completion we mean that a certificate of occupancy has been issued for 75% of the total units of the entire project area; and
2. **Buildings Occupied** - No demolition permit for any portion or all of the building is to be issued until there is 90% occupancy of the finished units that have a certificate of occupancy. By occupied we mean that tenants have rented or buyer have purchased the units, and the tenants and buyers have moved in completely and taken up residence.
3. **Partial bailout not allowed** – No demolition permit for any portion or all of this building shall be issued when only a partial stage of the project is completed.
4. **Project Description** – The percentages noted are to be for the entire project that covers the entire area, regardless of ownership. For example, if the project developer were to sell off half of all of the project area to other developers, that portion no longer under his control would still be counted as part of the entire project. The 75% completion would have to include all the approved build out, not just his 50% portion. The 75% of his 50% portion would only be 38% of the entire project, and thus a demolition permit would not be permitted.

INCOME STREAM FROM BUILDING – We need to point out that any reuse of most if not all of the building would provide an income stream that would be used to offset annual maintenance of the building, including its structural floor slab and underlying piling support.

The use of the floor slab as a 'park' would be problematic as it will incur annual costs of repair and upkeep, but without an income stream to offset this cost. The simple logic of the matter is any project for this area needs to include the reuse of the entire building so as to have that income stream to maintain the building structure.

All potential reuses must include a valid professionally prepared income stream analysis.

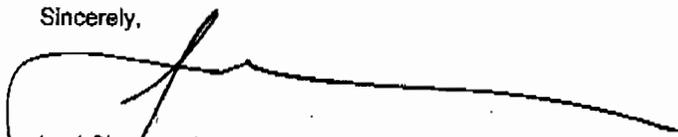
PROFESSIONALLY DEVELOPED ALTERNATIVE USES – The enclosed submittal was prepared by students and as such should not be considered a substitute for a professional evaluation of this building for alternative uses. These suggested uses promulgated by the students are not an endorsement by us of any particular use. This document does show that many alternative uses may be analyzed.

We expect there be several rational and economically viable and evaluated proposals for this building in any analysis or planning for the Oak-to-Ninth Avenue District. Any use of the Ninth Avenue Terminal, building of more than 180,000, requires numerous support such as parking, additional open space (adjacent to the building, etc.) etc.

NEIGHBORHOOD TIE-IN – Any alternate proposals must include the uses of the adjacent neighborhood. One cannot simply 'save' the building out of context with the uses of the adjoining parcels. These must be treated as an integrated whole. It is completely inappropriate and inadequate to just suggest that the terminal 'not be demolished.'

All project analysis that is encompassed by an environmental impact report must include reasonable uses of not only this building, but adjacent uses. For example, it is unreasonable to suggest that this building not be demolished and yet towering condominiums would be built adjacent to this building with no parking for users of this building.

Sincerely,



Leal Charonnat
Secretary,
Friends of Ninth Avenue Terminal

Enclosure – The Ninth Avenue Terminal – A Feasibility Study for Adaptive Reuse, prepared by: Nick Perry, Marie Sorensen, Hillary Strobel, City Planning 290E, University of California, Berkeley, CA, 2004

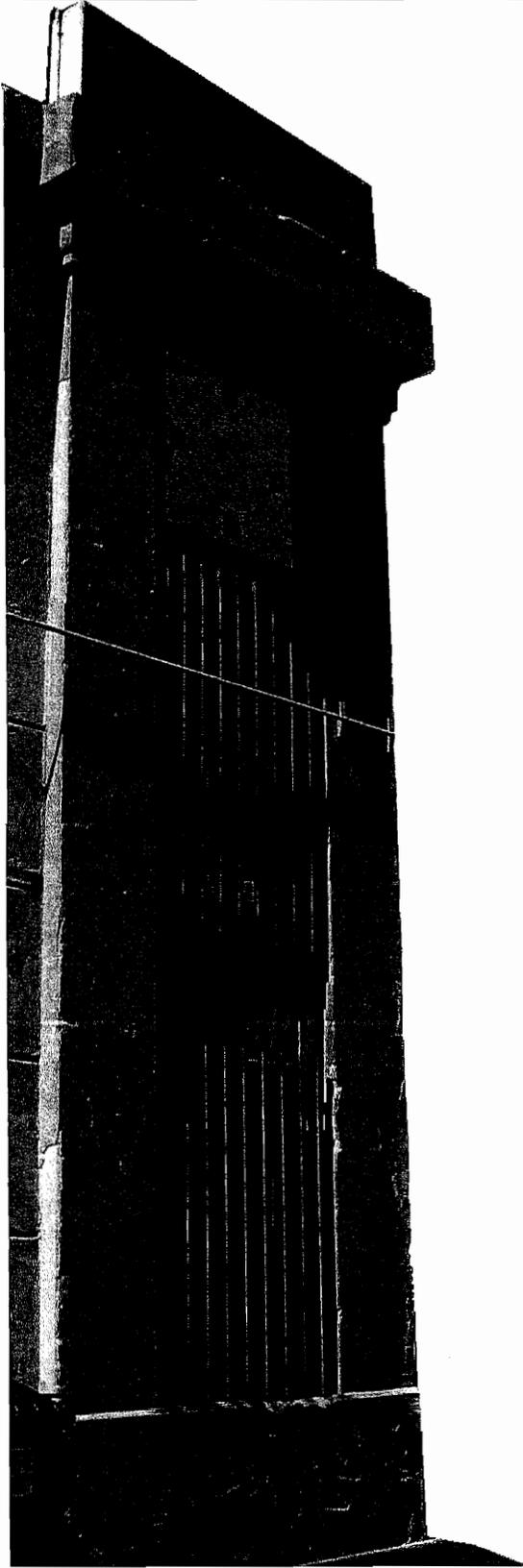
The Ninth Avenue Terminal
A FEASIBILITY STUDY FOR ADAPTIVE REUSE



Prepared by:
Nick Perry,
Marie Sorensen,
Hillary Strobel

City Planning 290E
Historic Preservation in California
Helaine Kaplan Prentice, ASLA

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Introduction



Historic 1929 bulkhead of Ninth Avenue Terminal

Few buildings along Oakland's waterfront remain standing that capture the spirit of the Port of Oakland's early history. As shipping methods have changed and modernization has occurred, the last vestiges of the historic working waterfront have been wiped away by new construction. Today, one of the last landmarks from this earlier era to survive is the Ninth Avenue Terminal. In fact, the Ninth Avenue Terminal is the last of the break-bulk terminals constructed as a part of the Port of Oakland's massive modernization and improvement program during the later half of the 1920s.

The Ninth Avenue Terminal is unparalleled in its importance to the built-heritage of the Oakland Waterfront. This massive structure, constructed between 1929 and 1952, offers the community a variety of opportunities to create a lasting landmark and civic resource right alongside the San Francisco Bay. The pages of this report contain an analysis of the potential that lies within the preservation and creative reuse of this significant landmark.

Scope of Study

The scope of this study is to define and describe conditions under which a historically significant portion of the Ninth Avenue Terminal can be maintained while emphasizing its importance to both the history and future of the Port of Oakland. Specifically, this study sets up a rationale for the preservation of more of the Terminal than the alternative proposed by Harbor Partners, Inc. in their area plan for the Oak-to-Ninth District of May 2005.

The Estuary Policy Plan (EPP) is a key agenda-setting document for the proposals presented in this report. The EPP states in Objective LU-5: "...provide for the orderly transformation of land uses, while acknowledging and respecting cultural and historical resources."¹

This stated agenda for preservation is consistent with EPP "Shoreline Access and Public Spaces" objectives for the "Ninth Avenue Terminal (OAK-2.4)," which states: "Recognize that the Ninth Avenue Terminal shed, or portions thereof, may be suitable for rehabilitation and adaptive reuse."²

It should be noted, however, that the Estuary Policy Plan is inconsistent about its position on the preservation and adaptive reuse of the Ninth Avenue Terminal. Area plans for the Terminal area recommend a flat open space in the current location of the Terminal.

A major element of the proposals presented here is to address the EPP's programming objectives for the proposed Ninth Avenue Park ("...establish a large park in the area of the existing Ninth Avenue Terminal..."³), but within the preserved space of the Ninth Avenue Terminals. These programming objectives are:

- a. "create a significant place for Oaklanders to gather for events,"⁴ accommodating large numbers of people, special events, cultural activities, and city festivals;
- b. yet "at the same time, be designed to be attractive to individuals or to small groups of people on a regular basis."⁵

A second document informing this proposal is the Oakland General Plan's Historic Preservation Element. According to this document, Class 1 structures, including the Ninth Avenue Terminal, cannot be demolished if economic feasibility can be demonstrated for the structure, or if a "reasonable use" can be determined. *This study outlines both economically feasible and reasonable uses for the Ninth Avenue Terminal.*

This proposal seeks to analyze ways to integrate public open space with the reuse of the Ninth Avenue Terminal, rather than presenting the two uses as oppositional. The study suggests five alternatives, three of which propose reuse of the entirety of the Ninth Avenue Terminal shed; and two of which call for maintaining the 1930 portion of the terminal (approx 504' in length), and removing the 1951 addition, either in whole or in part, to create open space.

Beyond the scope of this study is a detailed economic feasibility study for the proposals. However, each proposal is based on economically successful precedents for adaptive reuse of historic waterfront buildings in other cities in the United States.

¹ Estuary Policy Plan, Land Use Reforms, page 30

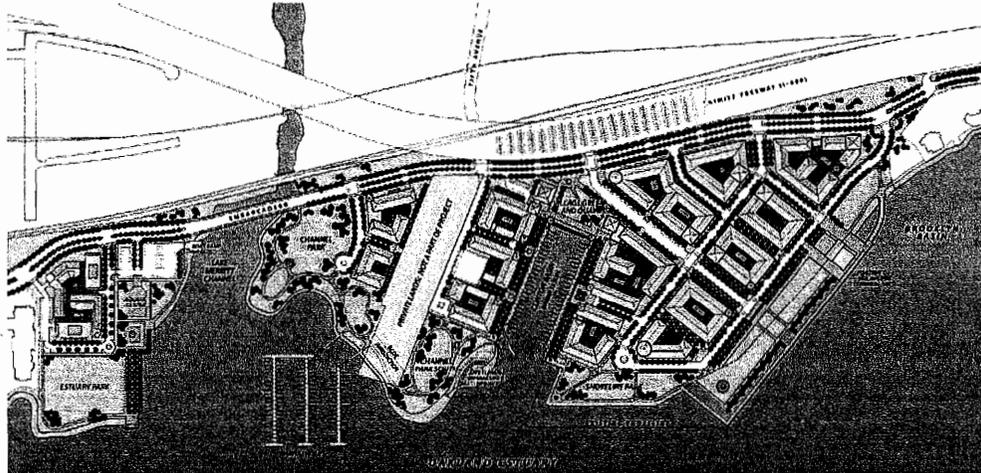
² Ibid, OAK-2.4, page 91

³ Ibid, OAK-2.4, page 91

⁴ Ibid, Executive Summary, page viii

⁵ Ibid, OAK-2.4, page 90

The intent of this feasibility study is to provide ideas and concepts, and to inspire people to think about the opportunities to turn the Ninth Avenue Terminal into a vital piece of Oakland's community fabric. Each proposal envisions the terminal becoming a community gathering space on the waterfront - a unique and versatile facility that can become a point of pride for the citizens of Oakland.



The Current Harbor Partners Inc. Plan for the Oak to Ninth Development calls for the removal of all but a small portion of the Terminal Facility, as seen on lower right.

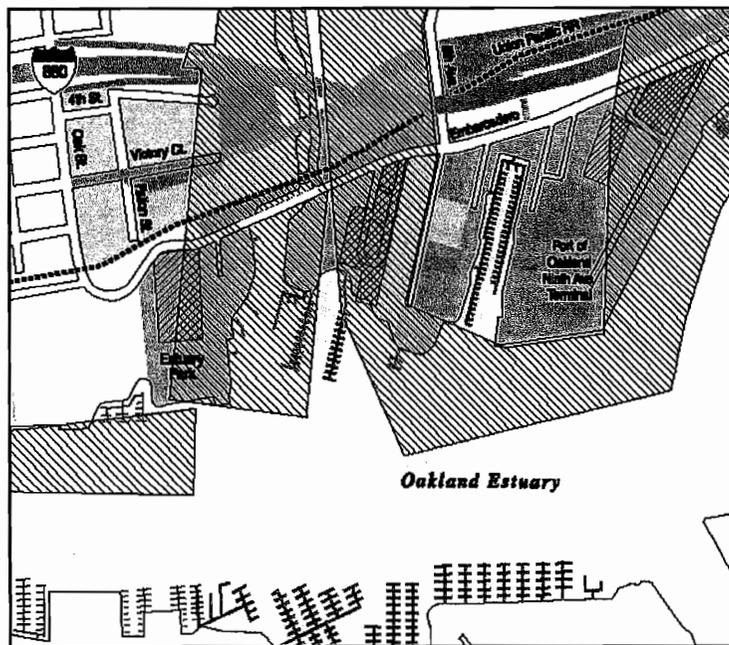
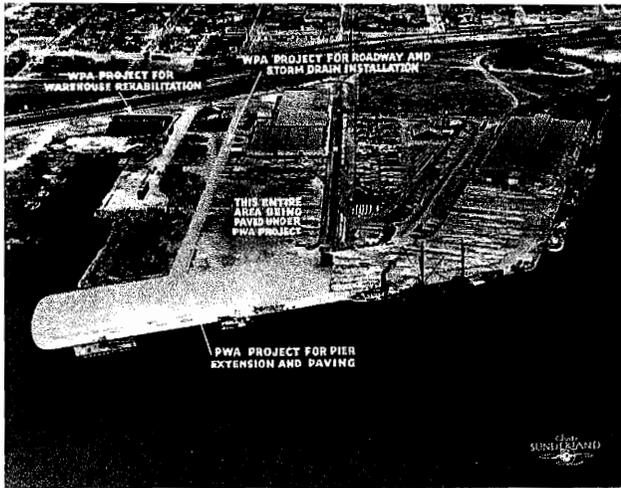


FIGURE III-8: Oak to 9th District Current Ownership



The Ninth Avenue Terminal is owned by the Port of Oakland; portions are under the jurisdiction of the Tidelands Trust. *Graphic from Oakland Estuary Policy Plan*

History of the Site



Aerial view of Ninth Avenue Terminal c. 1951

Construction of the Ninth Avenue Terminal was completed in 1930 by the Port of Oakland under a bond initiative that funded the improvement of port facilities between the years 1925 and 1930. The building is of Beaux Arts derivative style, designed by architect Arthur H. Abel, the Port's first Assistant Chief Engineer and Assistant Port Manager. The building has simple paneled pilasters and symmetrical detailing. It was designed to be a "break-bulk" terminal and inter-modal transportation complex.

The same bond legislation that funded the Ninth Avenue Terminal also created an autonomous Board of Port Commissioners of the Port of Oakland. The Ninth Avenue Terminal is also the last break-bulk terminal in Oakland that has remained in continuous use. The significance of the Ninth Avenue Terminal is augmented by the fact that the other break-bulk terminals built during this period, the Inland Waterways Terminal and the Outer Harbor Terminal, have since been demolished.

Pacific Gateway, a history of the Port of Oakland, describes the important maritime function of pier buildings like the Ninth Avenue Terminal:

Functionally the terminals were designed to expedite the movement of cargo and to avoid congestion in the harbor. When the site was of sufficient size, quay wharves, running parallel to the shore, were utilized to permit easy docking and departure. Berths accommodated vessels up to 500' in length, with wide aprons for ship-side trackage, trucks, and other vehicles. Rail spurs and paved roads linked the terminals to main lines and highways. Large transit sheds enabled goods to be stored with little or no stacking, and to be moved quickly between ship and rail, car, via doorways on the dock and land sides. The sheds were designed

Significant Dates:

Nov. 1925: bond approved for the creation of both the Port of Oakland and the construction of the Ninth Avenue Terminal.

Aug. 5, 1925: bids due for Ninth Avenue Pier.

Oct. 1930: Pier and Terminal construction completed, original building is 504' long.

June 1936: land purchase and WPA wharf extension.

May 1943: Pacific Naval Air Bases Command controls the Terminal.

1951: Addition to terminal completed, bringing the total length of building to 1004'.

Jan. 1952: Addition opened.

Feb. 1956: Encinal Terminals, located in Alameda, manages the terminal.

1998: Break-bulk operations moved from Ninth Avenue to Burma Road Terminal.

2003: Seaport Plan Amendment process completed to delete Port Authority Use "Marine Terminal" designation.

Dec. 8, 2003: Landmarks Preservation Advisory Board agrees to proceed with landmark nomination⁶.

Significance: period - 1906-1945. Also post-1945

Areas of Significance: Architecture and Commerce

Other: Maritime Commerce and Harbor terminal

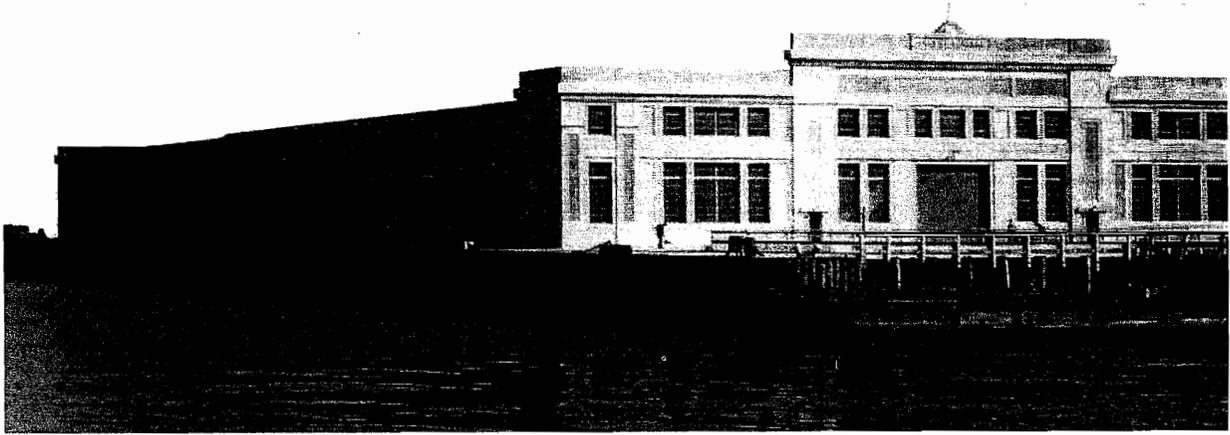
Period of Significance: Nov. 1925-Jan. 2004

⁶ Shartzer, 2004. Oakland Landmark and S-7 Preservation Combining Zone Application Form

expressly for the circulation of trucks, which could enter at one end and exit at the other without having to turn around.”

The architecture of the Port of Oakland’s terminal was not, however, solely defined by function. Like its rival across the bay, Oakland wanted to make its waterfront an attractive and marketable space. The ‘Report on Port of Oakland,’ an historic document cited in Pacific Gateway: An Illustrated History of the Port of Oakland, recommended, “...for aesthetic and advertising value, the shore and pier-head ends of sheds should be finished with some regard for architecture.”⁷ Each of the new transit sheds had a beaux art bulkhead with neoclassical piers, cornices, ornamental panels, and decorative tile work. According to Pacific Gateway, “This aesthetic approach to utilitarian structures was one facet of the City Beautiful Movement, which promoted civic order with the careful design and siting of buildings and other civic features. Oakland participated in this national movement in various ways, as exemplified by its city hall, schools, parks, and municipal port buildings.”⁸

Demolished Terminals



Outer Harbor Terminal - Demolished (Courtesy Oakland History Room)



Inland Waterways Terminal - Demolished (Port of Oakland Archives)

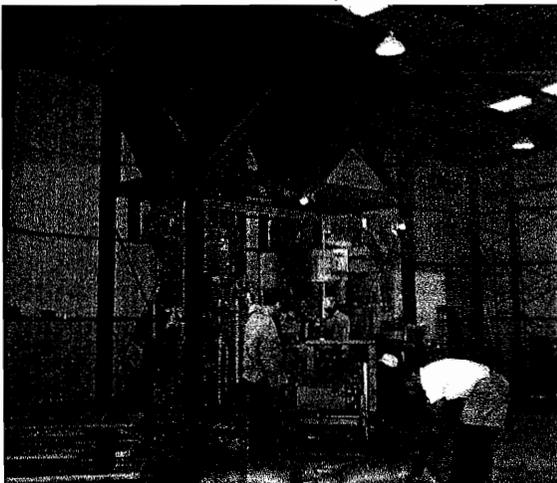
⁷ Pacific Gateway: An Illustrated History of the Port of Oakland, page 35

⁸ Pacific Gateway: An Illustrated History of the Port of Oakland, page 35

Historic Photos of Ninth Avenue Site



Circa 1930 View of Ninth Avenue Terminal showing transit shed on far right, and steamship docked in front. Quay wall, left of steamship was under construction. (Courtesy Port of Oakland Archives)



Men working inside the Ninth Avenue Terminal,
date unknown

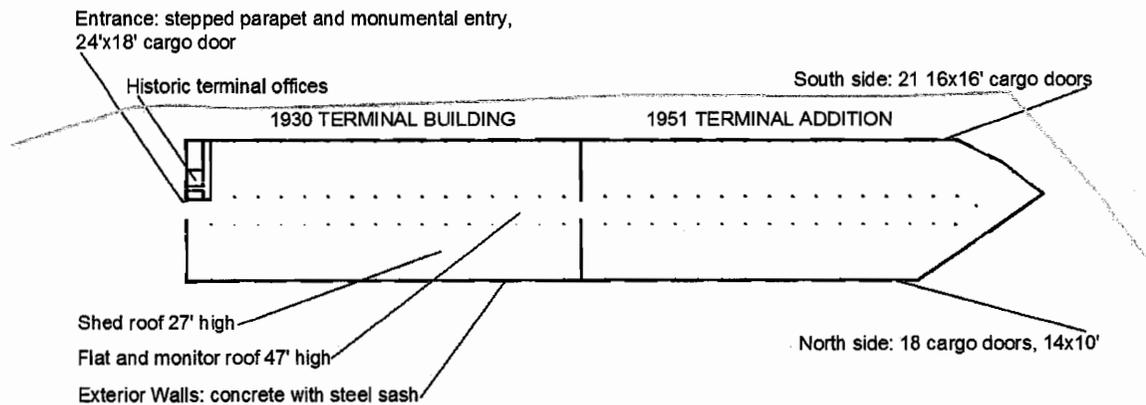


Construction of Ninth Avenue Pier in 1929

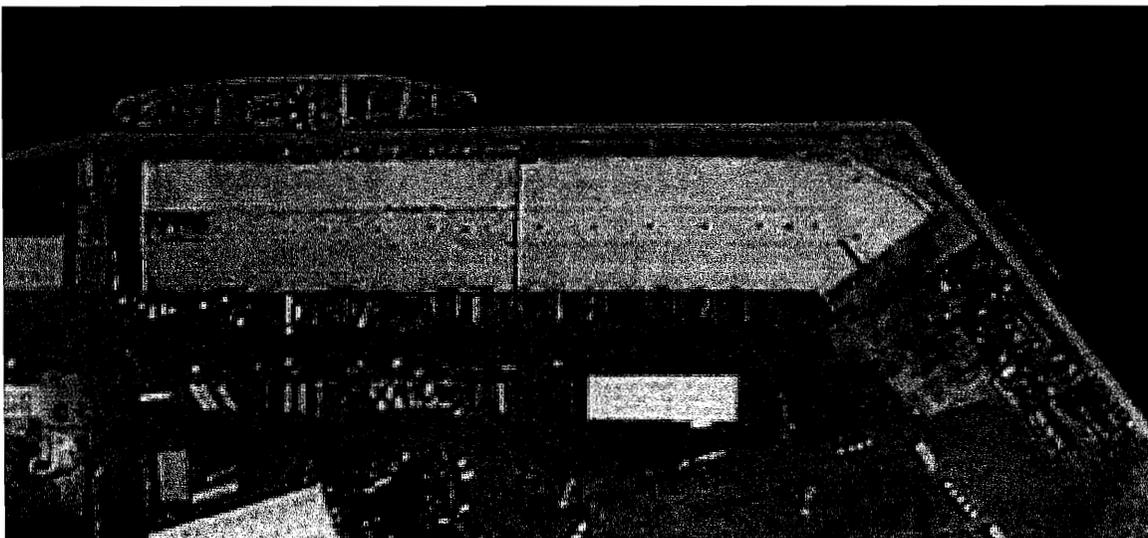
Current Status of Building

The present-day terminal is slightly over 1000' long, and approximately 180' wide. There is an extensive open platform space along the northern side. The transit shed has a "flat and monitor roof," which is 47' feet high in the middle clerestory section, and 27' high on the sides. The head-house at the inland (northeast) end has a stepped and peaked parapet and a monumental entry with paneled concrete pilasters and massive plain cornice. The form of the building reflects the form of a public arcade. The structural details of the building include exterior walls of reinforced concrete and steel sash, a composition roof, and steel trusses. Visible alterations since 1951 include windows covered with plywood, although the building is in otherwise good condition. According to the *Oakland Landmark and S-7 Preservation Combining Zone Application Form*, "Its integrity is excellent."⁹

Current plans developed Oakland Harbor Partners called for the preservation of only the bulkhead and approximately the first four bays of the transit bay in order to give an impression of the height and scale of the Ninth Avenue Terminal. The remaining structure would be demolished in order to make room for a four-acre waterfront park as described in the Estuary Policy Plan.



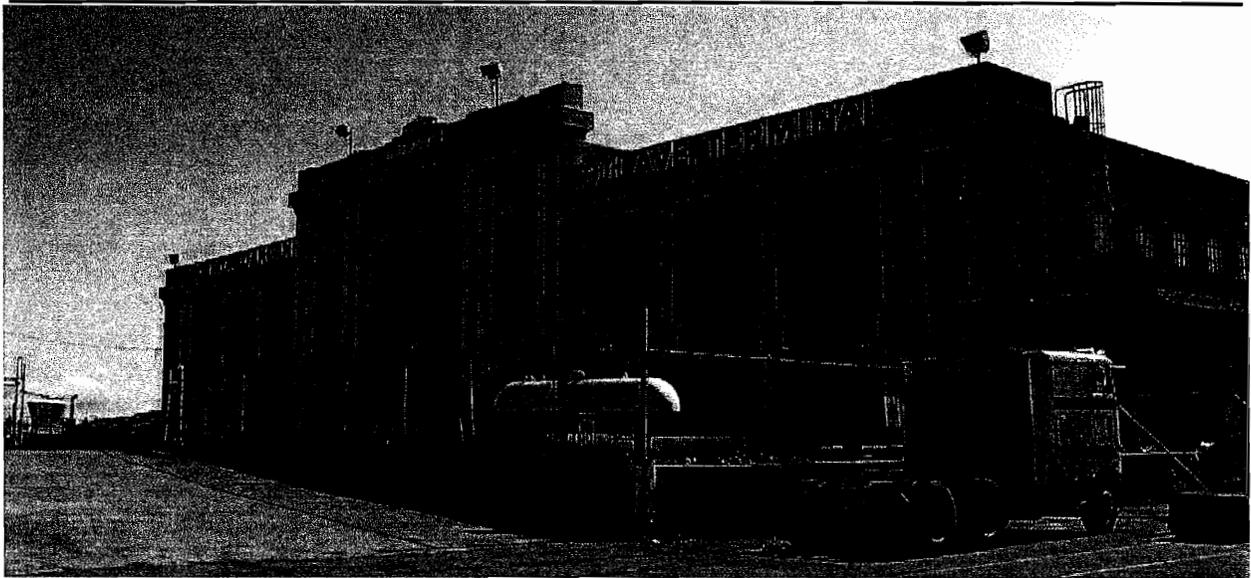
Plan of Existing Ninth Avenue Terminal building



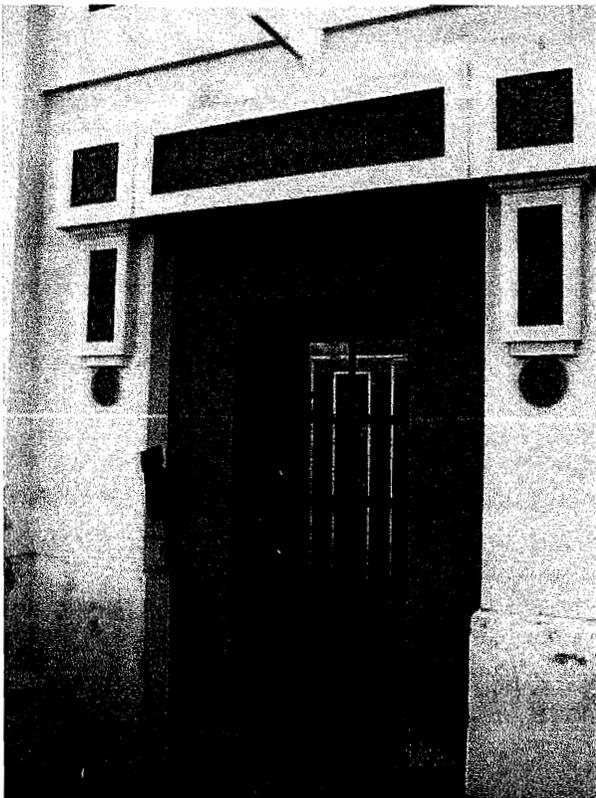
Aerial Photo of Ninth Avenue Terminal Site

⁹ Shartzer, 2004. Oakland Landmark and S-7 Preservation Combining Zone Application Form

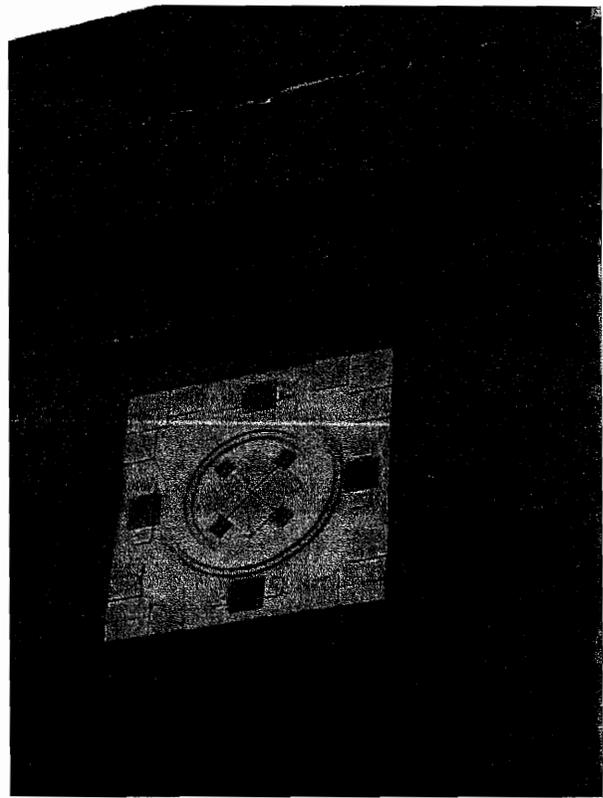
Beaux-Art/Neo-Classical Bulk Head



Beaux Art Bulkhead of Ninth Avenue Terminal



Painted-over tile work at entry

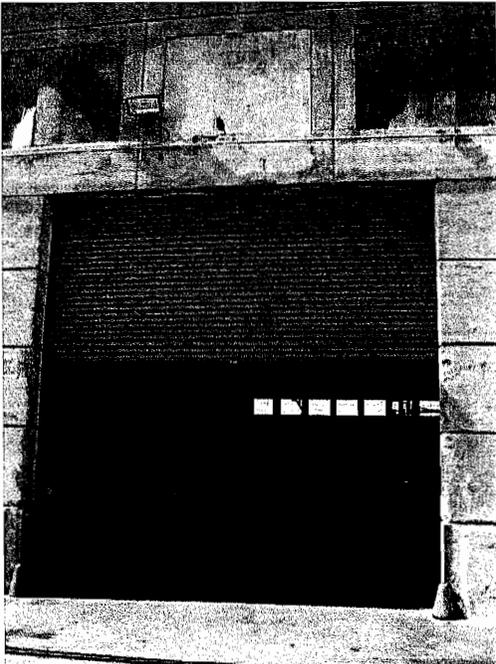


Tile Mosaic on Corner of Bulk Head

Waterfront/Southern Frontage of Terminal



Southern/Waterfront frontage of Ninth Avenue Terminal looking East; Possible location of Bay Trail access for pedestrians, cyclists, and joggers; Possible access point for small boat storage and docks



Removing plywood from the clerestory windows on the c. 1930 segment of the Waterfront Frontage of the building could provide ample light into the Terminal's interior.

Northern Frontages of Terminal



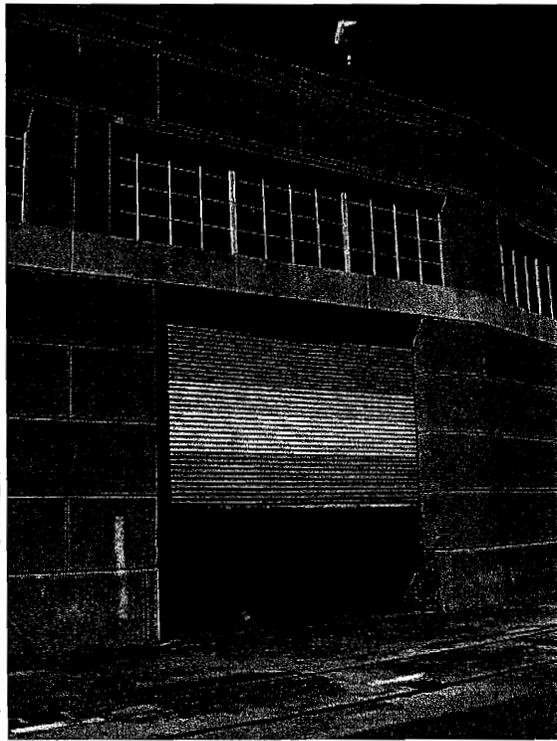
Northern exterior of c. 1951 section



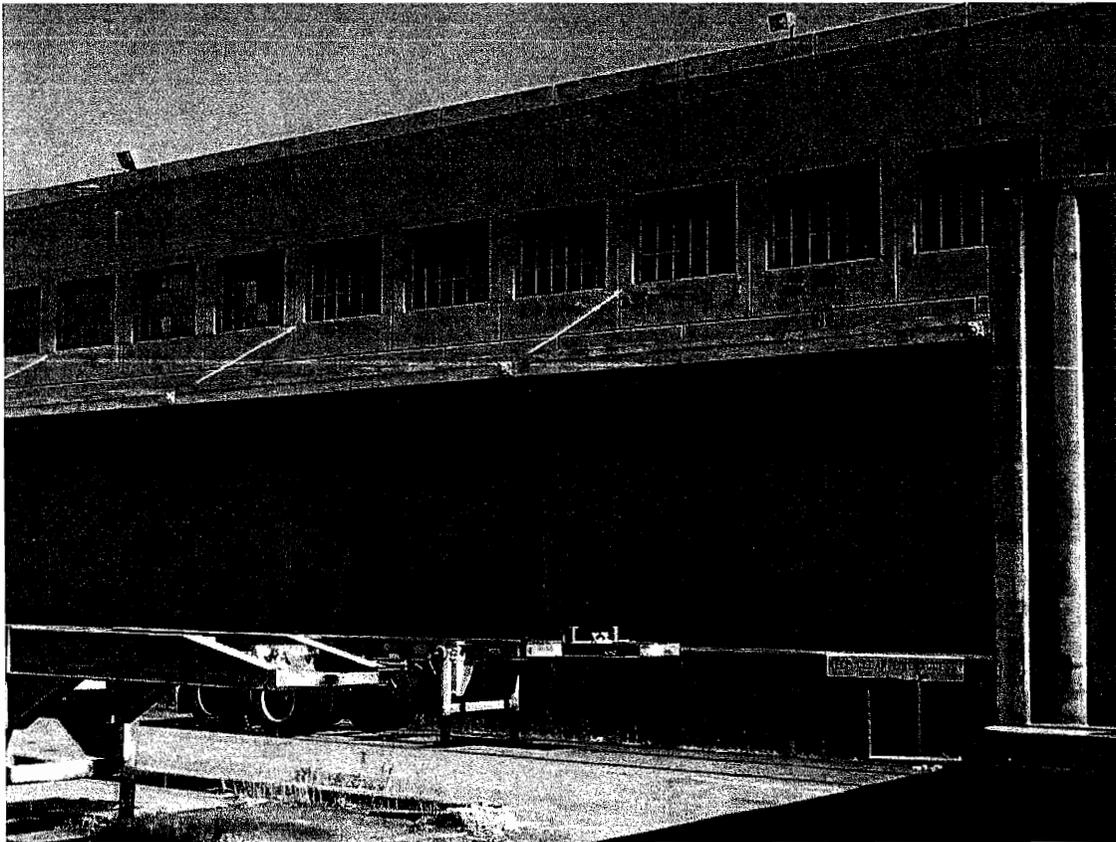
Loading bays along north side of building;
possible access point for retail and community organizations along tree-lined promenade



Elevated platform along northern frontage



Loading bay with rolling doors on southern frontage

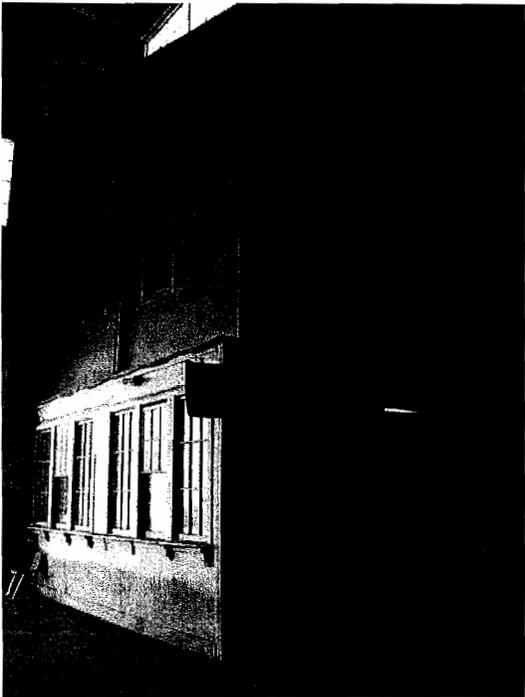


Detail of loading bay along northern frontage of 1930 segment of Terminal;
overhang and clerestory windows give this entrance the potential to be comfortable and transparent

Interior of Terminal



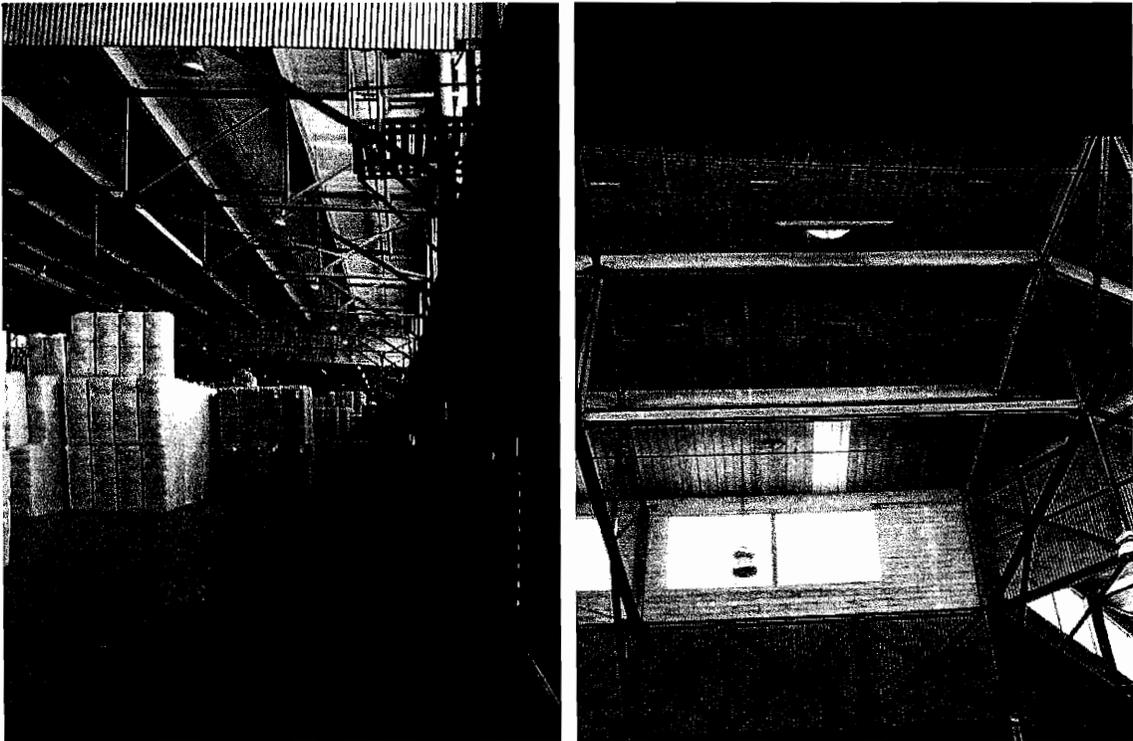
View of c. 1930 transit shed



c. 1930 Terminal offices near bulkhead



1951 portion of the transit shed



View of shed roof in c.1930 segment of Terminal (left) and in the c. 1950 segment (right)



Light pours in through the clerestory windows of the Terminal.

Precedents for Adaptive Reuse of Waterfront Industrial Buildings

The current proposal to destroy the majority of the Ninth Avenue Terminal fails to see the opportunities that lie within the adaptive reuse of the structure. Throughout the country, cities have successfully turned old waterfront industrial buildings into thriving centers of arts, culture, and commerce. These complexes help build a new and existing sense of place and history. Following is a look at successful adaptive reuse projects of waterfront industrial structures.

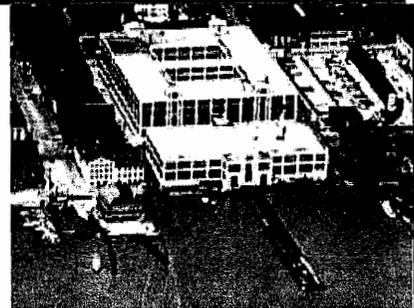


The Torpedo Factory Art Center building was originally built in 1918 by the United States Navy as the U.S. Naval Torpedo Station on the waterfront in Alexandria, Virginia. Torpedoes were manufactured at the site until the end of World War II in 1945. At that point, the U.S. government began using the site as a storage facility.

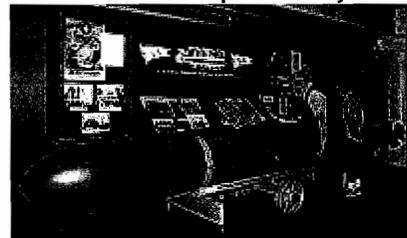
In 1969 the City of Alexandria purchased the property from the Federal Government. Over the next few years a plan was developed to transform the building into working studio spaces for artists. Work began on the Art Center in May of 1974. By July, the vast interior structure had been remade as a complex of studio spaces.

Today, more than 165 artists can be found working in the Torpedo Factory's 84 artist studios, 8 group studios and 6 galleries, spread across three vast floors. According to its website, the artists, "invite visitors to join them in their studios, observe their creative processes. You may ask questions and learn about each of their art forms. Visiting the TFAC is an informal educational and fun experience."

The building also contains historic exhibits on the site's history as a torpedo factory, the Alexandria Archeological Museum, and the Art League School where visitors can enroll in art education classes for both children and adults. The Torpedo Factory Arts Center shows how an industrial waterfront building once seen as only fit for storage can become a thriving center of arts and history.



1920s view of Torpedo Factory



Historic Exhibit in Torpedo Factory



Interior of Torpedo Factory

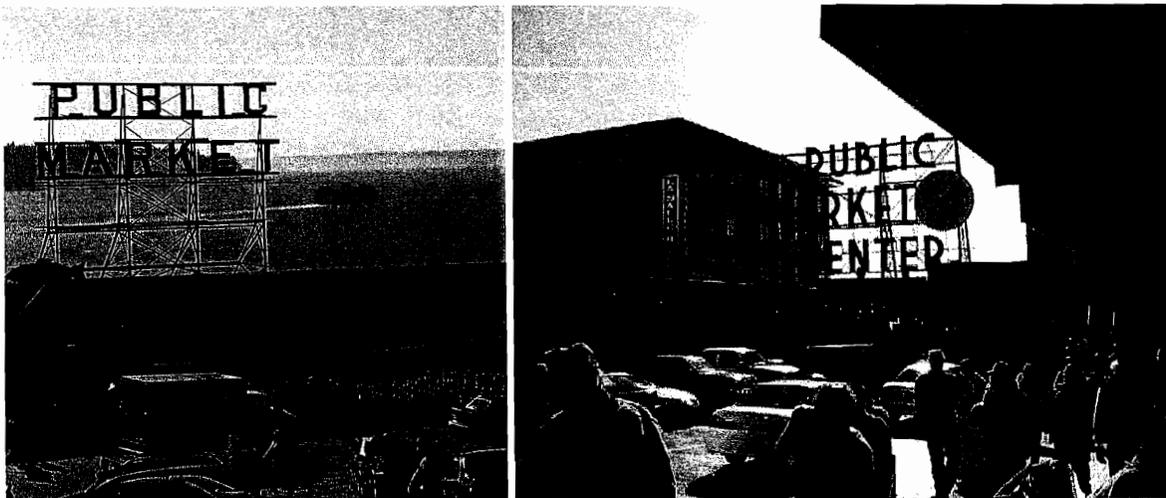
(Photos from www.torpedofactory.org)



The Pike Place Market was started in 1907 as a reaction to outrageous produce prices in the City of Seattle. The first 'market,' proposed as a solution by City Councilman Thomas Reville, consisted of eight produce sellers whose wares were depleted in a matter of hours by thousands of eager citizens of Seattle. Later that year, the first market building was built at First and Pike St., with all of its stalls filled. Like the 9th Avenue Terminal, Pike Place Market, deteriorating in the late 1960s due to its gradual abandonment after World War II, was described as an ideal development site for some other public amenity. In this case, members of the City Council envisioned "a new hotel, a 32-story apartment buildings, four 28-story office buildings, a hockey arena, and a 4,000-car parking garage" called the Pike Plaza Project, according to pikeplacemarket.org.

At the time, it was difficult to see the benefit of revitalizing the old Market buildings. Yet, a citizen ballot initiative led by a group called Friends of the Market was able to save the Market building in 1971. What was seen as a blighted area has now been revitalized into one of the most successful tourist attractions in Seattle. Virtual visitors to a tourist website called "tripadvisor.com" during April 2005 call the Pike Place market "simply interesting and must see/must-do in Seattle," "A most awesome place," "Gritty and real," and "The best in Seattle." From what it seems, "Gritty" is a compliment for a hip urban place.

The 9th Avenue Terminal can learn two lessons from this precedent: (1) What may look 'blighted' might just be an outside appearance. If the right architect is put on the job, a functional building like a warehouse or market can be brought back into the community. (2) West-coast cities like Seattle and San Francisco have capitalized on people's love of waterfront history. Both cities have kept important historic buildings at the waterfront - though they seem to be 'utilitarian' industrial-type buildings - the Pike Place Market and the Bulkhead Buildings in San Francisco. These resources keep people invested in the history of the City and build civic pride.



Views of Pike Place Market, by Stéphane Gauthier
(www.acoustics.washington.edu/~gauthier/Photography/Seattle/Seattle.htm)



Fort Mason Center, a thirteen-acre urban 'campus' for recreation, museums, the arts, nonprofit organizations, conferences, trade shows, and theater, is a paradigmatic example of the adaptive re-use of wharf buildings on the San Francisco Bay. Its programmatic mix and managerial structure can both be used as models for the successful adaptive reuse of the 9th Avenue Terminal.

The Center is located on the waterfront in San Francisco in the historic pier buildings of the U.S. Army's Fort Mason, which became a part of the National Park Service's Golden Gate National Recreation Area (GGNRA) in the 1970s. Fort Mason Center is managed by the Fort Mason Foundation, which has overseen the vision, leasing, and rehabilitation of the National Historic Landmark since 1976. The Center, located adjacent to the Fisherman's Wharf and Marina districts of San Francisco, includes three large wharf buildings, five mid-sized three-story office-type buildings, and various outbuildings. These buildings are leased by over 35 nonprofit resident organizations and four museums, and are rented as meeting, conference, theater, and trade show space.

The success of the Fort Mason Center model lies in its appeal to San Francisco's diverse talents and interests across the arts, nonprofit advocacy, and recreation. The pier buildings have been successfully adaptively re-used as the Herbst Pavilion and Festival Pavilion, two state-of-the-art conference/trade show/event spaces. These two spaces can accommodate 1,750 and 3,500 people reception-style, respectively, according to brochures published by Fort Mason Center in 2005. More than 15,000 events are held here each year, representing a client list of over 700 organizations and individuals that include BMW, Macy's Passport, San Francisco International Art Expo, OctoberFest, and the San Francisco Public Library Annual Book Sale. This mixture of public and for-profit clients contributes to the Center's financial success.



View of Fort Mason Center, Robert Campbell, Chamois Moon

Ford Assembly Plant



Views of Ford Assembly Plant - Kite Aerial Photography™ Cris Benton

Designed and built in 1930 by Albert Kahn, the well-known industrial architect of the Ford Motor Company, the Ford Assembly Plant in Richmond, California is currently being restored and adapted to new use as a mixed-use facility to include light industrial manufacturing, office space, live-work units, a visitor center for the Rosie-the-Riveter National Park, and an open-air outdoor market to be located in the old crane way of the building.

Like the 9th Avenue Terminal, the Ford Assembly Plant building was constructed on bay fill and has a unique vantage point over the Bay, with views of San Francisco. Another point in common is that both buildings are located in industrial areas that are being converted into more livable residential zones. Richmond residents recognized the uniqueness of the warehouse space by supporting its designation to the National Register of Historic Places in 1988. This designation is making it possible for Emeryville-based Orton Development to utilize a 20% historic preservation tax credit deduction on all rehabilitation expenses incurred during the development process.

Ford used the Ford Assembly Plant until 1955, and subsequently for book storage by the University of California and as a research laboratory. The building's significance, for preservation purposes, is based on Kahn's reputation as a well-known architect of industrial forms, on the use of the plant to outfit jeeps during World War II, and on the fact that the structure is "one of two plants designed by Kahn before 1935 that is still standing," according to the National Register of Historic Places Registration Form.

Orton Development will be accommodating the Bay Trail through orienting signage and a public access easement along the waterfront portion of the crane building's wharf. A similar model could be employed at the 9th Avenue Terminal, allowing joggers, cyclists, and walkers to walk along the Oakland Estuary.

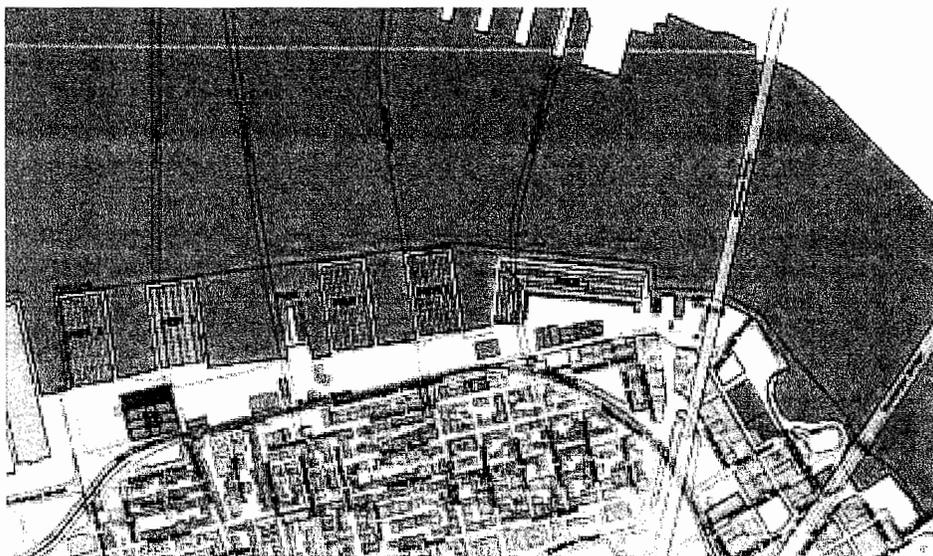


Image of Pier - www.nylcv.org/.../brooklyn/pages/3_bridge/

Although at a much larger scale than the Ninth Avenue Terminal, the Master Plan for the Brooklyn Bridge Park offers a variety of interesting precedents. The Brooklyn Bridge Park extends 1.3 miles along the East River. Some of the program activities include ball courts, boardwalks, and open lawns. It reclaims an area that once was covered with aluminum sheds and parking lots.

The site provides dramatic views of the New York Harbor and the Lower Manhattan Skyline. The major program spaces of the site will be built on five piers. The stretches of waterfront between the piers will become a linear park. Like the Ninth Avenue Terminal, the site is currently cut off from the rest of Brooklyn by a freeway. The plan for the park seeks to create spaces that will reconnect people with their waterfront.

One of the pier sheds (Pier 5) is being reused as an indoor recreational sports facility, similar to what is proposed in Option 2 of this Feasibility Study for the Ninth Avenue Terminal. Two of the piers contain shade pavilions and one contains a restaurant. In addition, in one of the inlets between piers is a kayak course within a chain of "habitat islands."



Plan View of Brooklyn Bridge Park - nylcv.org/.../brooklyn/pages/3_bridge/

LONG WHARF THEATRE

The Long Wharf Theatre, opened in 1965 in New Haven, Connecticut, was built in a vacant warehouse space in a busy food terminal. The theatre takes its name from the surrounding Long Wharf Port, recognizing the significance of the port to the history of the New Haven area.

According to its website, the theatre is “recognized as a leader in American Theatre, producing fresh and imaginative revivals of classics and modern plays, rediscoveries of neglected works and a variety of world and American premieres.”

The theatre started with a budget of \$294,000 and played to over 30,000 patrons. Since then its budget has grown to \$6.5 million with audiences exceeding 100,000 patrons annually. Many of its productions have transferred virtually intact to Broadway or off-Broadway.

The theatre has transformed a once neglected industrial space into a community center that “is dedicated to cultivating audiences that reflect the State of Connecticut and the diversity of its cities as well as its rural and suburban areas, and serving as a forum for the examination of historical and current issues through humanities programming.”

A similar theatre is proposed as one of the program elements of Options 1 and Option 3 for reuse of the Ninth Avenue Terminal



View of Theatre Entry

Information and images from: www.longwharf.org/about_history1.html

Suggested Adaptive Reuse Plans

The following proposals combine various elements from the previously discussed precedents while taking into account the unique circumstances of the Ninth Avenue Terminal site. Each of these proposals is a schematic vision for the site, not a definite plan. Each proposal address the programmatic requirements called for in the Estuary Policy Plan, but changes the form of the “public space” from outdoor public space to enclosed, and partially enclosed, public recreation space utilizing the Ninth Avenue Terminal structure. These proposals are meant to offer a variety of ideas and concepts for the reuse of the Ninth Avenue Terminal, either in whole, or with the removal of the c. 1951 portion for open space. Elements of these five proposals can be mixed, combined, or altered after further public input and review. Some general design guidelines pertinent to each proposal are addressed below:

DESIGN CONCERNS:

Relation to Waterfront:

In general, these proposals seek to include community uses along the waterfront that can take advantage of its unique aesthetic setting and relation to the water. Potential alterations to the waterfront frontage could include turning loading bays into large window bays to provide visual access to the water.

Relation to Streetscape:

The northern frontage of the terminal should be an active space that presents a welcome façade to the future development that will occur in the Oak to Ninth District. Each proposal includes commercial space or other active uses along the northern side of the Terminal to present an inviting and vibrant façade. Commercial uses such as cafes and restaurants should spill out on to an expanded loading dock platform facing a tree-lined boulevard.

Parking and Loading:

Parking and access is a major issue for the entire Oak to Ninth District plan. Some of the proposals include using portions of the 1950s section of the Terminal for covered parking. Cars would enter via the northern main entry. However, if the site is to be utilized to its full potential, access to public transit will be key to reducing congestion. Where loading access for trucks is necessary (i.e.; for a super market), the plan includes the reuse of a portion of the existing elevated loading platform.

Relation to Outdoor Public Spaces:

Each proposal should include ample outdoor public space around the terminal building. Opportunities for outdoor open space include:

Entry Plaza

An inviting public entry plaza in front of the Bulkhead could be the site of community events that would compliment the uses inside.

Bay Trail/Waterfront Promenade

Ample room exists between the Terminal and the waterfront for the creation of a promenade and segment of the Bay Trail along the Terminal’s southern frontage.

Shoreline Park Interface

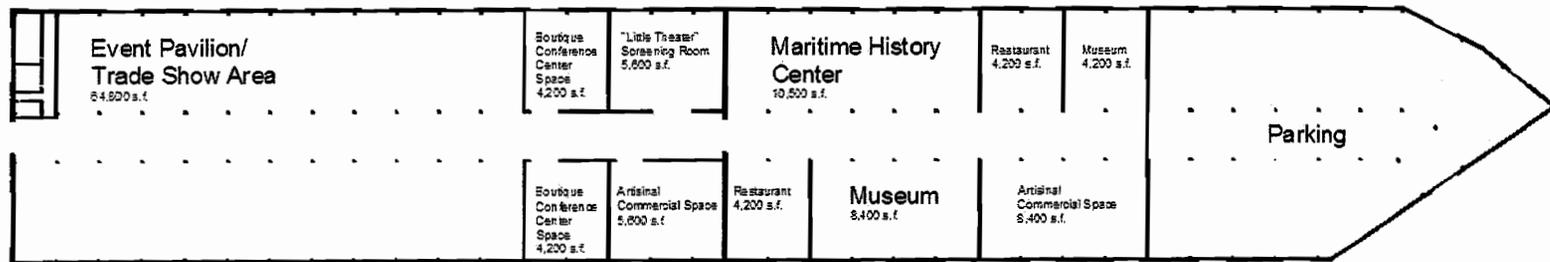
The areas to the north of the site should be well integrated with the proposed Shoreline Park.

Alterations to 1951 Segment:

In certain proposals, the provision of column free spaces is either necessary or desirable. In these cases we propose be located in the c. 1951 segment of the terminal building as this adjustment would interfere less with concerns over the historical integrity of the structure. The spanning could be achieved via augmentation of existing trusses by trusses with greater spanning capacity over the floor area for rich that require column free spaces (i.e.; indoor soccer fields).

Option 1: Fort Mason Center Model (Full Preservation)

Activity Venue for Major Public Events, Cultural Activities, City Festivals (EPP Suggestion)	Attraction for small groups for use on a more regular basis that "take advantage of the unique setting" (EPP Suggestion)	Commercial Space
Event Pavilion/Trade Show Area (Precedent: Fort Mason Center Herbst Pavilion) Big open space great any kind of public event, conference, or trade show.	Visitor Center/Museum Maritime History Center "Little Theatre"/Screening Room Boutique Conference Center Spaces	Restaurants Artisan Commercial Space

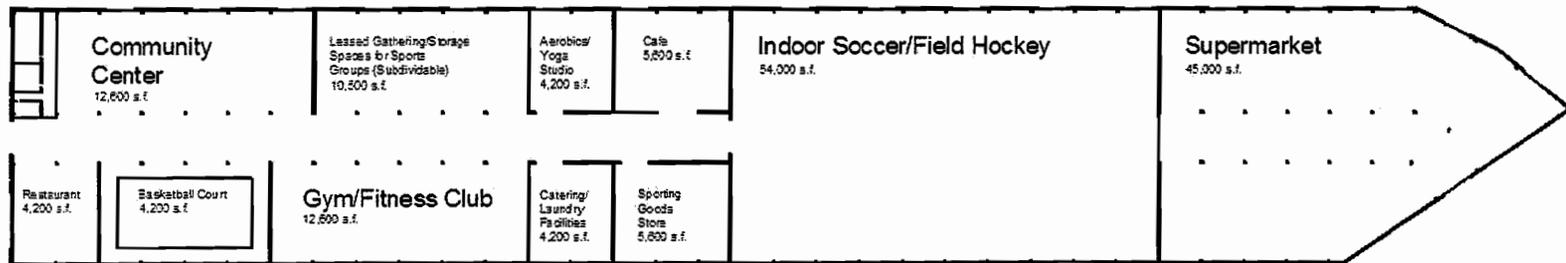


Option 1 envisions turning the Ninth Avenue Terminal into a community focal point by attracting a variety of unique uses to the site. The majority of the building's 1930 section would be outfitted to be fully equipped for major civic events, conferences, and trade shows. The space would be kept largely open to allow for flexibility and versatility.

The remainder of the building would be oriented along a promenade or indoor "Main Street" that takes advantage of the preexisting 47' high arcaded roof that runs through the center of the Terminal. Lined along this promenade and also oriented to either the waterfront or city-side frontages of the building would be commercial spaces, restaurants, a Maritime History Center and spaces for Museums. The far northern section of the building would offer on-site parking to serve the facility.

Option 2: Regional Recreation Center (Full Preservation)

Activity Venue for Major Public Events, Cultural Activities, City Festivals (EPP Suggestion)	Attraction for small groups for use on a more regular basis that "take advantage of the unique setting" (EPP Suggestion)	Commercial Space
Recreation Center: A recreation asset of regional significance "Programming of larger recreational areas should be undertaken in conjunction with the EBRPD, neighborhood organizations and other interested parties to ensure that the recreational activities provided help to meet identified needs." (EPP, Objectives, p. 39)	Leased gathering space for club groups: Boating, Rec. Soccer, Crew Community Center with café and reading area for enjoyment of the Estuary	Healthy restaurants/cafes Supermarket Private aerobics/ yoga studios Fitness supply store

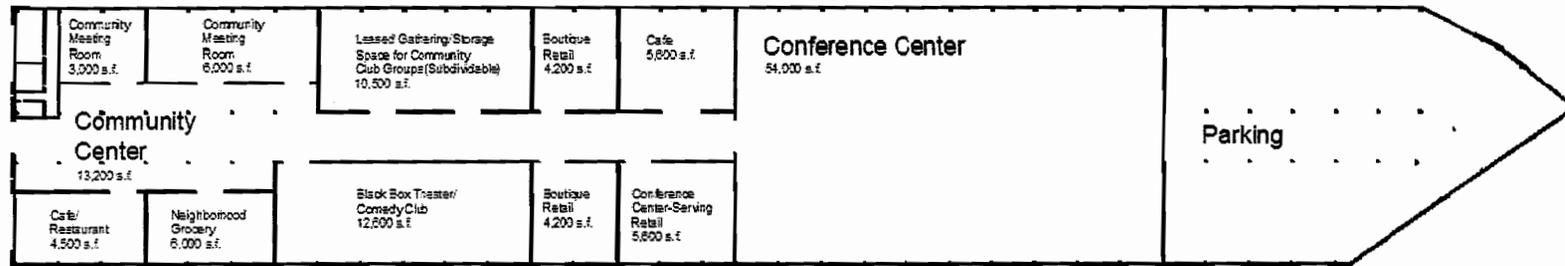


Option 2 seeks to concentrate a variety of complementary uses that will create a regional recreation center along the Oakland Waterfront. Uses in this plan include space for a Gym/Fitness Club, Community Center, Basketball Court, and leasable space for sports studios and recreation clubs. About half of the circa 1951 portion of the building would be devoted to a large indoor sports field for soccer or field hockey. To create this space, the columns along the promenade would need to be removed. Spanning could then be achieved via augmentation of existing trusses by trusses with greater spanning capacity.

The northern end of the 1951 section is proposed as the site of a large supermarket that could serve the future development in the Oak to Ninth Area and to those visiting the Recreation Center. Other retail components that would compliment the use of the site include spaces for cafes, a restaurant, and a sporting goods store.

Option 3: Conference Facility (Full Preservation)

<i>Activity Venue for Major Public Events, Cultural Activities, City Festivals (EPP Suggestion)</i>	<i>Attraction for small groups for use on a more regular basis that "take advantage of the unique setting" (EPP Suggestion)</i>	<i>Commercial Space</i>
<p>Terminal functions as conference facility for burgeoning Oakland high-tech industry, healthcare, etc.</p> <p>Major Street/Plaza in Front of Terminal to be closed off for special events with Terminal as backdrop, possibility of extending events into the Terminal building. Multi-purpose event/recreation space.</p>	<p>Community Group 'Clubhouses' facing waterfront</p> <p>Community meeting space and boat storage space for outdoor recreation groups.</p>	<p>Conference- and Recreation-serving Restaurants, Cafes, and Retail.</p> <p>Black box theater/comedy club</p>

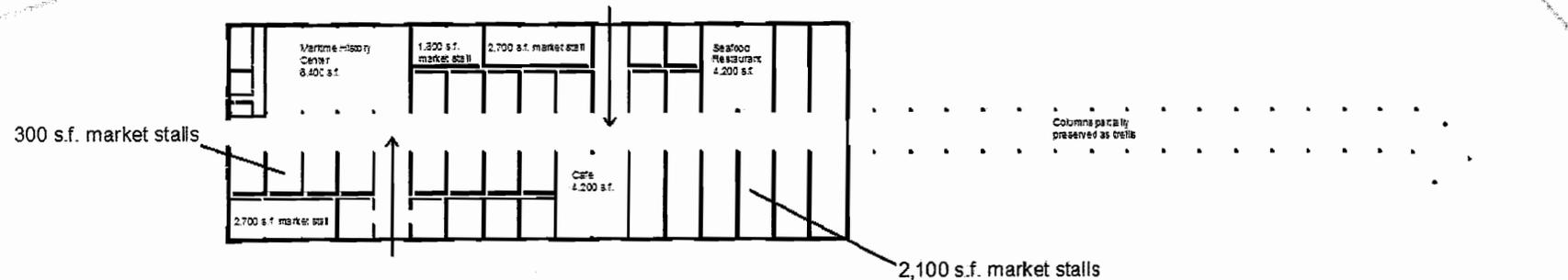


Option 3 proposes a 54,000 square foot Conference Center as its anchor in the c. 1951 segment of the terminal. Leading up to the Conference Center is a promenade lined with spaces that can be used by both the community center and people attending conventions, trade shows, and events at the Conference Center.

Nearest the southern Beaux Art bulkhead is a versatile Community Center space flanked by meeting rooms, neighborhood serving retail, and a café/restaurant. The layout of the Community Center space would allow for informal gathering and a variety of uses including performances. Leasable space for community groups and clubs is located along the waterfront. Other uses along the promenade include a Black Box Theatre/Comedy Club, retail spaces, and additional breakaway meeting rooms for the community or Conference Center patrons.

Option 4: Market Hall (1951 Segment Partially Removed for Open Space)

Activity Venue for Major Public Events, Cultural Activities, City Festivals (EPP Suggestion)	Attraction for small groups for use on a more regular basis that "take advantage of the unique setting" (EPP Suggestion)	Commercial Space
Community Market/ multiple vendors (precedent: Portobello Road, London - antiques, veggies, flea market)	Maritime History Center	Restaurants



Option 4, Market Hall, calls for the retention of only the c. 1930 segment of the Ninth Avenue Terminal, to be converted into a large public market. The proposal includes a trellis that is composed of a portion of the column grid located in the c. 1951 segment of the terminal. The remainder of the c. 1951 segment of the terminal will be transformed into an outdoor open space area that could be used for recreation and events.

The Market Hall space would be divided into an interior promenade with access points through the building. The market would be distributed in segments, with different portions of the hall devoted to different goods, such as meats, vegetables, fruits, flowers, handiworks, antiques, etc. Included in the schematic design are auxiliary promenades for shopkeepers to have back-of-house access to their stalls. Additional uses in the building include a Maritime History Center along the waterfront side of the building and restaurant and café spaces.

Next Steps



An open bay of the Ninth Avenue Terminal frames a view of Oakland's waterfront

The proposals envisioned by this feasibility study are meant to provide the leaders of Oakland with meaningful alternatives to the demolition of the Ninth Avenue Terminal. Although the proposals offer options for both partial preservation and full preservation of the structure, it should be noted that full preservation provides for a more versatile and dynamic community gathering space along the Oakland waterfront.

Two significant points that this study addresses are the aesthetic merit of the Terminal, and its ability to meet the desire for 'open space' at the waterfront. (1) Although the Terminal area in general has been deemed 'blighted,' in fact, the Terminal building offers great architectural potential. Its design is classic and representative of the Beaux Arts style that personified the City Beautiful movement around the turn of the century. The size and scale of the Terminal building suggest incredible possibility, as has been demonstrated here. (2) Recreation and preservation on the waterfront need not be seen as opposing objectives. The ability to provide open space within the interior of the terminal has been shown by this study.

The management of the reused terminal building is an opportunity for the Port of Oakland to generate revenues for the City through tourism and public use. This goal is in line with the Estuary Policy Plan's requirements that open space be provided for public enjoyment along San Francisco Bay. Casual visitors can marvel at the views of Alameda and San Francisco, as well as the Oakland Hills. Attending conventions, art shows, eating, and promenading along the Bay may also be accommodated. Reuse or partial reuse is also in line with the Oakland General Plan's Historic Preservation Element, in that the terminal building would become economically viable through new use, rather than removal.

As demonstrated by the precedent studies, historic waterfront warehouse and market buildings have the potential to become major community assets. Regionally, San Francisco, and now Richmond, as well, have recognized the importance of reusing, rather than demolishing, significant pier buildings that form a vital part of their history. Oakland now has the great opportunity to create such a landmark along its own waterfront by preserving and reutilizing the Ninth Avenue Terminal.

Appendix

Sampling of Community Group Responses:

Asian Health Services - 4/22/05

“In terms of the big picture, our organization is particularly concerned more around traffic and pedestrian safety impacts, specifically in Chinatown. Specifically since there will be more than 3100 housing units built, we are concerned about access points and traffic generated. Here in Chinatown we have one of the highest concentrations of pedestrian accidents in the city. Given the number of developments occurring within the Oakland area and where they are located, Chinatown is the epicenter of these developments and has the potential of being cumulatively impacted.”

“If it is a community space that will result in significant traffic impacts in Chinatown, there needs to be some real, viable mitigations and alternatives looked at - whether public transportation, shuttle options, or other alternatives. Let’s be cognizant and cautious of impacts in pedestrian safety terms.”

-Julia Liou - Exec. Analyst, Asian Health Services

Policy Link (Member of Oak to Ninth Community Benefits Coalition) 4/22/05

“I wouldn’t say that as an organization we’ve taken a position...The coalition has not to my knowledge given it a huge amount of attention yet. The priorities of the Coalition are affordable housing and jobs. If a project is to be built on the site, the Coalition hasn’t taken any position about the retention of the building or the uses of the building.

Nobody wants open space that will be just the front lawns of expensive apartment housing. The community should be involved. That should apply to any venue. I don’t think we’ll support any project if it will not have demonstrable community benefits. I don’t know that anyone’s specifically talked about it, but I do know that that’s kind of the next order of business, to see what common cause we might have.

The choice between those two options [open space and preserving the building] is not the cutting edge issue for the Coalition. Principles of community use are the high priority for us - and not privatizing it, making it into a private marina, for example - not making it something relatively exclusive.”

-Victor Ruben - Director of Research, Policy Link

South of Nimitz Improvement Council - 4/20/05

“That is not exactly the geographical area we are concerned with. We would look with great favor on the adaptive re-use of that facility. Our area ends at Oak St. We’re all in favor of finding a re-use for the building.”

-Gary Kanecht, President

Lakeshore Homes Association - 4/29/05

“We have no comment.”

Greenbelt Alliance - 4/29/05

“ Greenbelt Alliance does not have a position on the Oak to Ninth Development. If you know anything about our organization, we very much support infill development, in using our existing cities and towns to accommodate the growth that comes to our region. We also think it’s important that that happen in a way that meets community needs, in particular provides affordable housing to address the region’s affordable housing crisis and is done in an environmentally sensitive manner, and that robust community participation processes are used so that what the community needs is what ends up getting done. Although that doesn’t say very much about Oak-to-Ninth, that is our general position and our general process.”

-Jeremy Madsen, Greenbelt Alliance

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Websites:

Fort Mason Center - San Francisco, CA
www.fortmason.org

Longwharf Theatre - New Haven, CT
www.longwharf.org

Pike Place Market - Seattle, WA
www.pikeplacemarket.org

Torpedo Factory - Alexandria, VA
www.torpedofactory.org

Brooklyn Bridge Park Conservancy - Brooklyn, NY
www.nylcv.org

Site Visit:

Wednesday April 13, 2005

Oak to 9th Informational Open House and Public Meeting:

Wednesday March 30, 2005

Letter CC – Friends of the Ninth Avenue Terminal (second letter)

- CC-1 Similar to the Response to Comment S-3, the comment makes conclusion about the condition of the buildings without support of site-specific structural and geotechnical investigation information prepared by licensed, professional engineers. Also, under the project alternatives that would retain all or a portion of the Ninth Avenue Terminal, future reuses would be public uses that would require building upgrades to satisfy governing building code standards for public use occupancies (versus the existing storage shed use).
- CC-2 The alternatives analysis provided in DEIR Chapter V provides the environmental analysis of a range of alternatives to the project, including partial and full preservation of the Ninth Avenue Terminal. As stated in the discussion of the Full Ninth Avenue Terminal Preservation and Adaptive Reuse (DEIR p. V-38), “adaptive reuse of (as well as any physical alterations to) the remaining parts of the structure would be done consistent with the Secretary of Interior Standards for the Treatment of Historic Properties and City approvals.” City decisionmakers will ultimately decide on a preferred alternative or reject the alternatives and approve the project.
- CC-3 The comment recommends conditions of approval that the City would adopt related to issuance of a demolition permit for any portion of the Ninth Avenue Terminal. The comment does not address an environmental impact of the project or the adequacy of the DEIR analysis. Prior to its action on the proposed project, the City will consider appropriate conditions of approval for all aspects of the project, including subsequent development permits (and other agreements via a Development Agreement between the City and the project sponsor).

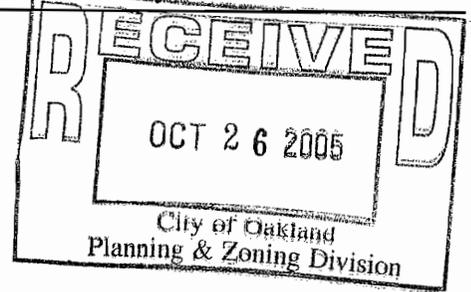
The comment puts forward requirements for an economic analysis that should be prepared for the evaluation of possible reuses of the Ninth Avenue Terminal. Since publication of the DEIR, the project sponsor has prepared an economic feasibility and constraints report (capital and operational) on for each of the project alternatives, including the consideration of retaining all or parts of the Ninth Avenue Terminal (as proposed in Alternatives 2 and 3 and the Full Preservation Sub-Alternative described in Chapter V, Alternatives, of the DEIR). This report is provided to City decisionmakers separate from this environmental report for its consideration of the project and the alternatives evaluated in the DEIR. The City will determine the adequacy of the report for its purposes. See Master Response B regarding further analysis of reuse alternatives for the Terminal.



Golden Gate Audubon Society

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Americans Committed to Conservation • A Chapter of the National Audubon Society
October 24, 2005



Margaret Stanzione, Project Planner
Planning Division
Oakland Community and Economic Development Agency
250 Frank Ogawa Pl., Ste. 3315
Oakland, CA 94612

Re: Draft Environmental Impact Report (DEIR) (Oak-to-Ninth Development Project)

Dear Ms. Stanzione:

The comments of the Golden Gate Audubon Society (GGAS) on the above-referenced DEIR are as follows:

As noted on p. IV.A-14 of the DEIR, the project as proposed (and as generally depicted in Fig. III-3) "would create or restore shoreline marsh and revegetate the length of shoreline from...Clinton Basin and along Lake Merritt Channel where it fronts the project site." As the DEIR notes, inclusion of these elements in the subject project make it possible for the project to be found consistent with applicable requirements of the Estuary Policy Plan, a finding that in the absence of such elements could not be made. (*Id.*) Mitigation Measure I.2e states that "compensatory mitigation" in the form of "onsite wetland creation or enhancement" will occur only "as required by regulatory permits issued by the Corps, RWQCB, and BCDC." Through textual revision, footnoting, or otherwise, the DEIR should make it clear that wetland creation and restoration as depicted in Fig. III-3, as further described on pp. IV.A-14 and IV.I-24-5, and as supported by a mitigation and monitoring plan as described on p. IV.I-25, will be carried out regardless of whether such elements are required by regulatory agencies, subject to the ability of project sponsors to seek to receive mitigation credit for such elements if one or more regulatory agencies impose a requirement for compensatory mitigation.

DD-1

DD-2

On p. III-19, consistent with the reference to "creation and improvement of marsh habitats," the DEIR should add "nature appreciation and wildlife observation" to the list of recreational activities for which the project will provide enhanced opportunities.

DD-3

The Barrow's goldeneye is a migratory waterbird that is both a specie of special concern under the California ESA¹ and that inhabits the Lake Merritt Channel in close

DD-4

¹ See Open Space, Conservation, and Recreation (OSCAR) Element, Table 6 ("Special Status Animal Species in Oakland.").

DD

proximity to the project site. It should be added to Appendix H and given appropriate consideration in Section IV.I of the DEIR.

DD-4
(CONT.)

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "John Bowers". The signature is written in a cursive style with a large, looping initial "J".

John Bowers
Member, Conservation Committee

Letter DD – Golden Gate Park Audubon Society

- DD-1 Comment is noted and acknowledges that the project proposes to restore and revegetate portions of the shoreline, from Clinton Basin and along Lake Merritt Channel.
- DD-2 The project description contains wetland and shoreline enhancements as part of the project. These improvements are described in detail on DEIR pp. III-19 and IV.D-20 through IV.D-29. Mitigation Measure I.2e (DEIR p. IV.I-24) is intended to provide compensatory mitigation above and beyond the shoreline and marsh enhancements and restoration that are proposed as part of the project. The measure is intended to provide compensatory mitigation if additional mitigation is identified as required during the regulatory permitting process.
- DD-3 The Project Description in the DEIR (Chapter III) is intended to describe all aspect of the project analyzed in the document. The comment suggests additional text to the discussion of how the proposed improvements would “enhance water-oriented activities in this area by facilitating greater and improved public access to the Estuary with enhanced parks, open spaces, trails along the waterfront. There would especially be improved public opportunities for recreational sailing, rowing, canoeing, and kayaking.” The suggested text does not clarify or correct information pertinent to the CEQA analysis. Further, the existing text does not preclude “nature appreciation and wildlife observation” or any other many possible waterfront activities that could occur.
- DD-4 The California Natural Diversity Data Base (CNDDDB) does not list Barrow’s goldeneye as occurring within the vicinity of the project area and this species was not observed during reconnaissance-level site visits. The CNDDDB does not list this species as occurring within Alameda County or within the other 7.5 minute USGS quadrangles queried. There is therefore very low potential for this species to occur within the project area and no impacts to this species are anticipated.

Alameda County League of Conservation Voters

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ACLVC Board Resolution Regarding Oakland's Oak to Ninth Street Project

The Port of Oakland's selected developer for the Oak Street to 9th Avenue area (near Jack London Square) proposes development radically different from the Estuary Policy Plan (EPP). That plan was adopted by the City Council and incorporated in the General Plan in 1999 after a lengthy public process. Its vision:

"Shoreline access and public space policies are intended to establish this area of the Estuary as the major recreational destination in the city. The Plan recommends a series of large open spaces, intended to provide for a wide variety of recreational experiences. Developing a series of well-defined open spaces would change the entire nature of the waterfront in this area, transforming it from an industrial backwater into a recreational centerpiece of the city. In total, these sites would represent one of the most significant additions of urban parkland within the entire Bay Area. They would create both a regional and local asset of major proportions."

EE-1

The EPP called for an 11-acre park landward of the 9th Avenue Terminal. That vanishes in the developer's plan, replaced with an approximate 4-acre pier resulting from the demolition of the 9th Avenue Terminal. Thus a major proposed park, as well as a historic building, is lost.

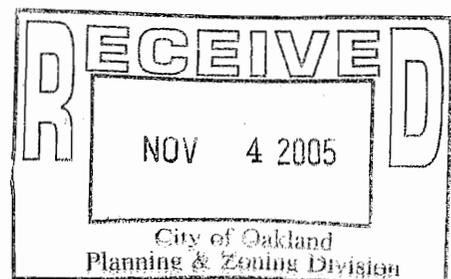
The building and street design tends to wall off this area from the public. The towers and bulky six story buildings – all greatly exceeding the densities of the EPP - will block views of the water. Any project should be designed to invite, not exclude, the public from Oakland's waterfront. It should benefit all Oakland residents, not just those who live there.

EE-2

There is no land use decision more important than the redevelopment of our waterfront. We are a waterfront city, but many are hardly aware of that fact because so much of our waterfront has been off limits to the public for so long. This area re-use gives us the opportunity to open the waterfront to people. It is an historic opportunity about the legacy we will leave – or not leave – to our children and grandchildren.

EE-3

Therefore, we urge that the City adhere to the EPP vision and create "the major recreational destination in the City." In particular, the Coalition urges that (1) the public open space in the development be no less than that called for by the EPP, and (2) that streets should be designed to provide maximum visibility of the Estuary.

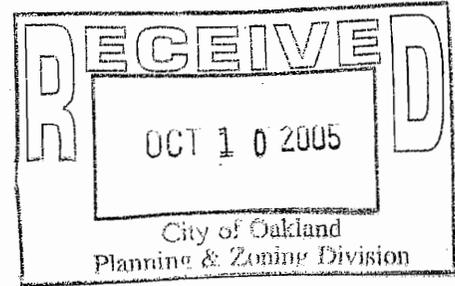


Letter EE – Alameda County League of Conservation Voters

EE-1: See Response to Comment W-5.

EE-2 See Responses to Comments B-8 and U-17.

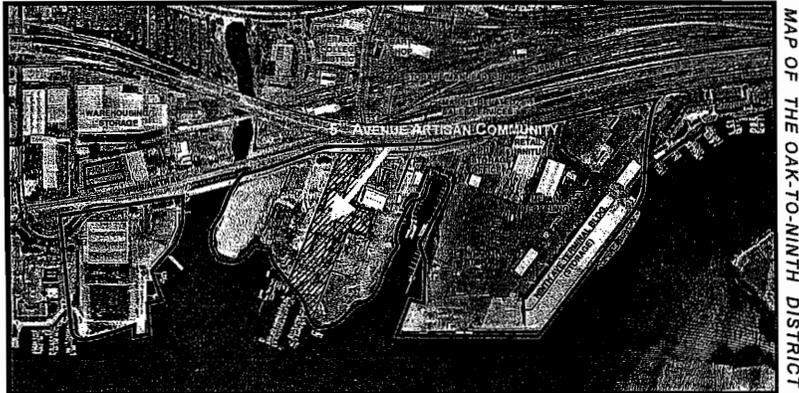
EE-3 The comment calls for public open space that is at least that called for in the Estuary Policy Plan. See Response to Comment P-3. The comment also states that street design should provide maximum visibility of the Estuary. See Response to Comment U-17, which addresses this topic. As it deliberates on the project prior to action, City decisionmakers will ultimately consider the proposed acreage of new parks and open space pursuant to all General Plan policies, and will consider the appropriateness of the level of visibility to the Estuary created by the project.



October 6, 2005

To Whom It May Concern in Oakland from Leal Charonnat:

A Specific Plan for the Oak-to-Ninth District must be done prior to development. It was called for. It was asked for. It was proposed. It was anticipated. It hasn't been done. It's being ignored. It's not in the works. But the transformation of this publicly owned waterfront property deserves it.



"The plan proposes the large-scale transformation of the area from the Lake Merritt Channel to the Ninth Avenue Terminal into a mix of artisan work/live lofts, hotel, cultural and commercial-recreational uses that will complement the planned open spaces and parks along the water."

— Estuary Policy Plan, 1999

Specific Plans? We ain't got no Specific Plans. We don't need no Specific Plans. I don't have to show you no stinking Specific Plans.

This is all about 60 acres of waterfront still owned by the citizens of Oakland.

As written in the Estuary Policy Plan [EPP] (1999); as annotated and demanded of respondents to the Port of Oakland's "Request for Development Proposals" for the Oak-to-Ninth District (2000); and as declared a major method they would use to develop their plans for this area by Oakland Harbor Partners, LLC (2001), now the developer of this area; all stated that a Specific Plan should and would be done.

Promises, promises.

Well, we have a humongous project before us, created in a vacuum by the developer with NO public input in its preparation as mandated by state law when a Specific Plan is done, that bears little relationship to the goals and dreams as set forth in the original Estuary Policy Plan.

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FF-1

17

The Estuary Policy Plan was created with thousands of hours of public input, hundreds of meetings and at a cost of over a million dollars. It recognized the unique opportunities for developing the Oak-to-Ninth District for all of Oakland, not just for a local developer.

FF-2

The EPP especially called out for open spaces that would work for large civic gatherings. What mention of housing was essentially on the backburner. It also recognized the dynamic local artisan community and called for more of the same.

A complex document, the EPP in one breath called for the demolition of the Ninth Avenue terminal for 'views', but in its next breath called for some or all retention of the historic structure. The developer's original response called for "the possible preservation and re-use of some or all of the Ninth Avenue Terminal for a mixture of commercial and community-oriented uses that maintain the historic character of the Oak to Ninth area." — Oakland Harbor Partners submittal, 2000. This is the last remnant of Oakland's working waterfront and deserves to be reused as both a cultural and a financial resource.

FF-3

Well, the developer that got the gig when he said he would be preparing a Specific Plan has completely ignore all of this, and is presenting a development project that is more housing on one spot that has been done in Oakland in many a year.

FF-4



The Jack London waterfront is becoming a significant regional destination. The Cirque Du Soleil attracted hundreds of thousands of visitors in 1997.

— Estuary Policy Plan, 1999

In 1997 the Cirque Du Soleil lost its site in San Francisco. Desperate, they held a press conference to ask the public to find them a place in the 'city.' Well, they got calls, dozens of calls, and they were all telling them that over here in Oakland they would be welcomed. At the time, there was a large empty lot (now just a bunch of apartments) near Jack London Square. They came, and the people came. Afterwards, they said that here in Oakland they had the greatest attendance of any venue outside of their home in Canada. There is no such site now in the Jack London Square area.

The Estuary Policy Plan for the Oak-to-Ninth District wanted to create large public spaces for concerts or festivals — activities completely excluded by the developer's scheme now advocated by the city. If approved, there will be no place in Oakland where an activity like Cirque Du Soleil will be welcomed, again.

Some like it not.

The city and port have reneged on their fiduciary responsibilities by declaring that with the developers project before them, and an EIR analysis, and some public testimony on the EIR, we're getting the 'functional equivalent' of a public-input Specific Plan. Not.

The head honcho of the Oakland Planning Department does a dance that would make the Cirque Du Soleil proud by announcing the same at the Planning Commission public hearing. Ignoring the fact of course that all the things they say they are doing – the developers plan, the EIR and taking public testimony on the EIR – would have been done ANYWAY when a Specific Plan is developed.

The city's position that it is doing more than what a Specific Plan would do is an outright misrepresentation of the truth – in other words a lie. Doing a Specific Plan would NOT preclude what they say they are doing now, but would be in addition, allowing the public to have vital input at the beginning of the planning process.

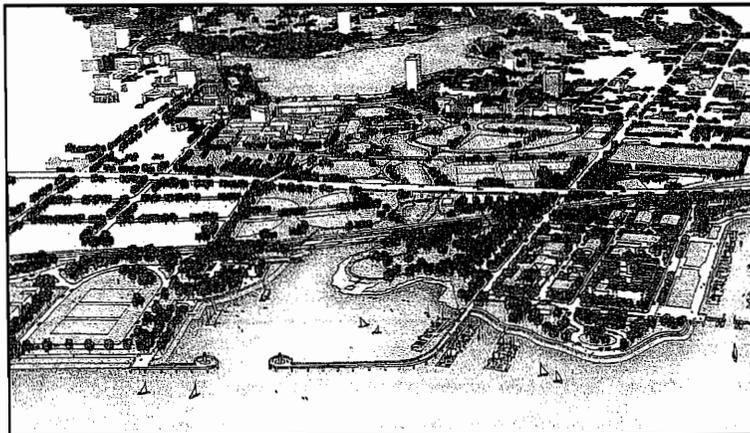


Illustration from developer's original response to RFQ

"ROMA worked with a 27-member advisory committee and the City of Oakland and the Port of Oakland in a collaborative effort to prepare a waterfront plan for the four mile reach of shoreline bracketed on the one side by the Oakland Airport and the other by the Port of Oakland. The purpose of this planning effort was to knit these waterfront lands back into the city, reclaim them as an integral part of the city fabric and create new opportunities for development to occur. The plan calls for a system of open spaces and parks to be developed comprising more than 55 acres, and proposes a variety of mixed uses and transformations, which will strengthen Oakland's position as an urban center and accommodate growth and development that complements the downtown and adjacent neighborhoods."

— From Oakland Harbor Partners, LLC submittal to Port in response to RFQ, 2001

You don't understand! I coulda had class. I coulda had a Specific Plan. I could've had something, instead of a bum design, which is what I got.

To add more insult to injury, the developer has been tramping around the city meeting with people and showing off pictures and models of what his project would look like. The trouble is, he shows dozens of photographs of 4-story buildings when what he wants to build are 6 and 8-story buildings with sprinklings of half a dozen 24-story towers.

FF-4
(CONT).

FF-5

The developer is just lying when he shows an unwitting public pretty pictures of something that is not to be built. The scale for the model he selected is miniscule. 24-story buildings are barely 4-inches high in his model; 8-story buildings are about an inch high. An ant crawling on his model is as about as big as a semi-truck!

No one gets a sense of scale from such a tiny sized model. He might as well hand out decoder rings with a model on top – it would give people the same sense of what his project will be like.

FF-5
(CONT.)

You've got to ask yourself one question. Do I feel lucky? Well, do ya, city.

The city has been no help in all of this. They assisted in holding public 'input' meetings to get feedback from the public. Not only was the public misinformed by having the developer's same misinformation put out, but the city never did show or clearly explain to the public what the Estuary Policy Plan called for, and how the developer's project was in conflict.

All that came of these 'public input' meetings was a checklist of complaints that the writers of the DEIR used as a way to counter any public criticism. The DEIR is essentially a cheering squad for the developer's project.

While the EPP called for spaces for large public gatherings, the DEIR states that not only does the developer NOT intend to put on anything like concerts or festivals, the EIR brags that if anyone in the future did, they would have to prove to the Oakland Police Department that the promoter of such an event could find parking somewhere.

The DEIR points out clearly that the developer has no intention of providing parking for anything like that needed for a festival or a concert.

FF-6

FF-7

The stuff that dreams are made of.

How did we get here? The answer is easy.

Through the classic Oakland developer process of bait, wait and switch.

The developer baited everyone by declaring they had commissioned ROMA Design [the very professional planning and design firm that helped the city create the EPP] to help develop a Specific Plan. They stated this in writing.

This bait was so tasty that the developer even showed everyone the schedule for the vast public meetings he was going to hold and a chart showing a yearlong schedule of these meetings – all to develop the Specific Plan for all 120 acres of the Oak-to-Ninth District.

The public took this bait and testified before the Oakland board of Port Commissioners that this developer was most superior and should get the gig.

Well he got the gig. But then he did the big wait – after just a few preliminary meetings, he disappeared for almost two years. When inquiries were made on the progress of the Specific Plan, the developer was mute, and the city staff would only say 'we don't have a project before us so we have nothing to comment on...'

Then the switch came, albeit in a few steps. In 2003 a leading business newspaper reported that the developer was adding another thousand units, for a total of maybe 3000 units, to the 2000 residential units he was already scheming for –all far more than originally anticipated in the EPP and with no public input.

FF-8

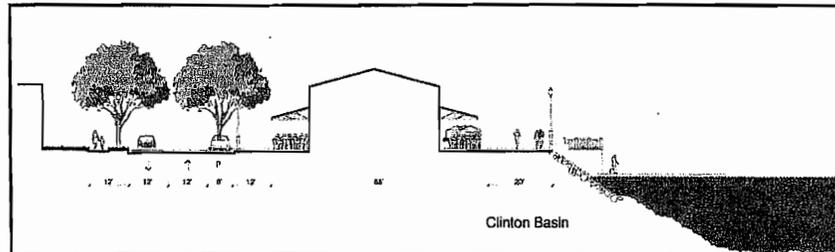


FIGURE III-12: Clinton Basin Illustrative Cross Section

- Illustration from Estuary Policy Plan, 1999

For the last year and a half he has been showboating this concoction of his around the community. Not to say that some don't like it. Some do. But this is not the process to use to plan on how to transform this public land. Proponents, like the developer, will dismiss critics with a waive of the hand with no option for discourse.

With no regard to any of the original vision the EPP has for the waterfront – making it a series of large public parks in addition to a vibrant commercial and artisan community for all of Oakland – housing advocates' only mantra is housing for all. Well that is fine, except where will the rest of Oakland have a chance to get together?

With this plan, they won't.

The vision of the Estuary Policy Plan is lost without a Specific Plan. At this point in time, with the short 54-day comment period of the DEIR coming to a close, the city staff is set on ramroding this project through, full speed ahead, with no public input in its PREPARATION.

FF-9

Round up the usual suspects.



"Artist's live/work" – illustration from developer's original response to the Port of Oakland's RFQ.

- Oakland Harbor Partners, LLC, 2001

The city staff has decided that the citizens of Oakland can only be reactive, not proactive. You wonder whom they work for, who pays their salaries? With coy 'public input' meetings done to circumvent public participation in the preparation of the project plans, the staff have definitely taken sides.

Even the report given to the planning Commission unfortunately misrepresented the project. From the public's point of view wanting to have some say in the planning stages is important. As it is now, this is land still owned by the citizens of Oakland, but not for long.

The planning Commission at their lone hearing on the DEIR showed their lack of knowledge of the EPP and its vision. As guardians of city policy, they should have taken the time to become familiar with the EPP – they weren't.

Which only leaves the City Council as a possible bulwark against this travesty. With developer's dollars spread amongst the council, even this body might be suspect. Words such as 'cost of development' or 'we can't pay for all the parks' or 'it can't be all parks' (of course no where in the EPP does it say 'all parks' – but such statements only bolster support for the developer's charge).

FF-9
(CONT.)

should give pause to anyone who might hope the council may only working for the 'citizens' of Oakland. It's all sounding like the Woody Allen line: 'We need the eggs.'
Meanwhile, the citizens of Oakland magnanimously passed Measure DD - a bond measure that will provide millions of dollars for Estuary Park development; and up at the state capital a two billion dollar state bond measure is in the works. But will Oakland have any of this? Time will tell.

We may not have much in Oakland, but we will always have Paris

If Oakland were serious about becoming the world-class city it could be instead of just another bedroom community for San Francisco, it would be looking into these sources of support for the EPP vision.

FF-10

An intact Ninth Avenue terminal, with its rollup doors turned into windows, some of its walls removed to create the largest outdoor pavilion in the East Bay, all revenue generating, is something to consider. As it is, the developer is planning to scrape off 93% of the building and paint the remaining floor a grass green.

A park suspended over the water [the idea of turning the Ninth Avenue Terminal's floor into 'green space'] creates a park that not only has to be maintained about the ground, but its very foundation will have to be repaired on a yearly basis. Talk about Fantasy Island!

FF-11

Don't be fooled.

The developer is no fool. All that housing is kept back from the shore for more than just a shoreline park. The Bay Area Conservation and Development Corporation – the BCDC, the keeper of our bay – only has jurisdiction 100-feet inland.

FF-12

Bravo! It's those shoreline parks that will prevent the BCDC from having much of a say at all on this project.

With a timeframe that will stretch out in decades, not years, any thought that this project will quickly provide Oakland with waterfront parks, skinny as they are, is dreaming. It would be much more efficient to go back to square one, plan the parks as everyone can agree, and go for the gold – funding from sources other than just Oakland taxpayers.

FF-13

Totally ignored in all the current discussions is what is to happen to the 5th Avenue artisan community – recognized and highly praised in the EPP. The developer plans of 8-story buildings surrounding this neighborhood are a joke on the EPP request to have more neighborhoods in the vein of this creative and vibrant community. Notice he will never talk about its expansion.

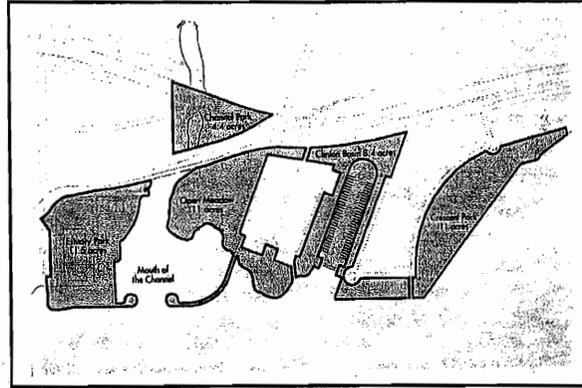
FF-14

I'm going to make him an offer he can't refuse.

It was not long after the EPP was adopted by the city that newspaper accounts told of a most logical way to develop this area: a non-profit development corporation would oversee both the Specific plan process, and then development.

FF-15

If the area were divided up into bite-sized parcels, just like the rest of Oakland, small local developers could ante up and many as opposed to just one developer could participate in the creation of a vibrant waterfront for all of Oakland.



Open space map from draft Estuary Policy Plan shows proposed acreage of open space for a total of almost 42 acres in the proposed project area.

- Estuary Policy Plan draft, 1998

This type of scenario is playing out on Coney Island in New York City as well as in dozens of other cities. Oakland government and the city staff seem to prefer forgoing true public input and just go for the developer's glitter.

FF-15
(CONT.)

The Plan! The Plan!

Oaklanders may not have a choice in the matter. The short fuse of the DEIR is about to run out. Then it's going to be another long quiet wait. Finally the Final EIR will come out. Once again this will come before the Planning Commission and then the City Council.

FF-16

There may be a wringing of hands but the rational of 'we need this development to pay for the parks - there is just no other way' with the developer's chorus of 'no other development scheme will pencil out' - the deal will be sealed. Oakland will once again sell off its waterfront.

#

To comment on the Draft Environmental Impact Report, which contains a copy of the Estuary Policy plan, send them by 4:00 p.m. October 24, 2005 or to get a copy of the DEIR, contact:

Marge Stanzione, Project Planner
City of Oakland
Community & Economic Development Agency
Planning Division, Suite 3315
250 Frank H. Ogawa Plaza
Oakland, California 94612
(510) 238-4932
mstanzione@oaklandnet.com

FF-17

EPILOGUE

As to how we got to where we got, let's review a few key statements from the original Estuary Policy Plan policy for this area, the developer's response to the Port's Request for Development Proposals, and the Draft EIR statement on why no Specific Plan was prepared for the Oak-to-Ninth District:

"POLICY OAK-5: INITIATE MORE SPECIFIC PLANNING OF THE ENTIRE OAK-TO NINTH DISTRICT.

The Oak-to-Ninth district is large and diverse, with several unique, complicated issues that dominate its real development potential. It should be planned in sufficient detail to identify all potential issues, and to understand the options available to address these issues in a timely manner.

A Specific Plan should be prepared prior to development. Planning should be based on a strategy which analyzes the area comprehensively and which accounts for the constraints imposed by subsoil environmental conditions. Transformation of the district will require that several outstanding issues be resolved simultaneously. Development feasibilities should be analyzed, phasing of improvements should be identified, and a funding strategy to finance and implement recommended open space should be addressed. These require that a realistic development."

- Estuary Policy Plan [EPP], 1999

We are looking forward to the opportunity of working creatively with the Port, City and community at large during the Specific Plan process. The development concept presented in this proposal has not been refined to plan level detail, as it is the belief of Oakland Harbor Partners that the next step must be preceded by an outreach program to develop input from the City, the Port and the community-at-large...

For the Oak to Ninth area, the Specific Plan will include the entire 120 acre planning area on both sides of the Embarcadero. This will be important in establishing the context for planned waterfront development, and in ensuring future activity linkages between the city and the estuary. Oakland Harbor Partners has commissioned ROMA Design Group, an internationally recognized design firm specializing in waterfront redevelopment to lead the Specific Plan process...

The Specific Plan process affords us the opportunity to create a meaningful dialogue with the Oakland community regarding the future of this key waterfront asset. Community outreach will be an important aspect of our Specific Plan process. At the outset of the planning process, we will undertake a community-wide symposium with key individuals and groups who have a stake in the future of the area, including community and business representatives, property owners, tenants, members of the 5th Avenue Point community, policy makers, etc.

- RESPONSE TO REQUEST FOR QUALIFICATIONS
SUBMITTED BY OAKLAND HARBOR PARTNERS, LLC, 2001

"Specific Planning. The City and Port of Oakland have not elected to prepare a Specific Plan for the Oak-to-Ninth District as called for in the Estuary Plan. Both agencies determined that 1) the Oak to Ninth Project application (with the modifications proposed in this EIR), 2) the analysis provided in this EIR, and 3) 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 Estuary Plan (Policy OAK-5). Thus together, these elements (project application, environmental analysis, and public review process) are considered functionally equivalent to the preparation and review of a Specific Plan."

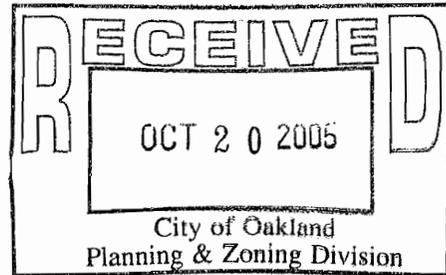
- Page IV.A-16, Draft Environmental Impact Report [DEIR],
- Issued by the City of Oakland, September 1, 2005

Sometime between 1999 when the Estuary Policy Plan was adopted and the Draft Environmental Impact Report was issued on September 1, 2005, the city and port of Oakland made the conscious decision – with no public input or discussion – to not do a Specific Plan for the Oak to Ninth District. The reader needs to decide who gained and who lost when no Specific Plan was done for the Oak-to-Ninth District.

- Leal Charonni



LEAL ROYCE CHARONNAT
ARCHITECT+ENGINEERING



October 17, 2005

TO: Marge Stanzione, Project Planner
City of Oakland
 Community & Economic Development Agency - Planning Division
 250 Frank H. Ogawa Plaza, Suite 3315
 Oakland, California 94612

FROM: Leal Charonnat

CC: Oakland Landmarks Preservation Advisory Board, Oakland Planning Commission

RE: Oak to 9th Avenue Project

SUBJECT: **Comments and documents on Draft Environmental Impact Report [DEIR]**

COMMENTS ON DEIR - OAK TO NINTH AVENUE PROJECT

FF-18

Enclosed are my comments on the Draft Environmental Impact Report prepared by the city of Oakland, dated September 1, 2005 [on the CD-ROM disk provided.] The process the city has used to review this project is flawed, incorrect and must be corrected prior to proceeding with finalizing the Environmental Impact Report [EIR] for this project.

The proposed project reviewed in the DEIR has so many inconsistencies with the Oakland General Plan for this area – the adopted Estuary Policy Plan, 1999 [EPP], that was prepared over a period of more than two years, in an open process that included public participation in its preparation, and reviewed and adopted by the Oakland Planning Commission and the Oakland City Council – that the proposed project is a major revision of the city's General Plan done with no public participation in its preparation as required for General Plan amendments per Planning and Zoning Law – State of California [PZL-SC] §65351. “During the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups, through public hearings...”

The DEIR cites a decision made by the port and city of Oakland to not prepare a Specific Plan for this project because of three items as noted in the DEIR: “*Specific Planning. The City and Port of Oakland have not elected to prepare a Specific Plan for the Oak-to-Ninth District as called for in the Estuary Plan. Both agencies determined that 1) the Oak to Ninth Project application (with the modifications proposed in this EIR), 2) the analysis provided in this EIR, and 3) 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 Estuary Plan (Policy OAK-5). Thus together, these elements (project application, environmental analysis, and public review process) are considered functionally equivalent to the preparation and review of a Specific Plan.*”

The city has no basis comparing a project itself [created with no public participation in its preparation as would happen if a Specific Plan were prepared], an EIR analysis and the respective public comments on the EIR as being the equal of the Specific Plan process. What is ignored by this decision is that these three elements would have to be done even with the preparation of a Specific Plan – so they are not the ‘functional equivalent to the preparation and review of a Specific Plan’ as the statement in the DEIR would lead the reader to believe.

Mere public review of a draft EIR does not comply with this section of the California planning code that clearly states that the public is to have ‘opportunities’ in the ‘preparation’ of the general plan [or amendments.] This has not been done. The developer has only held ‘show-and-tell’ meetings of the project, but these have never involved the public in the preparation process. A Specific Plan was also called for the entire 120 acres of the Oak to Ninth District as originally stated in the Port of Oakland Request for Developers Qualifications, 2000 [RFQ] and echoed in the developers response [see enclosed documents on CD-ROM.]. The DEIR is also inadequate because it only incorporates the projects 60* acres, but not the entire district, which such major changes in the General Plan for this area should require.

This decision also ignores **PLZ-SC §65453** “a specific plan must be “prepared, adopted, and amended in the same manner as general plans...” It is a serious error on the city's part to not require the preparation of a Specific Plan in the same manner as Oakland's General Plan is prepared, with public participation in its preparation.

As noted in the October 23, 2003 **San Francisco Business Times** [copy enclosed on CD-ROM], the developer was making the decision then to expand his project from 2000 to over 3000 units. Obviously, this amount of housing – a use not anticipated by the EPP for this area in such vast numbers – was going to preclude many of the other uses anticipated for this area in the EPP.

The proposed project provides 40% less open space than called for in the EPP, and further, the use of this open space is specifically not to include concerts and festivals, uses anticipated in the EPP for this area. This proposed use is in violation of **PLZ-SC §65561**: “The Legislature finds and declares as follows: (a) That the preservation of open-space land, as defined in this article, is necessary not only for the maintenance of the economy of the state, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of scenic beauty, for recreation and for the use of natural resources. That discouraging premature and unnecessary conversion of open-space land to urban uses is a matter of

FF-19

FF-20

RESPONSE TO DRAFT EIR FOR OAK TO NINTH AVENUE PROJECT

Submitted by Leal Charonnat

October 17, 2005

public interest and will be of benefit to urban dwellers because it will discourage non-contiguous development patterns which unnecessarily increase the costs of community services to community residents.

(c) That the anticipated increase in the population of the state demands that cities, counties, and the state at the earliest possible date make definite plans for the preservation of valuable open-space land and take positive action to carry out such plans by the adoption and strict administration of laws, ordinances, rules and regulations as authorized by this chapter or by other appropriate methods.

(d) That in order to assure that the interests of all its people are met in the orderly growth and development of the state and the preservation and conservation of its resources, it is necessary to provide for the development by the state, regional agencies, counties and cities, including charter cities, of statewide coordinated plans for the conservation and preservation of open-space lands.

(e) That for these reasons this article is necessary for the promotion of the general welfare and for the protection of the public interest in open-space land."

The open space as proposed does not meet the policies as outlined in the EPP: no large activities are planned for according to the DEIR. The DEIR further states that in the future some party wished to have such activity, they would have to prove to the Oakland Police department that they could find the necessary parking, etc. in order to hold an orderly event. Such burden on a potential organizer is not what the EPP would anticipate, but rather that the area would be designed for such large civic-like events.

The decision to undo such a basic use of this area as proposed in the EPP needs to be made with public participation, as found when a Specific Plan is prepared. By not preparing a Specific Plan, the port and city have excluded the public from participating in the preparation of the plan, in other words, contributing to the decision making process prior to deciding the project's goals and configuration.

In regards to the DEIR statement on the impact of the 5th Avenue artisan community: "*Impacts on 5th Avenue Community – Use setbacks, landscaping to reduce impacts to less than significant.*" There is no basis for this conclusion. The neighborhood is completely overshadowed by the adjacent high-rise project; the residential uses of the adjacent high-rise buildings will hinder the existence of this community and is the antithesis of the proposed uses outline in the EPP for those adjacent to this community.

The 5th Avenue community is a historic as well as a community resource. The EPP recognized this and asked that there be more of this as stated in **EPP Policy 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.*" The proposed project does none of this. Again, there was no public input in any of the decisions of whether to expand this community or not; to retain or reuse the 9th Avenue Terminal, or not.[copy enclosed]

The proposed project only anticipates 8% retention of the 9th Avenue Terminal in contrast to the EPP policy: "*The Port and City should investigate the feasibility of keeping and reusing the building (or portions thereof). A Specific Plan for the entire District should be initiated prior to development. (See Policy Oak 5)*" This is such a major departure from the EPP that was again done with no public participation in the preparation of this plan. As an acknowledged historic resource owned by the citizens of Oakland – as is all of the project area land - the city must provide public participation in the planning of its reuse.

Such wholesale amendments to what in effect is the city's General Plan requires the same public participation as would be appropriate in the preparation of the General Plan. Further, the proposed project contains approximately 3100 living units, in stark contrast to the EPP that did not having housing in this area except for expansion of the 5th Avenue artisan community [5AC]. The proposed project, with height limits of over 80-feet adjacent to the 5AC, not only ignores the directive of the EPP to 'expand' this use, but actually inhibits its livability due to extreme shadows, and incongruent adjacent uses [i.e., residential uses next to quasi-industrial uses found in the 5AC.]

The EPP also states: "*The plan proposes the large-scale transformation of the area from the Lake Merritt Channel to the Ninth Avenue Terminal into a mix of artisan work/live lofts, hotel, cultural and commercial-recreational uses that will complement the planned open spaces and parks along the water.*"

The proposed project as reviewed in the DEIR does not have an artisan work/live loft district – an expansion of the 5th Avenue artisan community as called for in the EPP, no proposed hotel, no cultural or commercial uses – only some local serving commercial space; no cultural uses – the little remaining portion of the 9th Avenue Terminal is not appropriate for a city-wide cultural uses as evidenced by the project proponents specifically planning on not providing for large events such as concerts or festivals – events specifically cited in the EPP as to be designed into the use of the Oak to 9th Avenue project area.

Therefore, on behalf of all of the citizens of Oakland who have not had a chance to participate in the preparation of a Specific Plan for the project area, I request that the city initiate the preparation of a Specific Plan for the entire Oak-to-Ninth District as originally outlined in both the port's original RFQ and the developer's response [copies enclosed.] Until such Specific Plan is prepared – with proper public participation – this project review process, including but not limited to, the environmental review process and other hearings need to be held in abeyance.

FF-20
(CONT.)

FF-21

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OAK-TO-NINTH - NEWS & VIEWS

THE LAST OPEN SPACE ON THE OAKLAND ESTUARY

VOLUME ONE

SEPTEMBER 2005 FF-28

THIS LAND IS YOUR LAND, THIS LAND IS MY LAND, THIS LAND IS MADE FOR ~~YOU AND ME~~ THE DEVELOPERS.

Some 60+ acres of prime waterfront land owned by the citizens of Oakland just south of Jack London Square known as the "Oak-to-Ninth" district are about to become a private enclave. Originally part of the very working Oakland waterfront, where the fishing fleet from Alaska would winter anchor, this part of Oakland's Estuary coast is on the chopping block for development.

The Ninth Avenue Terminal was the first major project undertaken by the young Port of Oakland. Built in 1928-29, it was doubled to its present size of over four acres in the early 1950s. It is not only a proud historic resource but is still working hard today as storage for heavy crops.

The district is also home to the 5th Avenue artisan and business community. Most of this community resides on private property which is excluded from the developers project (and the local redevelopment district) and is under separate private ownership.

In 1999 the Oakland Planning Commission and the Oakland City Council approved the Estuary Policy Plan (EPP.) Divided into three parts, the Oak-to-Ninth area has extensive policies. The EPP calls for the creation of a Specific Plan prior to development.

After the EPP was approved, the Port of Oakland put out a Request For Qualifications (RFQ) for this area.

In the Port's RFQ they mention the words 'Specific Plan' no less than 71 times! Obviously any possible developer knew that to get the gig, they had to be prepared to show they could do a bang-up job on a Specific Plan for this area. Not lost on the developer who got the gig, they hired the original EPP architectural/planning firm - Roma Design - to create a Specific Plan for the project area - the 120 acres of waterfront known as the Oak-to-Ninth District. The developer's response to the RFQ mentioned 'Specific Plan' 17 times. Seems

they got the message, and ultimately, the gig to be the sole developer for this area.

Now on September 1, 2005, the city issued an Environmental Impact Report (EIR) on the developer's proposed project. Amazingly, there never was a Specific Plan made for this area. The Port and city somehow decided they didn't need one. What the Port and city officials seem to miss is that the reason for doing a Specific Plan is so the public may be involved! Now, all the public is allowed to do is complain about points in the EIR. Hardly a constructive way to do things.

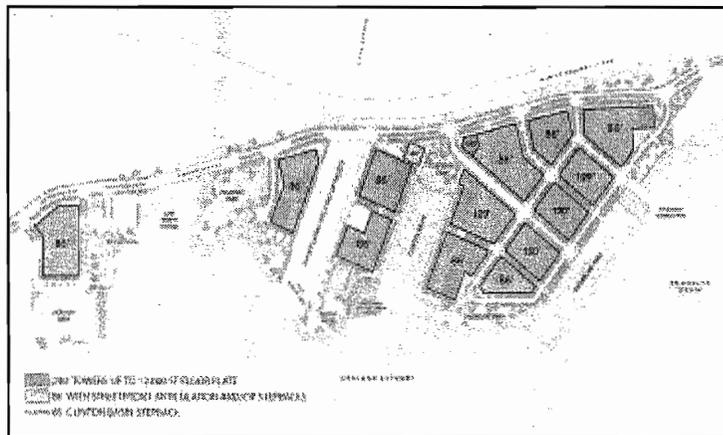
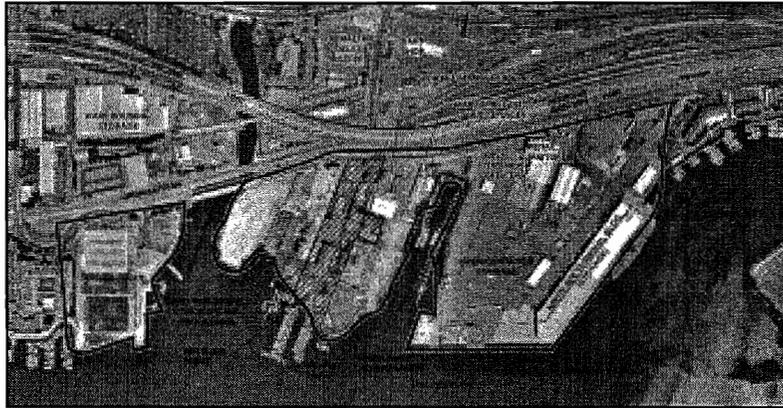
Just doesn't seem fair, that after almost a century of industrial use the city takes two-years and spends a million-dollars to develop a policy plan with the participation of hundreds of Oaklanders, this land is about to be sold off to a developer who is doing his own thing.

Not to mention that the developer is skipping out on the essentials of the EPP and turning this area into a high-price high-towered gated-like-community with privately-maintained lawns all around the waters edge [EIR pg III-18]. (Not one street on the developer's plans from the Embarcadero has a water front view.)

The developers only tip of the hat to the public is to allow a small path along the water's edge. But don't linger for too long there. Looking down

from the eight and twenty-four story towering buildings are the residents who paid handsomely for their water-view condo and the upkeep of that lawn your looking at [EIR pg III-18.] You can be sure they certainly won't want just anyone lingering under their windows on those lawns! They're paying for them, not you!

But to be fair, the developer is quite clear - as mentioned in the EIR - that they have no intentions of holding any events such as concerts or festivals [EIR pg III-18.] So Oakland, you had your chance owning waterfront property, so just bike off.



graphics from draft EIR prepared by the city of Oakland analyzing proposed project by developer

OAK-TO-NINTH - THE OL' BAIT, WAIT AND SWITCH!

First they lied.

To get the gig of being sole developers of Oakland's unique waterfront district, the developers wrote the vision they wanted us to see - a vision you will never see:

"We are looking forward to the opportunity of working creatively with the Port, City and community at large during the Specific Plan process. The development concept presented in this proposal has not been refined to plan level detail, as it is the belief of Oakland Harbor Partners that the next step must be preceded by an outreach program to develop input from the City, the Port and the community-at-large. [emphasis added] However, we have formulated some preliminary ideas on the basis of our own experience in, and commitment to, infill development and the recycling of underutilized urban land. More specifically, our goals include:

- The creation of a series of open spaces and promenades along the estuary shoreline, with linkages to Estuary Park and Jack London Square, Lake Merritt and Lakeside Park;
- The activation of the area's diverse water spaces with a range of appropriate recreational and maritime activities, including revitalized marinas, guest slips, provisions for water-borne transit and taxis, and open water for boating, rowing and other aquatic sports;
- The introduction of waterfront-oriented retail and marine services that have a strong local and regional character, including a major market-place that features California produce and local products;
- Uses that complement and enhance the existing artisan community at 5th Avenue Point, with complementary uses including studio and workshop space, galleries, live-work lofts, and the potential for a related educational and cultural institution;
- A new neighborhood to provide a full range of living opportunities including apartments, condominiums, live-work lofts, townhouses and studios; and
- The possible preservation and re-use of some or all of the Ninth Avenue Terminal for a mixture of commercial and community-oriented uses that maintain the historic character of the Oak to Ninth area.

Views to the waterfront from upland areas and I-880 will be essential in creating value and preserving the character of the Oak to Ninth area. The scale and pattern of new development will need to maintain and create new view corridors to the estuary, while establishing a "fabric" of buildings that form an interactive urban environment. We envision low and mid-rise buildings that frame views and reinforce and define open spaces, promenades and streetscapes within the plan area.

FAMOUS MOVIE QUOTES ABOUT SPECIFIC PLANS

"Specific Plans? We ain't got no Specific Plans. We don't need no Specific Plans. I don't have to show you no stinking Specific Plans." - said the developer to the city in "Treasure of the Oak-to-Ninth."

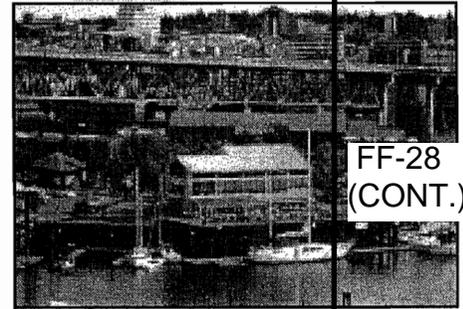
We envision buildings that are respectful of the site's maritime heritage, and that employ forms and materials that recall the bold warehouse sheds and industrial structures of the working waterfront. Rather than a series of individual development projects, we envision a cohesive new district that draws its identity and sense of place from the synergy of public-spirited activities. We envision a unique district that draws on the qualities of the site and the region—a district that combines the home grown commercial vitality of Pike Place Market in Seattle or Granville Island in Vancouver, with the mixed-use/residential qualities of River Place in Portland or the South Beach neighborhood in San Francisco. We envision a district with a diversity of open space experiences including parklands with open vistas to the estuary, performance and gathering spaces, promenades that provide continuous public shoreline access, and protected courtyards and paseos that offer a range of more intimate public experiences. We envision a district that will complement the activities and retailing of Jack London Square rather than duplicating or competing with them."

from pages 40-42 of 50 of the developer's written response to the ports RFQ

Then they cheated.

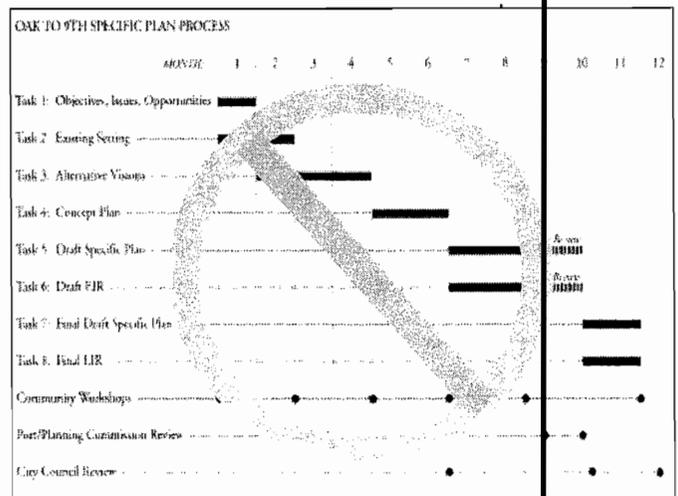
In their written response to the ports RFQ for developing this area, the developers sucker-punched the public. Not only did they list the Roma Design Group as one of their design consultants (Roma was the main design consultant for the Estuary Policy Plan - at a cost of a million dollars of consultant and staff time) they specifically noted they had commissioned Roma to prepare a Specific Plan for the project:

"For the Oak to Ninth area, the Specific Plan will include the entire 120 acre [emphasis added] planning area on both sides of the Embarcadero. This will be important in establishing the context for planned waterfront development, and in ensuring future activity linkages between the city and the estuary. Oakland Harbor Partners has commissioned ROMA Design Group, an internationally recognized design firm specializing in waterfront redevelopment to lead the Specific Plan process. They will be supported by McLarand Vasquez Emsiek & Partners and Michael Willis Architects and an EIR consultant acceptable to both City and Port staffs that has experience in handling projects of this magnitude.



The Specific Plan process affords us the opportunity to create a meaningful dialogue with the Oakland community regarding the future of this key waterfront asset. Community outreach will be an important aspect of our Specific Plan process. At the outset of the planning process, we will undertake a community-wide symposium with key individuals and groups who have a stake in the future of the area, including community and business representatives, property owners, tenants, members of the 5th Avenue Point community, policy makers, etc.

The public enthusiastically supported this developer's proposal as superior because they would be holding a series of public workshops every two months for eleven months to slowly and publicly develop a Specific Plan for the area. The developers provide an elaborate chart that clearly showed the meeting schedule. None of this ever happened - it's just eye candy.



Picture of Granville Island Vancouver provided by developer in their response to RFQ
Time-line chart provided by developer page 46 of 50 of the developers written response to the ports RFQ

OAK-TO-NINTH - WHOSE LAND IS IT ANYWAY?

now they are about to steal.

The original RFQ put out by the port only proposed to lease areas of the land to developers. These would be very long term leases - common in major real estate deals - long enough that one can get regular financing because the lease could go for 50 years.

But even a lease of that length means that eventually, the control of the land returns to the citizens of Oakland. A wise move. In fifty years, the children of today's Oakland children will be on the city council. Things will have changed enough that they may want to do something else with the waterfront. Good for them.

Whoa Nelly, what's this? Apparently the 'wise' city fathers and mothers are prepared to sell the land to the developer!

FAMOUS MOVIE QUOTES ABOUT SPECIFIC PLANS

"Round up the usual suspects." - from the EIR scene in the movie "Cause-a-Blank-a in Oakland"

Land in Oakland is going for \$1-2 million and even more per acre these days. Rare waterfront land should be 2-3 times as much. This would mean that the 60+ acres of the Oak-to-Ninth district waterfront land should be worth \$200 million or more. The selling price [after 'discounts such as the 'cost' to demolish Ninth Avenue terminal - and who asked for that?] is about \$18 million. And as if that is not a steal-this-land price, it has been reported the developer will be asking for \$20 million from the redevelopment agency. In other words Oakland will pay the developer \$2 million to own the land. Amazing what bargains are available.

ONE GREAT BIG BROWN FIELD

It is not hard to see that Mayor Brown's footprints are all over the stomping out of the Estuary Policy Plan. The developer has completely turned the EPP on its head. The essence of this area in the EPP was to be the one place in Oakland that could work for large public gatherings. Away from bothering housing, large Estuary Parks will serve Oakland well in the coming century as it grows into the urbane center it is meant to be.

FAMOUS MOVIE QUOTES ABOUT SPECIFIC PLANS

"You've got to ask yourself one question. Do I feel lucky? Well, do ya, city?" - the scene where the Developer is showing the City their plans in "Dirty EIR"

But the developer's plans - showing shadows of the Mayors '10k' housing program - is not the way to go. Unfortunately, the mayor's housing policy has apparently given the green light to this developer. The EIR say this is now policy.

It's time for the developer to put on the brakes, take a deep breath and go back and do what they said they were going to do - prepare a Specific Plan for the entire area of the Oak-to-Ninth district - all 120 acres - and not just their 'project area.'

Photo of 5th Avenue used in both EPP and developers response to RFQ

Where the heck is 5th Avenue?

The original proposal by the developer was in the spirit and direction of the Estuary Policy Plan. The EPP asked that the 5th Avenue community be expanded:

"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."



FF-28 (CONT.)

The developer went so far as to include this same photo of the 5th Avenue artistic enclave in their own presentation. In their submission they went on to say:

"To the west of Clinton Basin, we would propose activities that complement and extend the 5th Avenue Point community, including additional commercial space, live-work studios and workshops, galleries, and the possibility of an educational institution that is oriented to the visual and/or performing arts."

Now we learn in the EIR the developer plans to surround this community with eight story buildings- hardly following the EPP. Only a Specific Plan process can resolve these issues for the developer, the city and port, the neighborhood and all of Oakland.

PARKING? WHAT PARKING?

TABLE III-5 PROPOSED ONSITE PARKING SUPPLY

Parking	Ratio	Minimum Parking Spaces
Covered Residential Parking	1 space per unit	100
Covered Parking for Retail/Commercial Use	1 space per 500 sq. ft. of floor area	400
Covered Parking for Marina Use	1 space per five marina slips	34
TOTAL		534

While the EIR states the developer does not intend on holding any festivals or events in the Oak-to-Ninth district, the lack of parking will preclude anyone from ever suggesting such an idea - a true lack of public access.

chart from draft EIR - page III-16

OAK-TO-NINTH - THE LAST OPEN SPACE ON THE OAKLAND ESTUARY

WHERE'S THE BEEF?

It's pretty simple. If the citizens of Oakland don't stand up and make themselves heard, a developer with plans of their own is going to own the last large chunk of Oakland waterfront. What is truly amazing is the way the developer got to be the chosen one: they almost bragged on how they were going to let Oaklanders participate in the planning process. Never happened.

Using the age-old Oakland developer technique of 'wait and switch' - they just went into hiding for a few years and came out with a plan all their own.

The EIR now produced by the city is almost 1000 pages! But dissecting this tome is not the way to go - not if the waterfront development is to be for Oakland, and not some out-of-town developer to cash in on.

The Specific Plan process is an open, public invited process. The city and developer know there is a state law on how Specific Plans are to be created, and they know it would be hard to exclude the public.

If the public wants to have a say, they need to say so. Otherwise, the developer is going to privatize the last great piece of Oakland waterfront.

FAMOUS MOVIE QUOTES ABOUT SPECIFIC PLANS

"The stuff that dreams are made of."
- at the end of the movie after the Planning Commission had approved the developer's project, when asked what all the fuss was about a Specific Plan in "The Maltreated Oakland"

Estuary plan - What estuary plan?

The proposed project - created with no public input - has very little to do with the adopted Estuary Policy Plan. The city is not bashful about this. The EIR clearly lets you know they've dumped the EPP:

"The project would not be consistent with the existing land use classification or the existing zoning and would require a General Plan Amendment and Rezoning to accommodate the proposed densities and residential uses."

Specific Plan? What Specific Plan?

In a chapter titled 'Specific Plan Process' the developer clearly explained what was to be done:

"Under California law, a Specific Plan is intended to implement the policies of a community's General Plan, by providing more specific direction on: the location, type, mix and intensity of land uses

and open space; the configuration and pattern of transportation facilities; the public services, facilities and infrastructure necessary to support new development; standards and guidelines that promote community design objectives; and an implementation program that describes the phasing,

financing and regulatory actions necessary to realize the plan."

The Specific Plan process also requires public input in its preparation, something ignored by the developer.

FAMOUS MOVIE QUOTES ABOUT SPECIFIC PLANS

"You don't understand! I coulda had class. I coulda had a Specific Plan. I could've had something, instead of a bum design, which is what I got." - from the movie "On the Oakland Waterfront"

from draft EIR - CHAPTER II - Summary - A. Project Description

from developer's response to RFQ

WHERE ARE WE GOING AND HOW ARE WE GOING TO GET THERE?

Here we go again. Once again the city seems to think that Oaklanders should not have any say in the way Oakland can be developed! The developer (and the city and the port) need to know that they have to do a Specific Plan - as originally promised and discussed - just like they said they would.

FAMOUS MOVIE QUOTES ABOUT SPECIFIC PLANS

"We won't have much in Oakland, but we will always have Paris." - from a scene in "Cause-a-Blank-a in Oakland"

It is no accident the Port mentioned 'Specific Plan' seventy-one times in its RFQ! The developer did not come to this with eyes wide shut. Responding to an EIR for a project that has had no public input is not the way to go.

Who ya goin' to call?

Oakland City Council contacts:

Nancy Nadel (District 3) nnadel@oaklandnet.com (510) 238-7003	FF-28 (CONT.)
Henry Chang (at-large) cityyochang@aol.com (510) 238-7008	
Desley Brooks (District 6) dbrooks@oaklandnet.com (510) 238-7006	
Pat Kernighan (District 2) pkerringighan@oaklandnet.com (510) 238-7302	
Larry Reed (District 7) lreid@oaklandnet.com (510) 238-7007	
Jean Quan (District 4) jquan@oaklandnet.com (510) 238-7004	
Jane Brunner (District 1) jbrunner@oaklandnet.com (510) 238-7001	
Ignacio De La Fuente (District 5) idela Fuente@oaklandnet.com (510) 238-7005;	
Mayor Jerry Brown officeofthemayor@oaklandnet.com 238-3141;	
City administrator Deborah Edgerly cityadministrator@oaklandnet.com (510) 238-3301 fax. (510) 238-2223.	

You can write to all of the above at
**One City Hall Plaza, Third Floor
Oakland, CA 94612**

This is personal - and political. At this time only the City Council members have enough clout to slow down this project and require the developer to create a Specific Plan - the one they said they would do in the first place. Then all of Oakland may have a hand in the design of how this last piece of Oakland waterfront will be used.

THE FOLLOWING LIST OF DOCUMENTS ARE INCLUDED IN THE COMPACT DISC THAT WAS SUBMITTED BY LEAL CHARONNAY WITH HIS COMMENTS ON THE OAK TO NINTH DEIR

My Disc (D:)
File Edit View Favorites Tools Help

Address: D:\

File and Folder Tasks

- Rename this file
- Move this file
- Copy this file
- Publish this file to the Web
- E-mail this file
- Print this file
- Delete this file

Other Places

- My Computer
- My Documents
- My Network Places

Details

By the numbers
Adobe Acrobat 7.0 Document
Attributes: Read-only
Date Modified: Saturday, October 15, 2005, 12:02 PM
Size: 192 KB
Author: Leal Charonnay

File Name	File Type	Size
_Read me first	Text Document	3 KB
By the numbers	Adobe Acrobat 7.0 Document	192 KB
CA Planners Guide Specific Plan - Part One	Adobe Acrobat 7.0 Document	
Comments and references provided by Leal Charonnay2	Adobe Acrobat 7.0 Document	
EPP_9th Avenue Termini reuse discussion	Adobe Acrobat 7.0 Document	
Estuary_Policy_Plan_1999	Adobe Acrobat 7.0 Document	7,349 KB
Estuary_Policy_Plan_1999 Policy OAK-5	Adobe Acrobat 7.0 Document	
FAMOUS MOVIE QUOTES	Adobe Acrobat 7.0 Document	17 KB
Harbor partners Response to RFQ	Adobe Acrobat 7.0 Document	
Harbor partners Response to RFQ - SP	Adobe Acrobat 7.0 Document	
Kern County Specific Plan notes	Adobe Acrobat 7.0 Document	965 KB
Land for Sale - MAP	Adobe Acrobat 7.0 Document	210 KB
Land Use and Transportation Element031298	Adobe Acrobat 7.0 Document	
Letterf- Landmarks board - SP required	Adobe Acrobat 7.0 Document	
LWVO Waterfront Study	Adobe Acrobat 7.0 Document	272 KB
O-2-9 News8Views Vol 1a	Adobe Acrobat 7.0 Document	261 KB
Oak to Ninth Avenue Project DEIR 202622	Adobe Acrobat 7.0 Document	
oak_9th site may 5-24-2005	Adobe Acrobat 7.0 Document	1,056 KB
Part One_ The Specific Plan	Adobe Acrobat 7.0 Document	27 KB
Port RFQ - Appendix E - Why a SP	Adobe Acrobat 7.0 Document	
PortofOakland_EstuaryPolicy	Adobe Acrobat 7.0 Document	5,066 KB
REQUEST FOR DEVELOPER QUALIFICATIONS	Adobe Acrobat 7.0 Document	
SFBusTimes_10-23-03_1000 More Units	Adobe Acrobat 7.0 Document	
SPECIFIC PLAN	Adobe Acrobat 7.0 Document	17 KB
The Planners Guide Specific Plans	Adobe Acrobat 7.0 Document	
THE PLANNING AND ZONING LAW	Adobe Acrobat 7.0 Document	
To Whom It May Concern in Oakland_Illustrated-	Adobe Acrobat 7.0 Document	
Trib 20050331 Confront	Adobe Acrobat 7.0 Document	73 KB

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Letter FF - Leal Chardonnay, Architecture + Engineering

FF-1 See Master Response A regarding preparation of a specific plan.

FF-2 The comment suggests that the project would preclude “large civic gatherings.” See Response to Comment Z-2.

As stated on DEIR p. IV.A-37, the Estuary Plan provides a residential density for the project area although it does not explicitly identify residential as an allowable land use activity. As stated on DEIR p. IV.A-16, the project does not propose changes or expansion of the “local artisan community,” (Fifth Avenue Point).

FF-3 The comment states an opinion that the Ninth Avenue Terminal deserves to be reused as both a cultural and financial resource. The analysis in Chapter V (Alternatives) of the DEIR includes alternatives that retain all or part of the Ninth Avenue Terminal. The information in the DEIR and this FEIR document, together with supplemental information prepared for the project and the alternatives (separate from this environmental document), will allow City decisionmakers to evaluate and balance the cultural and financial considerations and opportunities raised by the comment prior to taking action on the proposal.

FF-4 See Master Response A regarding preparation of a specific plan.

FF-5 The project analyzed in the DEIR is described in text, tables, and graphics in Chapter III. The description of proposed buildings heights and a project height variant is provided on DEIR pp. III-8 through III-10, Tables III-3 and III-4, and Figures III-5 and III-6. Additionally, a series of photographic visual simulations of the project are provide for purposes of the EIR analysis, Figures IV.K-2 through IV.K-19 that accurately depict the scale and height of the project in context with existing structures and buildings.

FF-6 The comment is noted and does not address the adequacy of the DEIR analysis or topics related to CEQA. However, with regard to the DEIR’s purpose, it is to “clearly explain to the public what the Estuary Policy Plan called for and how the developer’s project was in conflict,” in addition to how it may be in compliance. Also, the DEIR process benefits from public input, which allows the scope of issues addressed in the document to respond to those issues of particular concern to the community, as appropriate under CEQA.

FF-7 The comment is correct in that the project sponsor is not proposing to hold events (such as concerts or festivals) at the project site (DEIR p. III-18). As previously stated, this does not preclude other entities from sponsoring such organized events at the new public open spaces created by the project, subject to City approval. The purpose of the DEIR is to provide adequate information about the factors that the City would consider (to the extent that they address potential impact to the environment under CEQA) when considering public events on the project site.

- FF-8 The comment is noted and does not raise issues with the adequacy of the analysis in the Draft EIR or issues under CEQA.
- FF-9 The comment is noted and does not raise issues with the adequacy of the analysis in the Draft EIR or issues under CEQA.
- FF-10 The comment describes an alternative to the project that retains the Ninth Avenue Terminal building. See Response to Comment K-3.
- FF-11 The comment suggests a frequency and degree of maintenance that would be required for the proposed project without substantial evidence. As discussed in Response to Comment S-8, the frequency and type of maintenance of the pier structure would not be different if the building is retained or an open space is constructed.
- FF-12 The comment is noted and accurately describes the general jurisdiction of BCDC on the project site.
- FF-13 The comment is noted and does not raise issues with the adequacy of the analysis in the Draft EIR or issues under CEQA.
- FF-14 See Response to Comment U-11.
- FF-15 The comment is noted and does not raise issues with the adequacy of the analysis in the Draft EIR or issues under CEQA.
- FF-16 The comment is noted and does not raise issues with the adequacy of the analysis in the Draft EIR or issues under CEQA. As of publication of this Final EIR, a public hearing is scheduled before the Planning Commission as indicated on the notice in the front cover of this document.
- FF-17 The comment is noted and accurately indicates City contact information for submitting comments on the Draft EIR.
- FF-18 See Master Response A regarding preparation of a specific plan.
- FF-19 The comment is noted and does not raise issues with the adequacy of the analysis in the Draft EIR or issues under CEQA.
- FF-20 The comment asserts that the project open space violates Government Code § 65561, which sets forth the State's policies encouraging public agencies to plan for, and implement actions to ensure, the preservation of open space. The City has complied with this provision and related Government Code provisions through the adoption and implementation of the Open Space, Conservation, and Recreation ("OSCAR") Element of the City's General Plan. These Government Code provisions do not apply to specific projects. If the City approves the project, it will be required to find that the project is consistent with the General Plan, including the OSCAR Element. Although the DEIR

states that the project sponsor would not be proposing to hold any concerts, festivals, or other large events at the open space areas, other entities or community groups could apply for the appropriate City permits and approvals to conduct these types of community events at the open space in the project site.

- FF-21 See Response to Comment FF-7. To the extent that aspects of the project design (open space location or size, parking, proximity to residential uses, etc.) do not align with the degree of “large civic-like events” that the City envisions on the project site, the City decisionmakers on the project have the discretion to modify or deny the project, or opt for one of the alternatives in the DEIR that more closely aligns with the City decisionmakers’ vision related to this topic.
- FF-22 See Master Response A regarding preparation of a specific plan.
- FF-23 The DEIR addresses impacts and mitigation measures regarding potentially significant impacts to the Fifth Avenue Point community in Impact A.1 (physical community division) on DEIR p. IV.A-35 and Impact A.3 (land use compatibility / change in environment) on DEIR p. IV.A-40. The project’s compliance with Estuary Policy Plan Policy OAK-4.1 is discussed on DEIR p. IV.A-16, and its compliance with overall neighborhood (N) policies in the LUTE Element of the General Plan is discussed on DEIR p. IV. A-9.

First, Mitigation Measure A.1, identifies a number of site planning considerations that address the impact resulting from the project “developing new and different uses and buildings immediately adjacent to Fifth Avenue Point....” The impact discussion recognizes that the project would not “divide” the core of uses within the Fifth Avenue Point, but would separate it from its existing industrial/manufacturing district. Measures that aim to minimize this physical division include effective pedestrian and bicycle connections between the project and Fifth Avenue Point, and the provision of appropriate buffering. The Fifth Avenue Point parcel is located in the middle of, but is not part of, the Oak to Ninth Avenue Project site and is not likely to be acquired for inclusion in the project site. The deliberate implementation of the mitigation measures identified are expected to effectively create as much physical and visual integration as is feasible given the varied character and land uses between the two areas.

The comment asserts that the project highrises would “completely overshadow” and “hinder the existence” of the Fifth Avenue Point community. First, the visual and shadow analysis in Chapter IV.K (Visual Quality and Shadow) of the DEIR find the projects impacts related to these topics are less than significant based on the significance criteria of established by the City of Oakland’s 2004 CEQA Thresholds/Criteria of Significance Guidelines. In particular, the shadow impact conclusion on DEIR p. IV.K-62 describes that, although Fifth Avenue Point would be partially shaded in the morning hours most of the year, the shaded area would subside by mid-morning to noon. This does not constitute an “unreasonable blockage of light,” thus the less-than-significant impact is appropriate.

- The statement that the project would hinder the Fifth Avenue Point community's existence is speculative since there is no evidence to suggest that the project would create physical effects that would be detrimental to the Fifth Avenue Point area – an area currently adjacent to intensive uses that include a mix of light industrial, service uses, a major concrete mix manufacturing operation, and no direct useable waterfront open space.
- FF-24 The comment states that the project proposal to retain 8 percent of the Ninth Avenue Terminal is a “major departure” from the Estuary Policy Plan. As described in DEIR Chapter III (Project Description), the project proposes to retain a minimum of 15,000 square feet of the 180,000 square-foot structure.⁶ This is not a major departure from the Estuary Policy Plan and aims to balance the potentially competing objectives laid out in the Estuary Policy Plan. While the supporting text of Estuary Policy Plan Policy OAK-2.4 recognizes that all or portions of the Terminal may be suitable for rehabilitation and adaptive reuse and that further study, and that initiation of a specific plan should occur prior to development, Policy Statement OAK-2.4 and illustrative graphics throughout the Plan foresee a large park in the area of the Terminal with no portion of the structure retained (recognizing that the structure currently impedes public access to and views of a key area of the Estuary). A significant and unavoidable cultural resources impact resulting from potential demolition of the Terminal is identified in the Estuary Policy Plan EIR and the City adopted a statement of overriding considerations for this impact (among others).
- FF-25 See Response to Comment FF-23 regarding shadow impacts and consistency with Estuary Plan Policies related to Fifth Avenue Point.
- FF-26 The comment identifies a number of characteristics that the Estuary Policy Plan envisions for the Oak to Ninth Avenue District, and which the comment asserts the project fails to provide. The comment correctly observes that the project does not propose “an expansion of the 5th Avenue artisan community” or a hotel. The project proposes approximately 200,000 square feet of commercial retail use, and all proposed reuses in the retained and rehabilitated Bulkhead Building would include “Tidelands Trust uses such as community, cultural, or recreational (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).” See Response to Comment FF-7 regarding “future large events such as concerts or festivals” on the project site.
- FF-27 See Master Response A regarding preparation of a specific plan.
- FF-28 Comment FF-26 is the Oak-to-Ninth – News & Views newsletter. The document does not address the adequacy of the Draft EIR analysis or potential impacts to the physical environmental impacts under CEQA. The comment describes the following: the history

⁶ Approximately 18,000 square feet of Tidelands Trust uses were assumed to be located in the retained Terminal Bulkhead Building for purposes of the EIR analysis.

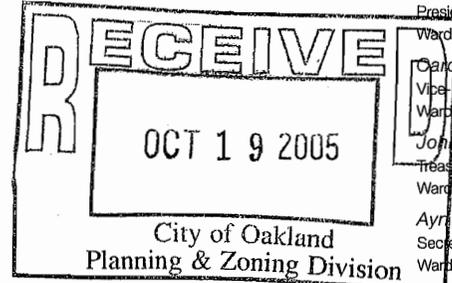
of the project site and its key elements (e.g., Ninth Avenue Terminal and 5th Avenue artisan and business community); the Port of Oakland Request for Proposals (RFP) process and the project sponsor's response submittal; assertions about the appropriate land costs for the project site; how the proposed project (analyzed in the DEIR) varies from the project sponsor's RFP submittal; the proposed parking supply as presented in Table III-5 of the DEIR; the proposal for a General Plan Amendment and Rezoning; and Oakland City Council contact information. Overall, the comment describes evidence of its position that a specific plan for the area should be prepared, which is responded to in Master Response A in this document.

FF-29 The comment includes a list of references cited or used in the preparation of the comment. Except as noted below, each of the documents identified is available for public review at the City of Oakland, Community and Economic Development Agency, Planning Department, associated with Project No. ER04-009.



October 14, 2005

Magaret Stanzione, Project Planner
 City of Oakland
 Community and Economic Development Agency
 250 Frank H. Ogawa Plaza, Suite 3315
 Oakland, CA 94612



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RE: Comments on DEIR, Oak to Ninth Avenue

Enclosed please find my comments on the DEIR. They represent my own views, not that of the Park District. They are arranged by pages of the DEIR sequentially. There is some repetition because some of the same or similar points are made at different points within the DEIR. Since the document, along with the process of amending the General Plan, is deemed by the drafters to be the equivalent of the Specific Plan called for by the Estuary Policy Plan (EPP), comments are more extensive than what might be expected only for a DEIR.

Presumably, a Specific Plan would attempt to plan for the optimal project and not simply respond to the proposed project. That should be the goal of the Planning Commission and City Council.

Since the Estuary Policy Plan was adopted only six years ago after an intensive study of the site by consultants and an advisory committee, and since it now forms part of the City's General Plan, all of the various issues discussed in the DEIR should be compared to the EPP. Specifically, each of the subjects in section IV (A thru N, inclusive) should examine the EPP, as well as the project, and compare them.

My principal objections to the Project and the DEIR which justifies it:

- 1) Failure to prepare a Specific Plan;
- 2) Elimination of about 40% of the open space called for by the EPP;
- 3) Blockage of existing views from the Embarcadero by curving streets and numerous bulky buildings. The proposed density is excessive.

Very truly yours,

John Sutter
 Director, Ward 4

GG-1

GG-2

GG-3



Comments of John Sutter on Oak to Ninth Avenue Project

Draft Environmental Impact Report (DEIR)

Comments are referenced by page number of the DEIR. Questions are not rhetorical but are requests for additional information to be included in the final EIR. Most phrases in quotes are from the DEIR text.

II-3 Alternative 1-B: "No Project/Estuary Policy Plan"	GG-4
<p>Why is the Estuary Policy Plan (EPP) "No project?" Is it because it is so radically different from the project that it cannot be considered an alternative to it? If so, how does that square with the conclusion that the project is consistent with the EPP? (IV.A-13) Is it designated "No Project" because it is deemed financially unfeasible? If so, where is the financial analysis to so indicate?</p>	
<p>II-39 What are the compensatory measures for mitigation of loss of waters of the U.S. including wetlands? Where will the mitigation through wetland creation or enhancement, if on site, be located? Where will additional wetland creation or enhancement offsite take place?</p>	GG-5
<p>III-6 et seq. Project Characteristics. This section fails to discuss ultimate ownership of the public areas in the project. Who will own the parks, marinas, Ninth Avenue Terminal or its remnant wharf – the Port, the City, a homeowners association? If assessments on owners are not sufficient to pay for maintenance, who will pay? Who will be liable for fines or any repairs mandated by regulatory agencies?</p>	GG-6
<p>III-12 Proposed open space. The project's 20.7 acres of new open space would be reduced by approximately 2 to 4 acres if the Ninth Avenue Terminal is retained in its present condition, rather than a portion of it converted to open space as proposed by the project. The relevant acreages and percentages of new open space in the project and in the EPP should also be stated here. New open space in the project is stated as 19.25 acres, not 20.7 acres at V.37.</p>	GG-7
<p>III-16 The use of the name "Gateway Park" will cause confusion. The East Bay Regional Park District is planning a park by that name at the eastern touchdown of the new Bay Bridge at the former Oakland Army Base site. There is a commitment for a Public Benefit Conveyance from the government for that purpose. Having two parks with the same name in Oakland would cause confusion.</p>	GG-8
<p>III-18 Maintenance of the open space by a public agency is critical. The alternative of a project homeowners association or any kind of agency which is operated by the ultimate owners will work to the disadvantage of the public</p>	GG-9

generally. There would likely be a tendency to privatize the public open space by limiting access to certain hours and limiting activities to those that are of special interest to the residents; perhaps, for example, tennis courts may be installed in lieu of turf areas for pickup soccer games. How will this outcome be avoided? What measures are recommended to guarantee that the area will be truly public?

GG-9
(CONT.)

There will be a special problem at the Jack London Aquatic Center which now has reasonably adequate parking. The proposal to build apartments and commercial space next door on parcel M is likely to interfere with JLAC usage. Apartment residents and commercial clients will probably use parking space now used by JLAC. Proposed mitigation: eliminate construction on Parcel M; retain it as open space, thereby opening up of Estuary Park to Embarcadero as proposed by the EPP.

GG-10

III-18 What else would need to be financed by the selected maintenance financing scheme? Shuttle service? Maintenance of the pilings and wharf of the Ninth Avenue Terminal? The terminal itself? Marinas?

GG-11

III-18, -19 “However, it is possible that in the future, upon further review and approval by the City of Oakland, entities could sponsor such organized events in new public spaces created by the project.” One of the goals of the EPP was to provide space for festivals, but that vision is lost in this project. It proposes multi-story housing adjacent to any possible festival location. Thus, the mistake of locating Estuary Park next to Portobello, thereby terminating festivals that used to held there on Labor Day, will be repeated. Where are the most feasible sites to remove proposed housing so as to make festivals possible? Parcels N and M should be considered for elimination as housing sites for this reason.

GG-12

III-19 “There would especially be improved public opportunities for recreational sailing, rowing, canoeing and kayaking.” What facilities are to be provided for these activities, and where would the boats be launched? How would maintenance of such facilities be financed?

GG-13

III-19 “The layout of the streets would lead to the water and open space areas, and each street would be landscaped and provide on-street parking for convenient use by the public.” Actually, most streets would have curves in them, blocking views of the water from Embarcadero. This is contrary to the EPP. Suggested mitigation: redesign streets.

GG-14

Whether parking is convenient for use by the public depends on whether it is adequate, which, as discussed later, it is not.

III-22 et seq. Construction of the parks and Bay trail is delayed until as late as 2018. Is there some way to phase these areas in sooner? The Bay Trail is particularly important because other segments in Oakland and the East Bay are now being completed.

GG-15

III-24 “Provide a mixture of dwelling sizes and types, including rental and for sale units.” What is the proposed breakdown of rental units versus for sale units? What is the projected sale price of the for-sale units and the projected rents of the rental units? | GG-16

III-25 “The project minimizes the use of public funds.” But is this in the public interest when the City has not only adopted the EPP, but the voters approved Measure DD by an overwhelming 80% majority. That measure called for \$53 million for waterfront improvements. The City Council has allocated up to over \$14 million for expanding Estuary Park to Embarcadero by demolishing the Jetro Cash and Carry warehouse. Estuary Park was specifically mentioned in the DD ballot measure, as was Meadow Park, renamed Channel Park by the developer. That park is also significantly reduced in size in the developer’s plan. Thus failing to develop these two parks as shown by the EPP not only violates the EPP but is contrary to the spirit of Measure DD. Assuming DD funds are not spent in the project area, where will they be spent? | GG-17

III-28 “The City’s approval of the project will be conditioned upon subsequent compliance with the provisions of SB 1622.” That legislation requires an exchange of lands from which the public trust is lifted for other lands. In order to make sure that such an exchange takes place, the condition should provide that the exchange is completed before the project can proceed. The Port is continuing to offer for sale Estuary lands which might be suitable for the exchange. Unless there is a condition precedent, the exchange language may become meaningless. SB1622 requires public meetings to review the exchange. When will they take place? Before project approval? | GG-18

IV.A-7 LUTE Policies. Buildings “should respect scenic view sheds and enhance opportunities for visual access of the waterfront and its activities.” But the numerous bulky buildings of the project will block the waterfront and will continue to hide Estuary Park as a “stealth” park. Would a smaller number of buildings and construction of slender towers rather than bulky six- to eight- story buildings open up views of the water from the Embarcadero? Alternate designs with simulations should be included in the EIR. | GG-19

Developments should avoid the “feeling of ‘gated’ or private communities.” In fact, however, the project will do just that. | GG-20

“...[D]evelopments along the estuary should be lower intensity than Jack London Square.” The density is significantly higher. | GG-21

IV.A-9 “The City would evaluate the appropriateness of the ‘node to higher intensity’ ...and would assess the extent to which the project [provides] ‘an open feeling at the marina, view opportunities, and public access along the shoreline.’ This DEIR proposes to serve as a substitute for the Specific Plan called for by the EPP, yet carefully avoids expressing an opinion on these important open space | GG-22

density and view issues. Why? No such reluctance is noted when listing the alleged positive aspects of the project: for example “would allow for additional and expanded views of open spaces, ““new development would not be detrimental to adjacent residential communities,” and would “enhance Fifth Avenue Point.”

GG-22
(CONT.)

IV.A10 “...The project would encourage public access....” But what about parking? Unless parking is adequate for residents, commercial users and park visitors, the access would be greatly limited.

GG-23

“A public shuttle service...would be incorporated into the development...” How is this to be financed? A promise of a transit shuttle is meaningless unless a permanent long term method of financing the operation of the service is included in the project. Is the maintenance cost to be included in a proposed assessment to be paid by the ultimate owners? If so, will the owners be able to decide they don’t want to pay for the shuttle service, in which case it will be shut down? How can that outcome be avoided?

GG-24

IV.A-11 Permitted floor area ratio is explained but not compared with that proposed by the EPP in an understandable way. For example, at build-out will the project have four times or ten times the floor area likely under the EPP?

GG-25

IV.A-13 The project “would be consistent with most Estuary Plan policies”. This conclusion is unreasonable.

First, the EPP envisioned this area to be “the major recreational destination in the City” EPP 86. That vision is lost in the project. Second, Estuary Park was to be extended to the Embarcadero, no longer hiding as a “stealth” park. The importance in opening up the estuary to the public is minimized in the DEIR. Third, there is about a 40 percent reduction in the amount of new open space is the EPP as compared to the project. Moreover, the open space will be further reduced if the alternative of continuing usage of all or one-half of the Ninth Avenue Terminal is adopted. Fourth, the density of the project is far greater than that anticipated by the EPP. A readily understandable explanation of these density differences is needed here. Fifth, the dominant purpose called for by the EPP, recreation/commercial, is entirely different from that of the project, residential. Sixth, the EPP opened the water to the public by designing all streets leading to the water, so that the estuary would be visible from the Embarcadero; the project cuts off views by curves in most streets as pointed out above. Seventh, given much greater density, parking will be a problem for park users unlike the proposals of the EPP. Eighth, the EPP called for creation of areas for festivals; the project, with its 3,100 residential units, would rule out festival use. Ninth, the EPP called for creating a Specific Plan, a process which would have provided extensive input by the public, the Planning Commission and the City Council in the planning process; the project proposal avoids that important step.

GG-26

“The City decision makers will be required to make a determination ... as to whether the new land uses... are appropriate....” Here again, since this document and the process of its adoption purport to be a substitute for a Specific Plan, there should be a specific recommendation.

GG-27

IV.A-16-17 Specific Planning. This section argues that the DEIR process is an adequate substitute for the Specific Plan called for by the EPP. But the conclusion that the project is “based on basic principles of the Estuary Plan” is not sustainable as pointed out above. Also, the policies were not “developed through a focused planning effort of community and public partnership”. In fact, the project plan was developed before there were any City-sponsored public hearings. Also, a Specific Plan would presumably be carried out to focus on the optimal development of the Oak to Ninth area, not as a response to a specific developer’s proposal. The procedure adopted has had the effect of preventing input of the public, the Planning Commission and the City Council that the Specific Plan preparation would have provided.

GG-28

“The City and the Port of Oakland have elected not to prepare a Specific Plan.” But preparation of a Specific Plan is mandated by the EPP, which is part of the General Plan. The General Plan is amended by the City Council only after public hearings by the Planning Commission and the Council. Who made this “election” and under what authority? Was a resolution to this effect passed by the City Council? Was the Planning Commission notified of this election?

An analysis of this issue by Leal Charonnat is attached and incorporated herein. The EIR should respond to the points it raises.

GG-29

IV.A-20 “The project would not conflict with OSCAR policies.” But as pointed out at IV.A-19, OSCAR calls for 10 acres of total parkland per 1,000 residents. 5,000 residents are anticipated in this project; therefore 50 acres of new parkland would appear to be required to meet OSCAR guidelines. The developer is proposing 20.7 acres of new parkland, to be reduced by two to four acres if the Ninth Avenue Terminal is wholly or partially preserved. While the OSCAR’s goals cannot be reached in most projects in Oakland, a much closer approximation is possible and should be achieved in this site, which is publicly owned and now devoid of residential uses. The DEIR finds no conflict by assigning all the park acreage to local-serving parkland. Is that reasonable? As conceded at IV.L-8, the area will attract regional use, not just local use. This issue is particularly important because of the meager amount of local-serving parkland available in Oakland, 1.33 acres per 1,000 population City-wide and only 0.78 acre per 1,000 population in the San Antonio District.

GG-30

IV.A-31 refers to the Bay Plan requirement of adequate public parking for marinas. Will the parking be adequate, especially for those bringing boats to launch into the Estuary?

GG-31

IV.A-32 The Bay Plan requires that views of the Bay be maintained, especially from “new streets to maintain and provide good views of the Bay” for travelers, particularly areas below roads coming over ridges and providing a first view of the Bay. The continued hiding of Estuary Park is particularly violative of this provision. So is the hiding of most of the Estuary by a mass of buildings and streets that curve, thereby blocking views of the water.

GG-32

IV.A-33 The exchange agreement required by SB 1622, the Perata legislation. As pointed out above, the compliance should be required before the project begins construction. If the condition is for “subsequent compliance,” how is that to be enforced?

GG-33

IV.A-35 Impact on established community. The most effective means of mitigating the effect of project buildings on the existing community at Fifth Avenue and also Portobello is to eliminate portions of the project close to them, specifically sites N and M. Such mitigation should be evaluated.

GG-34

IV.A-36 “The project would be consistent with most applicable General Plan policies.” In fact, the project conflicts with the EPP, among other policies, as pointed above.

GG-35

IV.A-37 General Plan Use and Development Standards. This discussion pointing out the inconsistencies with the General Plan as to residential use, density (apparently four times the density allowed by current law) should also be considered and stated in the section above “Project Consistency with Estuary Plan policies” starting at IV.A-13. There should also be an explanation of the difference in Floor Area Ratio (FAR) of the project as compared to that proposed by the EPP.

GG-36

IV.A-41 Proposed Mitigation: “the project shall adhere to the regulations and standards of allowable uses, etc....” A more effective mitigation to address impacts on adjacent residential properties, including the Fifth Avenue Point and Portobello, would be elimination of residential units west of Fifth Avenue. This alternative should be addressed in the EIR.

GG-37

IV.B-55 Transit Shuttle Service. See comment of IV.A-10. If it is to be financed by an assessment district on the ultimate owners, what other services will be included in assessments, such as maintenance of parks, Ninth Avenue Terminal wharf (with or without a park in lieu of the demolished terminal building), marinas, etc? Will the total assessments remain within a reasonable range? What will be the likely annual assessment on the typical condominium owner? Will those in the affordable units pay less?

GG-38

IV.B-62 Suggested additional mitigation measure B.7. Design all streets east of the proposed Gateway Park so they provide views of the estuary from the Embarcadero.

GG-39

IV.B-70 et seq. Parking Supply. There should be discussion of the number of parking spaces required for park users, the effect on parking of preservation of the Ninth Avenue Terminal, and a comparison on proposed parking under the project and the EPP. Parking needs to be addressed in the context of the likely income of the residents, which in turn relates to the likely sales prices and rentals of the units. Those with more income are likely to have more vehicles, and also boats which they may choose to store in their assigned parking area. What is the actual number of vehicles per dwelling unit in comparable Oakland projects? It is probably considerable more than the projected urban standard of 0.85 per unit. What is to prevent residents to demand that there be a permit parking system similar to what has been in place in other parts of the City? That would result in the reduction of spaces for park users and commercial users. Where will employees park? Will parking be placed in the open space areas? If so, doesn't this detract from that area as usable open space? To build this project with a shortfall of as much as 1,736 spaces is to effectively exclude many members of the public who are not residents of the project from using the proposed parks.

GG-40

IV.F-11-16 "According to [ABAG] maps, the project site is in an area expected to have very high potential to experience liquefaction. Liquefaction...was cited as a concern...with the area known as the Crowley Yard identified with the most potential". The obvious mitigation measure is simply not to build on the most sensitive areas, apparently those west of Fifth Avenue. Please discuss this mitigation measure.

GG-41

What measures will be provided to protect ultimate owners in the event of damage by liquefaction or settlement? Will a condition be included to require earth movement insurance, excluded by most homeowners' policies? Will there be a condition to require the developer to waive the 10-year statute of limitations which normally shields developers from claims arising 10 years after completion of construction?

GG-42

IV.G-19-20 There will be an 11-year construction period and the project sponsor estimates that the number of piles will average 675 per parcel on the 13 parcels with a duration of 12 weeks per parcel. What is the anticipated and average and worst case effect on residents being exposed to this lengthy and extremely noisy environment? Will there be hearing loss or other health effects on those living nearby? Suggested mitigation – no construction west of Fifth Avenue.

GG-43

IV.I-24 Compensatory mitigation includes "additional wetland creation or enhancement or offsite mitigation." This is vague. Where will the additional wetland creation or enhancement take place? And how extensive would it be? How will its maintenance be financed?

GG-44

IV.K-6-7 The DEIR compares the project with the "existing esthetic quality of the area". In this, and as in all areas in this Section IV, there is a need to compare not only the existing condition, but the condition that would prevail if the EPP were

GG-45

followed. The conclusion that “the project would not result in a demonstrable negative change in the visual character of the project site or its surroundings” fails to address the projected positive changes envisioned by the EPP. The same comment applies to the conclusion that the project “would not adversely affect scenic vistas”.

IV.K-10 et seq. The simulations demonstrate that the bulk of the buildings will block views of the Estuary. However, there needs to be a comparison with the EPP. A mere comparison of the site in its present run-down condition and the project fails to give any recognition of the potential of the EPP. Simulations are suggested to be added showing the views and the building configuration anticipated in the EPP and the proposed DEIR alternatives. Also, simulations should show additional alternatives with possible slender towers in lieu of numerous bulky buildings so as to enhance view and access to the water.

GG-45
(CONT.)

IV.K-39 “Therefore, the project’s effect on scenic vistas would be less than significant.” Here again, there is no attempt to compare the project and existing conditions with the EPP. One of the EPP’s purposes was to open up the waterfront and greatly enhance scenic vistas, a vision largely lost in the project.

“The series of connected parks and open space proposed by the project would be region-serving as well as local-serving....” This is a reason for applying the service standard of 10 acres of parkland per 1,000 residents or 50 acres, rather than only 4 acres per 1,000 residents for local-serving parks (see comments above).

GG-46

IV.L-8 Measure DD. The discussion fails to mention (1) that the DD measure ballot statement specifically referred to Estuary Park and Meadow Park, renamed Channel Park in the project, and (2) that the City has allocated up to \$14 million for improvements at Estuary Park, including demolition of the Cash and Carry warehouse building. Waterfront activists supporting DD thought they were going to get at least an expanded Estuary Park and a new Meadow Park as set forth in the EPP.

GG-47

IV.L-13 Schools. “Grade school children...living in the project site would attend La Escuelita and Franklin Elementary Schools”. Is Escuelita one of the schools targeted for closure by the current school administration either for low attendance or for redevelopment? If so, does Franklin have adequate space to accommodate these students? How will Oakland High School accommodate an additional 620 new students? How will middle school students get to Westlake Middle school, which is 2.4 miles from the project?

GG-48

IV.L-16 “... [T]he project would provide approximately 60% of the almost 36 acres of total new open space...delineated in the Estuary Policy Plan EIR.” This is another way of saying that 40% of the proposed EPP open space is eliminated by the project.

GG-49

While the EPP did not designate park and open space by acreage, this 40% loss is readily visible by simply comparing the project visuals with those of the EPP. Acreages were indicated in EPP drafts (41.5 acres total including existing Estuary Park). EPP draft of February 1998, page 97. The footprint of the outlined open space of that draft was carried forward substantially in the final EPP.

IV.L-17 Table IV.L-2 compares the proposed park acreage Estuary Policy Plan EIR and proposed project. Footnote “a” is wrong. It states “the area defined as Open Meadow Park in the Estuary Policy Plan includes the 6-acre Fifth Avenue Point community, an area not included in the proposed project”. The Fifth Avenue Point is 6 acres plus a 28,000 square foot parcel (IV.A-5). Rather than absorbing the Fifth Avenue Point into Open Meadow Park, the EPP policy OAK-4.1 provides “preserve and expand the existing Fifth Avenue Point community....” EPP page 93. [Emphasis added] The graphics of the EPP are to the same effect. The illustrative open space key map figure III-10 (EPP, p. 87) shows the Fifth Avenue Point area extending eastward, and areas west of a straightened Fifth Avenue as parks and open space. Fifth Avenue was planned to be straightened to remove a curve at E.8th street and align it with Fifth Avenue north of E.8th street. Perhaps ½ acre or so of the Fifth Avenue Point area is designated in the EPP for extension of the Bay Trail; otherwise it remains intact.

GG-49
(CONT.)

The source of this error is noteworthy. Table IV.L-2 states the source as “Estuary Policy Plan EIR, table III.D-1 and Harbor Bay Partners 2005.” That EIR lists park acreage but makes no reference to the Fifth Avenue Point community. The obvious source, then, is Harbor Bay Partners, the developer. Subject to criticism that the project wipes out much of the open space called for by the EPP, the developer attempts to minimize the amount of that loss by providing misinformation.

IV.L-17 “... [T]he 20.7 acres of new park and open space area proposed by the project would be consistent with the objectives of....” various city plans including the EPP. See above comments.

GG-50

IV.L-18 “The project would carry out a number of projects identified in the November 2002 Measure DD local bond measure.” This comment fails to note what is not being done – the extension of Estuary Park to the Embarcadero, the creation of parks in all areas west of Fifth Avenue, and the creation of Crescent Park. These were all part of then-adopted EPP at the time of the November 2002 election.

GG-51

V-1 “Feasible” alternatives are defined as an alternative that takes into account, among other factors, economic factors. Have the drafters done an economic analysis of the project, and also of the alternatives? If so, it is not attached as an appendix and should be. In any event, have the drafters determined that each of the alternatives is economically feasible?

GG-52

While the DEIR may assume the demolition of the Ninth Avenue Terminal in alternative 1-B “No Project/Estuary Policy Plan,” the EPP did not. It did, however, call for further study by the Port and the City to determine the feasibility of reusing the terminal. EPP page 91. This was one reason for a Specific Plan proposal.

GG-53

The comparison of open space depicted by the EPP and by the project is stated as 41 acres versus 28.4 acres. But since the project places open space on the Ninth Avenue Terminal site, the 28.4 figure would be reduced by another 2 to 4 acres if the Ninth Avenue Terminal were retained.

GG-54

V-19 Alternative 2. This alternative comes close to the vision of the EPP in terms of park and open space. The extension of Fourth Avenue as a loop towards the estuary, thereby providing separation of the housing from Shoreline Park is an imaginative solution. It invites people to visit the park and helps to avoid the “gated community” aspect of the project. The other streets east of Gateway Park, however, should lead to the water so as to open up vistas from Embarcadero. To approximate the EPP, buildings west of Fifth Avenue should be eliminated.

GG-55

The reduction in density as compared to the project greatly reduces many of the negative environmental effects of the project. The developer would be hard pressed to argue that this alternative is financially unfeasible because at an earlier stage it proposed 1,700 units with 200 affordable units, as compared to the current proposal for 3,100 units with zero affordable. Even 1,800 units appear to be too dense for this site, walling off the Estuary from the Embarcadero. Alternate designs should be explored – and demonstrated by simulations – showing how views of the water can be opened with slender towers and fewer bulky view-blocking structures.

GG-55

Retention of the 1920’s but not the 1950’s portion of the Ninth Avenue Terminal is a good compromise, preserving the most historical portion of the building. To the extent that any open space is lost by preserving that portion of the building, it should be made up elsewhere on the site.

GG-57

V-29 et seq. Alternative 3. This alternative is desirable because it comes closest to the EPP vision as to open space, views and density. The street pattern invites one to the water. Views are not cut-off by curving streets. See comments below about the Ninth Avenue Terminal.

GG-58

V-38 Ninth Avenue Terminal. Preserving the entire Ninth Avenue Terminal, rather than just the 1920’s portion, has the great disadvantage of blocking views of the Embarcadero Cove and Coast Guard Island. It will also eliminate approximately two acres of open space under the project sponsor’s scheme. Under any scenario, lost open space should be made up elsewhere in the project.

GG-59

Retention of the terminal should be considered in the light of its possible use. Retaining it for its present use as a warehouse will add nothing to the vitality of the area. On the other hand, some of the Oakland Heritage Alliance proposals could

GG-60

provide a real spark to the neighborhood. Particularly appealing is that of an art center like the Torpedo Factory Art Center of Alexandria, Virginia. Sculptors, painters, jewelry makers, glass blowers and other artists make their art work in public view there. It attracts 800,000 visitors a year and has revitalized an area with shops and restaurants that was previously a rundown industrial area. The EIR should consider such a use. What would be the needed parking for such a use or for other commercial uses of the building?

GG-60
(CONT.)

What is the remaining useful life of the terminal and the structure on which it rests? If the wharf and pilings must be replaced, who will bear the cost and how will it be financed? This issue must also be examined under the project's proposal.

GG-61

As to all the alternatives, there should be a chart which compares the density, building heights, and open space of each of the alternatives, and also that of the project so as to make easy comparisons.

GG-62

Stanzione, Margaret

From: Allen Pulido [apulido@ebparks.org]
Sent: Monday, October 17, 2005 11:43 AM
To: mstanzione@oaklandnet.com
Subject: Attachment to John Sutter's Comments re Oak to Ninth Ave Proj.



Leal Charonnat
Analysis.pdf (9...

Attached is Leal Charonnat's analysis as reference in John Sutter's comments emailed to you earlier today. A hardcopy has also been sent. Thanks,

Allen Pulido
Confidential Secretary
Board of Directors
East Bay Regional Park District
5610-544-2021

Comments and references provided by Leal Charonnat - September 7, 2005

DOCUMENT	PAGE OF QUOTE	REFERENCE QUOTE	COMMENT ON QUOTE
<p>Planning and Zoning Law – State of California</p>	<p>7 of 49</p>	<p>65351. During the preparation or amendment of the general plan, the planning agency shall provide opportunities for the involvement of citizens, public agencies, public utility companies, and civic, education, and other community groups, through public hearings...</p>	<p>Review of a draft EIR does not comply with this section of the California code. This section clearly states that the public is to have 'opportunities' in the 'preparation' of the general plan [or amendments], and this has not been done. The developer has only held 'show-and-tell' meetings, but these have never involved the public in the process.</p>
	<p>19 of 49</p>	<p>65361. The Legislature finds and declares as follows: (a) That the preservation of open-space land, as defined in this article, is necessary not only for the maintenance of the economy of the state, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of scenic beauty, for recreation and for the use of natural resources. (b) That discouraging premature and unnecessary conversion of open-space land to urban uses is a matter of public interest and will be of benefit to urban dwellers because it will discourage non-contiguous development patterns which unnecessarily increase the costs of community services to community residents. (c) That the anticipated increase in the population of the state demands that cities, counties, and the state at the earliest possible date make definite plans for the preservation of valuable open-space land and take positive action to carry out such plans by the adoption and strict administration of laws, ordinances, rules and regulations as authorized by this chapter or by other appropriate methods. (d) That in order to assure that the interests of all its people are met in the orderly growth and development of the state and the preservation and conservation of its resources, it is necessary to provide for the development by the state, regional agencies, counties and cities, including charter cities, of statewide coordinated plans for the conservation and preservation of open-space lands. (e) That for these reasons this article is necessary for the promotion of the general welfare and for the protection of the public interest in open-space land.</p>	<p>Open space is such a priority with the state code that a specific law is created that emphasizes the creation of open space. This is important because a major focus of the EPP is open space for large community gatherings.</p>

GG-63

Comments and references provided by Leal Charonnat - September 7, 2005

DOCUMENT	PAGE OF QUOTE	REFERENCE QUOTE	COMMENT ON QUOTE
Planning and Zoning Law – State of California	19 of 49	65562. It is the intent of the Legislature in enacting this article: (a) To assure that cities and counties recognize that open-space land is a limited and valuable resource which must be conserved wherever possible. (b) To assure that every city and county will prepare and carry out open-space plans which, along with state and regional open-space plans, will accomplish the objectives of a comprehensive open-space program. (Added by Stats. 1970, Ch. 1590.) 65563. On or before December 31, 1973,	Again, specific state law puts an emphasis on open space.
	10 of 49	65359. Any specific plan or other plan of the city or county that is applicable to the same areas or matters affected by a general plan amendment shall be reviewed and amended as necessary to make the specific or other plan consistent with the general plan. (Repealed and added by Stats. 1984, Ch. 1009.)	A Specific plan, when developed, shall be done in the same manner as the General Plan is developed – with public input in the creation of the plan, no just in response to an EIR.

GG-63
(CONT.)

Comments and references provided by Leaf Charonnat - September 7, 2005

DOCUMENT	PAGE OF QUOTE	REFERENCE QUOTE	COMMENT ON QUOTE
<p>Estuary Policy Plan</p>	<p>105 of 137</p>	<p>POLICY OAK-5: INITIATE MORE SPECIFIC PLANNING OF THE ENTIRE OAK-TO NINTH DISTRICT. The Oak-to-Ninth district is large and diverse, with several unique, complicated issues that dominate its real development potential. It should be planned in sufficient detail to identify all potential issues, and to understand the options available to address these issues in a timely manner. A Specific Plan should be prepared prior to development. Planning should be based on a strategy which analyzes the area comprehensively and which accounts for the constraints imposed by subsoil environmental conditions. Transformation of the district will require that several outstanding issues be resolved simultaneously. Development feasibilities should be analyzed, phasing of improvements should be identified, and a funding strategy to finance and implement recommended open space should be addressed. These require that a realistic development program and site plan be developed.</p>	<p>This section clearly states that a Specific Plan be done prior to development. The fact that the</p>

GG-65

Comments and references provided by Leal Charonnat - September 7, 2005

DOCUMENT	PAGE OF QUOTE	REFERENCE QUOTE	COMMENT ON QUOTE
Draft EIR	111 of 955	Additionally, the process to prepare a Specific Plan is the same as that required for a General Plan (or amendments thereto) and would required opportunities for broad community and public agency involvement through public hearings (Government Code Section 65453 and 65351).	The developers process of showing his development plan to various people at various times does not meet the requirements of Section 65351 that requires 'opportunities...through public hearings'. [see Planning and Zoning Law]
	111 of 955	Additionally, the process to prepare a Specific Plan is the same as that required for a General Plan (or amendments thereto) and would required opportunities for broad community and public agency involvement through public hearings (Government Code Section 65453 and 65351).	This paragraph clearly states that the process must follow the 'same' as that for a General Plan -- however the EIR does not state that the 'preparation' of the proposed project was done this way
	110-111 of 955	Statutory requirements mandate that a Specific Plan must specify (in text and/or diagram) the following in detail: ...[see list]...Each of the applicable Specific Plan requirements listed above is described in detail in this EIR.	The preparers of the draft EIR are clearly aware of the statutory requirements required of a Specific Plan, the required public participation is ignored. By not involving the public in the preparation of these components is a fatal flaw.
	125 of 955	Consistent with state law, the CCERP requires that at least 15 percent of all housing developed in the CCERP Project Area by non-Agency entities be affordable to very-low-/low- and moderate-income households. Of these affordable units, at least 40 percent must be affordable to very-low-income households. The Redevelopment Agency is obligated to meet this provision for the CCERP Project Area in the aggregate, over a 10-year period.	The statement shows that there is a tremendous amount of 'affordable' housing based on the proposed 3000+ units that must be created in the redevelopment area (CCERP.)
	128 of 955	Footnote #18 - Pursuant to the Oakland General Plan, as amended June 2005, the Oakland General Plan recognizes that it contains policies that may in some cases compete with each other, and that decision-makers must determine whether, "on balance, the project is consistent (i.e., in general harmony) with the General Plan." Further, "the fact that a specific project does not meet all General Plan goals, policies, and objectives does not inherently result in a significant effect on the environment within the context of [CEQA]" (City of Oakland, 2005a).	This footnote calls out legislation just passed [June 2005] that allows a project in conflict with the General Plan that would normally by CEQA standards to be significant to, instead, be allowed.

GG-65
(CONT.)

GG-66

GG-67

Comments and references provided by Leal Charonnat - September 7, 2005

DOCUMENT	PAGE OF QUOTE	REFERENCE QUOTE	COMMENT ON QUOTE
Draft EIR – by City of Oakland	110 of 995	<p><i>Specific Planning.</i> The City and Port of Oakland have not elected to prepare a Specific Plan for the Oak-to-Ninth District as called for in the Estuary Plan. Both agencies determined that 1) the Oak to Ninth Project application (with the modifications proposed in this EIR), 2) the analysis provided in this EIR, and 3) 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 Estuary Plan (<i>Policy OAK-5</i>). Thus together, these elements (project application, environmental analysis, and public review process) are considered functionally equivalent to the preparation and review of a Specific Plan.</p>	<p>Despite the draft EIR assertion that the EIR is a replacement for the Specific Plan process, it is not. The California Planning and Zoning code [see elsewhere] clearly states that the public is to be involved in the 'preparation' of the Specific Plan. Responding or commenting on an EIR of a project created solely by and proposed by a developer is not the same by any means. Further, there was no public disclosure of the city and port decision to scuttle the Specific Plan process [although the comment in the draft EIR clearly shows they are aware of a separate Specific Plan process when the draft EIR states they "have not elected to prepare a Specific Plan as called for in the Estuary Plan."].</p>

GG-68

Comments and references provided by Leal Charonnat - September 7, 2005

DOCUMENT	PAGE OF QUOTE	REFERENCE QUOTE	COMMENT ON QUOTE
REQUEST FOR DEVELOPER QUALIFICATIONS	2, 2, 3, 3, 4, 4, 5, 6, 6, 7, 11, 11, 14, 16, 16, 17, 18, 24, 24, 25, 25, 27, 27, 27, 27, 30, 30, 30, 30, 31, 31, 31, 31, 31, 31, 31, 32, 32, 34, 36, 37, 38, 39, 39, 39, 39, 40, 40, 40, 40, 40, 40, 42, 42, 42, 42, 97, 98, 98, 99, 99, 101, 102, 102, 102, 103, 104, 104, 104, 106, 106 of 114	"through the Specific Plan process"	Time and again, the port's RFQ cited the Specific Plan Process over and over again for a total of 71 times -- clearly a Specific Plan process was intended.
Harbor Partners Response to RFQ	40 of 50	We are looking forward to the opportunity of working creatively with the Port, City and community at large during the Specific Plan process. The development concept presented in this proposal has not been refined to plan level detail, as it is the belief of Oakland Harbor Partners that the next step must be preceded by an outreach program to develop input from the City, the Port and the community-at-large.	No such outreach as expressed was ever done.
	44 of 50	Oakland Harbor Partners has commissioned ROMA Design Group, an internationally recognized design firm specializing in waterfront redevelopment to lead the Specific Plan process.	The developer clearly intended to do a Specific Plan with the statement that they 'commissioned' a consultant for the work.
	44 of 50	The Specific Plan process affords us the opportunity to create a meaningful dialogue with the Oakland community regarding the future of this key waterfront asset.	
	44 of 50	Community outreach will be an important aspect of our Specific Plan process. At the outset of the planning process, we will undertake a community-wide symposium with key individuals and groups who have a stake in the future of the area, including community and business representatives, property owners, tenants, members of the 5th Avenue Point community, policy makers, etc.	No such outreach was ever done. And it is unclear whether the city or port ever publicly stated that the Specific Plan process was to be abandoned.
		For the Oak to Ninth area, the Specific Plan will include the entire 120 acre planning area on both sides of the Embarcadero.	Only the 60 acres of the developers project are Specific Plan of all 120 acres would have come up with a different plan, one that is not included in the limited EIR of the developer's project.
CA Planners Guide Specific Plan - Part One	4 of 4	"a specific plan must be prepared, adopted, and amended in the same manner as general plans (§65453)"	The process for creating the specific plan must follow the same procedures as that of a General Plan, which was not done for the 'specific plan' for this project.

GG-69

DOCUMENT	PAGE OF QUOTE	REFERENCE QUOTE	COMMENT ON QUOTE
<p>THE PLANNING AND ZONING LAW</p>	<p>15 of 49</p>	<p>65453. (a) A specific plan shall be prepared, adopted, and amended in the same manner as a general plan,</p>	<p>The process the developer used to create the project plan was not the same manner as that used by the city of Oakland to develop the general plan. No public meetings were involved. Commenting on an EIR on a plan after the fact it was created is not the same as participating in the preparation process.</p>
	<p>19 of 49</p>	<p>65561. The Legislature finds and declares as follows: (a) That the preservation of open-space land, as defined in this article, is necessary not only for the maintenance of the economy of the state, but also for the assurance of the continued availability of land for the production of food and fiber, for the enjoyment of scenic beauty, for recreation and for the use of natural resources. That discouraging premature and unnecessary conversion of open-space land to urban uses is a matter of public interest and will be of benefit to urban dwellers because it will discourage non-contiguous development patterns which unnecessarily increase the costs of community services to community residents. (c) That the anticipated increase in the population of the state demands that cities, counties, and the state at the earliest possible date make definite plans for the preservation of valuable open-space land and take positive action to carry out such plans by the adoption and strict administration of laws, ordinances, rules and regulations as authorized by this chapter or by other appropriate methods. (d) That in order to assure that the interests of all its people are met in the orderly growth and development of the state and the preservation and conservation of its resources, it is necessary to provide for the development by the state, regional agencies, counties and cities, including charter cities, of statewide coordinated plans for the conservation and preservation of open-space lands. (e) That for these reasons this article is necessary for the promotion of the general welfare and for the protection of the public interest in open-space land.</p>	<p>Open space is crucial to cities, California Planning code and the EPP clearly designated this area as a major component of Oakland's open space - which this project ignores. Because the specific plan process was bypassed, section 65561 has been completely ignored, not only by the developer, but by the EIR. This is a Significant Impact that cannot be mitigated - the elimination of open space use - that should negate this project. Only if a true and proper Specific Plan process is used could this plan be adopted.</p>

GG-70

GG-71

Comments and references provided by Leal Charonnat - September 7, 2005

OTHER COMMENTS			
DOCUMENT	PAGE OF QUOTE	REFERENCE QUOTE	COMMENT ON QUOTE
Draft EIR	129 of 955	Impacts on 5 th Avenue Community – Use setbacks, landscaping to reduce impacts to less than significant	Impact is not reduced to less than significant. The EIR does not address incompatible uses – i.e., artist shops vs. residential units.
Sierra Club Yodeler July-August	1 of 1	Comments by John Sotter for Sierra Club – see article.	The draft EIR does not address the plain fact that open spaces abutting high-rise residential is in DIRECT conflict with large public use of such space, and that the EPP clearly identified this area as the location for large public gatherings that is to serve the entire city.

GG-72

GG-73

Letter GG – John Sutter

- GG-1 The comment is noted and speaks to the extent of the letter’s comments. See Master Response A regarding preparation of a specific plan.
- GG-2 The comment states that because the Estuary Policy Plan is part of the City’s General Plan, all of the various issues discussed in the DEIR should be compared to the Estuary Policy Plan. Consistent with CEQA Guidelines Section 15125(e) (and as discussed in Response to Comment U-2), Chapter V of the DEIR provides an analysis of Alternative 1B (No Project / Estuary Policy Plan) that compares the proposed project to the “potential future conditions” that could occur with implementation of the Estuary Policy Plan. The environmental effects of the No Project / Estuary Policy Plan Alternative are discussed on DEIR pp. V-14 through V-19 for each environmental topic addressed in DEIR Chapter IV (Setting and Impact Analysis), Sections A through M. As provided for by CEQA Guidelines Section 15126.6(d), the analysis is discussed in less detail than the analysis conducted for the project, however, sufficient information is provided to allow “meaningful evaluation, analysis, and comparison with the proposed project.” A comparative matrix of the impacts of the project and the alternatives is provided in Table V-5 starting on DEIR p. V-42.
- GG-3 The purpose of an EIR is to evaluate and identify potential significant environmental effects that may result from the project, to identify feasible mitigation measures to reduce or avoid those impacts, and to identify and evaluate alternatives to the project. Pursuant to CEQA Guidelines Section 15121, the EIR is an informational document intended to “inform public agency decision-makers and the public generally of the significant environmental effect of a project, identify possible ways to minimize the significant effects, and describe reasonable alternatives to the project.” It is not the purpose of an EIR to “justify” a project, and the DEIR for the proposed project was not prepared with that intent.

The following addresses the comment’s three principal objections to the project:

- 1) Preparation of a specific plan is addressed in Master Response A.
- 2) The comment is correct in that the project would provide a total of 20.7 acres of new open space, which is approximately 40 percent of what was as analyzed in the Estuary Plan EIR and illustrated in the Estuary Policy Plan [DEIR p. IV.L-16 and Table IV.L-2. (The Estuary Policy Plan does not provide open space acreage assumptions.) City decisionmakers of the project will ultimately consider the adequacy of the proposed new open space acreage.
- 3) See Response to Comment B-8 and U-17 regarding impacts on views from the Embarcadero. The DEIR alternatives analysis includes a range of lower-density, lower-height alternatives to the proposed project. City decisionmakers will ultimately evaluate the project and the alternatives and determine the appropriateness of the

density proposed by the project. To the extent that the density has physical environmental effects (e.g., traffic, noise, air quality, shadow), those effects are analyzed in the DEIR for consideration by the City in its deliberations.

- GG-4 Alternative 1B (No Project / Estuary Policy Plan) allows the impacts of the proposed project to be compared with that of future possible development under the Estuary Policy Plan. CEQA requires a no project alternative to allow decisionmakers to compare the impacts of approving the project with the impacts of not approving the project (CEQA Guidelines Section 15125(e)). See also Response to Comments GG-2 and U-2.
- GG-5 Since regulatory permits have not yet been issued for the project, no quantification of potential wetland impacts (if any) has been made for the project. The project includes shoreline enhancements, which would include the improvement or creation of marsh habitat. If additional restoration of wetlands is required by the regulatory agencies, the applicant will provide the restoration as conditioned in permits and agreements for the project.
- GG-6 Land ownership is not a CEQA issue pertaining to the physical environmental impacts of the project. See Response to Comment S-14 (second paragraph) and Master Response H, which discusses the project sponsor's intended responsibility for park maintenance and possible maintenance agreement mechanisms. The comment speculates about insufficient assessments and liability for fines and repairs, neither of which are issues relative to the physical impacts of the project under CEQA.
- GG-7 The new open space acreage proposed by the project is discussed in the DEIR in Chapter III (Project Description) under *Proposed Parks, Open Space and Trails*, (DEIR pp. III-12 through III-19) and is depicted graphically (acreage indicated) in DEIR Figure III-7 (DEIR p. III-17). The description of the open space acreage envisioned by the Estuary Policy Plan and a comparison to the project is appropriately presented in Section IV.L (Public Services and Recreation) under Parks and Recreation Impacts (DEIR p. IV.L-15 through IV.L-18) and in Chapter V (Alternatives) under Alternative 1B(No Project / Estuary Policy Plan).

The following corrections are made starting on DEIR p. V-28 (additions shown as underlined; deletions as ~~strikeout~~):

L. Public Services and Facilities

Compared to the project, the Open Space / Partial Preservation Alternative would introduce fewer new residents (2,938 compared to 5,270) and households (1,728 compared to 3,100⁴) to the project site. Approximately 32.933.4⁵ acres of new park would be added to the project site (compared to 20.719.25 new acres with the project), which would result 11.4 acres per 1,000 residents on the project site. Overall, this alternative would result in

the same less-than-significant impacts on public services and facilities that would occur with the project.

⁴ 1,658 households compared to 2,976 project households, with 4 percent vacancy rate applied.

⁵ Total 40.6 acres proposed, minus existing ~~7.772~~-acre Estuary Park and Jack London Aquatic Center

The following corrections are made starting on DEIR p. V-37 (additions shown as underlined; deletions as ~~strikeout~~):

L. Public Services and Facilities

Compared to the project, the Reduced Development / Preservation Alternative would introduce fewer new residents (881 compared to 5,270) and households (518 compared to 3,100)¹³ to the project site. Approximately 32.232.7¹⁴-acres of new park would be added to the project site (compared to ~~20.719.25~~ new acres with the project), which would result 37.1 acres per 1,000 residents on the project site. Overall, this alternative would result in the same less-than-significant impacts on public services and facilities that would occur with the project.

¹³ 497 households compared to 2,976 project households, with 4 percent vacancy rate applied.

¹⁴ Total 39.9 acres proposed, minus existing ~~7.772~~-acre Estuary Park and Jack London Aquatic Center

GG-8 The comment is noted. The project sponsor has assigned park names to the proposed open spaces primarily for purposes of planning and organization during the project review process, and the issue is not relevant to the physical impacts of the project under CEQA.

GG-9 See Response to Comment S-14 (second paragraph) and Master Response H.

GG-10 It is assumed that the comment mistakenly references Parcel M although Parcel N is intended (since it is adjacent to Jack London Aquatic Center and Estuary Park). Each of the alternatives (except Alternative 1A: No Project) presented in the Chapter V of the DEIR includes a scenario in which Parcel N would be redeveloped as open space. Prior to its action on the project, City decisionmakers will evaluate the project alternatives and ultimately reject the alternatives and adopted the proposed project, or alternatively elect one or a combination of the alternatives analyzed, instead of the project.

GG-11 The selected maintenance agreement mechanism for which the project sponsor would be responsible would pertain to open spaces, including pilings and wharf, marina facilities, and the private shuttle facilities. The City could retain maintenance responsibility for the Ninth Avenue Terminal Bulkhead Building (or Terminal shed if retained), however, this

- issue is not pertinent to the impacts of the project on the physical environment under CEQA, and the City would consider and ultimately establish final responsibilities through the required conditions of approval for the project or a Development Agreement between the City and the project sponsor.
- GG-12 See Response to Comment P-6 regarding Estuary Policy Plan goals for festival space. Alternative 3 (Reduced Development / Terminal Preservation) (DEIR p. V-31) considers no development of Parcel M or N. Alternative 1B (No Project / Estuary Policy Plan) (DEIR p. V-13) considers lesser development on Parcel M (compared to the project) and no development on Parcel N. Alternative 2 (Enhanced Open Space / Preservation) (DEIR p. V-23) considers no development on Parcel N. This range of alternative site developments is provided for consideration by City decisionmakers who will consider each alternative and the project prior to taking action.
- GG-13 See Response to Comment GG-11.
- GG-14 The statement in the DEIR is correct. See Response to Comment U-17 regarding street alignment and views to the water. See Master Response D, which discusses proposed parking management for park uses.
- GG-15 See Master Response G regarding phasing of open space and trail improvements.
- GG-16 The breakdown of proposed residential units by dwelling size, type, ownership type or rental is not pertinent to the evaluation of project impacts on the physical environment under CEQA. As discussed on DEIR p. IV.J-20 under *Housing and Population*, “The new housing would include one-bedroom, two-bedroom, and three-bedroom units, with the largest number being two-bedroom units. There would be a mix of types of housing including one-level condo/apartment-style units and flats, two-level townhouse-style units, and higher-ceiling loft-style housing. The project is anticipated to include both ownership and rental housing, with the majority of units being offered for sale. The project proposes market-rate housing covering a range of prices and rents depending on the size, type, and location of units as well as views and other amenities. The new housing would accommodate a mix of types and sizes of households.”
- GG-17 As discussed in Response to Comment GG-3, the project proposes less open space acreage than was analyzed in the Estuary Plan EIR and illustrated in the Estuary Policy Plan (DEIR p. IV.L-16 and Table IV.L-2) and that was addressed by Measure DD expenditures for the Oakland waterfront parks. This does not constitute a significant impact under CEQA. City decisionmakers of the project will ultimately consider the proposed project in light of the Estuary Plan and the objectives of Measure DD in the project area. The project sponsor’s proposal to develop 20.7 acres of new public waterfront parks along the Estuary does not preclude the future use of Measure DD funds for improvements in the project area.

GG-18 The comment discussing the “exchange” and its timing and conditions and Tidelands Trust issues has no bearing on and does not concern the environmental consequences of the project discussed in the DEIR. The comment pertains to a separate property transaction between the Port and the State Lands Commission that is not a part of the project, but that is already authorized by the Legislature to take place on behalf of the State.

Before the exchange may take place, the legislation established specific criteria that must be met. The Legislature delegated to the State Lands Commission the authority to approve and implement the property transaction if those conditions are met. Among other matters, the legislation provides direction regarding the “exchange parcel” and the exchange approval process. No sale or exchange of Port property may be approved without a public hearing before the Board of Port Commissioners as required by the Charter of the City of Oakland and SB 1622. Additionally, as stated on DEIR p. IV.A-33 under *California State Lands Commission, Public Trust Doctrine*, the City’s approval of the project will be conditioned upon subsequent compliance with the provisions of SB 1622, the Oak to Ninth Avenue District Exchange Act.

GG-19 See Response to Comment B-8 and U-17 regarding impacts on views from the Embarcadero. Also see Response to Comment GG-3, item 3, regarding alternative design scenarios.

GG-20 The comment speculates that the project would create the “feeling of [a] ‘gated’ or private community, but offers no justification or elaboration. The project would not be gated and would be situated on a grid of public streets. To the extent that the site arrangement conveys a private community within the project area, City decisionmakers will evaluate the appropriateness of the proposal as it considers the merits of the project design.

GG-21 As discussed in DEIR p. IV.A-9, the project would be “larger” than the approved Jack London Square redevelopment with respect to overall development square footage and building mass and heights. Alternatively, the Jack London Square redevelopment would have more intensive use activities, particularly daytime office and evening entertainment uses. As also indicated in the DEIR discussion, the City would evaluate the appropriateness of the “node of higher intensity” that the project would create and that the LUTE recognizes may be appropriate outside of Jack London Square.

GG-22 The DEIR is not intended as a substitute for a specific plan. The DEIR states conclusions about the project’s potential impacts as determined after objective evaluation of the project against the significance criteria. The analysis of Land Use, Plans, and Policies and its applicable significance criteria require more subjectivity than other more discrete topics of the environmental analysis. This is also necessary given the interpretive nature of many policies themselves. The City of Oakland has acknowledged this fact by amending its General Plan to state “the fact that a specific project does not meet all General Plan goals, policies, and objectives do not inherently result in a significant

effect on the environment within the context of CEQA,” and that the City must determine whether “on balance, the project is consistent (i.e., in general harmony with) the General Plan.”

Compliance with a particular policy is rarely a purely objective determination, and the DEIR makes every effort to acknowledge this where appropriate. In cases where the DEIR can reasonably assess that the project is consistent with a particular policy (particularly when supported by impact analysis provided elsewhere in the DEIR, such as view impacts), the DEIR makes such conclusions. Otherwise, the DEIR acknowledges that the policy addresses an issue beyond the purview of CEQA and discloses an appropriate level of information or conclusions (to be supplemented by other reports and analyses regarding non-CEQA aspects of the project) to assist the City in its project evaluation and balancing of policies.

- GG-23 See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management and public access measures.
- GG-24 See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit and shuttle service measures.
- GG-25 As stated on DEIR p. IV.A-11, the existing Estuary Policy Plan land use classification, Planned Waterfront Development-1 (PWD-1), allows a maximum FAR of 1.0 per private parcel (with a maximum average FAR of 1.0 on all remaining parcels). The proposed amendments to the Estuary Policy Plan prescribe maximum and minimum density instead of FAR to guide new development. This, together with maximum commercial square footages and building heights would delineate the physical limits or “mass” of each building on each parcel of the project site. Thus, there is no comparison of existing and proposed FAR. In response to the example question posed by the comment, at buildout, the proposed project would be approximately 4.7 million gross square feet (DEIR p. IV.A-9). The Estuary Policy Plan proposed 150,000 square feet of building area plus floor area for a 650-room hotel (excluding development in Fifth Avenue Point) (DEIR Table V-2 on p. IV-12).
- GG-26 Pages IV.A-13 through IV.A-17 of the DEIR discusses the project’s relationship to key Estuary Plan Policies and concludes that it consistent with most policies. (See also Response to Comment P-1.) To respond to the nine points raised in the comment:
- 1) It is reasonable to presume that the creation of 20.7 acres of new open spaces and park facilities and marinas on the Oakland Estuary, and that would be connected to the Bay Trail and ultimately Lake Merritt, in addition to the creation of approximately 200,000 square feet of retail/commercial space, could create a “major recreation destination in the City.” Consistent with the statements on page 86 of the Estuary Policy Plan (referenced by the comment), the project would create a “series of large open spaces, intended to provide for a wide variety of recreational experiences...transform [the waterfront area] from an industrial backwater into a recreational centerpiece...[provide

open spaces that] are intended to be connected to each other and to a larger city-wide system of trails and parks...and preserve[ing] the area's wetlands, wildlife habitat and other natural features.”

- 2) See Response to Comment GG-10.
- 3) See Response to Comment GG-3, item 2.
- 4) See Response to Comment GG-25 regarding comparative FAR. Regarding density, as stated on DEIR p. IV.A-11, the existing Estuary Policy Plan land use classification, Planned Waterfront Development-1 (PWD-1), allows a maximum density of 40 units per net acre. As shown in Table IV.A-1 on DEIR p. IV.A-39, the proposed amendments to the Estuary Policy Plan prescribe a maximum residential density for each development parcel, with the lowest density being approximately 0.72 units per net acre (on 1.2-acre Parcel E), and the highest density being approximately 161 units per net acre (on 2.08-acre Parcel H). The average density for all development parcels taken together would be approximately 122.5 dwelling units per net acre.
- 5) The proposed project is a mixed use development of residential, commercial/retail, parks and open space, and marina uses. The project would provide less open space and substantially more residential use than was envisioned by the Estuary Plan, however, it maintains significant “recreational and commercial” components envisioned therein.
- 6) See Response to Comment B-8 and U-17 regarding impacts on views from the Embarcadero.
- 7) See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management and public access measures.
- 8) See Response to Comment P-6 regarding Estuary Policy Plan goals for festival space.
- 9) See Master Response A regarding preparation of a specific plan.

Overall, the City will consider the information provided in the DEIR (and other project information beyond the DEIR) to assess whether “on balance” the project is consistent (i.e., in general harmony) with the General Plan

GG-27 See Response to Comment GG-22.

GG-28 See Master Response A regarding preparation of a specific plan.

GG-29 Comment is noted.

GG-30 See Response to Comment Q-8.

- GG-31 See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management measures pertaining to marina uses.
- GG-32 See Response to Comment U-17 regarding street alignment and views to the water. Also see Response to Comment GG-10 regarding the expansion of Estuary Park north to the Embarcadero.
- GG-33 See Response to Comment GG-18.
- GG-34 See Response to Comment GG-12.
- GG-35 See Response to Comment GG-26.
- GG-36 The discussion of allowable uses and density, which is prescribed by the Planned Waterfront District-1 land use classification are use and development standards, not policies, and are appropriately discussed under *General Plan Use and Development Standards* on p. IV.A-37 of the DEIR. See Response to Comment GG-25 regarding FAR comparison.
- GG-37 The residential development located west of Fifth Avenue Point is Parcel M. See Response to Comment GG-12.
- GG-38 See Response to Comment GG-11 regarding functions that would be financed by an assessment district or similar mechanism. Despite the fact that the assessment costs or payment scales are not known at this stage of project development, this issue is not pertinent to the potential impacts of the project on the physical environment under CEQA or the adequacy of the DEIR. It is anticipated that the assessments would be at a level to ensure the adequate maintenance of open spaces (and other facilities addressed by assessment) in a manner that meets or exceeds minimum standards provided by the City. These standards would be enacted through conditions of approval for the project or a Development Agreement between the City and the project sponsor.
- GG-39 The comment suggests additions to Mitigation Measure B.7 (DEIR p. IV.B-62) to design certain streets within the project area to provide Estuary views from the Embarcadero. Mitigation Measures B.7 responds to the project's significant impact of increasing the potential for conflicts among different traffic streams. (Impact B.7 on DEIR p. IV.B-57). The suggested mitigation does not address the significant impact of the project under CEQA (as determined by established significance criteria for *Site Access and Circulation* on DEIR p. IV.B-15).
- GG-40 Provision of parking for park users is part of the design of open space for the project; see Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management measures. Provision for parking for different uses are reviewed and approved in accordance with the City's Municipal Code requirements for off-street parking (Municipal Code Chapter 17.116). A request for a

permit parking system could be made, and the City would review its merits on the basis of prevailing conditions at the time of the request. However, as described in Master Response D, based on representative hourly accumulation patterns for different land uses, the proposed parking supply would fully accommodate the peak weekday parking demand at project buildout. On weekend days, there would be parking spaces available on-street and in the Parcel G Garage (which would be open to the public). All of these spaces could be used by recreational visitors to the site.

GG-41 The project calls for the area of the project site known as the Crowley yard or Pacific Dry Dock, generally the east shore of Lake Merritt Channel), to be improved as park or open space (Channel Park). On the remaining two proposed structures west of 5th Avenue (Parcels K and L), Mitigation Measure F.2 would, as with all of the proposed structures, require preparation of site-specific geotechnical investigations. These investigations would provide mitigation for potential liquefaction as required by the California Seismic Hazards Mapping Act, described on DEIR p. IV.F-11 and discussed within Mitigation Measure F.2 on DEIR p. IVF-16. Ultimately, by adhering to the design criteria of the most current California Building Code requirements and the requirements of the Seismic Hazards Mapping Act, the proposed buildings would reasonably be expected to protect the public from significant adverse effects as a result of liquefaction.

GG-42 The comment is raises a question about earthquake insurance that does not address the adequacy of the environmental analysis in the DEIR or pertain to an issue of the physical environment under CEQA. See also Response to Comment E-8.

GG-43 Mitigation Measures G.1a through G.1d shall be implemented to reduce construction noise at nearby sensitive receptors. Although the average and worst case effect on residents is not quantifiable, specific measures, including limiting pile-driving to between 8:00 a.m. and 4:00 p.m. (excluding 12:00 p.m. to 1:30 p.m.) Monday through Friday, would limit the exposure of nearby residents by restricting pile driving to times when many residents would be at work or school. For those residents in the vicinity during pile driving, Mitigation Measures G.1b and G.1c would reduce the magnitude of noise that would affect the residents.

Even with these mitigation measures, noise from pile driving is expected to be significant (see Response to Comment 27 for a description of potential health effects from environmental noise) for a short-term duration. Residents would not be exposed to significant nearby pile-driving for the 11-year construction period, but rather for the construction periods of adjacent parcels. Noise levels from pile driving on further parcels would be attenuated by distance and shielding from new and/or existing buildings.

See Also Response to Comment GG-12 regarding project alternatives that do not involve construction west of Fifth Avenue.

GG-44 See Response to Comment GG-5.

GG-45 Pursuant to CEQA Guidelines Section 15125(e), the DEIR appropriately examines the project against the existing physical setting (as of publication of the Notice of Preparation) in and as well as the potential future conditions discussed in the Estuary Policy Plan. A detailed setting description and visual quality analysis of the Estuary Plan scenario (Alternative 1B: No Project / Estuary Policy Plan) is provided on DEIR pp. V-10 through V-13 and DEIR p. V-18, respectively. The comparison of the impacts of the project and the Estuary Policy Plan alternative impacts (both against existing setting) is provided in Table V-5 (DEIR pp. V-60 through V-62).

The visual quality analysis of the Estuary Policy Plan was based on the illustrative site plan and perspective provide as Figure V-1 in the Chapter V (Alternatives) of the DEIR.⁷ Whereas detailed graphics that depict project building massing and height for purposes of the environmental analysis of the project, only the conceptual illustration of development that could occur under the implementation of the Estuary Policy Plan (Figure V-1) is available for consideration, as is appropriate for a policy plan document.

GG-46 See Response to Comment Q-8.

GG-47 The overview of Measure DD (DEIR p. IV.L-8) as it pertains to improvements within the project area is adequate for purposes of the DEIR analysis of parks and recreation impacts of the project. The specific dollar amount allocated or the identification of specific projects is not pertinent to the environmental analysis. The expansion of Estuary Park and creation of a park on the east shore of Lake Merritt Channel along the project site is established by the Estuary Policy Plan, to which the project is compared and analyzed on DEIR pp. IV.L-15 through IV.L-18.

GG-48 The information presented in the discussion of public school impacts (DEIR pp. IV.L-13 through IV.L-14) is based on consultation and information provided for the DEIR by the managing staff of the Oakland Unified School District, Facilities Management and Planning. Information provided by OUSD specified the capacity of the district's facilities to accommodate potential new enrollment generated by the project throughout the period of project development. Information provided by OUSD did not indicate potential future closures of elementary schools in the project area, thus it would not be appropriate for the City's DEIR to speculate about such closures.

The comment asks how Oakland High School will accommodate an additional 620 new students. The DEIR states on p. IV.L-14 that "it is unlikely that 620 new students could be accommodated at Oakland High School, if introduced within a short period of time. As further stated therein, based on information from OUSD, "if classroom capacity within the Oakland High School Attendance Area...was not available at the time students from the project would enter the school system, OUSD may accommodate these students at school outside the Oakland High School service boundaries," and expects that it would

⁷ Illustrative perspective shown in DEIR Figure V-1 is also included in the Estuary Policy Plan as Figure III-1: Oak to 9th Bird's-eye Perspective.

be able to accommodate project students given the existing low enrollments in the project area.

The comment asks how middle school students will get to Westlake Middle School, approximately 2.4 miles from the project site. Although not pertinent to the DEIR analysis of the project under CEQA, it would be anticipated the students would travel to school by private vehicle or a number of alternative modes of transportation as is currently employed for home-to-school travel (e.g., public transit, bicycle, walking, car-pooling, etc.)

GG-49 Consistent with Figure III-10 (Oak to Ninth Illustrative Open Space Key Map) on page 87 of the Estuary Policy Plan (DEIR Appendix F), footnote “a” accurately points out that Open Meadow Park includes the approximately six-acre Fifth Avenue Point area – as shown west of 5th Avenue. The size of the proposed Open Meadow Park, 11 acres, is taken directly from the referenced Table III.D-1 in the Estuary Policy Plan EIR. The comment is misguided in assuming that the project sponsor provided this information in an attempt to “minimize the amount of that [Estuary Plan open space] loss by providing misinformation.” The acreage of Meadow Park is 11 acres regardless of what portion of the Fifth Avenue Point area is displaced or shifted eastward, thus the percentage of the Estuary Plan open space acreage provided by the project is consistently approximately 60 percent (or conversely, the percentage of Estuary Plan open space acreage that would not occur with the project is consistently 40 percent). The footnotes provided in DEIR Table IV.L-2 are an effort to provide an apples-to-apples comparison of open space acreage even though the project sites differ in overall size (due primarily to exclusion of the Fifth Avenue Point area within the project site). The information provided by Oakland Harbor Partners in Table IV.L-2 (as referenced) is the proposed project acreage.

GG-50 See Response to Comment GG-3, item 2.

GG-51 The expansion of Estuary Park and the creation of Crescent Park and a park on the east shore of Lake Merritt Channel along the project site (west of Fifth Avenue) are all components of the Estuary Policy Plan, to which the project is compared and analyzed on DEIR pp. IV.L-15 through IV.L-18. The implementation of Measure DD projects (or lack of implementation) is not a significance threshold criterion by which the project’s impacts are evaluated under CEQA.

GG-52 The project sponsor has prepared an economic feasibility and constraints report (capital and operational) on for each of the project alternatives, including the consideration of retaining all or parts of the Ninth Avenue Terminal (as proposed in Alternatives 2 and 3 and the Full Preservation Sub-Alternative described in Chapter V, Alternatives, of the DEIR). This report will be provided to City decisionmakers separate from this environmental report for consideration prior to their taking action on the proposal.

GG-53 Illustrations of the Oak to Ninth District that are provided in the Estuary Policy Plan consistently depict future development of the area based on demolition of the Ninth

- Avenue Terminal. As the comment states, the p. IV.A-15 of the DEIR acknowledges that the Estuary Plan recognizes that all or portions of the Terminal may be suitable for rehabilitation and adaptive reuse, as well as the fact that the structure currently impedes public access to and views of a key area of the Estuary. Alternatives that consider full and partial preservation of the Terminal are evaluated in Chapter V (Alternatives) of the DEIR. See Master Response A regarding preparation of a specific plan.
- GG-54 The DEIR cites total acreages of open space for the Estuary Plan (41.5 acres) and for the project (28.4 acres) for the geographic area defined by the project site (to allow relatively accurate comparison). Both scenarios would introduce open space on the area that is now the Ninth Avenue Terminal. Therefore, the comment is correct that if the Terminal were retained under the project, the total open space acreage would be increased by two to four acres. However, the same would be true if the Terminal were retained under the Estuary Plan scenario as well.
- GG-55 The comment cites the merits of Alternative 2 (Enhanced Open Space/Partial Preservation) and is noted. A scenario that does not include construction west of Fifth Avenue is addressed in Alternatives 1B (No Project / Estuary Policy Plan), and Alternative 3 (Reduced Development / Preservation).
- GG-56 Additionally, each of the alternatives described and analyzed in Chapter V (Alternatives) of the DEIR reflect lesser density, building height and bulk than that proposed project. City decisionmakers will evaluate the project alternatives analyzed in Chapter V of the EIR and ultimately reject these alternatives and adopted the proposed project, or alternatively elect one or a combination of the alternatives analyzed instead of the project. Also see Response to Comment Q-2, second paragraph.
- GG-57 The comment highlights merits of Alternative 2 (Enhanced Open Space / Partial Preservation) and is noted. This alternative is designed to provide more open space than is proposed by the project, as well as retain a portion of the Ninth Avenue Terminal. Compared to the total 28.4 acres of open space proposed by the project, a total of 40.6 acres of open space would be provided under Alternative 2 – generally the same amount as the Estuary Policy Plan Alternative 1B (41.5 acres). Therefore, Alternative 2 is adequate to provide the City with an enhanced open space scenario to the project. No additional open space acreage is necessary for purposes of the DEIR.
- GG-58 The comment cites the merits of Alternative 3 (Reduced Development / Terminal Preservation) and is noted.
- GG-59 The comment recognizes, as does the Estuary Policy Plan, that preserving the entire Ninth Avenue Terminal would block views of the Estuary (Embarcadero Cove and Coast Guard Island from certain perspectives). The comment states that “lost open space should be made up elsewhere in the project.” There is no existing open space on the site, except Estuary Park. Therefore, there are no scenarios in which open space could be “lost.”

- GG-60 See Master Response B regarding further analysis of reuse alternatives of the Ninth Avenue Terminal.
- GG-61 See Response to Comment T-8.
- GG-62 A synopsis of the project and each alternative is provided as a running heading on Table V-5, Summary of Impacts of Project and Alternatives (starting on DEIR p. V-42), to allow for easy comparison. The headings summarize the detailed description of each alternative provided in Chapter V of the DEIR.
- GG-63: State law requires that prior to adoption of a general plan amendment the planning commission and the legislative body each shall hold a public hearing. These public hearing requirements will be met for the general plan amendments proposed in conjunction with the project. Additionally, the project sponsor has conducted over 100 community meetings (See detailed description in Master Response A), and the City retained CirclePoint to conduct a community outreach process which involved nine small group meetings and two community-wide meetings. A number of official City hearings have been conducted on the project and its proposed approvals, including hearings at the Landmarks Preservation Advisory Board, the Park and Recreation Advisory Committee, and the Planning Commission in connection with the Draft EIR. Recently, the Planning Commission sponsored a publicly-noticed tour of the project site. Thus, there have been and will be numerous opportunities for public input on the proposed general plan amendments.
- GG-64 See the Master Response A on preparation of a specific plan.
- GG-65 See the Master Response A on preparation of a specific plan.
- GG-66 As stated in the DEIR on p. IV.J-42, “development of the project would require at least 420 low- to moderate-income units in the Central City East Redevelopment Project Area, at least 168 to be affordable to very-low-income households (based on the 2,800 units proposed east of Lake Merritt Channel). The affordable units could be included in the project (as part of the 2,800 units) or developed elsewhere in the Central City East Redevelopment Project Area.”
- GG-67 As stated in the Oakland General Plan Amendment legislation referenced by the comment, “the fact that a specific project does not meet all General Plan goals, policies, and objectives does not inherently result in a significant effect on the environment within the context of [CEQA].”
- GG-68 See the Master Response A on preparation of a specific plan.
- GG-69 See the Master Response A on preparation of a specific plan.
- GG-70 See the Master Response A on preparation of a specific plan.

- GG-71 The comment suggests that the project, which would develop 20.7 acres of new waterfront open space where none exists (an amount that is approximately 40 percent less than what was analyzed and envisioned for the project site in the Estuary Policy Plan) constitutes a violation of Planning and Zoning Law (Section 65561). Section 65561 addresses the preservation of open space land...the assurance of continued availability of land...for recreation and for the use of natural resources. It speaks to discouraging the premature and unnecessary conversion of open-space land to urban uses and the demand that jurisdictions make and carry out definite plans for preservation of valuable open space land. The comment suggests that through preparation of a specific plan, Section 65561 would have been adequately addressed. In 1996, the City adopted the Open Space, Conservation, and Recreation (OSCAR) Element of the General Plan to address the management of open land, natural resources, and parks in Oakland, pursuant to Section 65561. The project does not propose to amend the OSCAR Element, nor does it conflict with its policies, as discussed on DEIR p. IV.A-20. In its consideration of the project, the City will evaluate the characteristics of the project in light of Estuary Plan objectives and policies, including those pertinent to the provision of open space in the Oak to Ninth District.
- GG-72 The comment presumes that uses in the Fifth Avenue Point community and the project are incompatible uses (“i.e., artist shops vs. residential units). To the extent that such activities would be incompatible (e.g., potentially operational noise or odor from certain artist activities in proximity to residential uses), site configuration and standards, including setbacks and landscaping to addresses potential conflicts. Additionally, the proposed project development adjacent to Fifth Avenue Point would include commercial, parking, and service uses on the ground floor and be separated from Fifth Avenue Point area by roadways and/or paths.
- GG-73 See Response to Comment Z-2 regarding potential large public gatherings on the project site.

Stanzione, Margaret

From: mike [mike@Cosentinolaw.com]
Sent: Tuesday, October 18, 2005 6:30 PM
To: mstanzione@oaklandnet.com
Subject: Oak to 9th Project; Oakland Planning Department

Dear Margaret,

This is my written comment about the above referenced project; I hope I am sending it to the correct person; if not, perhaps you can tell me where to send it.

I read that as proposed, the project anticipates five 24 story apartment buildings along the Oakland waterfront. My law office at Marina Village, Alameda, is directly across the estuary from the proposed project. I have enjoyed the view of the waterfront and Oakland hills from this location since 1985. The mere thought of a single 24 story building close to the waterfront is offensive to my senses. Needless to say, five such buildings is outrageously offensive. Such buildings, if needed at all, should be placed downtown or very far from the waterfront. Such buildings would tower over the waterfront and deny the citizens of Oakland and of other cities clear access to the waterfront. It would be equivalent to walking through someone's front yard in order to enjoy what the inhabitants of such buildings would enjoy every day, to the detriment of everyone else. I cannot imagine a sight more ugly; what a black eye it would be to the City of Oakland (and everywhere else within viewing range). Please do not allow this project to impose such ugliness on us.

HH-1

The Ninth Avenue terminal must be saved; it is beautiful as it stands and would be basically unchanged if developed as a retail/commercial center. Any destruction of the building and pier would be an irreparable loss to the City. Surely a plan could accommodate my concern regarding the five 24 story buildings and the Ninth Avenue terminal.

HH-2

Also, please send me a copy of the draft EIR for the project.

Sincerely, Michael Cosentino, 1070 Marina Village Parkway, Suite 206, Alameda CA 94501. (510) 523-4702.

24

Letter HH – Mike Cosentino

HH-1 The comment describes the view from directly across the Estuary from the project. A view from a nearby vantage point along the Alameda shoreline is depicted in the DEIR in Figure IV.K-2 and IV.K-17 (on DEIR pp. IV.K-13 and IV.K-36, respectively). As described on DEIR p. IV.K-12, the existing long-range views of the downtown Oakland skyline and portions of the East Bay hills in the background would remain. The character of the site would change noticeably – heavy machinery, cranes, and containers along the waterfront would be replaced by project buildings set approximately 200 to 400 feet back from the shoreline. The 65- to 66-foot tall building podiums would fall just below the ridgeline of the East Bay hills, and the proposed towers would be clustered to create a visual focus at the center of the site and to minimize the obstruction of any views. The project's impact on views and scenic vistas would be less than significant, as stated on DEIR p. IV.K-10.

HH-2 The DEIR analyzes project alternatives that consider full and partial preservation of the Terminal. These include Alternative 2 (Enhanced Open Space / Partial Ninth Avenue Terminal Preservation and Adaptive Reuses) discussed starting on p. V-19, Alternative 3 (Reduced Development / Terminal Preservation) discussed starting on DEIR p. V-29, and the Full Preservation and Adaptive Reuse Sub-Alternative discussed starting on DEIR p. V-38.

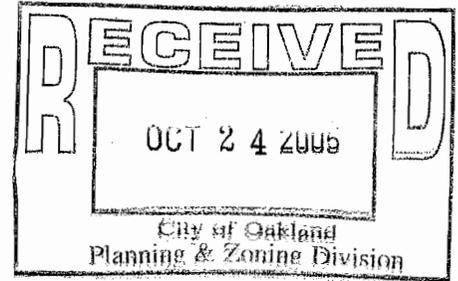
TO: City of Oakland CEDA Planning & Zoning Division

FROM: Margaret Elizares

RE: Case No. ER 04-0009
Oak to Ninth Development
Oakland Harbor Partners, Applicant

SUBJECT: Comments on Draft EIR

DATE: October 19, 2005



This process is inconsistent with the Estuary Policy Plan portion of the General Plan which calls for a SPECIFIC PLAN, not a so-called "functional equivalent." Real public input must be included in the preparation of a SPECIFIC PLAN, not a fait accompli project deal. As presented, this project requires a General Plan Amendment before it can proceed.

II-1

Public benefits must be secured first and foremost.

The Ninth Avenue Terminal can and should be preserved and restored for the benefit of all Oakland citizens. Call off the wrecking crew that has demolished so many of our waterfront's structures. Jack London Village was a viable, functioning example where citizens and tourists alike came to visit our waterfront, walk among beautiful, tall trees which provided habitat for hundreds of birds, patronize two dozen businesses and eat at waterfront restaurants that generated jobs, income and tax revenue, but is now a wasteland.

II-2

The applicant's project provides woefully inadequate PUBLIC open space as called for by the Estuary Policy Plan. This project, by design, is entirely too dense and tall and will ruin the views and visual quality of our last open look at much of our Estuary.

II-3

It seriously lacks access to and from the rest of Oakland only through NARROW Oak Street and 5th Avenue, streets which are frequently blocked by crossing trains, now known to average 14 to 16 trips a day. Their number is likely to increase in the future due to the continued increases in fuel costs for trucks. Hopes of public transit service to the area are surely dim.

II-4

The upgrade of the sewer system and utilities to support such a dense HOUSING project of this size will be hugely costly and disruptive for months, if not years, to come. Who will pay for this?

II-5

IV.F-1. The 2002 Treadwell & Rollo investigation and report is much too general and cannot be relied upon for this specific site, ABAG's 2003 maps conclude "this project site is in an area expected to have a very high potential to experience liquefaction." The Crowley Yard was identified as having the most potential. The goal of the the California Building Code is to provide minimum standards to safeguard life or limb, health and public welfare. This project does not meet those standards.

II-6

Page 2

Elizares comments on Draft EIR

Any impartial geologist will advise it is unwise to build dense or high HOUSING on bay fill muds like these. Even a modest earthquake will surely cause liquefaction in these soils. The result will be the snapping of pilings and, more dangerously, of gas mains which will lead to fires such as those experienced in the Marina District of San Francisco in the 1989 Loma Prieta quake.

II-6
(CONT.)

As an interested and concerned private citizen I attended many meetings on the formulation of the Estuary Policy Plan years ago. Many of us hoped there would be no more housing, but other public uses, on the water side of the railroad tracks.

II-7

This site is not an environmentally sustainable place to live, but could be a beautiful place to do business and visit if planned well. Instead, our dreams have turned into this nightmare.

II-8

For all of the above reasons and many more the only fair alternative to avoid the impacts of this plan is Alternative 1A, No Project.

II-9

Start all over again and do it right this time and in the public interest, not for the profit of a few.

II-10

Letter II – Margaret Elizares

- II-1 See Master Response A regarding preparation of a specific plan. The comment is correct in that the project proposes a General Plan Amendment primarily to modify the existing land use classification to allow the residential land uses and densities proposed by the project.
- II-2 The DEIR analyzes project alternatives that consider full and partial preservation of the Terminal. These include Alternative 2 (Enhanced Open Space / Partial Ninth Avenue Terminal Preservation and Adaptive Reuses) discussed starting on p. V-19, Alternative 3 (Reduced Development / Terminal Preservation) discussed starting on DEIR p. V-29, and the Full Preservation and Adaptive Reuse Sub-Alternative discussed starting on DEIR p. V-38.
- II-3 The project would provide a total of 20.7 acres of new open space. The Estuary Plan envisioned a total of 35.7 acres of new open space, as analyzed in the Estuary Plan EIR and illustrated in the Estuary Policy Plan (DEIR p. IV.L-16 and Table IV.L-2). All open space in the project area would be public area. City decisionmakers of the project will ultimately consider the adequacy of the proposed new parks and open space acreage.

As discussed in the DEIR and depicted in the series of visual simulations in Section IV.K (Visual Quality and Shadow) (DEIR Figures IV.K-2 through IV.K-16), the project would introduce new and taller buildings than what currently exists on the site. It would also allow for new and expanded views of the waterfront that do not currently exist from points along public streets within and adjacent to the project site. See also Response to Comment B-8.

- II-4 As shown in Figure IV.B-2, DEIR p. IV.B-23, about 45 percent of project-generated vehicle trips would use area freeways (i.e., I-880 and I-980) to travel to and from the project site; the other 55 percent would use other (non-freeway) roadways. See Responses to Comments J-1 and J-3 regarding railroad operations, and Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures.
- II-5 The comment does not address physical environmental impacts under CEQA or the adequacy of the analysis in the DEIR. However, the project sponsor would be responsible for cost of public utility improvements required for the development on the project site.
- II-6 The 2002 Treadwell & Rollo report is a master plan geotechnical report, the purpose of which is to develop design-level geotechnical recommendations primarily for cost estimating purposes. As stated in the DEIR on p. IV. F-16, site-specific, design level geotechnical investigations for each building will be conducted to determine appropriate mitigation for potential liquefaction at each building site. These investigations would occur prior to issuance of any building or grading permit for each building, as required by

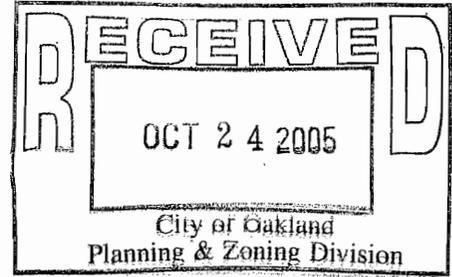
applicable state and local Codes. The Crowley Yard, where the potential for liquefaction is highest, is planned for open space (Channel Park) and would not have any permanent structures. Overall though, Treadwell & Rollo has concluded that, with regard to geotechnical issues, the entire project site can be developed as proposed. The proposed structures would be built according to the most current seismic standards as found in the California Building Code (CBC) and pursuant to an approval of the California Geological Survey for compliance with the Seismic Hazard Mapping Act. The geotechnical recommendations would become part of the project, would include design measures for the mitigation of liquefaction. In addition, the reports will include the design of flexible utility connections to withstand the anticipated effects in the case of an earthquake. It should be noted that despite implementation of the most current seismic engineering practices, the potential for a significant earthquake is unavoidable and could cause damage. However, as the commenter states, adherence to the CBC is reasonably expected to help safeguard the public from harm related to geologic and seismic hazards.

- II-7 Comment is noted and does not address physical environmental impacts under CEQA or adequacy of the analysis in the DEIR.
- II-8 The comment asserts that the project site is not an environmentally sustainable place to live, but does not specify or elaborate on this statement. Chapter IV of the DEIR (Setting and Impact Analysis) contains a thorough analysis of the potential impacts pursuant to CEQA that could result from the proposed project. Where feasible, adequate mitigation measures are identified to reduce significant impacts to less-than-significant levels. The analysis is summarized in DEIR Chapter II (Summary).
- II-9 As discussed on DEIR p. V-39, Alternative 1A (No Project), under which there would be no substantial change existing conditions on the project site, would avoid all significant unavoidable and significant impacts associated with the project and each of the other alternatives. The DEIR recognized that this would be the case even though there are existing conditions on the projects site that may be more adverse than would occur with the project (or other alternative), and that would continue. These would include contaminated soils conditions, limited views of the Estuary, and unprotected sensitive biological resources and wetlands.
- II-10 Comment is noted and does not address physical environmental impacts under CEQA or adequacy of the analysis in the DEIR.

Anna Naruta, archaeologist
Oak to Ninth Project DEIR comments
Oct 23, 2005 - 1

Oct 23, 2005

Margaret Stanzone, Project Planner
City of Oakland Community and Economic Development Agency
Planning and Zoning Division
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612



RE: Draft Environmental Impact Report for the Oak to Ninth Mixed Use Development Project,
Case File Number ER04-0009

Dear Margaret Stanzone:

Thank you for the opportunity to comment on the Draft Environmental Impact Report for the Oak to Ninth Mixed Use Development Project, Case File Number ER04-0009. I am an archaeologist familiar with the record of cultural resource management excavations in Oakland. The draft EIR's archaeological evaluation and proposed mitigation measures are incomplete and inadequate, must be amended to bring the project into compliance with CEQA. Major areas of concern are: 1) the DEIR inaccurately characterizing the known record of nearby previously encountered shellmound sites. 2) The DEIR inadequately assessing the possibilities for encountering archaeological remains within the product area, and failing to provide adequate mitigation measures. 3) A mitigation plan that requires construction workers to serve as archaeological monitors, which saddles workers with a cultural resource management role for which they have no training.

JJ-1

The DEIR inaccurately represents the record of known shellmound discoveries, inaccurately giving the impression there are no known shellmound sites close by, and inaccurately giving the impression the project area has already been checked for archaeological remains associated with Native Californians. For example, the DEIR mentions N. C. Nelson's 1909 survey of Bay Area shellmounds did not record a site within the project location. (DEIR IV.E-1) This has no bearing on whether there may be legally-significant archaeological remains within the project area. Nelson's 1909 survey was a visual survey of shellmounds that still extended above the surrounding ground level. It did not attempt to account for subsurface remains, such as those that Nelson in 1909 noted had for the last forty or fifty years been "rapidly ... disappearing from the bay shores." (1909 :310)

JJ-2

Nelson's 1909 survey did not record the existence of the shellmound site discovered in 1952 at Harrison and 2nd Streets, which today is a registered archaeological site. Nelson's 1909 survey had also failed to locate the shellmound site archaeologists have recorded on the southeastern shore of Lake Merritt. And the shellmound site(s) around the Civic Center BART station to which the DEIR alludes (IV.E-1) were likewise not represented in Nelson's 1909 survey, but had become registered sites after multiple encounters during construction. Additionally, he Jack London Square redevelopment DEIR reported "[r]ecent surveys have noted that subsurface components of CA-ALA-314 may exist in the area (p. IV.E-4)." (W.L. Nelson, 2000, *Cultural Resources Survey for the Level (3) Communications Long Haul Fiber Optics Project, Segment*

JJ-3

11

W507, *Oakland to San Jose*, on File at the Northwest Information Center, File No. 22820; Cited in ESA's DEIR, Environmental Science Associates, 2003, *Draft Environmental Impact Report for the Jack London Square Redevelopment*, dated September 8, 2003; publicly available at City of Oakland Community and Economic Development Agency, Planning and Zoning Division. See especially Table IV.E-1, "Identified Cultural Resources and Surveys Conducted Within the Project Area," page IV.E-4)

JJ-3
(CONT.)

The DEIR notes the project area and its relationship to "the historic extent of the Bay tidal marsh land" make it the sort of area likely to host "Native American archaeological sites that can shed light on the Costanoan ways of life in the pre-mission area". (IV.E-3) One registered shellmound site has been recorded within five blocks of the project area, and at least two are within a mile. Further, a resident of land encompassed by the project area, Charles Weber, recently showed me a Native American artifact he noted was recovered from his backyard. It seems that area residents have also observed archaeological remains related to early Oakland history during digging in the area.

JJ-4

The DEIR should be revised to more accurately reflect the known context of the project area, and appropriate mitigations should be prepared.

The DEIR contains an attempt at characterizing the project area's likelihood for legally-significant archaeological remains that fails to meet standards for survey or reporting. The DEIR relays: "in April 2005 a Registered Professional Archaeologist conducted a reconnaissance level survey of the project site to determine if undisturbed soils or areas suitable for survey exist" (IV.E -12). Upon contacting the Project Planner, I was told there is no survey report supporting this statement in the DEIR, and there would be none. If this statement in DEIR is the only written record of this "survey", it would need to conform to reporting standards of the Northwest Information Center, and at the very minimum provide a description of methods used and area studied. As it stands, what's in the DEIR is hearsay, if you can technically have "hearsay" from an unnamed source. This seems to put the City in a vulnerable position when it comes time to certify the EIR.

JJ-5

The DEIR fails to follow established practice for evaluating the possibilities of archaeological resources in this type of modified coastal area. The above mentioned "survey" isn't even an appropriate discovery method for this area. San Francisco shares Oakland's history of modifying the historic coastline, and has long practiced archaeological evaluations of the areas that were formerly tidal coast, but today buried with historic fill. The attached map from Pastron and Hattori (1990: 5) shows multiple legally-significant archaeological sites associated with historic tidal environments and discovered underneath subsequent land filling. One example is the Hoff Store site from the Gold Rush era. The second attached map, from Olmsted's 1991 *Guide to Historic Research in San Francisco: An archaeological aid*, also demonstrates standard practice in investigating historic tidal areas requires more than "a reconnaissance level survey". The DEIR's mitigations should be revised to bring the project in line with the practices demonstrated in the above works and projects such as that reported in Olmsted, et al's 1981 *Bayside San Francisco: Cultural Resource Survey of Mission Bay, the Potrero, Islais Basin, Hunsters Point & Bayview*, or 1981's *Rincon de las Salinas y Potrero Viejo -- The Vanished corner: historical archeological program, Southeast Treatment Plant, 1978-1979*, (Clean Water Program, San

Francisco).

Mitigation Measure E.1a would require construction workers to serve as archaeological monitors (IV.E-24). This is inappropriate under CEQA standards. And Oakland has experience that it does not work. The attached letter, dated April 28, 2004, relays a recent failure of a mitigation that required construction workers to act as archaeological monitors. During ground disturbing activities that unearthed historic remains, construction workers did not halt activities as they were specified to, even though the mitigation measure had set the trigger point as low as "an archaeological artifact".

To meet CEQA standards, the EIR should specify a qualified archaeologist compile land use records to determine if areas are likely to potentially yield legally-significant archaeological remains. This sensitivity study should be ground-tested by test excavations. It can be appropriate, when testing for shellmound remains, for this testing to take the form of multiple mechanical auger tests and or shovel test probes. If the results of this archaeological sensitivity study warrant it, a pre-construction archaeological testing and remediation plan can be prepared and implemented. With area residents reporting seeing and or recovering archaeological artifacts within the immediate area, professional archaeological monitoring should be conducted during all phases of ground disturbing activities. The City of Oakland is legally obligated to protect significant archaeological remains, even if their existence was previously unknown. The outlined procedure, or one like it, would bring the project into legal compliance in a manner than avoids additional project expenses or delays.

JJ-6

The mitigation measures also need to provide a program for appropriate treatment of Native American artifacts that may be present in historic fill.

JJ-7

Regarding Mitigation Measure E.1b (IV.E-24), how would Native American monitors or consultants be incorporated in the event the mitigation measure is triggered? How would Native American monitors or consultants be incorporated if Native American remains other than skeletons are discovered?

JJ-8

At a minimum, Native Californian groups should also be invited to comment on the DEIR's provisions, and should early on be invited into the planning process to contribute to determining the scope for adequate study of the area and possible mitigation alternatives should Native American artifacts be found.

Mitigation Measure E.3b would archive large format photographs at the Oakland History Room of the Oakland Public Library (IV.E-26&7). This measure should be amended to provide to the Library funds to support accessioning and curating this archival material. Any mitigation measures that would generate audio and or visual material, such as Mitigation Measure E.8 (IV.E-30&1), should also provide written transcripts on archival quality paper, and archiving and curating funds should accompany the deposit of all materials.

JJ-9

Finally, the EIR should explore more alternatives that include reuse of all or at least the majority of the 9th Avenue Terminal. This significant historic resource should be treated in compliance with the Secretary of the Interior's Standards. Historic resources had also been previously evaluated in the Estuary Policy Plan, and the planned project and project alternatives should be brought into compliance with this Plan.

JJ-10

Sincerely,



Anna Naruta, M.A., Ph.D. Candidate

(for identification purposes only ----
Anthropology Department / Archaeological Research Facility
University of California, Berkeley)
P.O. Box 1514
Oakland, CA 94604

Sources Cited:

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Olmsted; Nancy, 1991, *Guide to Historic Research in San Francisco: An archaeological aid*, Prepared by Resource Consultants for the California Department of Transportation, District 4, Oakland, California.

Olmsted, Roger, et al, 1981, *Bayside San Francisco: Cultural Resource Survey of Mission Bay*,

*Anna Naruta, archaeologist
Oak to Ninth Project DEIR comments
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the Potrero, Islais Basin, Hunsters Point & Bayview. (Clean Water Program, San Francisco).

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From:

Pastron, Allen, and Eugene Hattori, eds, 1990, *The Hoff Store and Gold Rush Merchandise from San Francisco*, Society for Historical Archaeology, Special Publications Series Number 7.

THE HOFF STORE SITE

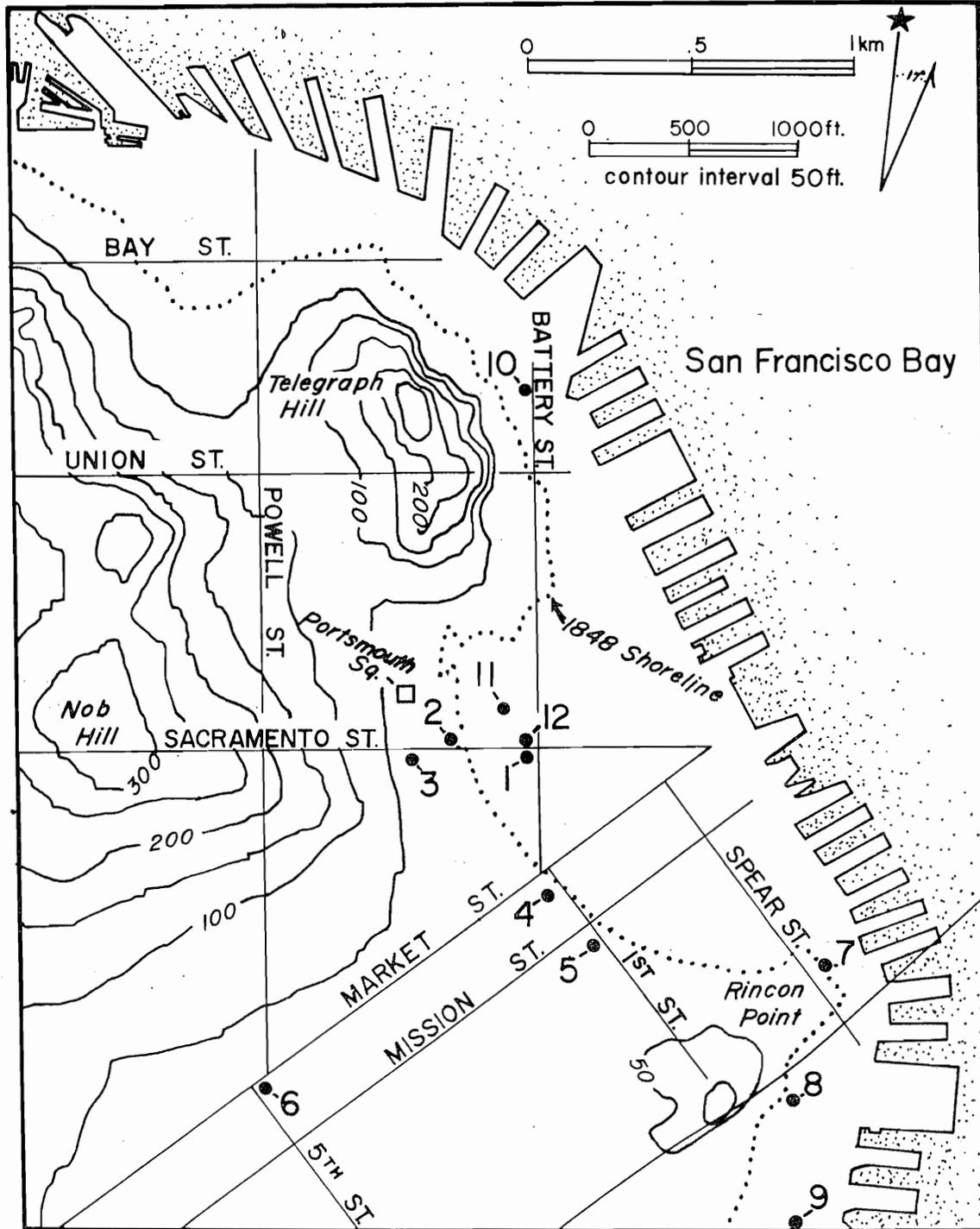


FIGURE 2-1. San Francisco archaeological sites: (1) Hoff Store site; (2) 505 Montgomery Street; (3) 600 California Street; (4) CA-SFr-112; (5) 100 First Plaza; (6) CA-SFr-113; (7) Hills Plaza; (8) Rincon Point Fishing Village; (9) Whaler Lydia; (10) William Gray at Levi's Plaza; (11) Storeship Niantic; (12) Storeship Apollo.

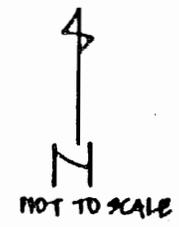
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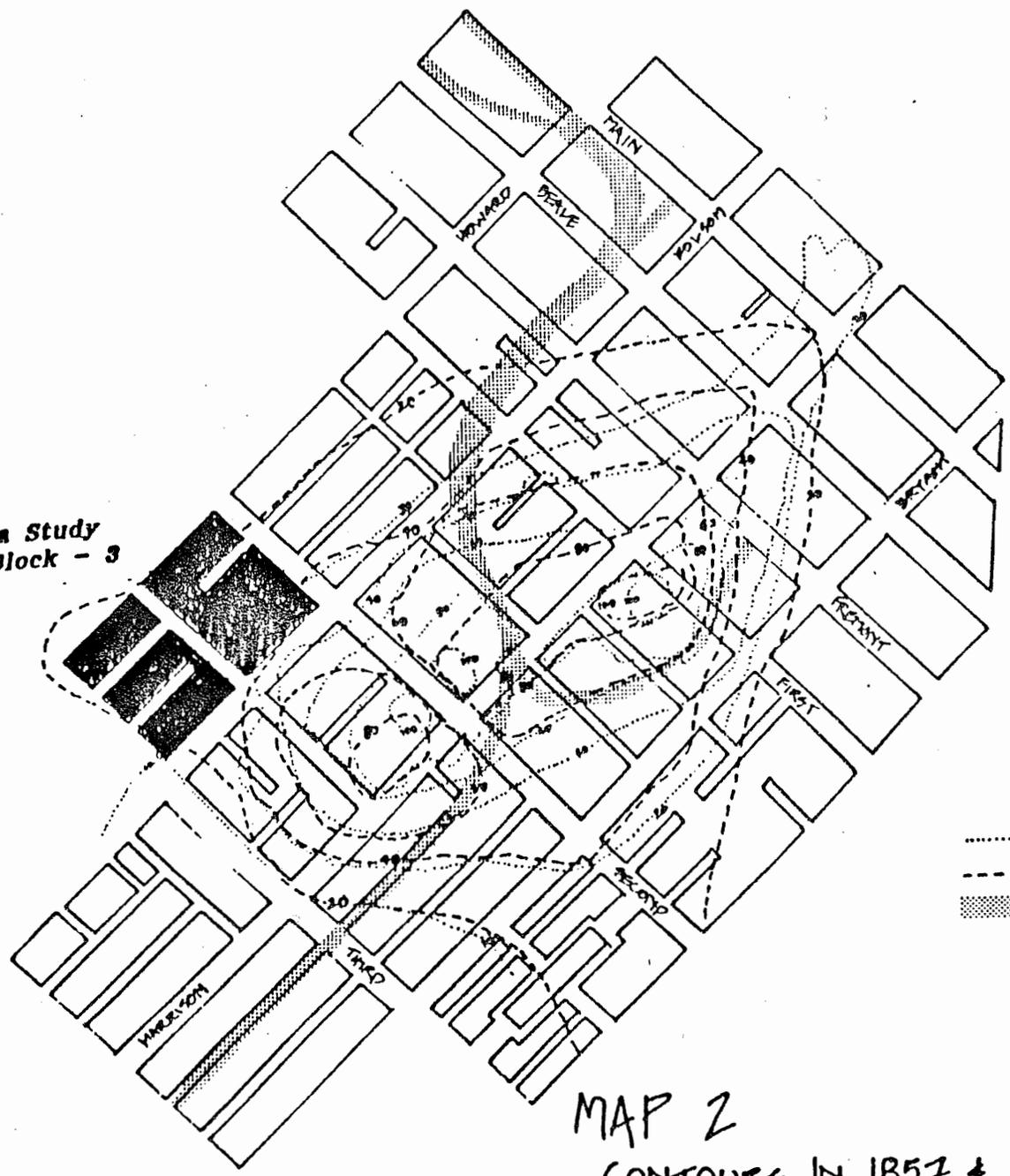
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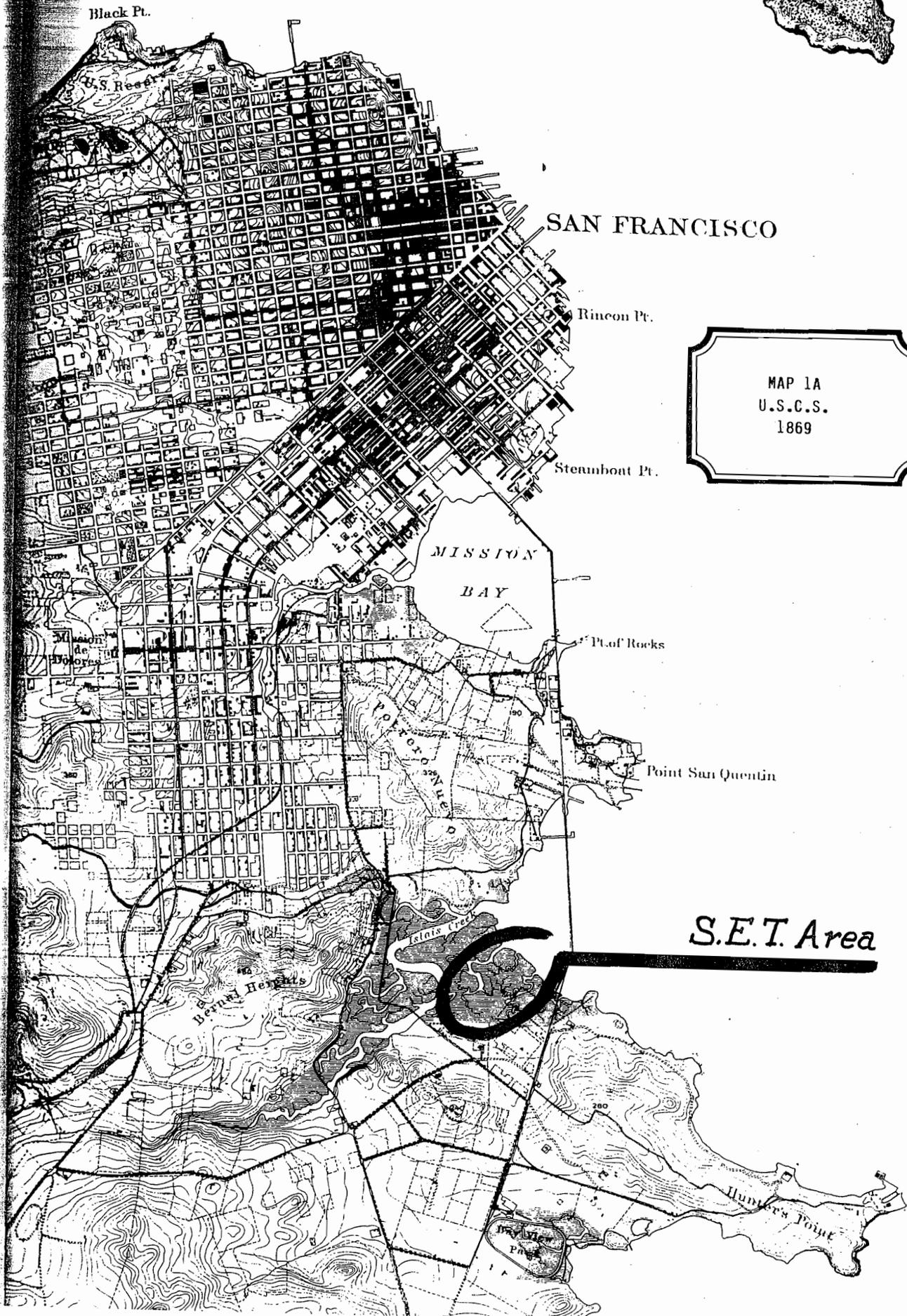
KEY

- CONTOURS FROM 1857 MAP
- - - - CONTOURS FROM 1913 MAP
- ▨ STUDY LOCATION

* ADD 11.64 FEET TO 1857 MEASUREMENTS TO ADJUST TO CITY BASE.

MAP 2
CONTOURS IN 1857 & 1913

From:
Olmsted, Nancy, 1991, *Guide to Historic Research in San Francisco: An archaeological aid*,
Prepared by Resource Consultants for the California Department of Transportation, District 4,
Oakland, California.



MAP 1A
U.S.C.S.
1869

From:
Olmsted, Roger, et al, 1981, *Rincón de las Salinas y Potrero Viejo -- The Vanished corner: historical archeological program, Southeast Treatment Plant, 1978-1979*. San Francisco, San Francisco Clean Water Program.

April 20, 2004
page 1 of 2

Claudia Cappio, Development Director
Community and Economic Development Agency
250 Frank H. Ogawa Plaza
Oakland, CA 94612

Re: Broadway-West Grand Mixed-Use Project,
Case File Numbers PUD03552, PUDF03553, ER030022

April 20, 2004

Dear Development Director Cappio:

It has come to our attention that ground-disturbing work has begun on the Broadway-West Grand development. We request your attention to the mitigation measures adopted by the Planning Commission as part of the Conditions of Approval for this project. The conditions of approval for this project are not currently being met. This potentially jeopardizes unique archaeological resources protected under CEQA.

Mitigation Measure E.1a reads in part:

"Representatives of established local Chinese-American organizations (including the Chinese Historical Society of America and the Oakland Asian Cultural Center) shall be invited to participate in a focused community review of the archival cultural resource evaluation prior to any subsequent recovery of potential resources or prior to the start of construction, whichever is earlier. The City shall consider the community comments in its review and approval of any plan for additional archaeological work or monitoring. (Staff Report to Planning Commission, December 1, 2004, Conditions of Approval, page 29)"

The Chinese Historical Society of America has not been contacted for the specified "focused community review of the archival cultural resource evaluation," yet earthmoving has already begun in the project area. Ground-disturbing activities should be halted until the cultural resource evaluation is completed, the CHSA and Oakland Asian Cultural Center have been invited to review it, and their comments considered.

Without the archival cultural resource evaluation, there is no basis for assuming the current project activities are not destroying unique and significant archaeological resources protected under CEQA. Primary documents show the project vicinity in the later 1800s was the site of the residences of a number of Chinese Oaklanders who, despite legalized discrimination, successfully pursued a living as independent farmers. (Naruta 2004, 2005). The project area itself was either the location of these independent farmers' residences, or those of their immediate neighbors. Information able to characterize the lives and relations

April 20, 2004
page 2 of 2

of these individuals is unavailable from documents. Archaeological remains from these previously forgotten Chinese farmers of the 1870s, or of the immediate neighbors of the 1880s Charter Avenue Chinatown could be of immense significance in understand early Oakland and its cultural changes. Prior to evidence showing otherwise, the data so far known requires we assume the project area may contain legally-significant archaeological remains. It must be evaluated and treated in accordance with CEQA protections.

Further, it has been brought to our attention that current project activities are uncovering numerous indicators that significant and intact archaeological remains may be present. The attached photo, taken April 19, 2005, shows one area of the ground-disturbing activities that have revealed historic building foundations, historic brick, buried organic-rich soils extending far below grade, and other indications of possible legally-significant archaeological remains. According to the Conditions of Approval, just one of these items must trigger having a qualified archaeologist investigate the site:

"Should an archaeological artifact be discovered on-site during project construction, all activities within a 50 foot radius would be halted until the findings can be fully investigated by a qualified archaeologist to evaluate the find and assess the significance of the find according to the CEQA definition of a historical or unique archaeological resource. (from Mitigation Measure E.1a, Staff Report to Planning Commission, December 1, 2004, page 29)"

Thank you for your attention to enforcing the project's Conditions of Approval.

Sincerely,

Anna Naruta
2005-2007 Board Member
Chinese Historical Society of America

References Cited:

Naruta, Anna. 2004. Draft EIR comment letter for the Broadway-West Grand Mixed-Use Project DEIR, Case File Number ER03-0022. Letter dated October 8, 2004.

_____. 2005. "Oakland's San Pablo Avenue Chinatown: A compilation of research to aid the upcoming archaeological sensitivity study and treatment plan to be drafted by the archaeological contractor for Forest City's Uptown redevelopment project." Oakland: UptownChinatown.org. January 2005. On file at the Oakland Cultural Heritage Survey, Oakland Public Library, and the Oakland Asian Cultural Center.

Letter JJ - Anna Naruta

- JJ-1: The use of Nelson's (1909) survey of shellmounds throughout the margins of the Bay as a reference is by no means suggesting that this is the only source or means by which to identify the location of prehistoric sites in the Bay Area. Because the Nelson survey is the first systematic and scientific survey of these shellmound sites and that it occurred before, in some cases, development of the historic margins of the Bay, this source is useful in predicting where shellmound sites, or similar features, would have been located. This EIR section does not contend that this survey verified the existence of all observed sites using subsurface techniques or that the survey was adequate in all aspects of mapping and site identification. However, Nelson (1906) did excavate the Emeryville shellmound (CA-ALA-309) to augment earlier investigations and was instrumental in the interpretation of site stratigraphy to answer research questions about the shellmounds themselves.
- JJ-2 As mentioned in the response above, Nelson's (1909) survey was not used as the only possible source for information on whether sites may or may not exist along the margins of the Bay. It's clear from more recent archaeology and discoveries made along the Peninsula and elsewhere that sites are located outside of the purview of Nelson's (1909) survey. This EIR section does not purport to use Nelson's survey as the only definitive evidence for whether sites exist or not in a given area.
- JJ-3 As mentioned in the EIR, the area that constitutes the Oak to Ninth project area was historically bay waters and tidal marsh (see Sowers 1995; SFEI 1997). The present-day character of the site is fill material. The process of filling the bay to allow for the construction of docks, boat building facilities, and so forth, has likely destroyed any archaeological remains that may have been located at this site. Furthermore, the presence of shellmounds in the vicinity is not in dispute, and there is no question that a series of mounds once existed at Emeryville and likely southward along the bay margins. However, the mere presence of shellmounds—those actually identified and excavated and those putatively identified through historical evidence—does not predict with certitude the presence of shellmounds or any other cultural feature or artifact anywhere along the historic margins of the Bay (Indeed, the margins of the bay south of Emeryville are relatively sparse for identified sites compared to the northern east bay). As stated in the EIR, sea level rising during the Holocene likely inundated older shellmounds and components of the shellmounds recorded during the early part of the 20th century.
- JJ-4 Based on a thorough review of recognized published and unpublished resources cited in the DEIR and ultimately the professional judgment of a registered archeologist, the reconnaissance level survey conducted for the DEIR analysis is appropriate and adequate upon which to assess the potential for impacts to archeological resources and identify appropriate mitigation measures to reduced potential impacts to less than significant levels. If the literature research and the site reconnaissance survey had suggested or indicated discrete archaeological sites or features existed on or near the project site,

additional subsurface discovery could be warranted. As outlined in the Response to Comment S-18, in the opinion of the registered archaeologist conducting the DEIR assessment, extensive discovery techniques and full testing survey does not appear warranted given that 1) the project site is in bay waters and consists of considerable artificial fill material with a low probability of re-deposited archaeological remains (even though it is recognized that archaeological sites have been shown to occur below fill material and underwater due to Holocene sea level rise, but this fact alone does not predict archaeological sites where tidal waters were artificially filled); and 2) given the expense and effort of methods that would be required to identify archaeological material on the project site, compared the low probability of discovering sites in artificial fill.

JJ-5 Historic land use records were accessed to determine the nature of the site prior to development (see references in Response to Comment JJ-3, also the 1871 Rancho San Antonio Plat Map, the 1857 A.D. Bache et al. San Antonio Creek Map, and the 1878 Thompson & West, Historical Atlas Map of Alameda County—all part of the records search). As mentioned, these maps show the project area as mostly bay with small patches of tidal marsh. Because of the large percentage of bay for this area, discrete archaeological sites were considered less likely. While full ground-testing does not appear warranted for reasons outlined above, please see added mitigation measures below to address the issue of accidental finds during construction.

JJ-6 During preparation of the DEIR, the Native American Heritage Commission was contacted concerning the project, and letters were sent to each Native American contact provided by the Commission. While no responses have been received in response to that correspondence, adequate mitigation measures are identified starting on DEIR p. IV.E-24 that address the required contact with relevant Native American organizations potential in the event that an archaeological site or burial remains is discovered, disposition of artifacts will be considered by the archaeologist called to the site.

To further detail this process, the additional and revised mitigation measures are added as starting on DEIR p. IV.E-24 (additions shown as underlined; deletions as ~~strikeout~~):

Mitigation Measure E.1a: An archival cultural resource evaluation shall be implemented prior to the start of construction or other ground-disturbing activities to identify whether historic or unique archaeological resources exist within the project site. The archival cultural resource evaluation, or “sensitivity study,” shall be conducted by a cultural resource professional approved by the City and who meets the Secretary of the Interior’s Professional Qualifications Standards for Prehistoric and Historical Archaeology.

The purpose of the archival cultural resource evaluation is to: (1) identify documentation and studies to determine the presence and location of potentially significant archaeological deposits; (2) determine if such deposits meet the definition of a historical resource under CEQA Guidelines Section

15064.5 or a unique archaeological resource under CEQA Section 21083.2(g); (3) guide additional archaeological work, potentially including pre-construction subsurface archaeological investigation if warranted, to recover the information potential of such deposits; and (4) define an archaeological monitoring plan, if warranted. A pre-construction meeting shall occur with the cultural resource professional and the City regarding the findings of the evaluation, and shall include consultation with and considerations of the Department of Toxic Substances (DTSC), the Lead Agency for the environmental cleanup activities on the project site. If excavation is the only feasible means of data recovery, such excavation shall be in accord with the provisions of CEQA Guidelines Section 15126.4(b)(3)(C). Any additional archaeological work and or monitoring shall be pursuant to a plan approved by the City. If a pre-constructing testing program is deemed necessary by the qualified professional as a result of the archival study, it shall be guided by the archival study and shall use a combination of subsurface investigation methods (including backhoe trenching, augering, and archaeological excavation units, as appropriate). If monitoring of any areas during ground disturbing activities is determined to be required based on the results of the archival evaluation and the pre-construction testing, the monitoring will be conducted by a qualified cultural resources professional and the monitoring plan will include appropriate provisions for evaluating any archaeological deposits, consultation with the City, and any necessary data recovery program.

Mitigation Measure E.1b: Prior to the commencement of ground disturbing activities, all construction personnel shall receive environmental training from a cultural resource professional approved by the City and who meets the Secretary of the Interior’s Professional Qualifications Standards for Prehistoric and Historical Archaeology. The purpose of the environmental training is to inform all construction personnel of the possibility of encountering historical resources. All construction personnel specifically involved in onsite activities that may uncover prehistoric resources shall be trained in the identification of prehistoric resources and immediate actions required if potential resources are found.

Mitigation Measure E.1a: Pursuant to CEQA Guidelines 15064.5 (f), “provisions for historical or unique archaeological resources accidentally discovered during construction” should be instituted. Therefore, in the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project proponent and/or lead agency shall consult with a qualified archaeologist to assess the significance of the find. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified archaeologist would meet to determine the appropriate avoidance measures or other appropriate mitigation, with the ultimate determination to be made by the City. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.

Mitigation Measure E.1b~~d~~: In the event that human skeletal remains are uncovered at the project site during construction or ground-breaking activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and follow the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

Significance after Mitigation: Less than Significant.

JJ-7 The comment references Mitigation Measure E.3b although the statements apply to Mitigation Measure E.3a, which requires that “documentary photographs [of the historic resource] would be archived locally at the Oakland History Room (OHR) of the Oakland Public Library. The mitigation details the standards, methods and format for the archived materials, which would be managed by qualified public library staff in perpetuity as a function of standard operations of the OHR, thus additional funding to fully implement Mitigation Measure E.3a is not warranted. Similarly, Mitigation Measure E.8 specifies an historical exhibit that would include, at a minimum, materials depicting the history of the Oakland Municipal Terminals through a variety of physical, aural and visual media.

The additional text is added to Mitigation Measure E.8 on p. IV.E-24 (additions shown as underlined; deletions as ~~strikeout~~):

Mitigation Measure E.8: The project sponsor shall set aside a minimum of 200 square feet of floor area within the Bulkhead Building for an historical exhibit depicting the history of the Oakland Municipal Terminals. At a minimum, the exhibit would consist of the following:

- 5) **An educative and documentary audio/visual history on the Oak to Ninth area and accessory areas as appropriate, including:**
 - a. **Visual explanation of wharf design versus other types of pier design;**
 - b. **Oral histories of people who worked at the building and/or other maritime industries in the area;**
 - c. **Historic film clips.**
 - d. **History of the development of the harbor;**
 - e. **History of the development of the Port Board;**

- f. **PWA and WPA involvement at the Port;**
- g. **World War II uses;**
- h. **A visual film documentation of the existing warehouse/industrial character of the area, including views from the water to the City.**
- i. **Written transcripts on archival quality paper for any audio or visual exhibits prepared for this mitigation.**

JJ-8 See Master Response 2 regarding alternative reuses for all or part of the Ninth Avenue Terminal. Regarding compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties, Mitigation Measure E.3b on p. IV.D-27 of the DEIR specifies that, under the project scenario in which the Bulkhead Building would be adaptively reused and rehabilitated, these actions would comply with the Secretary's Standards. Alternative 3 (Reduced Development / Terminal Preservation) discussed starting on DEIR p. V-29, and the Full Preservation and Adaptive Reuse Sub-Alternative discussed starting on DEIR p. V-38, both also would require consistency with the Secretary's Standards.

The comment states that the Estuary Policy Plan evaluated historic resources and that the project and the alternatives should be brought into compliance with that Plan. Section IV.A (Land Use, Plans, and Policies) of the DEIR includes a detailed discussion of the project's relationship to the Estuary Policy Plan's policies starting on p. IV.A-13 and concludes that the project would not conflict with the Plan. The alternatives analysis in Chapter V of the DEIR discusses the relationship of each alternative to the Estuary Plan Policies in particular. The evaluation of historic resources in the Estuary Policy Plan EIR (consistent with the policy statements in the plan) concluded that the project would have a significant and unavoidable impact given the potential that all or portions of the Ninth Avenue Terminal would be demolished. The City adopted a statement of overriding considerations stating why the benefits of the project (Estuary Policy Plan with Terminal potentially demolished) would outweigh the significant unavoidable impact.

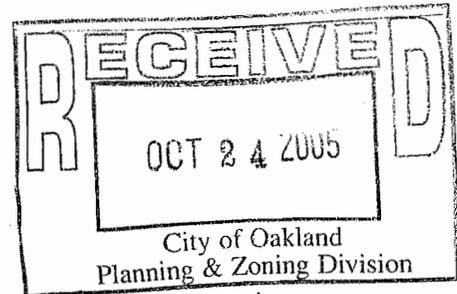
References

San Francisco Estuary Institute (SFEI). *Historical View of Central Bay Subregion, ca. 1770-1820, based upon Eco Atlas 1.50*. Map on file at Environmental Science Associates, Oakland, CA.

Sowers, J.M. *Creek and Watershed Map of Oakland and Berkeley*. Historical wetlands research conducted by Historical Ecology Group, San Francisco Estuary Institute. Map on file at Environmental Science Associates, Oakland, CA.

Pamela and Charles Weber
#3 Fifth Avenue
Oakland, CA 94606

October 23, 2005



Margaret Stanzione
Project Planner
City of Oakland
Community and Economic
Development Agency
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Re: Comments on DEIR, Oak to Ninth Avenue

Dear Ms Stanzione:

Following are our comments on the Draft Environmental Impact Report for Oak to Ninth Avenue.

III-4. "After implementation of the Oak to Ninth project, the site would consist of approximately 64.2 acres..."and "...after changes in land area resulting from shoreline alterations in Clinton Basin." This statement fails to state the project sponsor's intent to fill two acres of Clinton Basin.. The increased land area to be created by the fill is then used to positively calculate the ratio of open space-to-total land area in the Project Characteristics. The proposed land-fill issue alone is of such significance to warrant additional public hearings prior to approval of the draft EIR.

KK-1

III-5 "The project would demolish a maximum of approximately 165,000 square feet of the existing Ninth Avenue Terminal building and a portion of its existing wharf."

III-18 "The Port or the City would own the open spaces proposed by the project."

KK-2

The project sponsor will demolish an historic building in the process of being landmarked (with an Oakland Landmarks Preservation Advisory Board rating of "A") on public property. Who gave the project sponsor the authority to do this? How will ownership of the Ninth Avenue Terminal on public property be transferred to the project sponsor?

KK-3

24

Margaret Stanzione
October 23, 2005

<p>The voters of Oakland mandated approximately \$22 million of Measure DD funds to be expended on waterfront parks on the area from Oak to Ninth, and the project sponsor has no right to change the intent of measure DD. The DEIR does not discuss how these funds will be expended, and whether the Park Department will be involved in the planning process or administration of the waterfront improvements.</p>	<p>KK-3 (CONT.)</p>
<p>This section fails to discuss who will pay for maintenance of the piers, riprap, park landscaping, parking and amenities of the "open spaces".</p>	<p>KK-4</p>
<p>III-16. "Gateway Park would be sited at the main entry to the project." This presumes the project sponsor will obtain approval to fill 2 acres of Clinton Basin.</p>	<p>KK-5</p>
<p>The 3,100 residential units projects a population density equal to Manhattan, hardly a glowing recommendation of ideal California living conditions.</p>	<p>KK-6</p>
<p><u>IV.B-1.</u> This section does not address the approved development currently underway at Jack London Square which includes 1.2 million square feet of new office, retail, residential, theater, supermarket and theater space within one mile of Oak to Ninth. The DEIR for that project predicts weekday afternoon trip generation of 24,914 and weekend afternoon trip generation of 20,788. The access roads to the south end of Jack London Square are the same as those to Oak-to-Ninth. It is recommended that the transportation element of the DEIR for Oak-to-Ninth be combined with the EIR for the Jack London Square development and that public hearings on this component of the DEIR be held.</p>	<p>KK-7</p>
<p>The subject DEIR for Oak to Ninth does not address the proposal by CalTrans to close the Jackson Street onramp to northbound 880, although the Jack London Square DEIR acknowledges the proposed closure. This closure will force northbound and eastbound traffic from Oak-to-Ninth to negotiate city streets in Chinatown.</p>	<p>KK-8</p>
<p>The traffic study also fails to discuss the additional traffic on the Embarcadero created when there is a slowdown or blockage on southbound 880; traffic exits at Jackson Street, down Oak Street to the Embarcadero, causing delays of up to 15 minutes from Oak Street to Fifth Avenue on the Embarcadero. Such a delay, compounded by an additional 3,000 cars per day during commute periods, and the closure of 5th Avenue by trains, could be substantial.</p>	<p>KK-9</p>
<p><u>IV.B-68</u> Adds an estimated 50 truck round trips per day during the site preparation phase and 50 truck round trips per day during construction, both of which could be occurring simultaneously.. Many of these trucks are slow-moving and would add greatly to traffic delay times and congestion.</p>	<p>KK-10</p>
<p><u>IV.B-9.</u> Existing Intersection LOS (Level of Service) and Delay. The intersection of 5th Avenue and the Embarcadero is rated "F" – with a current delay of 54 seconds per vehicle in the morning and greater than 70 seconds in the afternoon. Delays caused by trains are not addressed.</p>	<p>KK-11</p>

Margaret Stanzone
October 23, 2005

IV.B-60. Railroad Operations. This section is incorrect and misleading. Field data was collected only from 7 am to 6 pm. A more accurate figure for freight trains is 18 per day, for a traffic delay of 3 to 10 minutes each. Combined with Amtrak passenger service of 38 trains per day, the more accurate estimate of total traffic delay at Fifth Avenue and Oak Street is currently 98 minutes per day. Compounding railroad traffic delays with a freeway backup that forces traffic onto the Embarcadero and an additional 3,100 to 6,000 vehicles per day during commute periods, the Embarcadero could become the Bay Area's worst traffic jam. An emergency vehicle would not have a chance of getting through to a waterfront emergency. Business owners at Jack London Square have already publicly expressed concern about how they would handle a serious medical emergency on the waterfront when there is a long freight train on site and heavy Embarcadero traffic.

KK-12

IV.B-74 Allocation of one parking space per residential unit. The Metropolitan Transportation Commission reported in 2000 that the average Bay Area household owns 1.85 cars. If this project is permitted to build only 3,100 parking spaces, it can be assured that all 665 spaces planned for retail, marinas and the aquatic center will be continually occupied by residents' secondary vehicles and guests. Full-time policing of "no parking" zones along the Embarcadero and the privately owned properties within the project would be required.

KK-13

If for any reason during the build-out phase the developer increases the number of parking spaces per unit, the additional traffic generated by these vehicles will invalidate the traffic study proposed for approval in the DEIR. It appears that the proposed parking ratio was geared toward presenting an acceptable traffic study.

KK-14

The planned ratio of parking of 1 space per 1,000 square feet of commercial space is inadequate. A 5,000 sq. ft. store might have 3 employees, thus leaving 2 parking spaces at a time for customers. Which retailers have agreed to leases on these terms?

KK-15

IV.E-14. Table IV.E-1 Philbrick Boatworks building #4. The section indicates the Philbrick Boatworks building was built in 1947. This is incorrect. The building was being used in the 1920's – 1930's as a receiving station for bananas and other produce from Central and South America. This building may not have architectural significance but its maritime history is significant.

KK-16

IV.G-17. Projected Noise Levels. The project is planned to be built out over 11 years, with all facets of the project – ground clearing, excavation, foundations, erection, exterior finishing and pile driving creating noise levels which exceed acceptable levels.

"Noise-sensitive uses nearest the proposed demolition and construction activity would be the residents of the adjacent residential complex (Portobello) and work-live tenants in the adjacent Fifth Avenue Point and tenants occupying buildings completed during initial construction phases."

KK-17

OSHA requires employers to monitor noise exposure levels in a way that accurately identifies employees exposed to noise at or above 85 decibels averaged over 8 working hours. This

Margaret Stanzone
October 23, 2005

- exposure measurement must include all continuous, intermittent and impulsive noise within an 80 to 130 decibel range. Employers must provide hearing protectors to all workers exposed to 80hour TWA noise levels of 85 decibels or above. | KK-17 (CONT.)
- What provision will the developer make for noise protection for the tenants and business operations existing at the Fifth Avenue Point Community and Portobello? | KK-18
- IV.J-1. Oak-to-Ninth is currently occupied by 21 tenants which employ about 230 workers, all of whom will be out of work if this project moves forward. The developer makes no provision to attempt to negotiate with existing tenants to keep them at the site or relocate them to other areas of the project. Twenty-one business licenses will be lost to the City of Oakland, with their attendant sales tax. Will incremental property tax, which will be directed solely to the Redevelopment Agency, make up for the loss of long-standing businesses in Oakland? | KK-19
- IV.J-5. This section fails to mention the Philbrick Boat Works, which has been in continuous operation since the 1940s. Philbrick boats are famous in the genre of wooden boats. There is no mention in the DEIR of an attempt by the project sponsor to relocate this important part of Oakland's waterfront history. | KK-20
- Table IV.J-17. Estimated retail sales are preposterous for the size and type of retail proposed. Central area neighborhood retail projects \$336 per square foot in sales – equivalent to a successful Nordstrom, except that this store might have only 20 parking spaces, 7 of which might be occupied by employees. | KK-21
- IV.K-39. To state that existing views and vistas from land that is currently vacant or occupied by one-to-two-story buildings would not be significantly impacted by covering said land with 8-to-24 story buildings is preposterous. To say the project's effect on scenic vistas would be less than significant is a lie. | KK-22
- Figure IV.K-32 and IV.K-33. Shadow patters for March 9am and December 9am cover nearly the entire area of Ninth to Channel Park. This is contradicted by line 1, page IV.K-62 "The project would not results in significant shadow impacts as a result of new construction" and the final paragraph of that section "In conclusion, based on the above evaluation, the project would results in less-than-significant shadow effects." This is completely false. With increasing energy costs, the use of natural light is becoming more important than ever. | KK-23
- Project Residents Would Contribute Additional Retail Spending. This section estimates project residents would spend \$30,645 per unit annually in Oak-to-Ninth retail/commercial enterprises. | KK-24
- IV.K-8 "The project would develop incrementally... The project sponsor proposes to develop the initial project phase(s) in the easternmost portion of the site, with subsequent phases likely to be constructed by other developers." Without a specific plan, what regulation and what governing body would have oversight over the "other developers." | KK-25

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IV.K-11-39. Comparison of existing and proposed views. Figures IV.K-2 through IV.K-19. Computer-enhanced photographs are intentionally composed from a distance or with trees or objects in the foreground to intentionally soften the impact of the massiveness and height of the structures. The alternate variant structures are depicted with the most misleading foregrounds. These depictions should be more realistically presented in the final EIR.

KK-26

Figure IV.K-20. March Shadow Patterns, 9 am and September Shadow Patterns, 9 am. This figure illustrates nearly total darkness for 90% of the project. It is apparent that many residents of this project will rarely see sunlight

KK-27

IV.L-9 This section deduces that the proposed project would have no adverse physical impacts associated with the provision of new or physically altered governmental facilities, or need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response time or other performance objectives for any of the following services:

KK-28

Fire protection, police protection; schools; and other public facilities

The DEIR for the proposed Jack London Square project, with its projected 1,200,000 square feet of new development and 20,000 to 24,000 trips per day, reached the same conclusion. How can 30,000 additional people per day visit a one-mile-long area served by a two-lane road and not require any additional fire, police and other public services?

The impact on public services of the combined Jack London Square and Oak to Ninth developments is of such significance that it warrants a combined DEIR public hearing.

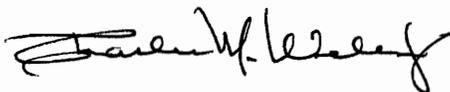
IV.L-15. Creation of a 3.1 acre park at the expense of filling the Estuary is unnecessary and will create a politically volatile situation. The San Francisco airport has proven that airport safety would be increased by filling San Francisco Bay for an additional runway – after 15 years of applications, the approval has not been achieved.

KK-29

An honest assessment of what this proposed development will be is a private community to which the public will not be welcome.

KK-30

Respectfully submitted,



Charles M. Weber, Jr.



Pamela J. Weber

Letter KK– Pamela and Charles Weber

KK-1 Although, not explicitly stated that approximately two acres of fill would be added to the project site at the base of Clinton Basin, the text that the comment references on DEIR p. III-4 indicates that the land area of the project site would increase by two acres compared to existing conditions. The discussion of agency actions required for the project (DEIR p. III-25) also specifies that review and approval for “filling” would be required by the San Francisco Bay Conservation and Development Commission (BCDC). DEIR p. IV.A-32 (Land Use, Plans, and Policies) states that “the project may require new Bay fill to create new open spaces around Clinton Basin... and the extent to which the potential new bay fill is ‘necessary’ would be considered by BCDC and City....” A description of how the vertical bulkhead wall proposed around Clinton Basin would retain the fill necessary for the improvements around Clinton Basin (DEIR p. IV.D-20).

The potentially significant impacts that could result from bay fill activities (and other water-impacting activities) are identified and fully analyzed in the DEIR in Section IV.D (Hydrology and Water Quality), under Impact D.1 (construction impacts on water quality, starting on DEIR p. IV.D-20), and in Section IV.I (Biological Resources), under Impact I.2 (construction impacts [fill and excavation] on waters of the U.S., which addresses wetlands and as well as “jurisdictional waters of the U.S.,” e.g., Clinton Basin, starting on DEIR p. IV.I-21). Mitigation measures are identified to reduce these potentially significant impacts to less-than-significant levels.

KK-2 The project sponsor has submitted an application for the proposed project, which would entail demolition of 165,000 square feet of the Ninth Avenue Terminal. The City is currently in the environmental and project review process of the proposal. Review and consideration by the Landmark’s Preservation Advisory Board has been, and will continue to be, a part of that City’s review process, and will forward its recommendation on the proposed landmarking of the Terminal to the City Planning Commission prior to its acting on the EIR or the project. If the City chooses to approve the project and allow full or partial demolition of the Terminal, it would be required to prepare and adopt statement of overriding considerations in support of its choice, as it previously did prior to adoption of the Estuary Policy Plan for which a significant unavoidable cultural resources impact was identified for full or partial demolition of the Terminal.

. Upon that approval, the project sponsor would be “authorized” to substantially demolish the Ninth Avenue Terminal, subject to its submitting and obtaining all required City permit applications and approvals for building demolition.

KK-3 Ownership of the Ninth Avenue Terminal (in whole or any portion that would be retained, including the Bulkhead Building proposed by the project) would be retained by the Port or City of Oakland.

- KK-4 See Master Response G, which includes a discussion of the use of Measure DD expenditures for the project area. The project sponsor does not proposed to utilize Measure DD funds to implement the 20.7 new acres of new, City-owned and operated waterfront parks/open space and trails along the Estuary. This would not, however, preclude the future use of Measure DD funds for other improvements within the project area.
- KK-5 See also Responses to Comments R-9 and GG-11 regarding maintenance responsibilities and scope.
- KK-6 The comment includes an unsubstantiated comparison of the proposed residential density to [the City of] Manhattan and a conjecture about the characteristics that warrant “ideal California living conditions.” The comment does address the adequacy of the DEIR or potential impacts on the physical environment under CEQA.
- KK-7 The comment that the traffic analysis in the DEIR does not address the approved development currently underway at Jack London Square is incorrect. Existing built and entitled development in the Jack London Square area is considered throughout the analysis in Section IV.B (Transportation, Circulation and Parking) of the DEIR. Specific discussion of planned roadway, intersection, and transit improvements are discussed on DEIR pp. IV.B-16 and IV.B-17, many of which pertain to Jack London Square approvals and mitigation measures. Further, (as discussed in Response to Comment QQ-4 below), the analysis of intersection impacts is based on the Congestion Management Agency’s (ACCMA) Countywide Travel Demand Model, which was modified with land use, employment and population projections from the Oakland Cumulative Growth Scenario (consistent with the standard process used by the City to prepare environmental analyses). Updated land use assumptions for the project study area, which includes other proposed and approved developments in the City of Oakland (including the Jack London Square Redevelopment project) were applied to the ACCMA model.
- KK-8 The commenters mis-read the planned roadway improvement pertaining to the referenced on-ramp. As described in the Jack London Square Redevelopment DEIR, what would close, as part of improvements recommended in the SR 260 Deficiency Plan, would be the ramp connecting Jackson Street at 6th Street to Broadway (*emphasis added*). The on-ramp from Jackson Street to northbound I-880 would remain open. This roadway improvement is discussed in the first paragraph under Broadway/Jackson Interchange at I-880 on DEIR p. IV.B-16 of the Oak to Ninth DEIR.
- KK-9 Standard traffic analyses for planning documents reflect prevailing (i.e., usual) conditions on roadways and at intersections. Consistent with those practices, the DEIR did not analysis irregular conditions (e.g., diversion of traffic off southbound I-880, as described by the commenter). It also should be noted that conditions that cause such periodic diversion of traffic onto the Embarcadero occur in the absence of the proposed project, and the project would not exacerbate those conditions. The commenter’s characterization of “an additional 3,000 cars per day during commute periods” is incorrect; the estimated

number of vehicle trips generated by the project at buildout would be no more than about 2,590 vehicle trips during the PM peak hour.

KK-10 Potential impacts associated with project construction are discussed on DEIR pp. IV.B-65 to IV.B-69. Mitigation Measure B.10, on DEIR pp. IV.B-69 and IV.B-70 (as revised in this FEIR), would require that the project applicant meet with the Traffic Engineering and Parking Division of the Oakland Public Works Agency and other appropriate City of Oakland and non-City agencies (e.g., Caltrans) to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project applicant would also be required to develop a construction management plan for review and approval by the City Traffic Engineering Division. Implementation of Mitigation Measure B.10 would reduce the impacts to a less-than-significant level.

KK-11 As stated in the Response to Comment KK-9, above, consistent with standard traffic analyses practices, the DEIR analysis reflects prevailing (i.e., usual) conditions at the intersection of 5th Avenue and the Embarcadero. The DEIR addressed the frequency of trains crossing 5th Avenue on DEIR p. IV.B-60.

KK-12 See Responses to Comments J-1 and J-3 regarding revisions to the DEIR descriptions of railroad service in the project area. The DEIR acknowledges that delays are incurred when the railroad crossing is blocked by a passing train, and that during those times, access to the project site would be impeded. However, the source of the commenter's characterization of the length of delay (3 to 10 minutes per freight train, and 98 minutes per day considering Amtrak trains, too) is unclear. As stated on DEIR p. IV.B-60, field observations at the 5th Avenue crossing (from 7:00 AM to 6:00 PM, when the great majority of project traffic would be generated) indicated that the crossing gates were down from one to five minutes per freight train. During the 11-hour data collection effort, freight trains caused the gates to be down for a total of about 20 minutes, or 3 percent of the total observed time.

The DEIR states that when a freight train is crossing the tracks across 5th Avenue, impeded access to the project site could be a serious concern for an emergency vehicle traveling to the project site. Available alternative routes are the at-grade crossing on Oak Street (to the north) and the overcrossing on 16th Avenue (to the south). In the opinion of the Oakland Police Department, the availability of alternative routes would minimize any significant delay in response time, given the relative frequency and duration of train obstructions at both the 5th Avenue and Oak Street crossings in typical conditions or in the instance of a simultaneous emergency in the project area.

See Response to Comment KK-9, above, regarding analysis of irregular occurrences of diversion of traffic off southbound I-880, and regarding the commenter's incorrect characterization of "an additional 3,100 to 6,000 vehicles per day during commute periods."

- KK-13 See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management measures.
- KK-14 See Response to Comment Q-3 regarding the relationship between parking demand and vehicle trip generation.
- KK-15 The commenters mis-read the parking requirement for commercial space on the project site. As seen in Table IV.B-11, DEIR p. IV.B-72, the proposed planned waterfront zoning district parking standard for general commercial spaces would be one space per 500 square feet of floor area.
- KK-16 See Response to Comment O-1 regarding the historic status of Philbrick Boat Works.
- KK-17 The comment describes noise monitoring and measures to protect employees from exposure that is required of employers under Occupational Safety and Health Agency (OSHA) regulations. Project compliance with all applicable federal, state, and local laws is assumed, including those that apply to construction workers.

The following text shall be added on DEIR p. IV.G-5, as the third paragraph under *State of California Regulations*:

“The project would involve hazardous noise activities related to certain construction activities and duration of such activities. Construction operations on the site therefore would be subject to federal and state Occupational Safety and Health Agency (OSHA) standards that address construction employee hearing conservation and noise exposure.” (DOSH, 2006; OSHA, 2006) References:

California Division of Occupational Safety and Health (DOSH) website, <http://www.dir.ca.gov/title8/5097.html>; accessed January 4, 2006.

U.S. Department of Occupational Safety and Health Agency (OSHA) website, <http://www.osha.gov/SLTC/constructionnoise/programs.html>; accessed January 4, 2006.

- KK-18 As discussed in the DEIR starting on p. IV.G-17, the project would have a significant and unavoidable construction noise impact (Impact G.1) due to “project construction noise levels that could exceed City of Oakland standards and cause disturbances in noise-sensitive areas, such as residential areas.” Feasible mitigation measures are identified and detailed starting on DEIR p. IV.G-20 and incorporation measures specific to adjacent sensitive receptors, such as residents in Fifth Avenue Point and the Portobello Condominiums.
- KK-19 The comment raises the topic of displaced employees, business relocation efforts, and whether new property tax generated from the project would cover the existing business

licenses and sales tax revenues that would be lost with the removal of existing businesses. To the extent that the project would displace existing businesses and jobs in a manner that would result in a potential impact on the physical environment under CEQA, these potential effects are discussed in detail under Impact J.2 (DEIR p. IV.J-28) and are determined to be less than significant.

KK-20 Other than highlighting two specific tenants that maintain long-term leases on the project site (Cash & Carry and the sand and gravel and ready-mix concrete operation), the discussion on DEIR p. IV.J-5 does not mention any specific businesses on the project site. Philbrick Boat Works is one of the two businesses cited as having been on the project site for “about 40 years” (which, based on information conveyed in Response to Comment O-1, may in fact be longer than 40 years).

KK-21 DEIR Appendix D.2 provides background on the retail analysis presented in the DEIR text and in Table IV.J-17 on DEIR p. IV.J-37. Appendix Table D.2-10 (Appendix D.2, p. 16) details the assumptions for estimating project retail sales for retail/commercial space (as shown in DEIR Table IV.J-17 on p. IV.J-37) and notes that Hausrath Economics Group considered potential retail uses and sales per square foot ratios for comparable retail uses and retail developments. Appendix Table D.2-11 (Appendix D.2, p. 17) provides a scenario of possible retail uses that could produce the estimated sales.

As shown in Appendix Table D.2-11, sales averaging \$335 per square foot could reflect a mix of Central Area Neighborhood Retail uses including the following:

- | | | |
|------------------------|---|-------------------|
| – Grocery store/market | \$350/sq. ft. | |
| – Drug store | \$400/sq. ft. | |
| – Smaller food shops | \$250-300/sq. ft. | (used \$275 avg.) |
| | (coffee, bagels, juices, sandwiches, deli, fish/meat, liquor/wine, baking, health foods, ice cream) | |

As shown in Appendix Table D.2-11, sales averaging \$335 per square foot could reflect a mix of Central Area Neighborhood Retail uses including the following. The sales per square foot ratios are from Urban Land Institute publications and from Hausrath Economics Group experience on a number of Bay Area retail projects and consulting assignments over the years. The following summarizes comparables from an Urban Land Institute publication used in developing the sales estimates for the DEIR analysis:

Retail Tenants in Neighborhood Shopping Centers/Areas*
(sales volume per square foot)

<u>Tenant Type</u>	<u>U.S. Median</u>	<u>Western U.S. Median**</u>
Supermarket	\$353.64	\$407.79
Drugstore/pharmacy	408.40	596.14
Coffee/tea	376.52	--
Hamburgers	347.26	--
Restaurant with liquor	273.31	307.22
Restaurant without liquor	194.16	--
Liquor/wine	254.10	--
Sandwich shop	244.63	--
Pizza	200.67	--

* The neighborhood center is defined as one that provides for the sale of convenience goods such as food and drugs. A supermarket is often the principal tenant.

** Only available for selected types of tenants.

Source: ULI-the Urban Land Institute, *Dollars & Cents of Shopping Centers:2004*

It can be noted that the Central Area Neighborhood Retail uses are estimated to have the highest average sales volumes per square foot within the project, and that 21 percent of the retail/commercial space in the project is included in this area. The Central Area Retail uses are estimated to have the highest sales volumes because they are located along the project's Main Street, and the area would be the "neighborhood center" for shopping by residents of the project. Estimated sales volumes per square foot are estimated to vary among the different types and locations for retail/commercial space in the project. As shown in Appendix Tables D.2-10 and D.2-11, average sales volumes for the project are estimated to range from \$125 per square foot to \$335 per square foot of space.

The comment mentions that \$335/336 per square foot in sales is equivalent to a successful Nordstroms. However, sales per square foot ratios are likely to be substantially higher for a successful Nordstroms, particularly one in the San Francisco Bay Area (*e.g.*, in downtown San Francisco, downtown Walnut Creek, or Palo Alto). As background, national data on median sales per square foot for national tenants in a super regional center or metropolitan area central business district (CBD) show the following:

Women's specialty retailer	
U.S. median	\$378.89 per sq. ft.
Top 10 percent	826.94 per sq. ft.

Top 2 percent	1,091.56 per sq. ft.
Women's ready-to-wear retailer U.S. median	\$270.34 per sq. ft.
Top 10 percent	503.73 per sq. ft.
Top 2 percent	681.57 per sq. ft.

Source: ULI-the Urban *Land Institute, Dollars & Cents of Shopping Centers: 2004*

The median sales volumes above are for the U.S. overall, and would be higher in the western U.S. A successful Nordstroms in the Bay Area could easily have sales ratios in the top 10 percent of the ratios for the U.S. overall that are shown above.

The statement incorrectly concludes that only 20 parking spaces would be provided to serve the proposed retail/commercial uses proposed. As shown in DEIR Table IV.B-11 on p. IV.B-72, the proposed parking standard for the project (1 space for 500 sq.ft. of general commercial use) would equate to approximately 400 parking spaces. Total proposed parking supply for the project is shown in DEIR Table IV.B-13 on p. IV.B-73 (3,534 spaces). This total onsite parking would be further increased by onstreet parking that is not considered part of the project parking supply for purposes of the parking demand and supply analysis in the DEIR. In addition, the total parking could be further increased essentially through possible and anticipated shared use of onsite parking spaces that would occur based on the interaction between various uses on the site – particularly residential and retail uses. A discussion of shared parking adjustments to parking demand begins on p. IV.B-73 of the DEIR. See also Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management measures.

KK-22 The analysis and conclusions of the project's effects on views and scenic vistas is guided by the significance criteria set forth in the City of Oakland's 2004 CEQA Thresholds/Criteria of Significance Guidelines stated on DEIR p. IV.K-6. Specifically, the assessment that buildings resulting from the project would be a less-than-significant impact is appropriate since the project would not result in 1) "a substantial adverse effect on a scenic vista" or 2) "substantially degrade the existing visual character or quality of the site and its surroundings." As discussed on DEIR p. IV.K-9, admittedly, visual quality is subjective, however it can reasonably be concluded that the project would not result in a substantial, demonstrable negative aesthetic effect, particularly compared to existing conditions of the site or potential development envisioned under the Estuary Policy Plan. Visual change due to the project would be noticeable and vast, however, change is not assumed to be adverse. Also, the change in views and vistas from public vantage points would be altered but would not be substantial or adverse, particular considering key views of the Oakland and San Francisco skyline, the Oakland Hills, or views of the Estuary. In some cases, new views would be created or existing views

expanded. The conclusion in the DEIR is consistent with the significance criteria under CEQA and priority views indicated in the General Plan.

- KK-23 The conclusion that the project would not result in significant shadow impacts accurately summarizes the analysis of the project, which considers the incidence of shadow throughout the year and all times of day (DEIR Figures IV.K-20 through IV.K-31). The comment specifically speaks to DEIR Figures IV.K-31 and IV.K-32, which depict the worst case shadows (mornings in March and December) for the increased height variant of the project. These figures show that the shadow under the increased height variant is not substantially different than that of the project during mornings in March and December (DEIR Figures IV.K-20 and IV.K-29). Consistent with the discussion of Criteria Overview for shadow impacts (DEIR p. IV.K-41), it is most appropriate for the analysis to consider the range of shadow impacts that would occur throughout the day and year. The analysis not only considers the incidence of shadows during the spring equinox and winter solstice, when shadows are longest, but the duration of shadows, particularly on sensitive areas. As discussed and depicted in Figures IV.K-21 and IV.K-30, the extensive morning shadows subside by mid-morning to noon and for the remainder of the day. Therefore, consistent with the CEQA significance criteria shown on DEIR pp. IV.K-6 and discussed further on IV.K-41, the project would not cast shadow that would substantially impair any facilities, buildings, or areas identified by CEQA or that would conflict with any solar access policies in the General Plan (i.e., LUTE Policy N3.9).
- KK-24 Table IV.J-18 on p. IV.J-38 shows the average annual spending per household and in total that is estimated for project residents and that is based on data provided by the U.S. Bureau of Labor Statistics, as footnoted in the table. The comment has mis-read the information to assume that this estimate of spending is anticipated to occur in the project retail/commercial enterprises.
- KK-25 If the City approves the project, it would involve approval of a Preliminary Development Plan (PDP) and Final Development Plan (FDP), amendments to the General Plan and Zoning Code/Map, and all other conditions of approval, permits and agreements. These approvals would constitute the “regulations” that would govern the development of the project site into the future, regardless of future other development entities that are not the project sponsor. All phases of project development would adhere to the all project approvals being sought by the project sponsor, including the development standards proposed by the Planned Waterfront District-1. The City would be required to review and approve all FDPs for future phases of development to ensure general consistency with the PDP and all conditions, approvals, and agreements. Substantial modifications of changes the any approvals would be subject to review by the Planning Commission and other appropriate City review boards (e.g., LPAB, PRAC).

See Master Response A which discusses how, in many respects, the Oak to Ninth Avenue project proposal analyzed in the DEIR provides greater detail on a broader range of topics

than required for a specific plan, and how in this way provides the public and decision makers with information that may not be available at a specific plan level of planning. This allows also for the City to establish more specific guidance for development of the site over time.

KK-26 The development of computer-enhanced visual simulations provided in the DEIR were developed with direction provided from City staff and based on input received during the EIR scoping process and during numerous public meetings and hearings on the EIR and project. Significant consideration and effort go into selecting a range of public view corridors or vantage points from public areas that represent short-, medium- and long-range views of and across the site, as well as internal views of the site (as discussed on DEIR p. IV.K-5). Significant consideration is also given to the ensuring that the visual simulations reasonably depict the setting that may exist at buildout, particularly regarding landscaping, but not to the degree that intentionally obscures the image and precludes accurate interpretation or analysis. As stated on DEIR p. IV.K-10, “the images of the project shown in the simulations are intended to convey the general mass, height, and interrelationships of project buildings, individually and collectively....” In instances where landscaping is introduced in the simulation, it is realistic of that anticipated for the project at buildout (e.g. along Lake Merritt Channel in Figure IV.K-6 and IV.K-7; along the Embarcadero in Figure IV.K-5 and IV.K-10; and along internal streets in Figures IV.K-14 and IV.K-15). Because the detailed architectural design of project buildings is not yet developed, particularly at street level, landscaping in the close-in, internal street-level viewpoints in Figures IV.K-14 and IV.K-15 is shown to minimize the reviewers focus on building design detail and to focus on building mass and changes in views as intended for the CEQA analysis.

KK-27 See Response to Comment KK-23.

KK-28 The DEIR provides a thorough analysis of the project’s effects on police protection services, fire and emergency services, public schools, parks and recreational facilities, and libraries in Section IV. L. (Public Services and Recreation Facilities). The analysis relies heavily on consultation with the senior agency staff for each service and is presented in the analysis. The cumulative analysis starting on DEIR p. IV.L-20 is discussed in substantial detail and not only considers future buildout growth in Jack London Square, but of all other foreseeable development in the city of Oakland and surrounding areas (per the Oakland Cumulative Growth Scenario). The significance criteria provided on DEIR p. IV.L-9, ultimately address whether new or expanded physical facilities would be needed with regard to the public services addressed, and whether that construction would result in significant adverse physical effects. As concluded in the DEIR, the project would not result in a significant impact pursuant to the CEQA significance criteria.

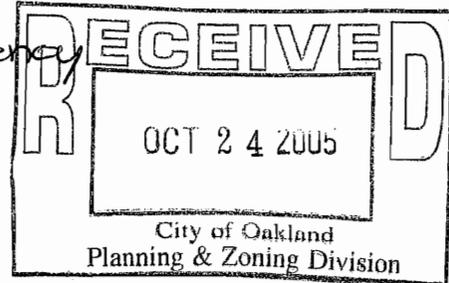
KK-29 See Response to Comment E-4. The comment speculates about potential political issues that could result from the project’s proposal to fill approximately two acres of the Clinton

Basin in the Oakland Estuary, and compares that to the San Francisco airport proposal to fill some portion of San Francisco Bay for additional runway. The comment is conjecture and not relevant to the adequacy of the DEIR analysis or issues pertaining to CEQA.

KK-30 The project would contain a mix of private development areas (residential and retail/commercial development, marinas) and public areas (parks, open spaces, Ninth Avenue Terminal Bulkhead Building, streets and public paths). To the extent that the site arrangement conveys a private community within the project area, City decisionmakers will evaluate the appropriateness of the proposal as it considers the merits of the project design.

October 23, 2005

Marge Stanzione, Project Planner
 City of Oakland
 Community & Economic Development Agency
 Planning Division, Suite 3315
 250 Frank H. Ogawa Plaza
 Oakland, California 94612
 Dear Ms. Stanzione:



The EIR on the proposed development of the Oak to Ninth district is invalid because there was no Specific Plan done which would have included the public's vision for this land.

You bypassed the requirement for a Specific Plan and gave away the last prime waterfront property to a narrow-minded developer instead of to the broadminded people of Oakland.

The people of Oakland deserve to have a say in how this property is developed. When a Specific Plan is implemented, then you can have a valid EIR.

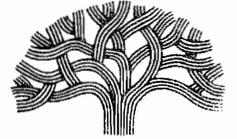
Sincerely yours,
 Eva Tolmarch

LL-1

Letter LL – Eva Tolmach

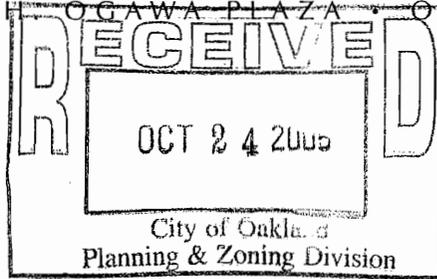
LL-1 See Master Response A regarding preparation of a specific plan.

CITY OF OAKLAND



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NANCY J. NADEL
Councilmember
District #3



(510) 238-7003
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October 24, 2005

Margaret Stanzone
Project Planner
City of Oakland
CEDA Planning Division
250 Frank Ogawa Plaza Suite 3315
Oakland, CA 94612

Re: Comments on Oak to 9th EIR

Dear Ms. Stanzone,

Thank you for the opportunity to present my comments on the Oak to 9th Avenue Project EIR:

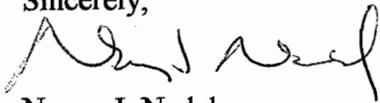
- 1. I would have rather the city had done a specific plan as proposed in the Estuary Plan. That process would have given the city a more objective position rather than a reactive position. The elements of a specific plan could have been presented with costs for various scenarios so that the city could then determine what might be feasible over time. MM-1
- 2. Why is the Estuary Plan alternative considered a “no development” alternative since it includes a conference center, demolition of the 9th Ave. Terminal and considerable open space landscaping? I think designating it a “no development” alternative is a mistake. MM-2
- 3. I no longer have a copy of the Estuary Plan EIR. Was a more dense alternative explored? If so, I assume it was rejected as more environmentally damaging. Can you respond with whether this EIR and the Estuary Plan EIR are analyzing the issues with the same conclusions since they consider the same land in part, for determining the least environmentally damaging alternative? MM-3
- 4. The 9th Ave. Terminal building is unique in its size. I’d like to see the same type of effort for it’s reuse as we are doing for the Wood St. Train station to determine a viable sustainable use. MM-4
- 5. Access and traffic are of great concern – a project that would result in significant unavoidable impacts at 5th and Broadway is unacceptable. This is our gateway to Jack London Square. MM-5

MM

6. The hazardous waste at the site is considerable and complicated to mitigate. The cost of such clean-up is used as the economic rationale for a dense housing development. It would be helpful to have a chart of levels of clean-up required for the various scenarios (Estuary Plan alternative, reduced development alternative, the proposed project alternative), and the costs of such clean-up to better analyze our options as a city. MM-6
7. The Estuary Plan calls for a community center at this location. Options to re-use the Jetro Cash and Carry building for a community center should be explored. We tend to think about tearing everything down and rarely consider rehabilitation and improved landscaping as options. Tax payer dollars are limited and all options for creative reuse should be explored. MM-7
8. Scenic Vistas – I think it is essential that the waterfront be seen from afar at several points from a distance so that one doesn't have to live there to appreciate it. Figure IV K-17 also makes the shore look very building oriented and green open space is indiscernible from a distance. MM-8
9. If housing is to be considered at this location, mixed income housing would be my preference. Economic impacts without such inclusion should be analyzed. MM-9
10. Access for fire and emergency equipment while trains are on tracks is not discussed in the EIR. This should be analyzed for appropriate service levels. MM-10

I look forward to your responses.

Sincerely,



Nancy J. Nadel

LETTER MM – Nancy Nadel

MM-1 See Master Response A regarding preparation of a specific plan. The analysis in Chapter V of the DEIR includes alternatives that retain all or part of the Ninth Avenue Terminal. To supplement the information provided in the DEIR, particularly the alternatives analysis in Chapter V (Alternatives), the project sponsor has prepared an economic feasibility report (separate from this environmental report) that assesses the economic considerations for each of the alternatives and the project.

MM-2 See Responses to Comments U-2 and Y-8 regarding the no project alternative.

MM-3 The description and analysis of Alternative 1B (No Project / Estuary Policy Plan), which considers the development envisioned in the Estuary Plan and analyzed in its EIR, is provided starting on p. V-10 of the Oak to Ninth Project DEIR. This analysis covers the same topics that were analyzed in the Estuary Plan EIR. The impact conclusions of the DEIR are consistent with (or more conservative than) those of the Estuary Plan EIR.

The Estuary Plan EIR did not analyze a more intensive alternative. The EIR analyzed a no project alternative under which the City would not have adopted the then draft Estuary Plan, thereby leaving the then existing Waterfront Mixed Use land use classification (per the Land Use and Transportation Element of the General Plan), the existing City zoning regulations, the existing Port of Oakland development standards, and the existing City and Port practices would remain in effect and conditions would be the same as assumed under the LUTE. Under the no project alternative, the total number of households projected would be reduced to 2,379 from 2,507 and the total number of jobs would be increased from 15,330 to 16,865.

The Estuary Plan EIR also analyzed an environmentally superior alternative in which specific strategies within the then draft Estuary Plan were altered to reduce environmental impacts identified for traffic, air quality, wildlife, and aquatic resources, and "Port Priority Use" area designations as defined then for the Ninth Avenue Terminal by the San Francisco Bay Plan. Changes under this alternative that pertain to the Oak to Ninth District included 1) deletion of the proposed commercial, hotel and conference center, and work/live lofts to maintain existing uses and open space and preserve the Ninth Avenue Terminal; 2) deletion of the proposed expansion of the park areas and passive recreation piers on Lake Merritt Channel; and 3) maintaining existing warehousing and port related activities and facilities at the Ninth Avenue Terminal, consistent with the then designated "Port Priority Use" area. The impacts of this alternative compared to the then draft Estuary Plan would be reduced or avoided for the following topics: land use changes; indirect adverse housing impacts; public service impacts; visual, biotic, geologic, and water quality impacts (given no pier construction); cultural resource impacts; impacts on transportation, energy, and air quality since the amount of development accommodated would be smaller (although adverse effects could occur if development simply went elsewhere in the region, resulting in longer trip lengths);

hazardous material impacts given fewer disturbances of contaminated sites (although in the absence of development there would be no incentive to clean-up contaminated sites).

The environmental superior alternative was rejected for a number of reasons. Those specific to the Oak to Ninth District include the following:

- 1) The proposed commercial, hotel and conference center and work/live lofts were considered necessary to support the large investments proposed for expansion of park space and road improvements planned for the area. Elimination of the commercial enterprises would limit the City and Port's ability to finance the other public improvements for the area, and the entire area would be maintained with existing uses and open space to reduce the potential for traffic and related air quality impacts.
- 2) The proposed piers would provide important opportunities for members of the public and experience the Estuary environment and literally walk out onto the water.
- 3) Redevelopment of historic terminals and port related structures for public uses and activities increases opportunities for the public to experience and enjoy the Estuary and the waters edge.

Like the alternatives analyzed in the Estuary Plan EIR, the Oak to Ninth Project DEIR analyzed one or more alternatives that would reduced propose development and retain all or part of the Ninth Avenue Terminal. The Oak to Ninth Project DEIR did not analyze an alternative that excluded proposed in-water activities (shoreline improvements, marinas, Ninth Avenue Terminal pier improvements) that may reduce significant effects on “biotic, geologic, and water quality impacts,” as these elements of the project are fundamental to the project sponsor’s objectives.

MM-4 See Master Response B regarding further analysis of reuse alternatives for the Ninth Avenue Terminal. To summarize from that response, the DEIR recognizes several suggestions that were submitted to the City as response to the Notice of Preparation (NOP) or during preparation of the DEIR. Most of the suggestions included possible reuses for the Ninth Avenue Terminal. Specifically, the *Ninth Avenue Terminal: A Feasibility Study for Adaptive Reuse* (Perry et al., 2005) describes several examples of uses that could occur in the fully- or partially-retained Ninth Avenue Terminal. (Other commenters on the DEIR subsequently submitted further information on this topic.) For each of the alternatives that assume partial or full preservation of the Terminal, reuses assumed in each include a potential mix of cultural, educational, and recreational uses as envisioned in the Estuary Policy Plan, and that are assumed to be allowable trust-compliant uses (as confirmed as of publication of the DEIR; see Master Response B). If the City elects preservation, some assumptions would be made regarding the appropriate or preferred specific reuses (acknowledging that either decision may drive the other). To assist the City in its deliberations, it has the benefit of detailed reuse information submitted during the EIR scoping process and public hearings on the DEIR, during other non-EIR-related public input opportunities that have paralleled the EIR process, and from

educational study (i.e., the aforementioned *Ninth Avenue Terminal: A Feasibility Study for Adaptive Reuse*). Also, a number of comments within this FEIR document provide more detailed information regarding possible reuse opportunities for all or part of the Terminal. To further assist the City, the project sponsor has prepared an economic feasibility and constraints report (capital and operational) of retaining all or parts of the Ninth Avenue Terminal.

Unlike the Wood Street Project proposal, the proposed project does not propose to retain or reuse the Ninth Avenue Terminal Shed, but the project sponsor would retain and rehabilitate approximately 18,000 square feet (15,000 sq.ft. minimum) of the original Bulkhead Building. This portion contains the key north-facing elevation with the most architectural design treatment and was (and continues to be) used for front-of-house operations of the break-bulk terminal operations. Additionally, the Wood Street Project proposal did not have the consideration of an adopted City plan that included unresolved and conflicting objectives and policies specifically regarding the preservation of a major historic resource. Also, the Wood Street Project proposal required Oakland Redevelopment Agency funding assistance for preservation of the historic train terminal.

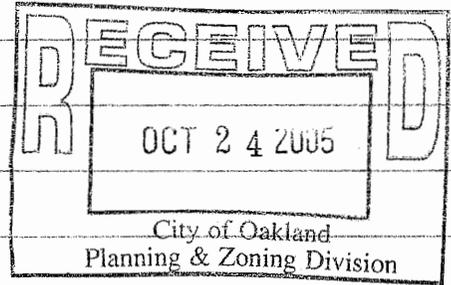
- MM-5 The proposed project would not create the significant and unavoidable impact at the 5th Street and Broadway intersection. The existing PM peak-hour LOS F is a result of backups on 5th Street that are caused by downstream bottlenecks in the Webster Tube heading to Alameda, causing vehicles to stack in the two left-most lanes on 5th Street waiting to enter the Webster Tube. (It is noted that traffic in the two right-most lanes, which provide through access to I-880, and to Jack London Square via a right turn onto Broadway, is generally free-flow with delays only at the signals.) However, as described in Impacts B.1b (Interim Project, 2010), B.2c (Project Buildout, 2025), and B.3b (cumulative, 2025), the LOS F condition would worsen with the addition of traffic generated by the project. The project-generated increases in vehicle delay would exceed the thresholds of significance. See Master Response C (Significant and Unavoidable Transportation Impacts).
- MM-6 The DEIR discusses how the project will “undertake remediation of contaminants in conjunction with development and/or improvement of relevant sites” starting on p. III-20, with further detail and discussion of related impacts and mitigation measures provided in Section IV.H (Hazardous Materials) of the DEIR. Regarding levels of cleanup required for the various scenarios, because each of the scenarios propose reuses that are primarily public open spaces and/or residential uses, cleanup would have to occur and would be essentially the same under each development alternative, even those scenarios that would have less development than the project. Even under the No Project Alternative (Alternative 1A) in which no development would occur, the Port would have to cleanup the site to levels suitable for ecological and industrial use, however, this is the only scenario that would require public expenditures for remediation of the project site.

- MM-7 See Response to Comment Q-2, second paragraph. Additionally, consistent with the Estuary Policy Plan's objectives for the area to include a wide range of recreational-oriented facilities for public use, the proposed project (and each of its alternatives) proposes that any portion of the retained Ninth Avenue Terminal would include a potential mix of cultural, educational, and recreational uses assumed to be Tidelands Trust compliant.
- MM-8 Figure IV.K-17 is a long-range view of the site from the Alameda Shoreline looking north. This viewpoint is approximately one-quarter mile away from the project site and at essentially the same elevation. The image shown is an actual digital photograph taken to depict how the site would appear from this view. Given the distance, buildings would be most prominent since the open spaces in its foreground (along the waterfront) would be relatively flat (and at the same elevation as the viewpoint) and minimal trees are introduced to the simulation. Other distant viewpoints of the project site would be from the northerly direction, and would therefore have minimal visual access of the waterfront that is located south of built development. Simulations from long- and medium viewpoints show that the project would have minimal affect on the visibility of the waterfront. Further, since the relatively low buildings that exist on the site now are likely lower than those envisioned by the Estuary Policy Plan (hotel, community buildings, etc.), the difference in long-range views of the waterfront under the project would not be substantially different than under the Estuary Plan.
- MM-9 The comment speaks to the income mix of housing to be provided by the project, and the economic impacts of not providing an income mix. As addressed in Master Response H, this topic does not pertain the adequacy of the analysis presented in the DEIR or to physical environmental issues that are within the purview of the California Environmental Quality Act (CEQA) (Section 15064). Excluding the extent to which this socioeconomic topic could result in physical changes to the environment (which have been addressed in the impact analysis of the DEIR in Chapter IV), the income mix of housing is a policy consideration that City decisionmakers ultimately consider prior to taking action on the project.
- The DEIR does, however, include a discussion of potential indirect impacts on housing market effects (additions to housing supply, development of affordable housing, improvement to job/housing relationship, potential effects on rents and prices in Oakland and vicinity) (starting on DEIR p. IV.J-41). This discussion concludes the project would not lead to significant indirect physical impacts (DEIR p. IV.J-46).
- MM-10 See Responses to Comments KK-12 and S-38, in addition to the discussion of emergency access and railroad operations on DEIR pp. IV.B-60 and IV.L-10 and IV.L-13.

Oct 24, 2005

To Marge Stanzone, Project Planner
City of Oakland, CEDA
Ste 3315
250 Frank Ogawa Plaza
Oakland, CA 94612

From Patsy St. Louis
499 Embarcadero #41
Oakland, CA 94606



Dear Ms. Stanzone,

I am a citizen of Oakland writing to inform you of my opinion of the EIR on the OAK-NINTH Estuary Development. I have been involved in the project as a citizen commenter since its early days as the Estuary Plan Advisory Committee. My concern has always been to preserve the natural shoreline so as to save what is beautiful about the area. ~~I~~ I truly believe that this last vestige of natural habitat that exists at Clinton Basin and the mouth of the Lake Merritt Channel is a wonderful opportunity for all the people of OAKLAND to enjoy and

NN-1

and a priceless educational opportunity for our children.

NN-2

Although I am pleased to see that the Wetland Enhancement Projects are included in the developers plans for the project area, I am not so very impressed as they are Clinton Basin project is State Mandated and the Channel Project is obvious. Regrettably I feel as though I and other Environmentally concerned citizens are being thrown a bone so that the developers can privatize and and obscure the waterfront with yet another big condominium project.

NN-3

I believe it is the intention of these developers to beautify the area, (Albeit for profit) however the effect is to create money.

NN-4

I would like to see a specific plan be developed before

NN-4
(CONT.)

The project is approved. I believe that was to be the procedure towards approval and a Specific Plan may resolve some of the contradictory aspects of the proposal as it stands.

Thank You

Patricia Shouls

LETTER NN – Patty St. Louis

NN-1 As stated on DEIR p. II-2, the project would improve the existing shoreline along the project site with varying treatments, including marsh habitats, and riprap, and bulkhead walls. Specific to Clinton Basin, the project would remove conditions of unprotected, eroding banks and debris (as described on DEIR p. IV.D-3) and create a new retaining wall-like edge to allow rebuilding and expansion of the existing marina facilities. South Park adjacent to the wetland restoration area and along Channel Park along the east shore of Lake Merritt Channel, improvements and new vegetated shorelines would occur where new marsh habitat could emerge. Proposed improvements are described on DEIR pp. III-18 and IV.D-20 and shown on Figure IV.D-3 on DEIR p. IV.D-21.

NN-2 The comment suggests that the proposed improvements to Clinton Basin are state mandated. There is no mandate for the project sponsor to implement the significant changes to Clinton Basin to facilitate shoreline stabilization and replacement of currently unusable marina facilities.

Regarding the comment that the project would privatize the waterfront, as stated in Response to Comment KK-30, the project would contain a mix of private development areas (residential and retail/commercial development, marinas) and public areas (parks, open spaces, Ninth Avenue Terminal Bulkhead Building, streets and public paths). To the extent that the site arrangement conveys a private community within the project area, City decisionmakers will evaluate the appropriateness of the proposal as it considers the merits of the project design. See Responses to Comments B-8 and U-17 regarding impacts on views of the waterfront.

NN-3 The comment addresses design aspects of the project that do not pertain to the physical impacts relevant to CEQA, as discussed in Master Response H regarding non-CEQA topics.

NN-4 See Master Response A regarding preparation of a specific plan.

Pavlinec, Joann

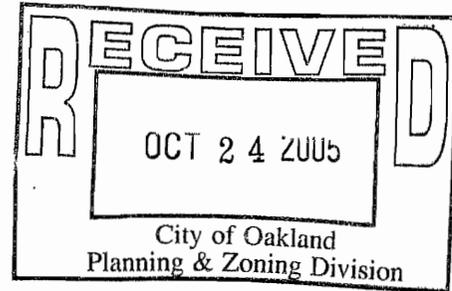
From: Kirk Peterson [art2arch@pacbell.net]
Sent: Wednesday, October 26, 2005 9:39 AM
To: Joann Pavlinec
Subject: DEIR

October 24, 2005

Joann Pavlinec

City of Oakland

jpavlinec@oaklandnet.com



Joann,

After review of the Draft Eir for the Oak to 9th project I feel that the document is lacking sufficient discussion of various topics. The following are my comments (not in any particular order) regarding things that should be addressed in greater depth, or new things that should have been discussed, but were missing altogether:

- The experience of the Maritime character of the terminal, it's form and association with shipping and it's implication of connection with the sea and distant lands, is a very different thing from an aquatic/shoreline experience - which is already available to us elsewhere. And it's different from the relatively fake/contrived character of Jack London Square. The opportunity to have very big ships tied up there - and seeing them up close - is exciting. The EIR needs to look at whether this aspect of the existing terminal is significant. OO-1
- The EIR needs to get more specific about what use or mix of uses might be possible in the Terminal. There needs to be a list of uses. The EIR should cite other projects where there were similar issues. OO-2
- Maybe the housing should be on a huge podium, and have less streets and more parking in a smaller footprint. This would result in more parking in less area. OO-3
- The terminal could provide all the commercial space proposed by the developer. Look at implications for proposed project. OO-4

• Look at the possibility of a transit village: a portion or all of the site that is for car-free living. Owners/occupants would have a deed restriction forbidding car ownership. There is a car share fleet for their occasional use. There would be neighborhood parking stickers, which would not be available to transit village project residents. OO-5

• Oakland has some sort of 'green' policy now - and the greenness of recycling an historic structure could further the goal of this policy. How does the proposed project make Oakland more green? Is sustainability addressed in the design or use of materials? Can the EIR address this issue? OO-6

• The site has an historic building, maritime use, and open space that are not available elsewhere vs. demand for housing which can go many places, and would be better located where transportation, shopping/amenities and infrastructure are already in place. Why must this housing be here? OO-7

• The City is under-served as far as recreation space is concerned. Please examine the possibility of the whole site being a park - including open space, sport fields, boating facilities and the Terminal with mixed use occupancy. OO-8

• Discuss the relative importance of adhering more closely to the Estuary Plan as relates to the goals of the City's General Plan. Is housing a priority of the Estuary Plan, and can the Plan's goals really be determined to be less important than the creation of new housing? OO-9

• The Alternative projects mentioned in the Draft EIR are described with such brevity that they are hard to assess in themselves, and as such do not help illuminate the discussion of the proposed project. These alternatives should be 'fleshed out' (thought out and described in greater detail) so that they can be given due consideration. OO-10

• A new alternative project needs to be explored: excluding the Terminal Building and Wharf for this proposed project (in concept like the way the 5th Avenue area is excluded). There is potential for the terminal to be revenue producing, and its demolition provides no income stream to the proposed development in the current proposal OO-11

• How can the environmental clean-up of the site be accomplished without the proposed project? What other sources of funding are available or possible for this purpose. If the Oak to 9th land is made into a park what is the required level of environmental clean-up? If the site is capped with clean fill (reducing the risk of exposure to toxics for future park users) what is the cleanup requirement? OO-12

• This project involves the sale of Public Trust Land to the developer. The public is to receive other land in exchange. The EIR needs to address to what extent this new 'exchange land' is comparable to the land being sold to the developer, in terms public access and ease of access (from land), location (neighborhood), access from/to the estuary, and how this new location is able to serve the goals of the General Plan and the Estuary Plan. The Oak to 9th property is located in an excellent place for public uses of many kinds (this includes a re-used Terminal) and is connected to both the Lake Merritt/Channel Park public areas, and to the Jack London/Broadway district. Can a 'replacement' parcel provide this level of amenity? OO-13

- The evaluation of the relative merits of a 'replacement parcel' cannot be made until it is identified and 'vetted' by the appropriate public and private parties. Further the exchange must be simultaneous: the loss of public use over time is a cumulative impact.

OO-13
(CONT.)

- The cost of improvements to a 'replacement parcel' need to be figured into the economic analysis of the proposed project. What will it cost to improve/develop some new location to make it suitable for public use comparable to the Oak to 9th land. This analysis needs to recognize that much of the Oak to 9th site has been 'mothballed' (like the marina) or has been inaccessible to the public (like the terminal and wharf), but both of these conditions are easily reversible. And who will pay for improvement to the 'replacement' site?

Please feel free to call me if you have any questions. It is now midmorning. I will call you in the afternoon to ascertain that you have received this letter, as I believe the deadline is today.

Thank you,

Kirk Peterson

Kirk E. Peterson

Kirk E. Peterson & Assoc. Architects

5253 College Avenue

Oakland, California 94618

Kirk@KPAarch.com

www.KPAarch.com

vox: 510-547-0275

fax: 510-547-4173

Letter OO – Kirk Peterson

- OO-1 The DEIR includes detailed discussion of the significance of the Ninth Avenue Terminal to historic maritime and overall transportation activities along the Oakland Estuary. This is presented starting on DEIR p. IV.E-15. As stated on DEIR p. IV.E-16 (and in the landmark application submitted for the project), “The Terminal is an amalgamation of water, rail and land transportation capability in one facility” and “an early example of an inter-modal transportation complex.” This aspect of the Ninth Avenue Terminal significantly contributes to the structure having been designated an Oakland Cultural Heritage Survey (OCHS) rating of “A” (outstanding architectural example or extreme historical importance) and as a result, an historic resources under CEQA.
- OO-2 See Master Response B regarding further analysis of reuse alternatives for the Ninth Avenue Terminal.
- OO-3 The comment recommends an alternative street configuration and building design in an effort to accommodate “more parking in less area.” Pursuant to CEQA, the alternatives identified and analyzed in Chapter V of the DEIR are selected to allow the consideration of alternatives that avoid or substantially lessening the significant adverse impacts of the project. Since adequacy of parking supply is not considered an aspect of the permanent physical environment under CEQA (as discussed starting on DEIR p. IV. B-70), the DEIR does not identify the project’s parking shortfall (relative to peak parking demand) as a significant environmental effect under CEQA, and thus no alternative is warranted. The project’s provision of parking and the adequacy of improvement measures identified starting on DEIR p. IV.B-74 and discussed in Master Response D regarding the draft Transportation Demand Management Plan (which identifies a surplus of parking with implementation of parking management and transit service measures identified therein) will be evaluated by the City as it considers all aspects of the project prior to acting on the proposal.
- OO-4 The comment proposes possible reuses for the Ninth Avenue Terminal that would include the commercial uses proposed by the project. See Master Response B regarding further analysis of reuse alternatives for the Terminal. Additionally, uses within any portion of the Ninth Avenue Terminal would be required to be trust-consistent, and the commercial retail uses anticipated in the project would not likely comply with these limited activities.
- OO-5 The comment describes a potential aspect of the project that does not address a potential impact of the physical environment under CEQA. The City decisionmakers of the project may, however, consider the comments suggestion of a transit village alternative as it considers all aspects of the project design prior to acting on the proposal.
- OO-6 The significance criteria by which the project is analyzed under CEQA do not include criteria explicit to the principle of sustainability (however, in the very broad sense, measures to reduce or avoid adverse impacts on the physical environment support align with the concept of sustainability). The principle of sustainability underlies a number of

City policies – most explicitly in Housing Element Policy 7.1, which states “Develop and promote programs to foster the incorporation of sustainable design principles, energy efficiency and Smart Growth principles into residential developments”(DEIR p. IVA-22). In addition, in late 1998, the Oakland City Council adopted a Sustainable Community Development Initiative aimed at ensuring that sustainable practices are integral to a number of community activities. The Initiative identifies as priorities the promotion of in-fill housing, mixed use development, affordable housing, and open space plan implementation for Lake Merritt and the Estuary area.

As discussed in Response to Comment S-49, one of the project sponsor’s objectives for the project is to “further Smart Growth principles,” which the project aims to do by developing 3,100 new housing units within the City of Oakland, in proximity to major employment centers rather than in outlying communities that result in increased traffic congestion, lengthy commutes, and fuel consumption, etc. Additionally, several Historic Preservation Element policies that encourage the maintenance, rehabilitation, and reuse of existing building resources such as the Ninth Avenue Terminal would align with sustainability principles, as the comment points out. The project would also assist the Oakland Redevelopment Agency in meeting its affordable housing requirements and would create substantial new, accessible open space along the Oakland Estuary that is current inaccessible bordered by industrial and warehouse uses. Therefore, the project’s measure of “greenness” or its support of sustainability principles can be evaluated on several levels – from the project’s incorporation of energy-conserving design and construction, to substantial removal of an existing historic structure, to significant development of new housing and open space proposed in the central part of the City, to the improvements that would result to aspects of the physical environment (water quality, natural habitats, hazardous clean-up, etc.).

- OO-7 The comment questions why the project must occur on the project site and not elsewhere where transportation, shopping/amenities, and infrastructure are already in place. The comment does not indicate a location in Oakland feasible to accommodate the proposed development and meet the objectives of the project sponsor and the Estuary Policy Plan for the Oak to Ninth District. As discussed starting on DEIR p. V-41, it is possible that the traffic, air quality, and noise impacts that occur with the project could be avoided or substantially reduced on a project site located in a less traffic-impacted area of the city or on a site not in proximity to a major freeway, however, an alternative site would not fulfill the basic project objective of redeveloping the Oak-to-Ninth District of the Oakland Estuary. Additionally, the alternatives evaluated in the DEIR successfully avoid and/or substantially reduce traffic, air quality, and noise impacts relative to the project’s impacts. Regarding historic resources, locating the project at another site may avoid significant and unavoidable impacts to the Ninth Avenue Terminal. However this is accomplished within the alternatives evaluated in the DEIR while continuing to meet the basic project objectives.

- OO-8 The comment describes a possible alternative to the project that is less intensive than the Estuary Policy Plan scenario. See Response to Comment Q-2 regarding the range of alternatives selected for analysis in the DEIR.
- OO-9 The comment highlights the point that the General Plan contains a number of potentially competing goals and policies that the project would support to varying levels, depending on the reviewer's priorities. The DEIR has discussed the project's relationship to the key policies of the Estuary Plan as well as its support of Land Use and Transportation Element and Housing Element policies that support the development on new housing. The determination of relative importance of these policies is not a CEQA issue and the City will ultimately establish this determination by its ultimate action on the project.
- OO-10 Chapter V of the DEIR includes a detailed narrative description of each alternative, (supported by detailed tables), and illustrative figures comparable to the proposed project site plan. Each narrative discusses the purpose of the alternative, its proposed development program by parcel, parcel acreages, open space acreage by proposed park, residential densities, relationship to Fifth Avenue Point, street layout, building heights, proposal for the Ninth Avenue Terminal in terms of preservation and reuse, improvements to Clinton Basin and the shoreline, and a other aspects that may be unique to a particular alternative.
- Further, the environmental effects each alternative are discussed (consistent with each environmental topic addressed in DEIR Chapter IV [Setting and Impact Analysis], Sections A through M.) in less detail than the analysis conducted for the project, as provided for by CEQA Guidelines Section 15126.6(d). However, the analysis presents sufficient information to allow "meaningful evaluation, analysis, and comparison with the proposed project." A comparative matrix of the impacts of the project and the alternatives is provided in DEIR Table V-5 starting on DEIR p. V-42 and includes a summary of each alternative and the project as a running heading for the reviewer's convenience. Thus, the description as well as the analysis in the DEIR is provided at a level of detail appropriate under CEQA and suitable for thorough comparative analysis by the reviewers.
- OO-11 See Master Response B regarding further analysis of reuse alternatives for the Ninth Avenue Terminal and Response to Comment Q-2 regarding adequacy of the range of alternatives analyzed in the DEIR.
- OO-12 The environmental investigation and cleanup work on the project site has been ongoing for many years, with some of the remediation already complete. As stated in Response to Comment C-4, the ongoing environmental process of remediation is being overseen by the DTSC. How the cleanup will progress will depend upon the current responsible parties and the requirements of the overseeing agency.
- OO-13 See Responses to Comments I-2 and GG-18.

SEA SCOUT SHIP MAKAI-SKIPPER BILL GAYLORD
4126 RAVENWOOD PLACE, CASTRO VALLEY, CA 94546

October 24, 2005

Re: Oak to Ninth Avenue Project
Draft EIR Comments

Margaret Stanzione, Project Planner
City of Oakland, Community and Economic Development Agency, Planning Division
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Dear Ms. Stanzione,

The purpose of this letter is to address a significant environmental impact that was not addressed in the Oak to Ninth Project Draft EIR.

The Port Of Oakland has been providing free berthing to the San Francisco Council of the Boy Scouts of America since the 1960's. Although the Clinton Basin is currently closed, it still operates as the East Bay Sea Scout Base. The Sea Scout Ship Makai (Makai) has been moored at the Clinton Basin since the early 1980's.

The Makai is the oldest continuously operating sea scout program serving the East Bay in the San Francisco Bay Area Council.

As part of the project, the Project Sponsor should be required to offer free berthing for an East Bay sea scouting program. Without the free berthing, the continuation of an East Bay sea scout program will be in serious jeopardy.

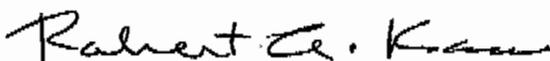
The existence of this educational and recreational program for high school age youth is an important part of the community and needs the continued support of this project. This program provides a rare opportunity for high school students to gain leadership skills while still having an exciting boating experience. It also provides a much needed youth program to enable young men and women to have a positive organization to participate in. Youth organizations for high school age men and women need to be preserved and promoted.

I look forward to a meeting to discuss the opportunities for the sea scouting program to continue in coordination with the project.

Please contact: Robert Karn at cell phone:(707) 321-7158, or via fax (707) 435-9988

Thank you for your consideration.

Sincerely,



Robert A. Karn-First Mate Sea Scout Ship Makai

PP-1

Letter PP– SEA SCOUT

PP-1 The comment discusses possible obligations of the project sponsor that are not related to CEQA issues. To the extent that the project sponsor would be required to provide or maintain existing marina-related benefits to organizations in the future could be taken under consideration by the City, who may incorporate such requirements as project conditions of approval or conditions of a Development Agreement.



October 24, 2005

Marge Stanzione
Project Planner
City of Oakland
Community & Economic Development Agency
Planning Division
250 Frank H. Ogawa Plaza
Suite 3315
Oakland, CA 94612

RE: Oak to 9th DEIR Comments

Ms. Stanzione,

My first thought in reviewing this DEIR is that there's a LOT of information to disseminate! My second thought is of the density. 3100 units is more than we have in the Jack London District, and yet the amount of space is considerably less - even if you take out the businesses. Considering our battles with getting merchants to be in the area, I have to wonder how that's going to play in the Oak to 9th area.

QQ-1

Here are my questions and concerns regarding the Oak to 9th Avenue Project as per the Draft Environmental Impact Report.

QQ-2

Tidelands Trust Designation:

I could easily have missed this in my bleary-eyed reading of the DEIR, but if this project is to move forward, does the area retain its Tidelands Trust designation? If so, what impact, if any, does this have on all of the alternatives being considered? Is there any benefit or drawback for future property owners within the project? For the City?

Traffic:

On pages IV.B-2 through IV.B-4, I did not see any dates regarding the data used for the local streets, only for the freeways and major roadways (Sept 2004). Does consideration for this data include the cumulative affect from the four new construction projects underway in the Jack London District? Also, is there consideration for the cumulative affect on traffic based on the approved Jack London Square Redevelopment Project? Oak Street should be added to the list on

QQ-3

QQ-4

QQ-5

Jack London Mail
248 Third Street
Oakland, CA 94607
(510) 893-4100
(510) 893-0563 fax

Jack London Mail

"Local Access". It is listed briefly under Embarcadero, but really should be listed separately. Additionally, the intersection of 3rd Street & Oak Street should be added to the list of "Existing Traffic Operating Conditions" on page IV.B-6.

QQ-6

For items B.2c & B.2d (page II-8), are the same as items B.2c & B.2f in the Jack London Square Redevelopment EIR (page II-5). The same mitigation of "...optimization of traffic signal timing shall include coordination with signal phasing and timing of adjacent intersections, and require coordination with Caltrans to implement the measure" is listed. Caltrans has already said that 880 was "at capacity" (see letter dated 10/27/03 in the JLS FEIR). The FEIR (for Oak to 9th) should have information from a Traffic Engineer as to the cumulative affect of the four projects underway and the Jack London Square Redevelopment Plan, as well as taking into consideration the work planned for 880. Also, if there could be some mention/consideration of the timing of construction of all these projects, that would be helpful.

QQ-7

My concern is that more often than not during peak hours and even during non-peak hours, traffic has been backed up down Oak from 5th Street all the way to 2nd, and occasionally even Embarcadero. There is concern as these other projects already underway finish and fill that this situation will continue to deteriorate and so it is an even bigger concern of adding 3100 residential units and a fair amount of commercial space and how that will further affect Oak Street all the way from Embarcadero to 5th, not just the intersection at Oak & 5th.

QQ-8

9th Avenue Terminal:

For item E.3 (page II-12 & II-13), I don't see how keeping 15,000 square feet of the terminal provides you with any real feeling of the shed as it is as a whole. I'd like to see more of it preserved. If it's an issue of blocking views, then I say add more parking to the project on the ground floor. Also consider the views being blocked that are behind the project.

QQ-9

Parking:

There is a mere 1 to 1 ratio for the residential units (3100 parking spaces), another 400 spaces for 200,000 square feet of retail, and 34 spaces for marina usage (page III-11). I need better clarification of the 450 spaces "...available primarily for use by park and mariner users: approximately 75 spaces in surface parking lots in the proposed open space areas, and approximately 375 on-street parking spaces." Obviously with a 1 to 1 ratio on the residential side, more than 375 spaces for on-street parking will be used by the residents based on other neighborhoods in Oakland. Considering the distance to public transportation (even if you add a shuttle), the majority of households have more than one car, even if that second car sits on the street during the day while they take public transportation. Will the future residents of this project be entitled to a parking permit plan? And if so, will it be the residential permit plan?

QQ-10

Jack London Mail
 248 Third Street
 Oakland, CA 94607
 (510) 893-4100
 (510) 893-0563 fax



“Green space” versus “Open Space”:

This project has considers 44% of the space as “green space”, yet there is no open space that I would consider as “open space”. Where do outdoor events and things like Cirque du Soleil happen? Outdoor concerts and festivals? Jack London Square has no space for this – in fact, they’re reducing the space in front of the ferry terminal with a pub, so where will events like this happen in the future? The 44% appears to be mostly the space that is required by the Tidelands Trust, so if you take that portion out, what is the real percentage of green space?

QQ-11

Other important considerations:

Surrounding 5th Avenue without appropriate integration is a bad thing.

QQ-12

The project as a whole creates yet another piece to the wall that is forming along Embarcadero – a wall that cuts off views and cuts off access in a figurative way, even if you don’t mean to. Consider The Landing apartments and how few people use the green space there, except for the Bay Trail.

QQ-13

Thank you for your time and consideration in reviewing my comments.

Thank you,

Joanna Adler

Business owner & Resident of the neighboring Jack London District.

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Oakland, CA 94607
(510) 893-4100
(510) 893-0563 fax

LETTER QQ – Joanna Adler

- QQ-1 The comment generally compares the residential density-to-open space ratio that exists in the Jack London District to that of the project, stating that the project would provide more units and less open space than that area. The Jack London District is generally the area bound by Adeline Street and Oak Street, south of I-880. The open space in this area generally includes that the approximately 40,000 square feet of new area to be developed as part of the Jack London Square Redevelopment Project, and the existing “meadow green” at the foot of Washington Street. The proposed Oak to Ninth Avenue Project proposes 20.7 acres of new open space. As shown in **Table V-2** on page V-24 of this FEIR, the Oak to Ninth Project would meet or exceed the City’s park/open space service standard throughout each phase of its development and at buildout.
- QQ-2 See Response to Comment I-2.
- QQ-3 Manual intersection turning movement counts were conducted in May-June 2004 at the 52 study intersections analyzed in the DEIR. The existing traffic volumes at the 52 study intersections are representative of prevailing conditions at the time of the traffic counts, and include construction-related traffic occurring during peak periods at those intersections.
- QQ-4 As described on DEIR p. IV.B-24, the analysis of intersection impacts used the Alameda County Congestion Management Agency’s (ACCMA) Countywide Travel Demand Model, which was modified with land use, employment and population projections from the Oakland Cumulative Growth Scenario (consistent with the standard process used by the City to prepare environmental analyses). Updated land use assumptions for the project study area, which includes other proposed and approved developments in the City of Oakland (including the Jack London Square Redevelopment project) were applied to the ACCMA model.
- QQ-5 Oak Street is described in 6th full paragraph on DEIR p. IV.B-3 under *Local Access*.
- QQ-6 The intersection of 3rd and Oak Streets is an unsignalized “T”-intersection, through which project traffic would travel straight on Oak Street (i.e., no turning movements). As such, this intersection does not warrant inclusion as a study intersection for the EIR per the DEIR’s screening process used to identify a project study area that adequately covers the potential project-generated traffic impacts.
- QQ-7 The commenter is correct that the 5th Street / Broadway and 5th/Oak Streets intersections were included in both the Oak to Ninth and Jack London Square Redevelopment (JLS) project EIRs, but the cited mitigation measure (optimization of traffic signal timing) applies to the latter intersection only. As discussed on DEIR p. IV.B-17, some of the JLS EIR-identified intersection improvements would benefit the Oak to Ninth Project, too. However, because the exact timing of implementation of these improvements has not been established, and is tied to the timing of development of the JLS project, for purposes

of the analysis of Oak to Ninth project impacts, none of the identified JLS mitigation measures were assumed to be in place. The discussion of mitigation measures for any intersection adversely affected by the Oak to Ninth Project includes references to the mitigation measures identified in the JLS EIR, and to opportunities for joint funding of improvements by projects in the area. See Responses to Comments D-5 and D-6, regarding Caltrans' comments about freeway and freeway ramp conditions. See Responses to Comments QQ-3 and QQ-4, above, about inclusion of cumulative effects of proposed and approved developments in the City of Oakland (including the developments currently under construction in the Jack London District) in the DEIR analysis of potential traffic impacts. Work planned on I-880 (assumed to mean the seismic retrofit project) is described on DEIR pp. IV.B-16 and IV.B-69, including the expected completion by 2010. QQ-8 The commenter's concern, given the best available information and the professional judgment of City staff and the EIR consultants, is adequately addressed in the DEIR.

QQ-9 See Response to Comment Q-2, second paragraph.

QQ-10 See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management and transit service measures.

QQ-11 As stated on p. III-12 of the DEIR under *Proposed Parks, Open Spaces and Trails*, the project would include "a mix of active and passive parks and open spaces⁸ covering approximately 44 percent⁹ of the project site...." Consistent with the initial footnote, the DEIR uses "park" and "open space" in combination (or sometimes interchangeably), which is particularly appropriate since the specific programming for the proposed parks/open spaces has not been established. The outdoor events referred to by the comment could in occur any of the proposed (or existing) parks/open spaces, with the 9.7-acre Shoreline Park being the most viable for larger events. The Tidelands Trust designation would not preclude public events from occurring in this area, assuming that these events are consistent with Trust purposes. Shoreline Park constitutes approximately one-third of the total parks/open space area on the project site.

QQ-12 The comment is noted and this response assumes the comment refers to the Fifth Avenue Point community. The DEIR discusses the project's physical relationship to this area on p. IV.A -9 (Land Use and Compatibility with Adjacent Uses), p. IV.A-16 (Estuary Plan Policies, Fifth Avenue Point), and p. IV.A-35 (Physical Division of Established Community). As also discussed on p. IV. A-35, Mitigation Measure A.1 that addresses the projects impact on the "established community" of Fifth Avenue Point includes measures aimed at ensuring safe, direct, and well-designed access between the outparcels

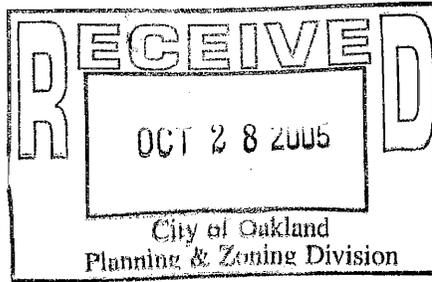
⁸ Consistent with the Open Space, Conservation, and Recreation Element (OSCAR) of the General Plan, "parks and open space" shall include the defined unpaved areas, as well as associated facilities, trails, and parking areas, as with Estuary Park and Jack London Aquatic Center.

⁹ 44 percent includes the existing 7.7-acre Estuary Park and Jack London Aquatic Center. With these existing facilities and associated site area included, a total of 28.4 acres of open space would exist on the project site, which would result in approximately 37 percent of the project site as open space.

and the new public open spaces, trails, and marina uses on the project site. Regarding the integration of the Fifth Avenue Point outparcel in the project site development, which may be the intent of the comment, the project sponsor does not own nor intends to acquire the outparcel, therefore this area is not proposed as part of this project. To the extent that the development proposed adjacent to Fifth Avenue Point has adverse physical effects, such impacts are analyzed and appropriately mitigated throughout Chapter IV (Setting and Impact Analysis) of the DEIR. To the extent that the City finds the proposed relationship of the project to Fifth Avenue Point “bad,” it will consider this as it takes action on the project.

QQ-13 See Response to Comment B-8 regarding proposed new buildings and effects on views and public access.

Oak to Ninth Avenue Project DEIR
Comment Letter



Rajiv Bhatia, MD, MPH
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October 24th, 2005

Transmitted via email to mstanzione@oaklandnet.com

Margaret Stanzione
Project Planner
City of Oakland
250 Frank Ogawa Plaza, Suite 3315
Oakland CA 84612

Re: Comment on Oak to Ninth Avenue Project DEIR; Case ER 04- 0009

Dear Ms. Stanzione:

Thank you for the opportunity to provide comments on the Draft EIR for the Oak to Ninth Avenue Project. As a public health practitioner and resident of Oakland, I am interested that the Final EIR for this project includes a comprehensive analysis of all environmental health impacts on neighborhoods and residents both within and adjacent to this project.

As you know, Section 15065 of the regulations for the California Environmental Quality Act (CEQA) mandates an environmental impact report (EIR) to analyze any "...environmental effects of a project [that] will cause substantial adverse effects on human beings, either directly or indirectly.¹ CEQA guidelines section 15126.2, subdivision (a) requires an EIR to discuss "health and safety problems caused by the physical changes" that the proposed project will precipitate. A recent Court of Appeals ruling in *Bakersfield Citizens for Local Control vs. the City of Bakersfield* underscores the necessity of health analysis in an EIR prepared under CEQA. Analysis of health impacts is necessary to evaluate the full significance of environmental effects. Environmental Justice also demands a full analysis of the health impacts on low-income and minority populations.

I am particularly concerned that the Draft EIR has not fully studied health impacts related to transportation.^{2 3 4} The Draft EIR acknowledges that development of the Oak-to-Ninth Avenue

¹ California Code of Regulations. §15065

² Dora C, Phillips M (editors). Transport, environment and health. Copenhagen: World Health Organization Regional Office for Europe; 2000.

³ Frank LD, Engelke P. How land use and transportation systems impact public health: A literature review of the relationship between physical activity and built form. Atlanta, GA: Centers for Disease Control; 2000.

⁴ Our Built and Natural Environments: A technical review of the interactions between land use, transportation, and environmental quality. USEPA Washington DC 2001

Project, which includes 3100 residential units and 3500 parking spaces, will increase vehicle trips not only around the project itself but also in the general area. The DEIR estimates, at build out, the project would result in an additional 27,110 daily vehicle trips external to the project. (Table IV.B-4) An estimated 19% of the total vehicle trips or 5151 daily vehicle trips would be destined for the Chinatown / Downtown Oakland Area.

RR-1
(CONT.)

In the Transportation Section, the Draft EIR extensively evaluates how these 27,110 vehicle trips may affect delays for drivers of automobiles at intersections (auto LOS)—a social impact that has been traditionally studied in CEQA reviews. However, I believe that the analysis of intersection level LOS impacts for vehicle drivers does not comprise a full analysis of the significance of increased vehicle trips for all segments of the Oakland population. A more comprehensive analysis is particularly important for pedestrians, transit-dependent populations, low-income residents, children, and the elderly. I believe the EIR has not provided this comprehensive analysis of project-related potential adverse human impacts and their feasible mitigations. In general, these impacts directly or indirectly result from the increased vehicle trips generated by the Oak to Ninth Project and destined for the surrounding neighborhoods including downtown and Chinatown. For most vehicle-related impacts considered in the DEIR, impact analysis does not extend to areas affected by project-related vehicle trips such as Downtown and Chinatown. Four potentially significant health-related impacts requiring further analysis of significance and potential mitigation are:

- A. Increased pedestrian injuries and reductions in the quality of the pedestrian environment;**
- B. Increased motor vehicle injuries;**
- C. Increased respiratory disease due to vehicle emissions;**
- D. Increased community environmental noise.**

Furthermore, I am concerned that the Draft EIR has not fully analyzed and established the feasibility of available mitigations to reduce vehicle trips—the underlying cause of the abovementioned environmental health impacts. In fact, the DEIR acknowledges that project includes no plans or sub-projects to reduce vehicle trips. (IV.B-21)

RR-2

A. Impacts on Pedestrian Travel Quality and Safety

The DEIR includes a remarkably brief analysis of impacts on pedestrians (IV.B-55 to IV.B-57) concluding that the projects impacts on pedestrian safety is less than significant. With regards to the needs of pedestrian environment quality and safety, the DEIR is insufficient in the following ways:

RR-3

1. The DEIR does not provide any data of baseline pedestrian injury rates in the project area and adjacent areas subject to increased project-related vehicle trips. Without this data it is not possible to analyze potential impacts on pedestrian safety. **The FEIR should provide pedestrian injury rates disaggregated by census tract or an equivalent geospatial unit of analysis.**
2. The DEIR does not provide any data on the location of pedestrian injuries in the project area and adjacent areas subject to increased project-related vehicle trips. Location data points to areas of high hazard and should be the focus of attention for pedestrian safety analysis. Without this data it is not possible to analyze potential impacts on pedestrian safety. **The FEIR should provide a map of pedestrian injury intensity.**
3. The DEIR does not provide any data on the existence or location of populations potentially more vulnerable to impacts on pedestrian safety and quality. These populations include children, the elderly, walking-dependent, and transit-dependent populations. Many members of these sensitive populations reside in Chinatown which will bear a large number of increased vehicle trips. **The FEIR should analyze the existence of sensitive populations as part of the analysis of pedestrian impacts.**
4. The DEIR attributes pedestrian injuries to diverse environmental factors including vehicle volume, signal timing, intersection and roadway design, allowed right turns on read, parking movements, and pedestrian volumes. (IV.B-56) However, the DEIR contains neither analysis of baseline conditions of these factors nor analysis of how the project may affect these other environmental factors. **The FEIR should analyze baseline conditions of all pedestrian environmental factors in all areas, including Chinatown, subject to increased vehicle trips as a result of the project.** (See comments regarding methods below)
5. The DEIR does not use readily available tools to analyze impacts on the pedestrian environment. Several jurisdictions have developed pedestrian environment metrics (pedestrian LOS). These metrics are based on a standardized set of observations taken by a trained observer. The City of Oakland has not yet developed such a metric; however, LOS metrics are straightforward to construct and use. **The FEIR should use a pedestrian environment metric to better understand the existing pedestrian conditions in the project area and adjacent areas subject to significant increases in project related vehicle trips.** Two recent examples of pedestrian environment / LOS metrics are provided below:
 - The City of Gainesville Florida has developed Pedestrian LOS quantitative level of services measures and standards for the City and tested and evaluated these standards both on existing conditions and proposed projects.⁵ Factors included

RR-3
(CONT.)

⁵ Dixon LB. Bicycle and Pedestrian Level-of-Service Performance Measures for Congestion Management Systems. Transportation Research Record. Number 1538. 1996.

facility type, facility width, driveway conflicts, pedestrian signals, turn conflicts, crossing widths, speeds, buffers, lighting, and shade trees.

- The City of Charlotte North Carolina has developed a method for pedestrian level of service for intersections in 2005.⁶ This pedestrian LOS metric weighs crossing distance, signal phasing and timing, corner radii, cross walk treatments, and traffic flow.
6. Pedestrian injuries are the direct result of vehicle—pedestrian conflicts. Increased vehicle trips result in an increase in pedestrian-vehicle conflicts and will likely result in increase pedestrian injuries and fatalities in adjacent areas. A recent study conducted by the Florida Department of Transportation support the relative importance of vehicle trips (and other factors) on pedestrian safety. The study found that traffic volume, traffic speed and lateral separation between pedestrians and traffic explained 85% of the variation in perceived safety and comfort for pedestrians.⁷ The DEIR does not provide estimates of the effects of vehicle trips on pedestrian injuries in the project area or adjacent areas. These increases are quantifiable. **The FEIR should estimate changes in pedestrian injury incidence.** One reasonable assumption is that the incidence of injuries will increase in proportion to the increase in vehicle trips in any given and thus could be calculated simply: *Change in area pedestrian injury rate = baseline area injury rate X (vehicle trips generated / baseline vehicle trips).*
7. The DEIR indicates that as mitigations to intersection LOS impacts, the project will include signals with pedestrian signal heads at several intersections (Embarcadero and Oak, Embarcadero and 5th Ave; Embarcadero and I-880 Northbound off-ramp; Embarcadero and Broadway.) The DEIR concludes that these traffic control devices will “safely accommodate the added vehicle and pedestrian traffic and the project would have a less than significant impact.” The determination of ‘less than significant impact’ is not supported by any substantial evidence. **The FEIR should include evidence on the relative efficacy of traffic signal devices as measures to reduce pedestrian injuries and provide evidence demonstrating that reduction in injuries due to these signals will compensate for any increases in estimated injuries due to project related increases in vehicle and pedestrian injuries.**
8. The mitigations identified as adequate to mitigate impacts on pedestrian safety would only apply to a limited number of intersections in and around the project area. No mitigations are proposed for adjacent areas such as Chinatown which would see over 5000 additional vehicle trips per day. **The FEIR should either provide evidence demonstrating that the**

RR-3
(CONT.)

⁶ Charlotte Department of Transportation. Pedestrian and Bicycle Level of Service: Methodology for crossings as signalized intersections. 2005

⁷ Landis BW, Vattikuti VR, Ottenberg RM, McLeod DS, Guttenplan M. Modeling the Roadside Walking Environment: A Pedestrian Level of Service. TRB Paper -1-0511 Tallahassee. 2000.

increased vehicle trips will not affect pedestrian injuries in Chinatown and other adjacent areas or analyzed these impacts and analyze and propose mitigations.

9. The DEIR states that the Revive Chinatown Plan includes funded pedestrian environment and safety improvements, including corner bulb-outs, scramble systems, pedestrian countdown times, and bilingual signs. (IV.B-56) While some short-term Plan improvements do have funding others are not funded. Mid term improvements are not funded. **The FEIR should not assume that all improvements identified in the Revive Chinatown Plan will occur.**
10. The probability of serious injury in a collision increases rapidly triples from 20 mph to 30 mph.⁸ Ninety percent of pedestrians struck at speeds greater than 30 mph suffer severe injuries. The DEIR does not analyze effects of the project on vehicle speed which can affect the severity of pedestrian injuries. **The FEIR should analyze project effects on vehicle speed and consequent effects on pedestrian injuries.**
11. Development will likely increase pedestrian trips both in the project area and in adjacent areas; increase in pedestrian trips may either increase or decrease injuries through separate mechanisms. On one hand, an increase in pedestrian trips can increase the frequency of vehicle—pedestrian conflicts which results in greater injuries. Alternatively, some evidence suggests that greater pedestrian activity can decrease pedestrian hazards from motor vehicles.⁹ **The FEIR should analyze the effects of pedestrian trips on pedestrian injuries.**
12. In general, the analysis of pedestrian safety in the DEIR neither contains little if any substantive evidence or analysis. The DEIR does not appear to reflect the best available scientific knowledge in the field of pedestrian safety. **In the FEIR, the analysis of pedestrian impacts should be conducted by someone with specific expertise in the field.**
13. The DEIR provides extensive analysis regarding impacts on the quality of travel for automobile drivers. The same consideration of quality of travel should be applied to the class of the population who rely on walking to meet their travel needs. **Equity and environmental justice demands that the FEIR analysis of pedestrian environments should focus not only on safety but also on quality, and convenience for pedestrian travel in the project areas and surrounding areas.**
14. The DEIR provides for no specific mitigations for impacts on pedestrian safety or quality other than those already required for mitigating impacts on vehicle drivers. **The FEIR should consider all of the mitigations listed below. If the mitigations are not**

⁸ New directions in Speed Management: a review of policy.

⁹ Leden L. Pedestrian risk decrease with pedestrian flow. A case study based on data from signalized intersections in Hamilton, Ontario. Accident Analysis and Prevention. 2002: 34:457-464.

analyzed, the FEIR should provide either evidence demonstrating that they are not effective or evidence demonstrating that they are not feasible.

14.1. Pedestrian Infrastructure Improvements in pedestrian infrastructure (e.g., presence of sidewalks, roadway buffers, street lighting, and reduced crossing speeds) can make walking safer, increase walking behavior, and reduce single-occupancy vehicle trips and associated vehicle emissions. **The FEIR should consider as mitigations funding specific improvements and necessary planning studies for suggested improvements in the Revive Chinatown Plan.**

14.2. Traffic Calming Traffic calming can reduce both the number and severity of injuries. Reviews of international studies demonstrate that on average traffic calming interventions reduce accidents by 15%.¹⁰ Traffic calming can also increase the perception of neighborhood quality and increase walking behavior.¹¹ **Specifically, the FEIR should consider traffic calming improvements should be considered in and around the project area where appropriate.**

14.3. The FEIR should consider Travel Demand Reduction measures as pedestrian safety mitigation measures (see comments on air quality below).

14.4. The FEIR should consider transit mitigations as pedestrian safety mitigation measures (see comments on air quality below).

14.5. The FEIR should consider shuttle service measures as pedestrian safety mitigation measures (see comments on air quality below).

RR-2
(CONT.)

B. Impacts on Motor Vehicle Injuries

Vehicle related injuries, including injuries to vehicle occupants, are a significant health impact in Oakland and the United States. Nationally, for people aged one to 40, traffic injuries are the single greatest cause of disability and death. Injuries involving motor vehicles are a major cause of life lost especially among children. In 2001, over 42,000 people died in traffic related incidents nationally.¹² Injuries to humans are adverse human impacts of at least comparable significance to intersection level delays which the DEIR analyzes extensively.

RR-4

15. The DEIR does not provide any data of baseline motor vehicle injury rates in the project area and adjacent areas subject trips. This data is available from the California State traffic

¹⁰ Morrison DS, Petticrew M, Thomson H. What are the most effective ways of improving population health through transport interventions? Evidence from systematic reviews. *Journal of Epidemiology and Community Health* 2003;57:327-333.

¹¹ Morrison DS, Petticrew M, Thomson H. Evaluation of the health effects of a neighborhood traffic Calming Scheme. *Journal of Epidemiology and Community Health* 2004;58:837-840.

¹² Earnst M. *Mean Streets 2004*. Washington DC: Surface Transportation Policy Project; 2004.

incident database. Without this data it is not possible to analyze potential impacts on vehicle injuries. **The FEIR should provide vehicle injury rates disaggregated by census tract or an equivalent geospatial unit of analysis.**

16. The DEIR does not provide any data on the location of vehicle injuries in the project area and adjacent areas subject to increased in vehicle trips. Location data points to areas of high hazard and should be the focus of attention for pedestrian safety analysis. Without this data it is not possible to analyze potential impacts on pedestrian safety. **The FEIR should provide a map of vehicle-related injury intensity.**

17. In general, motor vehicle injuries are proportional to vehicle trips and vehicle miles traveled. The greater than 27,000 project generated daily vehicle trips will likely result in an increase in motor vehicle injuries. Empirical research demonstrates that changes in vehicle mileage might provide a proportional change in vehicle crashes.¹³ **The FEIR should estimate changes in vehicle injury incidence in the project area and adjacent areas.** A reasonable estimation of the change incidence of injuries may be provided by the following formula: Change in Area injury rate = Baseline Area injury rate X (vehicle trips generated / baseline vehicle trips).

18. Broadly speaking, each 1mph change in speed may reduce accident frequency by 5% with effects greatest for urban main roads and low speed residential roads.¹⁴ The DEIR does not analyze effects of the project on vehicle speed which can affect the severity of motor vehicle injuries. **The FEIR should analyze project effects on vehicle speed and consequent effects on all vehicle-related injuries.**

19. The DEIR provides for no **mitigations** for impacts on vehicle injuries. **The FEIR should consider all of the mitigations listed below. If the mitigations are not analyzed, the FEIR should provide either evidence demonstrating that they are not effective or evidence demonstrating that they are not feasible.**

19.1. Traffic Calming Traffic calming can reduce both the number and severity of injuries. Reviews of international studies demonstrate that on average traffic calming interventions reduce accidents by 15%.¹⁵ **Specifically, the FEIR should consider traffic calming improvements should be considered in and around the project area where appropriate.**

19.2. The FEIR should consider Travel Demand Reduction measures as vehicle safety mitigation measures (see comments on air quality below).

¹³ Litman, T. If Health Matters: Integrating Public Health Objectives in Transportation Planning. Victoria Transportation Policy Institute. 2004.

¹⁴ Taylor M, Lynam D, Barua A The effects of drivers speed on the frequency of road accidents. Transport Research Laboratory. TRL Report 421 Crowthorne, UK, 2000.

¹⁵ Morrison DS, Petticrew M, Thomson H. What are the most effective ways of improving population health through transport interventions? Evidence from systematic reviews. Journal of Epidemiology and Community Health 2003;57:327-333.

19.3. The FEIR should consider transit mitigations as vehicle injury mitigation measures (see comments on air quality below).

19.4. The FEIR should consider shuttle service measures as vehicle injury mitigation measures (see comments on air quality below).

RR-6
(CONT.)

C. Air quality and health impacts

20. The project finds that project related vehicle trips have significant adverse impacts on regional air quality. However, increased vehicle trips will also result in increased local area vehicle emissions potentially resulting in an increase in respiratory disease among people living near roadways. Research confirms an inverse relationship between exposure to particulate matter, nitrogen dioxide, and soot and distance from roadways. The California Air Resources Board recently published guidelines which aim to decrease exposure to criteria air pollutants and toxic air contaminants related to vehicle air emissions.¹⁶ **The FEIR should provide quantitative estimates of increases in vehicle emissions, including PM 10 and PM 2.5, in areas adjacent to the project which will bear project-related increases in vehicle trips.**

RR-5

21. The DEIR identifies sensitive receptors (for air quality impacts) as the elderly, young children, and people with pre-existing illnesses, and people performing strenuous work outdoors. The DEIR further identifies sensitive receptors as the Fifth Avenue Point work-live artist community as well as future proposed parks. Eighteen percent of project generated vehicle trips will be destined for Downtown & Chinatown, and children, the elderly, and strenuous workers doing strenuous work live and work in these areas. **The FEIR should identify sensitive populations and receptors to air quality impacts in the Chinatown—Downtown areas affected by project generated vehicle trips.**

RR-6

22. The DEIR identifies exposure of "...sensitive receptors to substantial pollutant concentrations" as a significance criterion. (IV.C-10) To evaluate such potential impact, the DEIR includes an analysis of Diesel Particulate Matter (DPM) exposure on the project site. (IV.C-22) However, analysis restricted to DPM is incomplete. Health effects due to roadway related vehicle emissions are not exclusively due to diesel particulate matter; health effects also result from PM-10 and PM-2.5 as well as other pollutants. The DEIR documents health effects due to PM-10 and PM-2.5 in table IV.C-1. Epidemiologic studies have found consistent associations between proximity to roadways and respiratory disease symptoms and lung function measures.^{17 18} The California Air Resources Board Air Quality

RR-7

¹⁶ Air Quality and Land Use Handbook: A Community Health Perspective. California Air Resources Board; 2005.

¹⁷ Brauer M, Hoek G, Van Vliet P, Meliefste K, Fischer PH, Wijga A, Koopman LP, Neijens HJ, Gerritsen J, Kerkhof M, Heinrich J, Bellander T, Brunekreef B. Air pollution from traffic and the development of respiratory infections and asthmatic and allergic symptoms in children. American Journal of Respiratory and Critical Care Medicine. 2002;166:1092-1098.

and Land Use Handbook (Handbook) also does not recommend that analysis of road way related environmental health effect be limited to analysis of Diesel Particulate Matter. Epidemiological research provides effect measures that allow the estimation of impact on health outcomes related to roadway related pollutants. **The FEIR should analyze how project generated vehicle emissions (including Pm-10 and PM-2.5) might affect respiratory disease among project residents, among residents of Chinatown-downtown, and among residents of other areas affected by project generated vehicle trips.**

RR-7
(CONT.)

23. The DEIR finds that the project will result in significant cumulative contributions to regional air pollution. (IV.C-30) The DEIR proposes a set of measures including rideshare measures, shuttle measures, transit measures, and bicycle and pedestrian measures. The mitigation measure states the project sponsor shall, as feasible and practical, implement a combination of the measures. Many of the measures, particularly the area shuttle appear effective and feasible. However, many of the other specific measures are voluntary, not enforceable, and benefits from these measures would not be quantifiable. **The FEIR should describe the specific enforceable and quantifiable measures to reduce air quality impacts be implemented by the project sponsor. The FEIR should estimate reductions in air pollutants due to these mitigations. Any feasibility analysis required for selected mitigations should be provided in the FEIR. (See related comments below)**

RR-8

24. Investments to maintain or improve the quality and capacity of transit services in the project area and adjacent areas would be likely to reduce vehicle trips use reduce single-occupancy vehicle trips and associated vehicle emissions, motor vehicle related injuries.¹⁹ The DEIR acknowledges that residents of the project would not have direct access to mass transit and use of area mass transit services would require an associated vehicle trip. (IV.B-21) The DEIR also acknowledges that no transit service improvements are proposed or funded complimentary with the project. Proposed air quality mitigations related to transit include the construction of transit facilities adjacent to the project site, but there is no mention of actual transit service enhancements. A residential development the size of the Oak to Ninth project should be able to generate significant transit demand if convenient and quality services are provided. **The FEIR should analyze the feasibility of project funded operational support to provide AC transit services to the site.**

RR-9

25. The DEIR identifies a private shuttle between the project and nearby activity as one of several air quality mitigations. This measure is specific and enforceable. **This measure should become specific condition of the project approval. The frequency, route, and**

RR-10

¹⁸ Mikkelsen J. Effect of vehicular particulate matter on the lung function of asthmatic children in Fresno CA. Unpublished Manuscript.

¹⁹ Kitamura, et al., 1997

capacity of the shuttle should be specified in the FEIR. The shuttle should operate between 7 am and 11pm and serve at a minimum Lake Merritt BART station, Oakland City Center BART Station, Oakland Chinatown, and Jack London Square. The shuttle should be accessible at no cost to future employees working at the project site as well as visitors and area residents. Any feasibility analysis needed for this mitigation should be included in the FEIR.

26. The DEIR acknowledges that a comprehensive Travel Demand Reduction program has not been proposed or adopted for the project. Some Travel Demand mitigations are provided by the project including provisions for a private shuttle (see above) and pedestrian and bicycle lanes within the project. **The FEIR should include analysis of the feasibility of a comprehensive Travel Demand Reduction Program.** An effective comprehensive travel demand reduction program might include: (1) Reducing the number of on-street or off-street parking spaces provided through the Oak to Ninth development; (2) increasing parking charges within the project; (3) unbundling the sale of housing units from parking units; (4) providing a "car-share" program on site.

RR-10
(CONT.)

D. Impacts on Community Environmental Noise

27. The DEIR infers that subjective effects (annoyance, nuisance, and disturbance) and interference with speech, sleep and learning are the primary effects of environmental noise. Scientific research has documented that even moderate levels of chronic environmental noise has multiple adverse health impacts. It is important to note that even if noise is constant or "in the background" significant health effects might occur. For example, high levels of traffic noise may require people to raise their voices to engage in normal conversation. Over time this phenomenon might have adverse physiological impacts. The combination of noise and poor housing in urban areas has recently been associated with higher stress and hormone levels in children.²⁰ Chronic exposure to moderate levels of environmental noise also results in poor quality, interrupted sleep that may cause both physical and psychological problems.²¹ Noise-induced stress can cause chronic elevated blood pressure, coronary disease, ulcers, and migraine headaches. Noise can also affect safety; traffic noise may prevent pedestrians from hearing cars approaching dangerously from the side or behind. The WHO guidelines for Community Noise provide a recent overview of scientific research on noise and health. **The FEIR should reference the WHO Guidelines for Community Noise and other resources on noise to provide more contemporary documentation of the adverse health impacts of environmental noise.**

RR-11

²⁰ Evans G, Marcynyszyn LA. Environmental Justice, Cumulative Environmental Risk, and Health among Low- and Middle-Income Children in Upstate New York. *American Journal of Public Health.* 2004;94:1942-1944.

²¹ Guidelines for Community Noise. Geneva: World Health Organization; 1999.

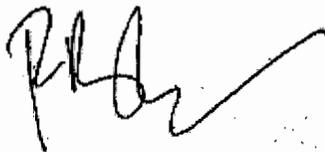
28. In urban areas, environmental noise is largely a function of vehicle volume, vehicle speed, and vehicle type and road conditions. Increased vehicle trips generated by the project will cause an increase of environmental noise in all areas impacted by project generated vehicle trips. The DEIR models future noise levels and incremental changes in noise levels attributed to the project for selected areas surrounding the project. (IV.G-25) While the results indicate moderate increases in noise levels, the DEIR does not model vehicle related changes in noise levels in other sensitive areas with significant increases in vehicle traffic. Downtown Oakland and Chinatown have a significant residential population as well as a significant population (including the elderly and young children) that may be sensitive to the health effects of increased vehicle induced noise. Chinatown also has schools and childcare facilities that might be adversely impacted by higher levels of noise. Furthermore, many residential dwellings in Chinatown pre-date Title 24 requirements for interior noise levels. **The FEIR should include baseline noise analysis and model project-related increases in noise for all residential areas impacted by project-related vehicle trips.**
29. Because of roadway associated noise, the DEIR provides mitigation measures to reduce indoor noise in the project's new multi-family dwelling units. (IV.G-27) **If the FEIR determines that project-related changes in noise levels would be significant, the project sponsor should consider funding improvements in windows and other sound reduction measures in walls facing affected roadways.**

RR-12

RR-13

Thank you for your consideration of these comments. I look forward to reviewing further analyses of this project in the Final EIR. I would be happy to meet with City staff, the project sponsor, or EIR consultants to discuss these comments if appropriate.

Sincerely,



Rajiv Bhatia, MD, MPH

Letter RR – Rajiv Bhatia

RR-1 The DEIR includes an analysis of public health and safety risks in the Transportation, Circulation, and Parking Section of the DEIR, starting on p. IV.B-55, *Pedestrian Safety Impacts* (see also Master Response F regarding pedestrian safety related to rail crossings), and in Air Quality Section of the DEIR, starting on p. IV.C-21, *Toxic Air Contaminants*. Guidelines for preparation of environmental documentation pursuant to the National Environmental Policy Act (NEPA) requires a full analysis of the health impacts on low-income and minority populations as part of Environmental Justice. The project is not subject to environmental review under NEPA, and thus does not include the specific geo-economic analysis of the effects on these populations.

Each of the four topics of concern raised by the comment is discussed in the following responses.

RR-1 See Master Response D for a description of the Transportation Demand Management Plan for the project.

RR-3 Per Section 15125(a) of the CEQA Guidelines, an EIR shall include only enough information about setting (baseline) conditions to provide a meaningful context for the discussion of impacts and mitigation measures. It is not necessary for the DEIR to provide the detailed baseline conditions suggested by the commenter in order to provide disclosure of potential traffic safety issues and the project's potential effect on traffic safety conditions in the general project area, as well as in high pedestrian activity areas (e.g., the San Antonio and Chinatown areas).

The various documents cited by the commenter are noted, but their relevance to the analysis of potential project impacts on pedestrian conditions is limited at best. The design of the project site, augmented by DEIR mitigation measures, incorporates a circulation system that accommodates traffic streams (vehicle, bicycle, pedestrian) in an efficient and cooperative way. In the professional judgment of City staff and the EIR consultants, detailed analysis of pedestrian levels of service, in the context of pedestrian trails, sidewalks, and traffic control devices (existing or provided as part of the project) is not required.

As described on DEIR pp. IV.B-55 to IV.B-57, traffic control devices (traffic signals with pedestrian signal heads), as well as striped crosswalks, would safely accommodate the added vehicular and pedestrian traffic by controlling the flow of the traffic streams through positive guidance. Pedestrian Master Plan (PMP) Policy 1.2 recommends use of traffic signals and their associated features (e.g., pedestrian signal heads) to improve pedestrian safety. As further described on those pages, drivers and pedestrians share responsibility for pedestrian safety. While increased vehicular volumes may contribute to pedestrian collisions, there are many other factors, such as signal timing (i.e., the amount of time pedestrians have to cross the street at signalized intersections), intersection and roadway design (e.g., the presence or absence of pedestrian crossing signals, and the

prohibition or allowance of right turns on a red light), adjacent land uses, parking movements, as well as pedestrian volumes and characteristics that also affect pedestrian safety. See Response to Comment X-3 regarding the basis for the DEIR's finding of a less-than-significant impact to pedestrian safety.

The proposed project would not introduce to the project area incompatible uses or design features (e.g., sharp curves or dangerous intersections) that do not comply with Caltrans design standards. As a result, while the potential for motor vehicle or pedestrian accidents would exist under project conditions, the *rate* at which those accidents occur (i.e., accidents per number of vehicles or pedestrians) would not be expected to increase as a result of the project. Therefore, the project would have a less-than-significant impact on motor vehicle and pedestrian traffic safety.

The basis for the commenter's reference to "over 5,000 additional vehicle trips per day" through Chinatown is unclear. The project trips shown on DEIR Figure IV.B-2 traveling to and from the downtown area represent all the possible paths and routes to downtown Oakland, which includes Broadway, 7th/8th Streets and 12th/14th Streets; it is estimated less than 10 percent of all project trips would go through Chinatown. As described on DEIR p. IV.B-24, on the basis of travel time runs conducted to ascertain the relative attractiveness of each route, the 5th Avenue / 12th Street / 14th Street path would be the fastest route into the downtown area, and the 5th Avenue / 7th Street / 8th Street route would be the slowest. As discussed above (and in the DEIR), the movements of vehicles at area intersections would be controlled by traffic control devices (traffic lights and stop signs). Also, there is no basis to expect travel speeds on area streets to increase as a result of the project, and in fact, increased traffic volumes tend to slow travel speeds.

Pedestrian improvements in the Revive Chinatown Plan that address pedestrian safety issues are short-term measures, and are fully funded. The mid-term improvements are pedestrian amenity measures (e.g., widened sidewalks), not safety measures. Also, as stated on the Oakland Public Works Agency's web site (regarding City of Oakland / Alameda County Transportation Improvement Authority / Measure B Projects), the Revive Chinatown Pedestrian Oriented Improvements (G278230) is anticipated to be completed by late 2007.

The suggested mitigation measures are noted, but because the project would have a less-than-significant impact on pedestrian safety, no further mitigation measures are required. See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures.

- RR-4 See Response to Comment RR-3, above, regarding the level (content) of baseline conditions necessary in an EIR, and about how because the proposed project would not introduce to the project area incompatible uses or design features that do not comply with Caltrans design standards, the rate at which motor vehicle accidents would occur (i.e., accidents per number of vehicles) would not be expected to increase as a result of the project (i.e., the project would have a less-than-significant impact on traffic safety).

The suggested mitigation measures are noted, but because the project would have a less-than-significant impact on traffic safety, no further mitigation measures are required. See Master Response D for a description of the Transportation Demand Management Plan for the project, including transit service measures.

- RR-5 The analysis in the DEIR followed the Bay Area Air Quality Management District *CEQA Guidelines* recommended methodology for the calculation of project-related air pollutant generation, including emissions associated with project vehicle trips. Criteria pollutant total emissions from mobile sources were quantified by using URBEMIS2002 and project-specific vehicle trip information from the traffic study. These emissions were then compared to the respective BAAQMD Thresholds of Significance for project operations. Table IV.C-5 of the DEIR shows that, except for CO, regional emissions of ROG, NO_x, and PM₁₀ do not exceed the BAAQMD Significance Thresholds. Since CO emissions exceeded the Significance Threshold, localized air quality impacts from CO emissions were analyzed in the DEIR for key intersections and were found to be less than significant. These key intersections are located near the project site where there would be the greatest concentration of project-related vehicles. The density of project-related vehicles at distances farther from the project site, such as in Chinatown, would be less, and the CO air quality effects from project-related trips would be less than that analyzed in the DEIR. The DEIR assumes that, since regional emissions of PM₁₀, ROG and NO_x are less than the Significance Thresholds their corresponding localized air quality impacts would be less than significant. In addition, see Response 21.
- RR-6 Comment noted. Additional information regarding sensitive receptors in the project area described below shall be inserted in the DEIR in the first paragraph on p. IV.C-10, before the *Air Quality and Meteorological Conditions Impact Discussion* heading (additions shown as underlined; deletions as ~~strikeout~~):

The existing sensitive receptors in the immediate project area are part of the six-acre Fifth Avenue Point live-work artist community along 5th Avenue, south of the Embarcadero. Fifth Avenue Point includes a mix of residential, industrial, and commercial uses on privately owned parcels. Also, proposed parks and open space recreational areas to be developed as part of the project would also be considered sensitive land uses. Due to the project construction phasing, proposed residential units that would be completed during initial phases would be occupied while other parcels are under construction developed. Therefore, the nearest sensitive receptors to project-related air quality impacts include the new project residents and tenants. In addition to the sensitive receptors in the immediate project vicinity, there are also receptors offsite, including residences within the Chinatown and Downtown areas.

- RR-7 See Responses to Comments RR-5 and RR-6 above. The EIR relies on analyses proposed by the *BAAQMD CEQA Guidelines* for determining analyses to be conducted. The project impact is below the significance criteria for PM-10 identified in the *BAAQMD*

CEQA Guidelines. The EIR does identify a significant unavoidable impact for the 2025 Cumulative + Project scenario. Mitigation Measures C.7(a) through C.7(k) shall be implemented if feasible to reduce this impact.

Regardless, the DEIR took a conservative approach by analyzing the health effects from emissions of the pollutant with the lowest threshold that can cause significant health outcomes, which is exposure to carcinogenic diesel exhaust. The levels that would cause adverse non-carcinogenic health effects are several orders of magnitude higher than the levels that would cause adverse carcinogenic effects. Because the DEIR determined that carcinogenic impacts from project-related PM emissions would be less than significant, the adverse non-carcinogenic impacts would also be less than significant.

RR-8 Comment noted. See the Oak to Ninth Transportation Demand Management Plan included in the FEIR for specific transportation mitigation measures and recommended actions associated with Transit, Bicycles, and Parking. The BAAQMD *CEQA Guidelines*, Table 15 and Table 16, list mitigation measures for reducing motor vehicle emissions and respective percentage effectiveness. Potential motor vehicle emission reductions from the required mitigation and recommended actions listed in the TDM Plan would include:

Mitigation/ Action	Effectiveness
• Construction of transit facilities	0.5% to 2.0% (for all trips)
• Provide shuttle service to regional transit system or multimodal center.	0.1% - 0.5% (for all trips)
• Provide bicycle lanes and/or paths, connected to community-wide network.	0.1% - 2% (for all trips)
• Provide safe, direct access for bicyclists to adjacent bicycle routes.	0.5% – 2.0% (for work trips)
• Provide secure short-term bicycle parking for retail customers and other non-commute trips.	1.0% - 2.0% (non-work trips)
• Implement parking fees for single occupancy vehicle commuters.	2%-20% (for work trips)

RR-9 Comment noted. See the Oak to Ninth Transportation Demand Management Plan included in the FEIR for specific transportation mitigation measures and recommended actions.

RR-10 See Responses to Comments RR-8 and RR-9.

RR-11 Additional information regarding the adverse health effects due to noise described below shall be inserted in the DEIR as the last paragraph before the *Noise Attenuation* heading on p. IV.G-4 (additions shown as underlined; deletions as ~~strikeout~~):

Noise can have significant effects on physical and mental human health and well-being. Adverse impacts and effects include interference with speech and other forms of communication such as television and radio; sleep disruption; negative mood and behavioral changes; and hearing loss (usually temporary

and caused by occupational, rather than environmental, noise). Sleep disruption and interference with communication are the main sources of noise-related community complaints. It should be mentioned that people's tolerance to annoyance from noise is highly subjective, varying greatly among individuals (Oakland General Plan Noise Element, 2005). Also, epidemiological studies have shown that cardiovascular effects occur after long-term exposure to noise (aircraft and road traffic) with 24-hour Leq values of 65-70 dBA, but the associations are weak and more research is required to estimate the long-term cardiovascular and psychophysiological risks due to noise (WHO, 1999).

The following reference is added to p. IV.G-29 of the Draft EIR:

World Health Organization (WHO), *Guidelines for Community Noise*, 1999.

- RR-12 The DEIR analysis modeled noise for roadway segments between intersections that were screened for having the highest volumes. Based on traffic data, these segments have the largest increase in peak-hour traffic volumes for the interim and buildout scenarios versus existing conditions, and thus the greatest impact on noise along the roadway network. Since the analysis was based on the most affected roadway segments and noise levels were found to be less than significant (less than 5 dBA increase), the noise levels along other roadway segments, such as in the Downtown and Chinatown areas, would also be less than significant.
- RR-13 As determined in the DEIR, project-generated traffic noise would be less than significant along the screened roadway segments. As noted by the commenter, the DEIR provides mitigation measures to reduce indoor noise for the project's new multi-family residential units. Mitigation is required for these project-related dwelling units because the project would locate noise-sensitive multifamily residential uses in a noise environment where existing noise levels are above what is considered "normally acceptable" according to the City of Oakland General Plan Noise Element, not because of increased noise levels associated with project traffic (see DEIR Impact G.3 on p. IV.G-27).

Wendy L. Tinsley
Jack London District Association
Oak to 9th Project Planning Commission Speaker Comments

Good Evening Commissioners,

My name is Wendy Tinsley. I live at 247 4th Street in the Jack London neighborhood and serve as President of the Jack London District Association.

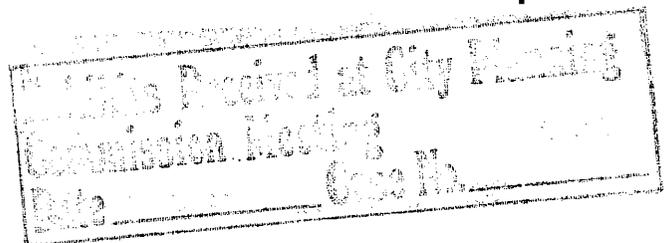
The Jack London District Association is studying the Draft EIR for Oak to 9th, and will soon issue a formal opinion. Currently our organization wishes to publicly support the goals and sentiment of the Measure DD Coalition and those community organizations aligned with the group.

Areas of concern preliminary identified by Jack London residents are traffic and parking, historical resources, open space and urban design.

- The significant and unavoidable adverse effects on traffic congestion and surface parking in the Jack London District resultant from this project as well the Jack London Square redevelopment project, four existing 6-8 story tower developments currently under construction, and three planned 8-15 story tower projects bring the neighborhood to a Level of Service category F, individually and cumulatively. SS-1
- Oak to 9th proposes to demolish up to 85% of the 9th Avenue Terminal, the last vestige of Oakland's historic port. Opportunities exist to retain the structure in its entirety and incorporate it into the development. 10% and 20% historic preservation tax credits are available to assist in the proper rehabilitation and adaptive reuse of the historically and architecturally significant structure. SS-2
- Oak to 9th is comprised of a series of towers at the waterfront surrounded by small sections of green space. From an urban design perspective, the project configuration will effectively curtain that section of the waterfront off from the existing surrounding community and all of Oakland. Although public access to the waterfront must legally be provided, the public would not likely feel welcome in the shadow of the development. SS-3

The Jack London District Association encourages new development in the area that is consistent with the City's General Plan and the Estuary Policy Plan. Tonight I respectfully request that the Planning Commission require further refinement, study and analysis of the project design, impacts, and alternatives in order to provide a project that achieves consistency with existing adopted City plans and policies, and ultimately better serves Oakland's waterfront. SS-4

Thank you.



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LETTER SS – Wendy Tinsley

- SS-1 The commenter’s concern, given the best available information and the professional judgment of City staff and the EIR consultants, is adequately addressed in the DEIR.
- SS-2 The comment describes the availability of historic preservation tax credits that may be used to assist with historic rehabilitation and adaptive reuse of the Ninth Avenue Terminal. This comment is noted and does not address CEQA issues pertinent to the DEIR analysis. If the City approves an alternative that retains the Terminal, pursuing the use of historic preservation tax credits would be at the project sponsor’s discretion.
- SS-3 The comment raises concerns with the design of the project and asserts that its configuration would “effectively curtain that section of the waterfront off from the existing surrounding community.” As discussed in the DEIR and depicted in the series of visual simulations in Section IV.K (Visual Quality and Shadow) of the DEIR (Figures IV.K-2 through IV.K-16), the project would introduce new and taller buildings than what currently exists on the site, would create new open space that does not currently exist on the site, and would allow for new and expanded views of the waterfront that do not currently exist from points along public streets within and adjacent to the project site. See also Response to Comment B-8.
- SS-4 The comment requested further “refinement, study, and analysis of the project design, impacts, and alternatives in order to provide a project that achieves consistency with existing adopted City plans and policies....” The DEIR contains a thorough analysis of the potential impacts pursuant to CEQA that could result from the proposed project and, where feasible, identifies adequate mitigation measures to reduce significant impacts to less-than-significant levels. This analysis is provided in Chapter IV of the DEIR (Setting and Impact Analysis) and summarized in Chapter II (Summary). Section IV.A (Land Use, Plans and Policies) presents a complete discussion of how the project relates to key policies of the General Plan (as well as other plans and policies relevant to the project). Chapter IV includes a detailed description and analysis of a range of reasonable project alternatives, including a No Project / Estuary Policy Plan development scenario. As guided by CEQA, the alternatives would reduce or avoid significant impacts identified for the project while feasibly attaining the basic objectives of the project and the overall goals and policies of the Estuary Policy Plan. As a result, the analysis presented in the DEIR, along with additional information provided in this FEIR document, is adequate to inform the City in its environmental review and consideration the project under CEQA.

Regarding adequate review of project design, the project has been developed during a four year planning process that has thus far involved numerous community meetings, including a community outreach process conducted by Circlepoint on behalf of the City, public hearings at several City boards and commissions, with input from non-City agencies as well. In addition, there have been numerous project-sponsored meetings and community discussions on all aspects of the project. Input received throughout this process has resulted in project design modifications, including those identified by the

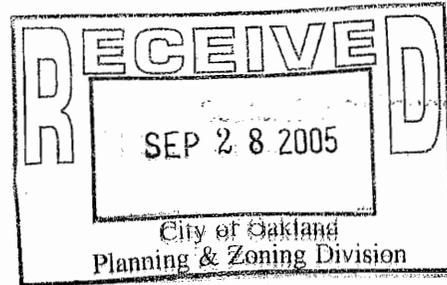
City-sponsored urban design consultant and presented to the City Planning Commission. Both the Planning Commission and the City Council will hold additional hearings prior to acting on the project proposal and will have the discretion to further modify the project design to ensure full adherence to the City's applicable design review criteria.

September 25, 2005

City of Oakland, CA.

Attn: Planning Commission

RE: Oak Street to Ninth Ave. Project



After viewing the model for the Oak Street to Nine Ave Project plans on the Internet, I am submitting the following comments:

Need to consider the long term impact of the project, effects on its unique geographic area and all the surrounding communities. How does it **complement and preserve the natural scenic beauty and open unobstructed views of the Oakland hills.**

TT-1

Height limits **need** to be implemented for all property along the Estuary. Low rise buildings only, the closer to the estuary the lower the building.

TT-2

This project is too dense for the site.

TT-3

It blocks views of the Oakland hills. Needs more open space and landscaping. It looks like most of the land is covered with concrete.

TT-4

Added congestion to the 880 freeway. Noise and air pollution increase.

TT-5

Five 24 story towers – **Too high. e.g. Compare** to St Paul's Towers near Lake Merritt. That building is 24 stories. It's like building a **wall** along the Estuary just like the tall condos and apartments around Lake Merritt diminish and block views of the hills – every building in competition with each other. **Another comparison** – The old Montgomery Wards building in East Oakland. It was unsightly, a wall blocking views, seen for miles as one drove on 880 Freeway into Oakland. Needs more public access.

TT-6

Land Trust initiated to preserve area. Believe much of this property was originally preserved in a "Land Trust" which the City of Oakland traded for another property. Which other property involved and why?

TT-7

Who's is profiting from this development. The developers?

TT-8

Also compare a recent project by Signature Properties called the "Estuary". These condominiums are on Glascock St near 29th Ave. along the estuary. These buildings are four stories high. Units are on 3 and 4 levels with up to 44 stairs in one unit. This project is very dense/crowded. Not handicapped accessible. Not a single condo on a single level. Public access to the estuary is invisible and limited.

TT-9

Thank you for considering these comments.

Kathleen Jensen
122 Cypress St.
Alameda, CA 94501

Exhibits Received at City Planning
 Commission Meeting
 Date 9.18.05 Case No. OK-09

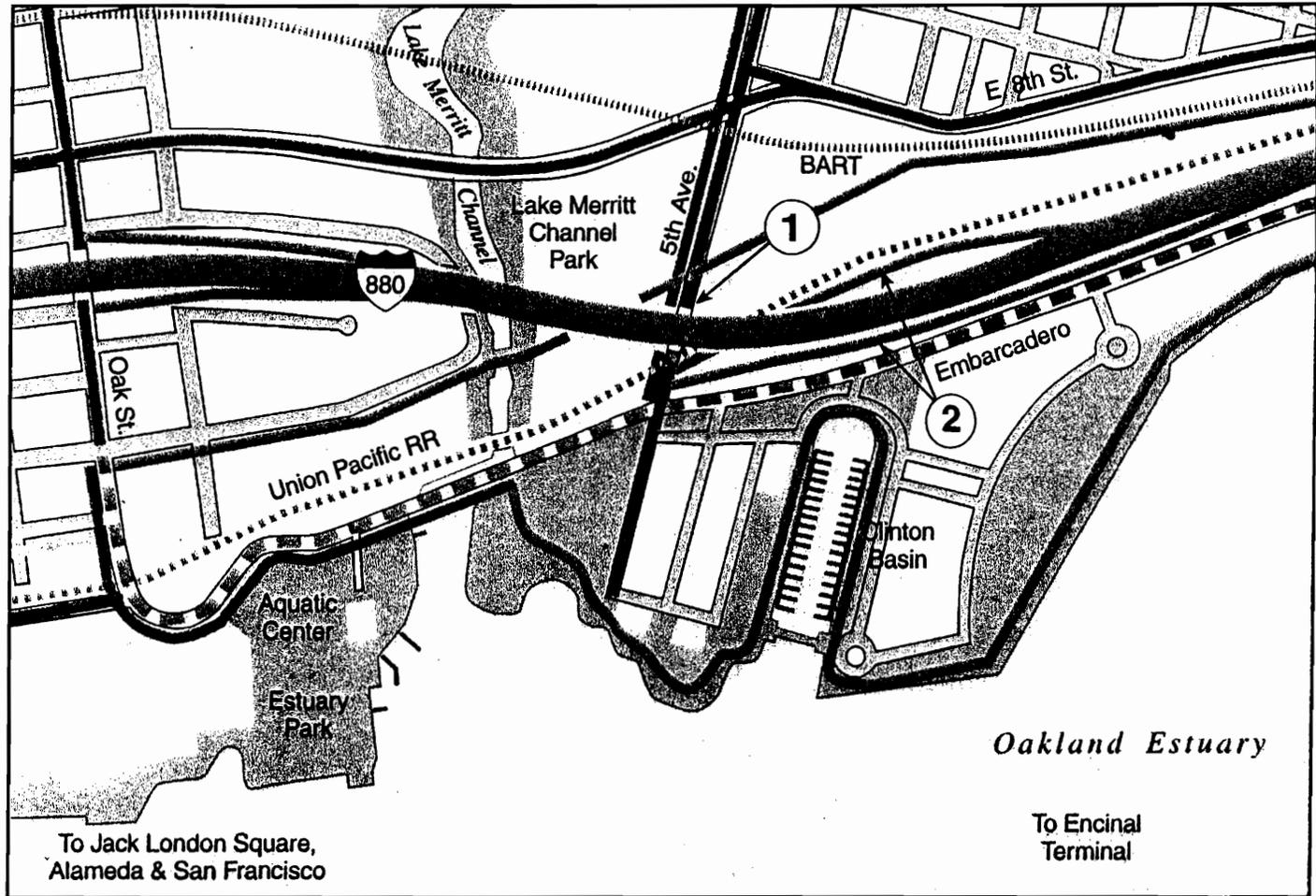


FIGURE III-14: Oak to 9th District: Illustrative Circulation

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|---|--|--|------------------------|--|--|
| ① | Realigned 5th Avenue | | Interstate 880 | | BART - Bay Area Rapid Transit |
| ② | Rebuilt half diamond interchange at 5th Ave. | | Major Linking Streets | | Waterborne Transit (Ferry, Water Taxi) |
| | Estuary Parkway | | Local Streets | | Class I Bikeways/Pathways |
| | Open Space and Public Access | | Passenger/Freight Rail | | Class II Bikeways/Pathways |
| | | | | | Class III Bikeways/Pathways |

LETTER TT – Kathleen Jensen

- TT-1 The DEIR includes a detailed analysis of the project’s impact on scenic views and vistas, including those of the Oakland hills, in DEIR Section IV.K (Visual Quality and Shadows). The project impacts on visual quality would be less-than-significant as discussed on DEIR pp. IV.K-10 through IV.K-39. Overall, development of the project would improve the visibility and access to the “natural scenic beauty” of the area which is currently limited by hazardous conditions, debris, and dilapidated areas (such as Clinton Basin), industrial and warehouse type development and uses, and lack of public access and open spaces east of Lake Merritt Channel.
- TT-2 As discussed on DEIR p. III-8 and depicted in Figure III-5 (Proposed Maximum Height Distribution) on p. III-15, the project proposes a mix of medium-height buildings from six to eight stories (up to 86 feet) in height. The DEIR also analyzes an increased height variant that would increase the building podium heights by 34 feet (from 86 to 120 feet maximum). Five of these medium-height buildings would include highrise tower elements of up to 24 stories (240 feet). Around Clinton Basin, a building stepback would be required at heights above 65 feet. These maximum height limits are included as development standards in the proposed Planned Waterfront Zoning District (PWD-1) summarized in Table IV.A-1 on DEIR p. IV.A-39. Except around the proposed Clinton Basin promenade, all development sites are separated from the waterfront by open spaces (and in some cases streets) and set back 200 to 400 feet shoreline.
- TT-3 See Response to Comment GG-3, item 3, for discussion of lower-density alternatives to the project.
- TT-4 See Response to Comment TT-1 regarding views. The project would result in approximately 37 percent of the project site as open space (unpaved area), however this acreage does not include landscaping that would occur along public streets and on residential development parcels.
- TT-5 Sections IV.B through IV.D of the DEIR includes the analysis of traffic, air quality, and noise impacts associated with the project. Significant impacts are identified and, where feasible, mitigation measures to reduce or avoid significant impacts of the project are presented and discussed.
- TT-6 See Response to Comment B-8 regarding proposed new buildings and effects on views and public access.
- TT-7 See Responses to Comments I-1 and I-2.
- TT-8 The comment poses a question regarding recipients of profit from the project. The comment is not related to the adequacy of the DEIR or impacts of the project under CEQA.

TT-9 See Response to Comment B-8 regarding proposed new buildings and effects on views and public access.

CHAPTER VII

Responses to Comments at the Planning Commission Public Hearing on the Draft EIR

The Planning Commission held a public hearing on the Draft EIR (DEIR) on September 28, 2005. The following is the transcript of the public hearing, followed by the responses to each comment. Responses provided in this section specifically focus on statements that pertain to environmental topics under CEQA and the adequacy of the analysis in the DEIR. Statements regarding the project are identified and responded to as appropriate.

Comments relevant to the DEIR start on page 16 of the transcript.

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4 OAK TO NINTH AVENUE PROJECT
5 DRAFT ENVIRONMENTAL IMPACT REPORT
6 PUBLIC COMMENTS
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14 OAKLAND, CALIFORNIA
15 WEDNESDAY, SEPTEMBER 28, 2005
16 PUBLIC COMMENTS
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22 Reported by:

23 DANA M. FREED
24 CSR No. 10602

25 JOB No. 3-39119

Page 1

1 Oakland, California
2 Wednesday, September 28, 2005
3 7:16 p.m. - 10:05 p.m.
4

5 MR. KIMELBERG: Okay. Item number 2 is
6 the Oak Street to Ninth Avenue Development Proposal
7 comprised of approximately 64.2 acres bounded by
8 Embarcadero Road to the Oakland Estuary,
9 Fallon Street, and Tenth Avenue. Proposal includes
10 this evening a public hearing on the Draft
11 Environmental Impact Report to obtain comments
12 regarding the environmental analysis related to
13 a new mixed-use development which includes up to
14 3100 residential units, 200,000 square feet of
15 ground-floor commercial space, up to 3950 parking
16 spaces, 28.4 acres of parks to public open space,
17 2 renovated marinas, a total of 170 boat slips,
18 and a wetlands restoration area.

19 The existing buildings on the site will be
20 demolished with the exception of a portion of
21 the Ninth Avenue Terminal shed building and the
22 Jack London Aquatic Center.

23 Director Claudia Cappio will provide a brief
24 overview.

25 MS. CAPPIO: Thank you.

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4 OAK TO NINTH AVENUE PROJECT
5 DRAFT ENVIRONMENTAL IMPACT REPORT
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14 Public Comments, taken at City Hall,
15 1 Frank Ogawa Plaza, Oakland, California, beginning at
16 7:16 p.m. and ending at 10:05 p.m. on Wednesday,
17 September 28, 2005, before DANA M. FREED, Certified
18 Shorthand Reporter No. 10602.
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Page 2

1 Commissioners, members of the public:
2 Tonight is a public hearing on the
3 Environmental Impact Report to the Oak to Ninth
4 project. The Draft EIR was published on September 1st
5 of this year and the comment period runs through
6 October 24th next month.

7 The project studied under the EIR includes
8 3100 housing units, 200,000 square feet of commercial
9 space, and approximately 29 acres of park space.
10 It also includes the demolition of the Ninth Avenue
11 Terminal building.

12 The Environmental Impact Report is part of
13 the required development review process under both
14 City code and the California Environmental Quality
15 Act. The purpose of this document is informational.
16 It provides decision-makers and the public with a very
17 detailed analysis of the potential physical impacts of
18 the project and ways in which those impacts can be
19 reduced or eliminated through what we call mitigation
20 measures. Some of the impact areas that were studied
21 in this EIR include traffic, air quality, and the
22 demolition of the historic Oak to Ninth building.

23 Once the comment period ends on October 24th,
24 all comments that are being received during the
25 comment period, including those received orally

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1 tonight as well as those received by e-mail or letter
2 to our office in the Planning Department, will be
3 responded to and they will be compiled and published
4 in what we call a Final Environmental Impact Report.
5 Along with the comments and the response to comments
6 will also be revisions, corrections, or clarifications
7 that were deemed necessary in the draft document.

8 The comments that are made tonight would be
9 most useful to the City and to the Planning Commission
10 if they pertained directly to the Draft Environmental
11 Impact Report now before the City. These can be
12 comments like: Is it adequate; does it cover all
13 impacts; is it a complete analysis of the major
14 environmental issues that have been addressed; and
15 have the measures to respond to those mitigations or
16 those impacts been adequately described in the report?

17 Comments about the project itself at this
18 point will be noted, but there will be future hearings
19 where the opportunity to fully comment on the project
20 as it evolves from this point will be incorporated
21 into the public review process. These include
22 comments about the design, the massive bulk of the
23 project, the open space configuration, or other
24 aspects.

25 The staff report does contain a brief

Page 5

1 Properties and Brown to Brown, two local developers
2 that specialize in housing and mixed use and in fill
3 opportunities in general. So it's an honor to be here
4 tonight and talk a little bit about our Oak to Ninth
5 project.

6 This is my first time actually using a
7 PowerPoint presentation, so bear with me a little bit.

8 I thought it would be helpful to go through
9 a little bit of the history before we talk about our
10 current project proposal. We have been working on
11 this project for a little over four years. The
12 Port of Oakland issued a request for qualifications
13 in the spring of 2001. We were one team that
14 submitted a response and competed against another
15 team. And we were awarded the right to negotiate with
16 the Port.

17 In November of 2003, we executed an Option
18 and Purchase Sale Agreement with the Port of Oakland
19 to acquire this property. From day one, we envisioned
20 this property to be, well, unique obviously because of
21 its waterfront setting, but we envisioned it to be
22 a new neighborhood in the City of Oakland.

23 And forgive me. I didn't bring copies for
24 the commissioners tonight. But for the general
25 public, this is the Nimitz Freeway. You have the

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1 explanation of the issues about the project which have
2 been identified to date and these have been included
3 as a beginning point. It is meant as an opportunity
4 to review that list as well as to make sure that
5 the Planning Commission has an opportunity to add to
6 it.

7 With that, I conclude my remarks and I'd be
8 glad to address any questions. Thank you.

9 CHAIR JANG: Do we have any questions from
10 commissioners at this point? None?

11 I actually want to make sure that those that
12 wish to speak fill out a speaker card. They're still
13 available at the front here.

14 And if you're speaking as an a group,
15 I'd like to have those people identified. Those
16 groups that want to speak together, so that, you know,
17 the cards don't get separated. I know that there's
18 one group that will speak as a group, so I know that
19 there's one.

20 With that, I'd like to have the applicant
21 come to the podium and make a presentation.

22 MR. GHIELMETTI: Mr. Chair, members of the
23 commission. I'm Mike Ghielmetti with Signature
24 Property and Oakland Harbor Partners. Oakland Harbor
25 Partners is a joint venture between Signature

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1 Union Pacific rail yards, you have BART maintenance
2 yard, BART tracks, East Eighth, and Embarcadero
3 that separate this project from the rest of Oakland.

4 Our job, we thought, was to help reunite it
5 basically with the City of Oakland. It's challenging,
6 because there's only a couple of access points that
7 are achievable there. Fifth Avenue along here and
8 then future access along the Lake Merritt channel.

9 The plan has evolved quite a bit in the last
10 four years. Our original plan -- well, actually,
11 maybe I'll show a little bit more of what it looks
12 like now. This is what the site currently looks like.
13 These shots were taken within the last basically
14 12 months. It is, for the most part, in a fairly
15 rundown state. The shoreline needs to be improved,
16 there's contamination on the site, there's garbage
17 on the site and most of the buildings are in pretty
18 poor condition.

19 To give some close-ups: This is existing
20 shoreline conditions on some of the existing
21 buildings. This was one of the first site plans that
22 we submitted to the Port. Yellow areas designate
23 residential. Orange and red areas designating retail.
24 And obviously, green designating open space. You can
25 see how it evolves. This plan was circa, what, 2002,

Page 8

1 towards the ends of 2002.
2 This plan showed about 15 or 18 acres,
3 I'm fairly certain, of open space, wider footprints,
4 lower buildings. And in this particular project,
5 we envisioned that we would need a City subsidy and
6 said publicly that we thought we would.

7 This is the project a year later. We went
8 through many iterations, we have met with dozens of
9 community groups. Actually close to 100. And
10 hundreds if not thousands of people over the four
11 years trying to get people's input.

12 This project is certainly not a perfect
13 project nor will it meet the goals of some people.
14 We think that we're drafting a project that's going
15 to meet the broadest goals of the broadest number of
16 people. This plan shows 27 acres of open space.
17 That really hasn't changed. We've just refined it.
18 We now have areas here, these areas just for a sense
19 of scale, that's wider than the Marina Green
20 in San Francisco. It is about 9 acres. Actually,
21 it's a little bit more acreage than the Marina Green.
22 It's similar to some of the waterfront parks like
23 Riverfront along the Willamette River in Portland.
24 Harbor Green in Vancouver. Similar in width to
25 Embarcadero Pacific Park in San Diego. So these are

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1 Other things. So we have 3100 residential
2 units here. All the streets are public. There are
3 no gates. They all have wide sidewalks, very
4 accessible urban design. Street trees, wide
5 sidewalks. Buildings range in size generally from in
6 and around eight stories. But on exact locations,
7 one here, one here, one here, and one here up to 24
8 stories. We feel that that height and that density
9 and that critical mass is what's going to bring this
10 area to life and revitalize it, because it's fairly
11 well isolated.

12 We're also showing close to 200 marina slips
13 that right now some of them are not in the best shape,
14 so we want to revitalize that marina. Again, bring
15 people to and from this area, even from the water.
16 So that's important to consider. We think this
17 residential will activate these spaces.

18 The parks that don't have anything nearby
19 them generally fall into a state of disrepair. You
20 get bad elements and start loitering in those parks
21 because there is no one there watching them. And this
22 project we feel there will be people watching these
23 parks and they'll be active and vibrant places for
24 families from all over Oakland to use.

25 This is a little bit of a focus on the park.

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1 substantive parks. This is, like I said, about
2 9 acres. This is a 5-and-a-half acre park, this is
3 a 7-acre park. These are big spaces.

4 And we intend to fill them with active and
5 passive uses: dog parks, bocce ball courts, children's
6 parks, community center. And other types of uses
7 that will draw people down to the water.

8 All of the areas are separated by, most of
9 the open space areas are separated by a roadway.
10 We think that due to the fact that they're separated
11 by roadways, due to the fact that they're wide,
12 usable, accessible spaces that they will generate
13 a tremendous amount of use.

14 The Jack London Aquatic Center is also shown
15 here. We intend to enhance their facilities by
16 allowing them to grow into some of our space, so that
17 they can continue to serve youth in Oakland.

18 Residential development here basically pays
19 for all this. We are not looking for any subsidies.
20 We are looking to install this 27 acres, 28 acres,
21 I think, of open space on, at the development's
22 expense to maintain it at the development's expense
23 and yet have it be owned and run by a public entity
24 more than likely the City of Oakland. It's still
25 being determined whether it's the Port or the City.

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1 We will have a Bay trail across the approximately
2 1-and-a-half, little less than 1-and-a-half miles of
3 shoreline there. Separate bike and pedestrian trails
4 and bike and pedestrian trails along the frontage and
5 Embarcadero.

6 This is showing some of the view quarters.
7 Now, this is an area that has been controversial,
8 quite frankly, because not in all circumstances
9 it's not visible straight through. But there's kind
10 of a dual purpose for that, because don't forget that
11 the freeway is here and when people are out enjoying
12 the park we didn't want them necessarily to smell,
13 hear, and experience the freeway, we wanted them to be
14 able to experience the water and basically be able to
15 turn in the other direction.

16 There are wide view corridors throughout
17 this area and there are view corridors once you get
18 into the project so that when you're out here you're
19 really not experiencing the experiences of the
20 underbelly of the freeway.

21 This is a little bit of a ground section.
22 The areas in pink we envision to be kind of our retail
23 areas. Certainly around the harbor here and certainly
24 down, for lack of a better term, kind of a main
25 street. It's configured like a Lakeshore or something

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1 like that with diagonal parking on either side.
2 Ground-floor retail on either side and ground-floor
3 retail all along the Brooklyn Basin there.
4 This could be visitor-serving uses so people
5 can come down and have, enjoy a restaurant or cafe or
6 a bike shop or a kayak shop.
7 It could be neighborhood-serving uses
8 as well: Your dry cleaners, your shoe repair, those
9 type. Grocery store, et cetera, we envision to be
10 there.
11 This is an example of some of the park-type
12 configurations we envision. This is Tom McCall Park
13 in Portland which is written up in Fudor's as a
14 destination. It's almost identical configuration to
15 some of our parks. This is that same park with the
16 blues festival. I was just up there last week and
17 they were setting up for. So these are spaces that
18 can accommodate large amounts of people if that's what
19 the public wants to use them for. They will be public
20 spaces.
21 This is what we envision to be our Bay Trail
22 section. So you have a section for pedestrians,
23 a section for bikes, and large open spaces nearby
24 those. This is Harbor Green in Vancouver. This is
25 our idea for a children's, this is a children's

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1 water park and mom and dad could relax with a cup of
2 coffee or whatnot above or sit and watch their kids
3 from the side. This is Marina Green in San Francisco
4 and you can tell by the length of the shorts it was
5 taken some time ago, and by the hairstyles.
6 But these are the types of spaces we have
7 in mind. These are not small, inaccessible spaces.
8 These are not private spaces. These are very public
9 and it's basically some of the density that's helping
10 make this happen.
11 We think this is a smart growth project.
12 We envision retail corridors, all the streets are
13 going to have, they'll be active streets. We're going
14 to have awnings, we're going to have street trees,
15 nice sidewalks, and we want to make these streets
16 come alive with a good urban center.
17 Dynamic residential district: Buildings with
18 various heights and buildings that enter off the
19 street, so you have kind of old fashioned walk-ups so
20 you can sit out in front. You can, you know, go next
21 door and visit your neighbor on the street with,
22 you know, flowers and street trees and those types of
23 goods urban designs in there.
24 Smart growth: This is near jobs, this is
25 near density. This is what my industry has been

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1 encouraged to do for the last 5 to 10 to 15 years.
2 Instead of continuing to build out in the suburbs to
3 come in to in-fill areas and build smart growth that
4 we can take people away from dependencies on cars and
5 get them to walk around their neighborhoods a little
6 bit more. These are taken from Portland, Vancouver,
7 San Diego, and other locales.
8 And again, living on the waterfront, let's
9 not forget these big parks that we have in mind. This
10 is probably a little bit taller than we have in mind,
11 a majority of our project. For example, our 24-story
12 tower is very similar to The Essex on Lake Merritt.
13 I think that is 22. So it's very very similar. These
14 are not going to be big concrete blocks that were
15 built 40 or 50 years ago. These are going to be
16 elegant new high-rises in a select area and primarily
17 mid-rises.
18 So I think that's basically it. I wanted to
19 give you a sense of the design. We're here to listen.
20 The City prepared an Environmental Impact Report
21 showing potential impact this project has, showing
22 alternatives for your and the City Council's
23 consideration. And we would love to entertain any
24 questions you may have.
25 MR. JANG: Okay. Thank you, Mr. Ghielmetti.

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1 Do we have any questions from the
2 commissioners?
3 Commissioner Lighty.
4 COMMISSIONER LIGHTY: Mr. Ghielmetti.
5 MR. GHIELMETTI: How are you?
6 COMMISSIONER LIGHTY: I read this article
7 in the Montclarion recently where you said that
8 the Estuary Policy Plan doesn't work. And in your
9 presentation I was hoping you would elaborate on that.
10 Since you didn't, I wanted you to have the opportunity
11 to do that. Because I was on the commission that
12 adopted that plan, so I have some personal interest
13 in your view on that. PH-1
14 MR. GHIELMETTI: I appreciate that.
15 The Estuary Policy Plan, first off, I don't
16 know that it considered some of the economic
17 implications. For instance, I don't know that,
18 it wasn't known what the extent of the contamination
19 on this site was, or the cost to clean it; it didn't
20 contemplate whether the infrastructure served on the
21 site was adequate and it didn't contemplate some of
22 the access issues. We want transit, for instance, to
23 work. Transit needs a massive subsidy unless you can
24 get enough density onto this site so that it doesn't
25 come out of taxpayer dollars to serve it.

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1 And because of the clean up, the
2 infrastructure, and needing to pay basically the Port
3 a fair market value for this property so that they
4 could reinvest it in their mission which is airport
5 and seaport. It's an incredibly expensive project to
6 undertake.
7 That coupled with let's talk about the
8 operations and use. The Estuary Policy Plan was
9 a very low, low intensity development. There's
10 nothing wrong with that in and of itself, but it's
11 an isolated area. And in my opinion, it wouldn't have
12 generated the activity that would have made these
13 parks come to life.
14 I know there are people out there you'll hear
15 from tonight that disagree with me on that and that's
16 fine. But our opinion and our land planners and
17 people on our team, our opinion is that that never
18 would have been a very viable -- it would have been
19 more like Middle Harbor Park, quite frankly, which is
20 a beautiful park that is in the middle of a bustling
21 port operation. It's not very much, it's not used
22 very much, except for select festivals where people go
23 and congregate there.
24 But on a daily basis you don't see lots of
25 people there. Not like the parks we've been visiting

PH-1 (cont.)

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1 CHAIR JANG: Let's have our first round of
2 public speakers. I believe Oak to Ninth Coalition is
3 coming as a group.
4 MR. KIMELBERG: That's correct. I have
5 19 speakers associated with that group, so...
6 CHAIR JANG: Okay. If they could organize
7 themselves so that basically they could come up to
8 the podium very quickly.
9 MR. KIMELBERG: I'll call the first five
10 speakers.
11 CHAIR JANG: Okay. Why don't you read off
12 all the names, because I believe they have a set order
13 that they wish to speak?
14 MR. KIMELBERG: They do, yeah. Okay.
15 First speaker is Leonor Godinez followed by
16 Andy Nelson, Muang Saechao, Chhoeuth Prak, the last
17 two of which have translators. Antonio Varraz,
18 Quan Tut with a translator, Gloria Lomeli with
19 a translator, Disheng Huang with a translator,
20 Mimi Ho, Andre Spearman, Jennifer Lin, and then
21 David Cocashida [phonetic sp]. Jennifer Lin -- that's
22 a repeat -- Virginia (inaudible) and Rob Smith.
23 CHAIR JANG: And I believe that we had
24 negotiated 34 minutes. 34?
25 MR. KIMELBERG: 34 minutes.

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1 in San Francisco, San Diego, Portland, and Vancouver.
2 There are strollers, there are bikers, rollerbladers,
3 people everywhere. And that's the type of life
4 we want to see there.
5 You know, the use that is contemplated in
6 this Estuary Plan is a convention center. Well,
7 the Henry J. Kaiser Convention Center, if I'm not
8 mistaken, was just shuttered because it was an
9 operational deficit. And low-intensity hotels out
10 there. Do we want to see Motel 6s out here? Because
11 you're not going to get hotels I think in that
12 location that isolated that are going to do the City
13 proud.

14 So for those reasons and more, those are
15 the basic premise behind us not agreeing with the
16 configuration or use of the Estuary Plan.

17 COMMISSIONER LIGHTY: Thank you.

18 MR. JANG: Any further questions from
19 commissioners?

20 I believe there aren't any at this time,
21 but there may be others.

22 MR. GHIEMMETTI: We'll sit and take our
23 medicine.

24 CHAIR JANG: Okay.

25 MR. GHIEMMETTI: Thanks.

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1 CHAIR JANG: Set it for 34 minutes, right.
2 Okay. Any time you're ready.
3 MS. GODINEZ: Thank you.
4 My name is Leonor Godinez. I'm a member of
5 St. Anthony's Catholic Church and a leader in the
6 Oakland Community Organizations. I'm a lifelong
7 resident of Oakland. I live about a mile from the Oak
8 to Ninth site and I'm a member of the Oak to Ninth
9 Community Benefits Coalition. PH-2
10 Tonight the Coalition would like to share
11 with you a little bit about who we are, the makeup of
12 our members, the makeup of our Coalition, and what
13 we are proposing for the Oak to Ninth site.
14 Last year residents, community leaders, and
15 community-based organizations came together to talk
16 about what might be possible for Oak to Ninth.
17 We developed a process to gather input from our
18 neighbors, churches, families, and community leaders,
19 in order to hear and see what the community's vision
20 would be for the project. We formed the Coalition
21 that's here before you tonight. It's the Oak to Ninth
22 Community Benefits Coalition.
23 The Coalition is co-coordinated by the
24 Urban Strategies Council and APEN, Asian Pacific
25 Environmental Network. The Coalition is made up of

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1 16 organizations representing various faces and phases
2 from the entire City of Oakland. We are spearheaded
3 by leaders and families from our four resident-based
4 organizations. They are APEN, the Asian Pacific
5 Environmental Network, EBAYC, the East Bay Asian Youth
6 Center, OCC, Oakland Coalition of Congregations, and
7 OCO, Oakland Community Organizations.
8 At this time I'd like to ask the members of
9 this coalition that are present here this evening to
10 please stand up. PH-2
11 Thank you. (cont.)
12 Before turning this over to Andy Nelson with
13 Urban Strategies Council who will give you the details
14 of our proposal, I'd like to add that our coalition is
15 not anti-development. We simply believe that new
16 housing developments in the City of Oakland can and
17 should benefit the community that they're being built
18 in. We believe new developments can benefit the
19 community and at the same time be profitable for the
20 developer.
21 Thank you very much.
22 CHAIR JANG: Thank you. I'd like to ask the
23 audience to refrain from clapping after every speaker,
24 so please.
25 MR. NELSON: Thank you. I'm Andy Nelson,

1 cochair of the Community Benefits Coalition along with
2 Jenny Lin from Asian Pacific Environmental Network.
3 I want to start by building on something that
4 Leanor said, which is simply that any projects of this
5 size will have significant impacts of various types --
6 it's unavoidable -- environmental, physical, and
7 social.
8 In our view, if there's impacts that out to
9 be acceptable tradeoffs. This project needs to create
10 significant opportunities and provide real benefits
11 for existing Oakland residents. Oakland is undergoing
12 a rapid change in growth and yes, we need new
13 development. But we need to make sure that this
14 development provides opportunities for Oakland
15 current residents as well. PH-3
16 Front page of today's Chronicle tells us a
17 Bay Area family of four must make over \$55,000 a year
18 just to get by. Families in the Eastlake/lower
19 San Antonio/Chinatown neighborhoods make around
20 \$30,000 a year on average. The main reasons,
21 according to the article, for growing income
22 inequality of the Bay Area, guess what? The high cost
23 of housing and the lack of good paying job
24 opportunities for people without a college degree.
25 No surprise to our members who asked us to craft a

1 proposal that would address just these issues.
2 So let me briefly outline our proposal, which
3 calls for 25 percent of the housing to be created by
4 this development to be affordable to families making
5 less than \$50,000 a year. For most of these to be 3-
6 and 4-bedroom units for working families. 100 percent
7 of the new apprenticeship for the project construction
8 jobs to be Oakland residents so that career
9 opportunities are created for Oakland. Funding for
10 a multilingual construction jobs training program
11 so that all Oakland's residents can have access to
12 these opportunities. Such a program does not yet
13 exist among Oakland's otherwise stellar group of PH-3
14 construction job training providers. And finally, (cont.)
15 the application of Oakland's living-wage law to retail
16 and maintenance jobs created by this project.
17 In closing, let me say that our members'
18 interest in housing and jobs are driving our thinking
19 as we develop this proposal and our proposal
20 represents one way to accomplish our goals. We want
21 to say clearly we're open to hearing other ways to
22 create real, meaningful and significant housing,
23 employment, and other opportunities for our members.
24 And we will work with everyone, public officials,
25 members of the public, and the project sponsors to

1 accomplish these goals.
2 Let me now turn it over to our residents to
3 speak to you this evening.
4 MS. SAECHAO: Hello, everyone. I am come
5 from EBAYC. My name is Muang Saechao. I came from
6 America in 1987 as I live here from Laos. But now
7 I am a U.S. citizen and I vote. I am here to share
8 with you the concerns that I have in the community.
9 My friends and relatives are moving out of
10 Oakland because they couldn't afford to buy a home
11 in Oakland. In the last four years 26 families have
12 moved to Sacramento and 43 families have moved to
13 either Redding, Mountain View, Stockton, and PH-4
14 Fairfield. 19 families including myself, bought our
15 first home in Sacramento, Redding, and Mountain View,
16 and work here in Oakland. If Oakland had affordable
17 housing, my family wouldn't have to purchase homes
18 elsewhere.
19 Oakland citizens need your leadership to
20 fight for affordable housing so we all can stay in
21 Oakland.
22 Thank you.
23 MS. MAE: Hi. My name's Chandu Mae and
24 I'll be speaking on behalf of the parents from
25 East Bay Youth Center named Chipra. PH-5

1 Chipra is 47-years-old and he's receiving SSI
2 because of his health problem and he cannot work.
3 He is interested in affordable housing because he
4 cannot afford regular rent because of the high housing
5 cost. He believes that there should be affordable
6 housing for low-income people like himself.

7 Right now he's living from one place to
8 another and it's hard for him. He don't have a place
9 that he can call his home. PH-5 (cont.)

10 So please understand his situation and others
11 that are like himself to support affordable housing.

12 Thank you.

13 MR. VORRUZ: Good evening. My name is
14 Antonio Varruz. I live with my family and four
15 children. I have lived in Oakland for the last three
16 years. I work every day, but I work from job to job,
17 I have worked in restaurants, I have done plumbing,
18 I have done electrical work. I have worked as a
19 gardener, I have worked in -- my jobs are never stable
20 and my wages are always are very low. I barely have
21 health benefits for myself, for my family.

22 I want to stay in Oakland, I want my children
23 to grow up here in Oakland. The Oak to Ninth project
24 is a big opportunity for my family and for many other
25 families in Oakland. Hundreds of construction jobs

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1 of job I can do well. However, I face many
2 disappointment in my job search, even though I work
3 hard and have the experience, most construction job
4 I could find are temporary and will provide no
5 benefits. Currently I work for a private construction
6 business that pays me \$8.00 an hour. While I'm
7 working on the project I work from 7:00 to 9:00 p.m.
8 every day. When the work is done, I will be
9 unemployed until the next project comes around PH-7

10 In the meantime, my wife works in a (cont.)
11 restaurant and faces a similar situation in terms of
12 her job stability. Most of the time I don't make
13 enough money to support our family. I dream of having
14 a stable job in the construction field so that that
15 will also provide health benefit for me and my family.
16 I'm in good health and I'm willing to work to have
17 a better life in America.

18 I think the Oak to Ninth project can provide
19 me with sustainable job training and job placement in
20 the construction field and help me fulfill my dream.

21 MS. LOMELI: Good evening.

22 My name is Gloria Lomeli. I live on 27th
23 Avenue. I have been living in Oakland at this same
24 address for the past 11 years. I'm also a leader
25 in OCO and I'm working with the St. Anthony's Parish.

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1 will be created by the Oak to Ninth project. These
2 jobs should go to Oakland residents. This way hard-
3 working Oakland people like me can learn a trade and
4 make a good living for families. PH-6

5 We want you to support Oakland by making sure
6 Oakland residents get those hundreds of jobs created
7 by the Oak to Ninth project.

8 Thank you.

9 (Mr. Tut first says his speech in his own
10 language, followed by the translator in English.)

11 INTERPRETER: This is the translation of
12 Mr. Quan's testimony: My name is Quan Tut. I'm a
13 parent of the East Bay Asian Youth Center. I'm a
14 recent immigrant from Vietnam. I came to Oakland in
15 2004 and currently live at 1450 13th Avenue, Oakland,
16 California. I live in this house with three other
17 families who are also recent immigrants like me. Our
18 family immigrant status prevent us from applying or
19 receiving for public benefits. PH-7

20 Due to this reason, all of us have to work at
21 any job that we can find to maintain our basic living
22 necessity such as food, rent, and clothing. In
23 Vietnam I'm an accomplished construction worker and
24 carpenter. When I came to United States I want to
25 continue working in this field because it is the kind

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1 I'm participating in this particular meeting because
2 I'm worried about the impact this project will have
3 on housing. PH-8

4 For example, the conditions in my apartment
5 are very bad, but I have to stay there because the
6 rents are high in any other places. Therefore,
7 it's important for the City to create opportunities
8 for housing in this project for families of low income
9 such as my own and other families in the same
10 situation. We want to have opportunities for housing
11 in this project. It's important for my family to have
12 appropriate and dignified housing with accessible,
13 affordable prices. If this project can help families
14 or people of other income and social levels, it will
15 be good for the City.

16 (Mr. Huang first says his speech in his own
17 language, followed by the translator in English.)

18 MR. HUANG: Ladies and gentlemen, good
19 evening. PH-9

20 My name is Disheng Huang. I am a leader of
21 the Power of Asian Organizing. Power is based in
22 Oakland and we have over 300 members and quite a lot
23 our senior members. All Power members young and
24 senior are very involved in fighting for more
25 affordable housing, for we have had a lack of

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1 affordable housing in Oakland.
2 Whenever public housing is made available,
3 there are long waiting lines. Our members are expert
4 of waiting in those lines. Use me as an example.
5 I have lived in Oakland for over nine years and
6 applied for affordable housing five times. Now, five
7 of us are still squeezing in a 2-bedroom unit. I was
8 qualified for the first place several times and even
9 pay more than \$100 for credit check, but the result is
10 endless waiting for there were not enough unit PH-9
11 available. (cont.)
12 Senior apartments are needed in Oakland as
13 well. Someone of our members Mrs. Wong, who is now
14 70 years old, live with her seven family members in
15 one-bedroom apartment in Oakland in Chinatown for over
16 seven years. She had applied for senior housing four
17 to five times. Finally, she get a senior apartment
18 unit in East Oakland last year.
19 I'm 60 years old now and I have been fighting
20 for more affordable housing with Power for three
21 years. I don't want to be like Mrs. Wong who needs to
22 wait until 70 to get an affordable housing. That is
23 why Oak to Ninth project is so important to us. It is
24 the largest project to provide more affordable housing
25 and help to solve Oakland's housing prices.

1 Thank you.
2 REVEREND HOPKINS: Good evening.
3 My name is Reverend Jim Hopkins. Since 1989,
4 I have been the pastor at Lakeshore Avenue Baptist
5 Church, corner of Lakeshore and Mandana, in Oakland.
6 Not that far from the planned development. I am also
7 a leader in the Oakland Coalition of Congregations,
8 a member of the Oak to Ninth Coalition.
9 I want to thank the planning commissioner for
10 your work, for your work involves not only the
11 implementation of law, the implementation of policy,
12 the implementation of regulations, but in many ways
13 your work is about the implementation of opportunity.
14 Your work is the implementation of justice and your
15 work is the implementation of hope.
16 You see that the Coalition that we gather and
17 represent this evening is a very diverse congregation,
18 coalition. It's a coalition that bridges language,
19 it's a coalition that bridges cultures, it's PH-10
20 a coalition that bridges neighborhoods, it's
21 a coalition that bridges agencies, it's a coalition
22 that bridges fates.
23 For instance, representatives of the
24 religious community that are here or were here or are
25 in some way supportive of the Oak to Ninth Community

1 Benefit Agreements are Reverend Brandon Reeves from
2 Center of Hope; Elder Farrell from the Church of God
3 in Christ; Willie Johnson from the Elmhurst
4 Seventh Day Adventist Church; Wanda Shannon from the
5 Faith Presbyterian Church; Reverend Ama Zenya
6 [phonetic sp] from First Congregational Church;
7 Shakir Zayid [phonetic sp] from Millenium
8 International Ministries; Reverend Louis Mueller,
9 Plymouth United Church of Christ; Reverend Jesus
10 Nieto, St. Anthony's Church; Reverend Jason Lendeza
11 [phonetic sp], St. Columba's Church; and Rabbi Steven
12 Chester, Temple Sinai. Also supportive, Reverend
13 Cheryl Elliott from Allen Temple Baptist Church;
14 Reverend Lubial Bally [phonetic sp], Bethlehem
15 Lutheran Church; Reverend Mark Clifton, East Oakland
16 Church of God in Christ; Reverend Kathy Huff,
17 First Unitarian Church; the Islamic Cultural Center;
18 Reverend Kristina Williams from St. Augustine's
19 Episcopal; Reverend Scott Dim [phonetic sp],
20 St. John's Episcopal; Reverend Ron Swisher, Taylor
21 Memorial United Methodist Church. PH-10
22 We say yes to the idea of the Oak to Ninth (cont.)
23 development with, but we say that yes with a lower
24 case y, a small y. We say yes to the Oak to Ninth
25 development with a community benefits agreement,

1 with a capital Y, with a large Y, an emphatic Y.
2 For a Community Belt Benefits Agreement takes certain
3 things that are necessities. Those necessities being
4 adequate housing, opportunities to good paying jobs,
5 access to natural beauty, these are necessities of
6 life. A Community Benefits Agreement says these are
7 not only necessities, these are human rights and
8 we stand as a coalition in support of these rights
9 this evening.
10 Please hear us. A small y yes to the
11 development, a large Y yes to the Community Benefits
12 Agreement.
13 Thank you.
14 MR. SPEARMAN: Good evening.
15 My name is Andre Spearman and I'm a member of
16 SEIU Local 790, a long-term resident of Oakland; and
17 I come in support of the coalition to reach
18 a Community Benefit Agreement. PH-11
19 As we look at the use of land, particularl,
20 public land, it requires us to think beyond instant
21 gratification. It requires that we sit down and think
22 about what will the long-term impact be of the
23 project. And as we look at the proposals that are
24 presented to you today, they present both challenge
25 and opportunity.

1 Challenge because it's such a large project
2 and there will be many subsidies, I'm sure, from the
3 Board or the City to make it happen.
4 Opportunities if the developers and the
5 community would come together and realize their dreams
6 of providing an opportunity to change the development
7 of Oakland to impact the community and provide jobs
8 that would be sustainable.
9 The ability to live in Oakland has risen
10 beyond most people's ability to afford it. Current
11 living-wage ordinance we should probably change it to
12 just-getting-by ordinance, because \$9 an hour will not
13 really give you an opportunity to live in Oakland,
14 you would just be getting by. But that is the
15 foundation in which the living-wage ordinance exists,
16 which is Port property or the City property; and so
17 the question will be: Will this project adhere to the
18 living-wage ordinance.
19 In Oakland the residents of Oakland pass a
20 living-wage ordinance to address the issues of the
21 lack of sustainable economics. Healthcare is rising,
22 the cost to live in Oakland is rising, poverty is
23 rising. And yet development that does not include
24 a living-wage ordinance, good paying jobs, sustainable
25 community does not benefit the community. As a matter

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PH-11 cont.)

1 of fact, it exacerbates the problems.
2 And I'm quite sure, as you sit here today,
3 as you look at land-use policy that your model is to
4 improve the community not to exacerbate the problems.
5 I'm encouraged also that the developers in
6 the Coalition brought forth some meaningful ideas
7 meaning that they can sit down together to dialogue
8 about the problems, about the challenges and come
9 together with a proposal that everyone can walk away
10 with feeling excited about it and supportive.
11 Again, we are not anti-development; we're
12 about smart development. And these ideas are both
13 smart and responsive and this proposal, the Community
14 Benefits Agreements both an opportunity and also a
15 challenge; and will we meet those challenges here in
16 Oakland?
17 And I want to close with this thought:
18 When we use the public land, will it be
19 to the benefit of a select few in the community, or
20 will it benefit the whole community. That is
21 the question before us as we look at this proposal.
22 I submit to you today but I'm excited that
23 this development will address both long-term economics
24 and also the ability to maintain a visual waterfront
25 that everyone can be excited about.

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1 The developers put forth a beautiful
2 proposal. I think it is beautiful, but it needs
3 an opportunity for folks to come together in dialogue.
4 And so we want to be part of that dialogue and we're
5 excited about that.
6 And will the Planning Commission play a role
7 in facilitating those negotiations? That is the key
8 question: Will they participate? I'm hoping that you
9 will. PH-11 (cont.)
10 Again, I've lived here for 23 years.
11 I'm excited that something is being done, but we don't
12 want change for change's sake. We want the change
13 to be responsible, to not exacerbate the problems, and
14 to provide long-term economic opportunity for our
15 residents and our newly immigrant population. So
16 there's a holistic approach to be able to afford and
17 live in the community for long-term should we choose
18 to stay here. And the majority of the people here are
19 excited about Oakland and that's why they're here.
20 And I thank you for your time.
21 MS. LIN: Hi, my name is Jennifer Lin.
22 I'm with the Asian Pacific Environmental Network and
23 I'm one of the co-coordinators of the Oak to Ninth
24 Benefits Coalition and it's my job to close out our
25 chunk of speakers.

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1 Tonight you've heard directly from residents
2 from the surrounding communities some who live a mile
3 or two away from the planned development and also
4 people from across our beloved city. You've heard
5 from folks in multiple languages, people who are
6 testifying for the very first time here at the
7 City Hall. You've heard the day-to-day things that
8 families and residents deal with: Long lines for
9 affordable housing, the desire and need to get a foot
10 in the door on construction jobs that pay well and
11 help provide family support, employments, and
12 benefits. PH-12
13 These are the issues that families and
14 communities across Oakland face. These are the issues
15 that have been the driving force for the Oak to Ninth
16 Community Benefits Coalition and its residents. These
17 are the issues that are just as important as those
18 traditionally highlighted through the Draft
19 Environmental Impact Report process.
20 We are here tonight not just to highlight
21 the need and expose the poor conditions of housing and
22 jobs that many of us are all too familiar with, but
23 to present a feasible plan. We feel that can work for
24 the public officials, for the developer, and for all
25 of Oakland.

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1 This is, this really is a once-in-a-lifetime
 2 opportunity and we look forward to working with you,
 3 with Signature Properties, with folks from across
 4 Oakland, to make this a development that we can truly
 5 all be proud of. PH-12 (cont.)
 6 Thank you for your time.
 7 UNIDENTIFIED SPEAKER: We have one more
 8 speaker who would like to speak as part of our
 9 presentation. Thanks.
 10 (Ms. Kuan first says her speech in her own
 11 language, followed by the translator in English.)
 12 MS. KUAN: Ladies and gentlemen, good
 13 evening. My name is Sau Chun Kuan. I'm a home care
 14 worker and a member of the SEIU Local 616. Today
 15 I speak on behalf of my union that we support
 16 Oak to Ninth Community Benefit Coalitions Proposal.
 17 I hope that this development proposal will
 18 give us affordable housing and job opportunities.
 19 There are over 10,000 members with the SEIU Local 616
 20 and over 1,000 of Chinese-American members. Our
 21 members get only 9 to \$15 per hour and we have limited
 22 work hours. Each day we can only work 3 or 4 hours.
 23 For me, my husband, three members and our annual
 24 household income is only \$20,000. It is impossible to
 25 find another job due to the work hours. PH-13
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1 For those lower income worker like us,
 2 we work hard to make the ends meet. We could not
 3 possibly afford those expensive condo being built in
 4 the City of Oakland.
 5 We hope that the Oak to Ninth development can
 6 bring affordable housing and job opportunities for all
 7 Oakland residents.
 8 Thank you for your support.
 9 CHAIR JANG: Just to make sure that we have
 10 the public report straight. Do would have a speaker
 11 card for that last?
 12 MR. KIMELBERG: Yes, we do. Yes.
 13 CHAIR JANG: I'd like to thank you.
 14 Thank the Oak to Ninth organization for a very well-
 15 organized presentation.
 16 Do we need a break at this point? Anybody?
 17 No.
 18 So how many public speaker cards do we have
 19 left?
 20 MR. KIMELBERG: We have approximately 25.
 21 20, 25. I haven't counted them.
 22 CHAIR JANG: Okay. Let's just take the
 23 next five.
 24 MR. KIMELBERG: Next five?
 25 CHAIR JANG: Yeah. PH-14
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1 MR. KIMELBERG: Okay. Next five
 2 speakers. First Teresita Cruz, Iliana
 3 DeLa Torres, Rod Divelbiss, Doug Block, and
 4 Lora Yatour [phonetic sp].
 5 CHAIR JANG: You can come up in any order
 6 once you hear your name called.
 7 MS. TORRES: Okay. Good evening.
 8 My name is Iliana DeLa Torres. I am
 9 a teacher at Roosevelt Middle School and I'm also
 10 a former long-term resident of the San Antonio area
 11 in Oakland. I lived in the same area where I teach
 12 and I was basically forced to move out because the
 13 conditions of my apartment were deteriorating and
 14 the landlord did not want to invest any money in
 15 repairing. And I looked and looked and looked and I
 16 couldn't find affordable housing in the area. And had
 17 to move away quite a bit further. PH-14
 18 I believe it was important for me to share
 19 my residence with the same students that I teach.
 20 I believe that because research shows that teaching
 21 and being part of the same community that you teach in
 22 results in actually increased participation from
 23 the students feeling better identified with you
 24 and you with them, better understanding their
 25 idiosyncrasies. And if I as a teacher could no longer
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1 afford to live in this area, I wonder how does that
 2 impact my students' families? And I see that
 3 it definitely has had an impact in enrollment in the
 4 Oakland School District the way rents are going.
 5 Therefore, I want to say that I'm very
 6 excited about the opportunity that the Oak to Ninth
 7 project presents for us to, or for this project to
 8 provide affordable housing, not to mention jobs, and
 9 to have a positive impact on our community.
 10 Thank you.
 11 MR. DIVELBISS: Good evening.
 12 My name is Rod Divelbiss. I have the
 13 privilege of living in Oakland and I also work
 14 in Oakland. My business is across the Plaza PH-15
 15 in the Rotunda building.
 16 I think we could all agree that that is
 17 a building we can walk over and say we did it right.
 18 You look in that building and it is one of the nicest
 19 buildings in Oakland, in the Bay Area, in the state.
 20 And I want to commend Ghielmetti. I've looked at his
 21 projects and I think that project is similar.
 22 It's a project where it appears that he's got it
 23 right. That it is going to be a project that
 24 as a member of Oakland we can be proud of.
 25 And I'll briefly try and address what
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1 Ms. Cappio indicated to try to address our comments to
2 the Draft EIR.
3 First with respect to housing, my comment is
4 very brief. The fact that 3-, over 3,000 housing
5 units would come online can do nothing but relieve
6 the pressure on housing prices. The fact remains that
7 housing prices are high because there's a limited
8 supply and this addresses, albeit somewhat in a small
9 way, but it does address that issue. PH-15 (cont.)
10 Secondly, with respect to traffic, that was
11 addressed in the Draft EIR. Certainly there is going
12 to be some traffic issues coming and going from the
13 project. However, there's no question that there's
14 going to be growth in the State, there's going to be
15 growth in this County, there's going to be growth in
16 this City and I don't think again there's any dispute
17 that the way to address that is to have high-density
18 housing around jobs. And again, I believe that is
19 exactly what this project does.
20 And again, as a member of and resident of
21 Oakland and as an owner of a business in Oakland
22 I would again commend Mr. Ghielmetti and urge that
23 this project move forward.
24 Thank you very much.
25 MS. CRUZ: Mr. Chairman, members of the

1 wage. I ask that the planning commission consider
2 union security officers to protect these buildings and
3 the tenants. Union security officers that are
4 protected under a master agreement with health care
5 and benefits. PH-16 (cont.)
6 I ask you to look around at the diversity of
7 the members of the people here and don't forget
8 the diversity that made the City what it is and don't
9 forget the Oakland residents with affordable housing.
10 Thank you for your time.
11 MR. BLOCH: Good evening.
12 My name's Doug Block. I'm with SEIU's
13 Property Services Division which include SEIU
14 Local 1877 and 247. Janitors and security officers
15 low-wage workers. I also live down on East 7th Street
16 right near the estuary and for the last few years
17 I have watched the neighborhood changing.
18 When the new lofts down the street were built
19 my wife and I went down to take a look and I'll be
20 the first to admit they are beautiful. Really,
21 really beautiful housing. The -- and we thought when
22 we walked in there we said everybody in Oakland should
23 be able to live in housing like this; but they can't
24 and we can't. Working people can't afford that
25 housing. The housing that's built here needs to be

1 Planning Committee:
2 My name is Teresita Cruz. I am
3 vice-president of SEIU Local 247 security officers
4 union. We represent over 5,000 private security
5 officers in the Bay Area. I have been a resident of
6 Oakland since 1957. Before I was elected
7 vice president, I was a security officer right across
8 the street at City Center. PH-16
9 As a single parent, I struggled for years
10 trying to raise my family only watching the cost of
11 living rise to what it is today. I had to pull my son
12 out of Bishop O'Dowd in the 11th grade after so many
13 years of robbing Peter to pay Paul, I just couldn't
14 afford it anymore. In California workers live in
15 families whose incomes remain under the federal
16 poverty standards. I am one of those million,
17 2 million workers better known as the working poor.
18 I attend Mass every Sunday, I work five to six days
19 a week, I vote, I pay my taxes, I follow the rules.
20 I cannot afford to live in this project that we are
21 talking about tonight.
22 I am happy that this development is under
23 a project labor agreement with prevailing wages.
24 I just ask when it's all said and done, what will
25 my security officers, will they have a prevailing

1 affordable to people that live in the flatlands. PH-17
2 The other thing I want to address is the
3 issue of union jobs. I understand that union labor is
4 going to be used to build this project and of course
5 I think that's great. But I have the same question as
6 my sister here, what about the security officers who
7 are going to guard the construction sites while it's
8 being built and what about the janitors who clean it
9 after it's done? This should be 100-percent union
10 labor on the project and nothing less.
11 Of course, we favor this project, but we
12 stand in support of the Coalition and its demands
13 tonight.
14 Thank you for your time and consideration.
15 MS. YEE: Hi there. My name is Susan Yee and
16 David Cocashida has ceded his time to me.
17 So again, my name is Susan and I am a teacher
18 at Roosevelt, or I was a teacher at Roosevelt for
19 the last seven years and I just recently took over as
20 the director for the Roosevelt Health Center. That's
21 Roosevelt Middle School. And you may wonder why a
22 teacher and a health director would be speaking about
23 the, here in support of the Oak to Ninth Community
24 Benefits Agreement. PH-18
25 And I'm going to ask you to think about

1 way back when you were 13 years old, maybe not way,
2 way back, but way back to when you were 13 years old
3 and in middle school and what it was like to go to
4 middle school and imagine what it would be like if you
5 are a 13-year-old student who walked in in the middle
6 of the year possibly the third school that you were in
7 for that year and trying to learn algebra. It's a
8 nearly impossible situation for any of you who
9 remember that kind of, that kind of, that era in your
10 life. PH-18 (cont.)

11 They are already going through so much stuff.
12 And we really have at the school and at the Health
13 Center seen the impact of the rising costs of
14 affordable housing, the rising cost of housing.
15 So many students come through. They don't have their
16 medical records with them, they've gone through a lot
17 of different clinics to receive care in terms of
18 education, they've been through, you know, a ton of
19 teachers by the time they're just making it, you know,
20 to middle school.

21 So I guess I'm here to say really that
22 affordable housing and the jobs, all the things,
23 the good things in the Community Benefits Agreement
24 have a real impact on these other areas in the
25 neighborhood in terms of healthcare and in terms of

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1 that is also an opportunity that has not been
2 destroyed yet. If we cut it down, if we make it
3 smaller, we will have something a lot less. Now,
4 it would be very expensive to build a huge building
5 like that today and it's really not affordable.
6 But to use it creatively would be a real feather
7 in our cap. And to have park land around it would be
8 a marvelous thing. PH-19(cont.)

9 Now, given that the opportunity is here
10 to have this marvelous park that we should have had
11 and don't, we have to use it somehow. But I think
12 as a city, we would be losing another opportunity
13 again if we did not at least demand that the housing
14 be affordable and available to people who actually
15 live in our community.

16 So I hope that you will work more on the
17 preservation of the Terminal Building and find a way
18 to adaptively reuse it in a creative, wonderful way
19 and not just compromise it by cutting it up and
20 throwing it away like so much of Oakland gets.

21 And, you know, I hope that you will take that
22 into consideration and take into consideration the
23 needs of the community.

24 Thank you.

25 MR. LERRIGO: My name is Charles Lerrigo.

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1 education. And those are all the things that are
2 really important I'm sure to every single one of us
3 here.

4 So, once again, I'm here representing the
5 health center and the school and I'm really thrilled
6 to hear that you're thinking and considering the
7 Community Benefits Agreement.

8 Thank you.

9 CHAIR JANG: Thank you.

10 Could you read five more speakers, please.

11 MR. KIMELBERG: Certainly. Orna Sasson,
12 Reverend Charley Lerrigo, Naomi Schiff, Sanjiv Handa,
13 and Ken Katz.

14 MS. SASSON: Hello, I'm Orna Sasson,
15 Lakeside Apartments Neighborhood Association.

16 Oakland is a place of lost opportunities and
17 this whole area could have been a park, it could have
18 been a garden. And as we saw in the pictures, it's
19 basically not very attractive. It's not as attractive
20 as it should have been. And the reason for that is
21 because we've spent our money, our, quote,
22 redevelopment money, on some very unattractive
23 projects instead of using it as it should have been
24 to develop that place as park land. PH-19

25 Also, there's the issue of the terminal and

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1 I'm a United Methodist pastor and a resident of
2 Oakland for 17 years. I hope to live here for
3 the rest of my life.

4 This is my first time to come to this
5 commission. This is my first time to walk into this
6 room and one of the things that I've noticed is how
7 you're listening to all of this thing and I wish that
8 I could see inside your hearts to know what is going
9 on there, because you're hearing an awful lot of
10 information.

11 I wish I could see inside your hearts, PH-20
12 because as I walked in here tonight I notice that
13 there's a big plaque out here and it says that this
14 room is focused on the just and equal administration
15 of the common good. And that's very dear to my heart,
16 because I believe in a book, the Bible, which
17 I believe is a reliable guide to the common good.
18 And the biblical perspective that I would like to
19 share with you is this, that a nation, a government,
20 and a city is judged not by how many rich people
21 it has in it, or how well it addresses the desires of
22 the wealthy and well off, the nation in the Bible
23 story is judged by how well it treats what Jesus
24 called the vintagers and you've heard those people
25 speaking tonight. You've heard some of those people

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1 speaking tonight. There are many more of them out
2 there. PH-20 (cont.)

3 And what the staff report, as I had looked
4 through it, does not seem to address adequately is
5 the issue of the inclusive housing requirements that
6 are I believe required by law. It looks like it's
7 saying we will do what is legal and perhaps what is
8 expedient or maybe reasonable. And I would like to
9 call upon you to find in your heart that place where
10 you can connects up with what would be hope. And what
11 will be not just politically right but that which is
12 just and equal.

13 I hope you do well.

14 CHAIR JANG: Commissioner McClure, did you
15 want to interject.

16 COMMISSIONER McCLURE: Yes. Mr. Lerrigo.
17 It's Mr. Lerrigo?

18 Just so you know, all of our contact
19 information is on the City website. So should you
20 want to have a conversation with one of us or me
21 personally, I'd be happy to share with you what's
22 inside here, okay?

23 MR. LERRIGO: Thank you very much.

24 MS. SCHIFF: Naomi Schiff, Oakland Heritage
25 Alliance. More than 1,000 members and recipients of

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PH-21

1 this year's Preservation Award from the ever-loving
2 governor.

3 We support the EIR alternatives which
4 preserve Ninth Avenue Terminal. As far as the
5 EIR goes, it underlines it's historical status, so
6 I won't revisit that. I hope you have copies of this,
7 maybe you can take copies.

8 Other cities are doing really great reuse
9 projects on their waterfront. On this page I just
10 have a few of them. They include Arlington, Virginia;
11 Milwaukee, New York. One that's not there,
12 San Francisco and our neighbor Richmond, California.
13 We should, too. A revised Draft EIR should study
14 reuse of the terminal. I'm going to show you an
15 inexpensive architectural model that I have brought
16 that will show you how much of the terminal the
17 developer proposes to save. This loaf is about
18 the size of Ninth Avenue terminal and I didn't want
19 to bring a knife in here, because I was afraid I'd be
20 arrested by security.

21 UNIDENTIFIED SPEAKER: Thank God.

22 MS. SCHIFF: That's how much the developer
23 proposes to save. We would say that that is not
24 historic preservation, it is like saving the hood
25 ornament in attempting to imagine the Mercedes.

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1 We think it would be wise to make better use of
2 our maritime history.

3 Maximize the open space that is on solid
4 land. Since after all, if you put a park on top of
5 this wharf you'll have to fix those piers anyway.
6 You're not saving anything by converting the shed to
7 park use.

8 Historically we have been barred from our
9 waterfront. This is a great opportunity.

10 Maximize affordable housing. Everyone should
11 share in a project that is based on our public land.
12 I assume that was Ron, huh?

13 MR. KIMELBERG: Two.

14 MS. SCHIFF: That wasn't two minutes.

15 CHAIR JANG: Can you -- I'll give you
16 a minute to kind of wrap it up. PH-21 (cont.)

17 MS. SCHIFF: Thank you.

18 Please study the feasibility of reusing
19 the terminal.

20 And I want to address process for one moment.
21 The exhaustive list at 325-29 demonstrates the project
22 goes against many adopted plans and policies. The
23 DEIR should be reissued with revisions that take into
24 consideration the fact that this is violating many
25 parts of the General Plan. A Specific Plan or a

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1 General Plan revision should be undertaken and should
2 precede all other approvals and determinations and
3 it should accommodate a public discussion that is as
4 good as the one that brought us the Lake Merritt
5 master plan now resulting in excellent project funded
6 by the citizens supported Measure DD. We need to do
7 a Specific Plan for this area.

8 Please support the preservation of
9 Ninth Avenue Terminal. Our waterfront is our history
10 and it is the original basis for Oakland's existence.
11 Thank you.

12 If anybody needs any bread...

13 COMMISSIONER McCLURE: Did you bring any
14 sandwich meat for the bread? I didn't bring dinner.

15 MR. KATZ: My name is Ken Katz.

16 I've had the misfortune a couple of times
17 in the past of having to speak following

18 Mother Wright. This is the first time I've ever been
19 upstaged by a loaf of French bread. PH-22

20 More importantly, I feel personally

21 it's tough to come up here and talk following all
22 the people from OCO and from the Oak to Ninth
23 Coalition who spoke so eloquently about the needs for
24 affordable housing and the needs for good paying jobs.
25 But nonetheless, I think it's important to remember

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1 that we want people to live in affordable housing, but
2 in a liveable city.

3 And there are a lot of problems with the
4 proposal that's on the table. The biggest of them
5 stems from the fact it does not implement the Estuary
6 Plan. The people who worked on the Estuary Plan
7 recognized that this slice of estuary land was
8 essential to the success of the City of Oakland.

9 There really isn't much open space available
10 facing the estuary. This space had tremendous
11 potential. The Estuary Plan had been implemented
12 to draw in people. The proposal that we're looking at
13 talks about a much smaller slice of space for public
14 access. A big portion of what they're talking about
15 is bicycle and pedestrian paths up to 40 feet wide.
16 If you look at them, they're not usable spaces.

17 They're thoroughfares. In a sense, there are buffer
18 spaces between the water and the community and
19 the proposed housing.

20 More importantly, the largest single parcel
21 that they're claiming for open space is coming from
22 the demolition of the Ninth Avenue Terminal, which as
23 Naomi I think pointed out has tremendous potential.
24 It can be used for retail, it could be used for
25 a restaurant, it could be used for gallery space.

PH-22 (cont.)

1 project. I think it's good for our city. It's
2 a point of destination. My family has been here over
3 100 years in the good times and in the bad and
4 we're still here. And I can tell you projects like
5 this don't come every day. The crowd of people who
6 were here today I wish they would have been here for
7 the four-city development. It received so much of
8 our money with very little of our opinion.

9 I look and I beg for businessmen that will
10 bring in their own capital and take on a project of
11 this magnitude and see it to completion. To create
12 a point of designation. PH-23 (cont.)

13 And I will just by the fact say this, th
14 I live right next door to where this project is going
15 to end. My balcony overlooks the Cash and Carry.
16 So, you know, I'm in full support.

17 He came out and he met with the small
18 business counsel, we voted unanimously to support it.
19 He came out and met with our pastors, they're
20 supporting it; he came out and met with our homeowners
21 association. I don't know what more you can ask of
22 a developer. And I have messed with some slimy ones.
23 And I'll tell you, for whatever reason, I like this
24 plan, I like this guy, I trust him. I'm not going to
25 fight him.

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1 Most importantly, I think it would be
2 a perfect location for a ferry stop, so the people
3 who do end up living in this space instead of getting
4 into their cars and trying to find their way out
5 through that small exit on Fifth Avenue can walk from
6 their units out to the Ninth Avenue Terminal where
7 there is a ferry landing. They can go to their jobs
8 and the people from the city will be attracted to
9 Oakland if it's properly developed.

10 Thank you very much.

11 CHAIR JANG: Thank you. Let's have another
12 five speakers.

13 MR. KIMELBERG: Okay.

14 The next group includes Pam Weber, Charlie
15 Wegen[sic].

16 MR. WEBER: Weber.

17 MR. KIMELBERG: Is that Weber, too? Wow,
18 I thought that was a g.

19 Helen Hutchison, Michael David Sasson, and
20 Darrel Carey.

21 MR. CAREY: Good evening, Commissioners and
22 President Jang.

23 My name is Darrel Carey, president of East
24 Bay Small Business Council.

25 I rise in support of the Oak to Ninth

PH-23

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1 You know, those who know me know that I come
2 out 110 percent and, you know, I think that you guys
3 ought to loosen some of the barriers, if any, that are
4 presented.

5 I thank you for your time.

6 MS. WEBER: Good evening.

7 My name is Pamela Weber. I'm a 25-year
8 resident of the Fifth Avenue Point Community and
9 a director of the Fifth Avenue Institute.

10 After years of meetings and hundreds of
11 thousands of expended dollars, we have reached
12 a crossroads at the Oak to Ninth property. You have
13 the opportunity to facilitate the linking of Oak to
14 Ninth and Jack London Square to create the liveliest
15 and most exciting waterfront on the West Coast.
16 Or you can allow it to become the bedroom community
17 and forever doom Oakland to being the bedroom
18 community of San Francisco. PH-24

19 If you think high-rise residential units
20 liven up an area, drive down Fourth Street or
21 Fifth Street between Oak and Jackson. The only action
22 you'll see is an occasional fight for a parking space.

23 This EIR and the developer's presentations
24 promise that parks on the water side of 3100
25 residential units will draw visitors to the water

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1 when in reality these parks will be the dog runs for
2 the pets of the residents of that community. The EIR
3 promises it will be a mixed-use community when
4 in reality it proposes only 5 percent of the build out
5 will be retail. The proposed sales for that retail
6 in this EIR equal Wal-Mart and Nordstrom.

7 This land belongs to the people of Oakland,
8 it deserves to be developed in accordance with the
9 Estuary Policy Plan. PH-24 (cont.)

10 Thank you.

11 MR. WEBER: Good evening. My name is
12 Charles Weber and I also live at the Fifth Avenue
13 community. I have been there the same length of time
14 as my wife Pam.

15 The EIR speaks to the Specific Plan of this
16 project. In response to the RFQ, which mentions the
17 Specific Plan 71 times, the developer mentioned the
18 Specific Plan 17 times and said that they commissioned
19 ROMA to do a Specific Plan on the 60-acre project and
20 an additional 60 acres surrounding the project.

21 In addition to leasing the property,
22 they said they would follow the Estuary Policy Plan.
23 Now, however, after they were selected to negotiate
24 for the final contract, the plan changed. Behind
25 closed doors, the lease became a sale, the PH-25

1 supports full compliance with the Estuary Policy Plan.
2 The plan was developed through a process that included
3 lengthy public discussion, debate, and compromise and
4 that process should be respected. Further, I would
5 say by "full compliance" we mean just that not most of
6 the elements of or in the spirit of or many principles
7 of, but full compliance.

8 On to more questions. The Estuary Policy
9 Plan calls for a Specific Plan for this site prior to
10 development. There's a statement in the Draft EIR
11 that the City and Port have elected not to prepare
12 a Specific Plan with the rationale that the process
13 that we are now in is essentially equivalent to
14 a Specific Plan. PH-26 (cont.)

15 We ask that the Planning Commiss
16 that decision and ensure to the public that
17 essentially equivalent doesn't leave anything out
18 especially the chance for back and forth public
19 discussion.

20 My final question is a somewhat technical one
21 about regarding the open space in the plan. Would
22 an assessment district work better than CC&Rs to
23 protect the public use and access to that space?
24 By using an assessment district, the City would
25 maintain more long-term control over that open space.

1 Specific Plan was scrapped and the Estuary Policy Plan
2 is to be dumped.

3 There are a number of people that are very
4 suspicious about the activities and negotiations
5 behind closed doors that led to this removal of the
6 land from the process and the citizens of Oakland.

7 Thank you very much.

8 MS. HUTCHISON: Hi. I'm Helen Hutchison
9 and I'm president of the League of Women Voters of
10 Oakland. The League is preparing a formal response
11 for the Draft EIR.

12 For tonight I have what is mostly a series of
13 questions. The first is a process question.
14 While the Draft EIR is posted online, it is very hard
15 to find. It requires multiple clicks that is not
16 particularly intuitive. And additionally, there is
17 no link from the agenda for tonight nor was there
18 a link to the staff report. Most of us thought there
19 was no staff report until earlier today when somebody
20 pointed out that it was posted elsewhere.

21 Because of all of this, we request an PH-26
22 extension on the comments period.

23 I said I was going to have a lot of
24 questions, the next thing is a statement of position.

25 The League of Women Voters of Oakland

1 By using CC&Rs the private homeowners group has
2 more control over the open space and potentially would
3 allow them to place restrictions on the public access
4 to that space.

5 Thank you very much.

6 CHAIR JANG: How many more speakers do we
7 have?

8 MR. KIMELBERG: We have eight speakers.

9 CHAIR JANG: Okay. Next five.

10 MR. KIMELBERG: Okay. Joyce Roy,
11 Phil Takomi [phonetic sp], Pamela Drake, Wendy L.
12 Tinslay, and Sandra Threlfall.

13 MS. ROY: My name is Joyce Roy and
14 I'm speaking on behalf of the Sierra Club. PH-27

15 The Sierra Club supports the open-space
16 aspect of the Estuary Policy Plan and is concerned
17 that the proposed project does not meet it. The main
18 purpose of the EIR was to provide for publicly
19 oriented -- and I'm quoting -- for publicly oriented
20 activities and enhanced public access. The goal
21 for the development of the estuary is to provide
22 the community benefit for the whole of Oakland.

23 For in-fill development, we support at least
24 20 percent of affordable housing. But this site
25 we have concerns about a lack of transit accessibility

1 and air quality. We would like to point out two ways
2 that the E- -- Draft EIR is inadequate.
3 The traffic impacts and resultant
4 air pollution are even more horrendous than claimed.
5 The project proposes 3,534 on-site parking spaces for
6 3100 units. That is 1.14 spaces per unit. That can
7 possibly be adequate at a transit node, but is totally
8 unrealistic at this transit-challenged site. Most
9 families will have to have two cars. PH-27 (cont.)
10 The air quality data is irrelevant
11 it is not based on monitoring at this site adjacent to
12 the I-880 freeway. The data is taken from the
13 Alice Street and West Oakland monitoring stations.
14 And there is no analysis of a possible
15 adverse effect of the airborne pollution on the health
16 of residents living so near the I-880 freeway.
17 I have passed out to you an article, a recent
18 article on a study that showed that children who lived
19 a quarter mile from freeway had 89-percent higher risk
20 of asthma than children living about a mile from
21 a freeway. And this whole site is within a quarter of
22 a mile.
23 And lastly, but most importantly, a
24 Specific Plan public process as called for in the
25 Estuary Policy Plan must be conducted before the

1 approval of any project.
2 Thank you.
3 MS. TINSLEY: Good evening, Commissioners.
4 My name is Wendy Tinsley. I live at 247 4th
5 Street in the Jack London neighborhood and serve as
6 president of the Jack London District Association.
7 I provided you a handout that is verbatim with what
8 I'm reading to you this evening.
9 The Jack London District Association is
10 studying the Draft EIR for the Oak to Ninth project
11 and will soon issue a formal opinion. Currently our
12 organization wishes to publicly support the goals and
13 sentiment of the Measure DD coalition and those
14 community organizations aligned with the group.
15 Areas of concern preliminarily identified by
16 Jack London residents are traffic and parking,
17 historical resources, open space, and urban design.
18 The significant and unavoidable adverse
19 affects on traffic congestion and surface parking
20 in the Jack London district resultant from this
21 project as well as the Jack London Square PH-28
22 Redevelopment Project, 4 existing 6- to 8-story tower
23 development currently under construction, and 3
24 planned 8 to 15 story tower projects bring the
25 neighborhood level of service category to that of F.

1 Individually and competitively.
2 Oak to Ninth proposes to demolish up to
3 85 percent of the Ninth Avenue Terminal. The last
4 vestige of Oakland's historic port. Opportunities
5 exist to retain the structure in its entirety and
6 incorporate into the development 10 percent and
7 20 percent historic preservation tax credits are
8 available to assist the project sponsors in the proper
9 rehabilitation and adaptive reuse of this historically
10 and architecturally significant structure.
11 Oak to Ninth is comprised of a series of
12 towers at the waterfront surrounded by small sections
13 of green space. From an urban design perspective,
14 the project configuration will effectively curtain
15 that section of the waterfront off from the rest of
16 the surrounding community and all of Oakland.
17 Although public access to the waterfront must legally
18 be provided, the public would not likely feel welcome
19 in the shadow of the development.
20 The Jack London District Association
21 encourages new development in the area that is
22 consistent with the City's General Plan and the
23 Estuary Policy Plan. PH-28 (cont.)
24 Tonight I respectfully request that
25 Planning Commission require further refinement, study,

1 and analysis of the project design, impact, and
2 alternatives in order to provide a project that
3 achieves consistency with the existing adopted city
4 plans and policies and ultimately better serves
5 Oakland's waterfront.
6 Thank you.
7 MS. DRAKE: Good evening. I'm Pamela Drake
8 and I, I've got to start by saying there's so many
9 things wrong with this project that I probably need
10 a lot longer than two minutes to get started on it.
11 First of all, the idea that people come here
12 asking for community benefits for a project that's
13 based on public land and public money is very sad
14 to me. We shouldn't be even asking for benefits that
15 something that should be benefiting the community.
16 It's too bad that we're now asking for crumbs. If we
17 look back at the Cypress project, we see what happened
18 there and how few jobs and what kind of crumbs were
19 left for the community. So I think that's kind
20 kind of a sad way to start. PH-29
21 But I did want to reference an article in the
22 Montclair in which the developer Mike Ghielmetti of
23 the Signature Properties stated that the mix will be
24 similar to Grand or Lakeshore Avenues serving to help
25 link the area to Lake Merritt. I think it could

1 in some way link it to Lake Merritt by a long line of
2 traffic that will not move sort of just look at
3 Houston what happened and we kind of get an idea.
4 Anyway, maybe that's a bit of an exaggeration but
5 the traffic is a real problem.

6 It's kind of sad to think that this is the
7 last of our waterfront and we do have a policy and
8 I realize that you guys aren't our leaders in terms of
9 our governmental body that decided that policy and
10 it's not really, it's down to them whether we follow
11 that policy. But it would be sad to see a policy
12 junked that the community worked so hard on.

13 But in any way to compare this to Lakeshore
14 and Grand Avenue areas. First of all, we don't
15 conceive of ourselves as waterfront. We're near
16 the lake but we're not on the lake. Any successful
17 waterfront project is not exactly right on the
18 waterfront, but is close to the waterfront and when
19 you get close to the waterfront you want to have
20 waterfront retail. You don't want to overwhelm it
21 with housing where people feel then prevented from
22 using the waterfront. If you look at the way it's
23 designed, the retail is down a dark corridor in the
24 middle of the project not designed to bring people
25 down to the waterfront and it's incredibly overly

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1 MS. THRELFALL: Good evening. My name is
2 Sandra Threlfall. I represent Waterfront Action and
3 it looks like you all could use a seven-inning
4 stretch.

5 Good. This is good.

6 Okay. Waterfront Action is an organization
7 that is dedicated to the implementation of the
8 Estuary Policy Plan and the Lake Merritt Master Plan.
9 We basically believe that people's opportunity
10 to touch the water has a way of reviving them.

11 I'll share with you my favorite quote:

PH-30

12 A lifeness of a city depends on the bond
13 between its water and its flow of dreams. I think
14 that says it very well. In 1994 there was a public
15 /SHER /RET over 60 people from all over the community
16 met in a room with no air conditioning for two days
17 designing our dream waterfront. Out of that came the
18 move to get the General Plan to set up a specific area
19 which became the Estuary Policy Plan.

20 The policy plan was our waterfront dream and
21 we hired ROMA, thanks to the funds from the City and
22 the Port, to help us create a dream that was
23 functional. That could potentially work. The Council
24 passed that plan unanimously in June of 1999. The
25 plan is our vision. ROMA helped us to make it what

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1 dense.

PH-29 (cont.)

2 It's not historic like Lakeshore is.
3 Lakeshore the buildings range from 2 to 4 stories.
4 So we're not talking 28 to 24 stories, we're talking
5 historic buildings with local retailers who serve
6 the local area. So to compare it is kind of sad and
7 also to say that it will enhance the City of Oakland
8 and bring people more projects to downtown. If we
9 keep building around the lake and around the wharf
10 with the idea that somehow this is going to end up
11 with a 10,000 K downtown project we're going to have
12 a way overbuilt waterfront area and still not have
13 anything downtown. So downtown is where we want the
14 skyscrapers, we don't want them down where we're
15 trying to bring people, attract tourists, attract
16 neighborhood residents down to the waterfront and
17 overwhelm it with residences. I would like to see it
18 be more public space, performance-art space, more
19 retail waterfront retail-oriented kind of thing and so
20 I really think we need to go back to the drawing
21 board. This project sort of hurts our last economic
22 development engine that we have which is our last
23 large parcel of waterfront property and it's just
24 a bad project.

25 Thank you.

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1 we thought would be a practical vision.

2 Our position here is again support of
3 the Estuary Plan, because that access, that ability
4 for our citizens to actually see the water is a very
5 important part in order to get them to access it.
6 Estuary Park is a living example of nobody's been
7 there because nobody knows how to get there. There is
8 that huge Jethro park and shop building and once you
9 pass that it's over. But Estuary Park is there. That
10 to me signifies the importance of the people being
11 able to see the open space. Open space is what we
12 need. The EPP was our vision, ROMA helped us turn it
13 into a dream, and we'd like your support at this
14 point.

15 Thank you very much.

16 COMMISSIONER McCLURE: Commissioner Lighty
17 like to support us in a verse of Take Me Out to the
18 Ballgame?

19 COMMISSIONER LIGHTY: After last night,
20 I can't do that. I'm sorry.

21 MR. KIMELBERG: Three remaining cards.
22 John Sutter, Chris Durazo, and James Vonn.

23 MR. SUTTER: Good evening.

24 My name is John Sutter. I have been
25 interested in waterfront for many years and been

PH-31

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1 involved in trying to develop parks and open space on
2 our waterfront for many years. I think the major
3 problem, at least one of the major problems, with this
4 project is what it has done to the proposed open space
5 in the Estuary Policy Plan.
6 I've distributed a copy of the one page out
7 of the Estuary Policy Plan which shows the open space
8 in shaded, in the shaded material. And I think you
9 need to compare that with the project. Maybe I can
10 put one here. Will it show? As Sandra Threlfall just
11 pointed out, will still be a hidden park. It will
12 still be a park that you can't see because it will be
13 hidden behind buildings. Although the Jethro Cash and
14 Carry building would be demolished it would be
15 replaced by condos and apartments under the project's
16 proposal.
17 Similarly, if you go to the area west of,
18 west of Fifth Avenue in the Estuary Policy Plan that
19 was called for to be all open space. But the
20 developer has proposed instead to build condos and
21 apartments there as well.
22 If you go to the area near the Ninth Avenue
23 Terminal, you will notice that there was an 11-acre
24 park proposed, the so-called Crescent Park. That
25 disappears in this project. What you have instead is

1 So this process is backwards. There should
2 be a Specific Plan and you as planning commissioners
3 should have input in that Specific Plan and so should
4 the City Council. And once that plan is adopted then
5 it should be shopped out to find the developer who
6 will build it. Not the reverse, which is what we have
7 today.
8 Any questions?
9 COMMISSIONER McCLURE: I do have a question.
10 CHAIR JANG: Okay. Commissioner McClure?
11 COMMISSIONER McCLURE: Mr. Sutter, thank you
12 for coming down tonight.
13 In the illustration you put up the Crescent
14 Park does not show the Ninth Avenue Terminal.
15 MR. SUTTER: That's true.
16 COMMISSIONER McCLURE: Is -- PH-31 (cont.)
17 MR. SUTTER: That's true, because in the
18 Estuary Policy Plan the issue of what to do with
19 the Ninth Avenue terminal was left undecided.
20 COMMISSIONER McCLURE: Okay.
21 MR. SUTTER: It doesn't show it.
22 COMMISSIONER McCLURE: So am I to understand
23 that the vision of the Estuary Policy Plan was to not
24 have it there or you just didn't come to any
25 conclusion over the --

1 about, is the demolition of the Ninth Avenue Terminal
2 and grass planted on top of most of that.
3 So we've lost very significant open space.
4 And I would like to remind the members of this board
5 that the Estuary Policy Plan was a compromise. There
6 was a 27-member citizen group. There were two years
7 of meetings. There were a lot of people who thought
8 there should be more open space. That we should
9 open up our waterfront and provide the public benefit
10 that would benefit the most people in Oakland and that
11 is to have a very large, usable area that, of open
12 space on our waterfront. That vision is lost in this
13 project.
14 And finally, I would say as a member of the
15 Planning Commission I would wonder why was an end run
16 pulled on me. Estuary Policy Plan says, as others
17 have said, there's got to be a Specific Plan. State
18 law says a Specific Plan is treated like an amendment
19 to the general plan. It comes to you and you have
20 public hearings and you hear from the public and then
21 it goes to the City Council and the same thing occurs.
22 That has all been avoided. Somebody has pulled an end
23 run on you, somebody has decided oh, the city, not
24 you, and I don't think the City Council has, quote,
25 elected not to have a Specific Plan.

1 MR. SUTTER: Well, the Estuary Policy Plan
2 shows the Crescent Park which is there.
3 COMMISSIONER McCLURE: Right.
4 MR. SUTTER: What to do with the
5 Ninth Avenue terminal was not decided. That was put
6 off for further study.
7 COMMISSIONER McCLURE: Okay. One might draw
8 the conclusion from the illustration, though, that it
9 advocates the demolition of the Ninth Avenue terminal.
10 MR. SUTTER: Well, the early draft did say
11 that. And then I think when it got to the
12 City Council they changed their mind but they didn't
13 change the graphics.
14 COMMISSIONER McCLURE: Okay. Thank you.
15 By the way, I enjoy the East Bay Park
16 Districts very often. I'm a born and raised Oakland
17 guy, so thank you very much for your work on that.
18 MR. SUTTER: Thank you.
19 CHAIR JANG: Next speaker, please.
20 MS. DURAZO: Good evening.
21 My name is Chris Durazo. I'm an Oakland
22 resident here.
23 I came actually to, because I was concerned PH-32
24 about the Oak to Ninth project. I was concerned about
25 the impacts on affordable housing, about jobs, about

1 the loss of the PDR, the industrial land and that
2 conversion without any what I thought were very
3 realistic community benefits in exchange.
4 However, after watching the presentation and
5 actually listening to a lot of people, I am concerned
6 that you might have the wrong impression of
7 San Francisco's waterfront and I'd like to actually
8 give testimony on what's been going on on the other
9 side of the bay.
10 My job, my day job is actually a community
11 planning director over at the South of Market
12 Community Action Network in San Francisco. And one of
13 the major campaigns that we just recently worked on
14 was the Rincon Hill project area. They actually
15 proposed -- well, all of South of Market is proposing
16 40,000 condominiums over the next 10 years. I don't
17 know, some of you might be aware of that.
18 And the particular Rincon Hill was packaged
19 into being at very high density, very large towers,
20 it was going to be coming in, it was actually going
21 for approval for its planning process, and our concern
22 at that time was, of course, the rising land costs and
23 the impacts on the affordable housing stock or
24 potential land for affordable housing. It was very
25 significant. You're going to see significant land

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PH-32 (cont.)

1 changes in this from industrial to these condominiums
2 which are usually steel-based structures and stuff.
3 The most expensive types of development you can
4 create. You're going to have to have the rising lands
5 cost just because of that purpose alone.
6 However, because of the views, because of the
7 proximity to the beautiful waterfront, it is a premium
8 and not to give away that I really don't want the City
9 to give away for no real good exchange. So I want to
10 share with you what we did in South of Market.
11 We actually worked with the developers in the
12 area unanimously they all agreed with us as well as
13 the supervisors, majority of the supervisors and
14 we were able to get a mitigation fee of \$17 a square
15 foot for their towers. And the \$17 a square foot was
16 provided into a community stabilization fund to
17 support the most vulnerable residents in the South of
18 Market from being displaced through gentrification and
19 through the land costs. This includes residents,
20 poor residents as well as small businesses that can't
21 compete to get into those larger buildings. They
22 can't afford the rent which as well as looking at the
23 issues which, you know, they show the parks and these
24 open spaces and actually the speaker before I think
25 Ms. Weber, was mentioning that there's, these are just

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1 dog runs and I adamantly agree. They are dog runs.
2 They are not conducive to families, they're not
3 conducive to any activity. They're just walkable
4 areas that look pretty.
5 So I really urge you to look at the Community
6 Benefits Agreement that's Oak to Ninth people put
7 together, Coalition put together, and really work
8 strongly with them, because they are the leaders of
9 Oakland. PH-32 (cont.)
10 In terms of coming up with strategies that
11 will really support a lot of the problems that Oakland
12 faces around land using and planning, around immigrant
13 rights, around jobs. I mean, you know, when you pull
14 together that team you have to take it seriously and
15 really think about those as real, viable solutions.
16 \$17 a square foot actually came out to be \$20 million
17 that's going to be going to support the vulnerable
18 communities in South of Market, as well as we also
19 were able to get 50 percent of all the inclusionary
20 housing from that to remain in the immediate
21 neighborhood. So that when the land costs do go up,
22 people will be able to access potential new affordable
23 housing opportunities in that area and not be
24 displaced from what their, you know, their lifeline of
25 the community.

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1 So I just urge you to look at other aspects
2 of waterfront opportunities.
3 Thank you.
4 CHAIR JANG: Okay. Mr. Vonn.
5 MR. VONN: Good evening, Commissioners, and
6 thank you for the opportunity to address you this
7 evening. James Vonn at 251 Wayne Avenue, Oakland.
8 I come to you tonight to speak on behalf of
9 the Coalition of Advocates for Lake Merritt, CALM,
10 CALM is a multiorganizational line of groups and
11 individuals who hold an endearing interest in the
12 general betterment of the gem of Oakland Lake Merritt
13 and its environs. Four years ago CALM developed
14 the redesign plan, cost estimates, and development
15 strategies, which was adopted essentially in its
16 entirety by the City Council and which plan became
17 the basis for the reconstruction of 12th Street at the
18 south terminus of the lake soon to be Lake Merritt
19 Boulevard. PH-33
20 CALM is an active measure of the Measure DD
21 coalition, a community coalition of broadly
22 represented coalition sanctioned and charged by the
23 City Council to provide planning and physical
24 oversight of projects being carried out under the
25 198 million bond referendum that was approved in 2002

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1 by 80 percent of Oakland voters. In fact, the
2 Measure DD budget allocates \$22 million for the Oak to
3 Ninth developer and we will be overseeing that money.
4 The statement that I'm presenting tonight
5 from CALM is, actually is an introduction to a
6 statement that was passed without opposition by the
7 Measure DD Community Coalition and I will be
8 submitting this statement of the Coalition in writing
9 to the Commission tomorrow. As a diligent member of
10 the DD coalition, CALM strongly endorses the Coalition
11 position statement on the proposed Oak to Ninth
12 developed a statement that was adopted after
13 an extended period of dialogue and consideration and
14 meetings with the developer without opposition at
15 the Coalitions meeting of July 28th. In particular,
16 CALM endorses the three recommendations in the
17 Coalition, in the Measure DD Coalition statements and
18 adds two others.
19 CALM urges the Planning Commission and the
20 City to assure that any development of the precious,
21 priceless, and irreplaceable Oak to Ninth parcel will,
22 (A), provide the maximum of open space, a minimum of
23 45 percent with development perhaps focused in
24 strategically sited point tower.
25 (B), assure maximum vistas directly through

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PH-33 (cont.)

1 and to the estuary from the Embarcadero and accessible
2 to bicycle, pedestrian, and vehicleways adjacent to
3 the development. In fact, CALM strongly encourages
4 that the vistas defined in the Estuary Policy Plan be
5 a mandated provision of any Oak to Ninth development
6 project.
7 (C), that the amenities, furnishings, and
8 appurtenances of the development shall be world class
9 in quality, adequately befitting the beauty and
10 irreplaceability of Oakland's rare and last
11 possibility to salvage its long neglected waterfront
12 for the use and enjoyment of Oaklanders for
13 generations to come.
14 (D), we endorse the jobs and housing
15 provisions of the Community Benefits Coalition and
16 urge your careful attention.
17 And finally, we endorse the historic
18 objectives of the Oakland Heritage Alliance in the
19 retention of the Ninth Avenue pier at least the
20 original, the initial part of the Ninth Avenue pier.
21 Thank you very much.
22 I will be submitting a statement in addition
23 to the statement from the Measure DD Coalition in
24 writing.
25 CHAIR JANG: Okay. Thank you.

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1 MR. HANDA: For the record, I'm Sanjiv Handa,
2 East Bay News Service and I have six points I want to
3 make.
4 First one is on the Estuary Plan. You can
5 thank the Estuary Plan process ultimately in part for
6 the enactment of the Sunshine Ordinance in Oakland.
7 When that advisory committee started meeting it was
8 convened by the Oakland Chair Division in cooperation
9 with the Port of Oakland the meetings were not
10 noticed, were not publicized, they were not open to
11 the public. And there was a threat of litigation
12 shortly before the work was concluded (inaudible)
13 those meetings. The Port and OSP at that point opined
14 that the advisory committee of the citizens was
15 actually not advisory to the Port or the City but
16 rather to the consult of them that was declaring the
17 plan or developing the plan.
18 Ultimately the City Attorney's Office had to
19 reject that notion because it was clearly under the
20 Brown Act publicly constituted body to avoid all
21 the delays that would have been associated with
22 reconvening of the Estuary Plan process a number of
23 safeguards were supposed to have been implemented.
24 Some of those have been followed, some have been not.
25 But one of the things to keep in mind is

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PH-34

1 this. You heard from a number of people today issues
2 related to the Estuary Plan and the fact that that
3 plan has not been followed. I would urge you in
4 particular to listen very carefully to what
5 Judge Sutter said related to the state law, because
6 you now have the necessary information you need to
7 know that litigation could ensue if the state process
8 is not followed.
9 And I should also point out that the last
10 meeting that you held just last week when
11 Bob Schwartz, representing the Oakland Strategies
12 Council, spoke to you keep in mind the words that
13 he uttered which is in the short term developers and
14 politicians and organized labor have developed a
15 relationship to create the immediate development,
16 the immediate jobs, the immediate revenue, that
17 the long-term consequences and the price of that
18 involvement have not been calculated in.
19 As you well know from the last two sets of
20 budget hearings over the last three years that
21 the Oakland City Council has conducted, the City lacks
22 the resources according to the words of the
23 City Council members, to maintain its parks, provide
24 adequate police services and a whole host of other
25 requirements that are part of the quality of life.

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1 The citizens of Oakland have taxed themselves
2 over and over and over to pay for additional services,
3 to pay for open space, to pay for landscape lighting
4 assessment district, to pay for libraries. It goes on
5 and on and on.

6 This has also not been said here but City
7 staff is looking at the feasibility and the idea of
8 imposing a surcharge for new development that won't
9 affect this project obviously if and when it goes
10 through, but it is important consideration that in
11 many communities new developers have to buy their way
12 in by paying for the amenities and services.

13 As you know from Council meetings and other
14 testimony, no new development in Oakland, residential
15 development ever pays even 50 percent of the cost of
16 providing those services. That's something that
17 California League of Cities and others have pointed
18 out.

19 My final two points real quickly.

20 First one is simply that as you're looking at
21 this the website has come up again. The City's
22 website continues to be a problem and if citizens
23 cannot find the information on that website it is the
24 same as not having that information out there.
25 Somehow Ms. Cappio and her staff are unable to

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PH-34 (cont.)

1 communicate with the Web team. It ultimately falls on
2 the Mayor or the City Manager to do something about
3 it. She and her staff have done their job, they've
4 prepared the materials but the City has not done their
5 job in making it available to the public. That is a
6 very serious repercussion, I'm sorry, it's a very
7 serious issue with a lot of repercussion.

8 What Ms. Hutchison said on comments of Women
9 League of Voters is actually on the mark which is that
10 if the materials are not available then clearly
11 they're not available and I also agree that the
12 comments period should be extended.

13 And the final point is simply this:
14 There are only so many times people are going to come
15 down here with the same points development after
16 development after development. What you were hearing
17 nine years ago none of you were here on this Planning
18 Commission nine years ago, but the exact same points
19 were being made by many of these same citizen
20 activists. The same issues were being raised in terms
21 of process, the same kinds of concerns being raised
22 about the quality-of-life issues and taking shortcuts;
23 and I would just caution you because you're sitting
24 here now that you have the opportunity to correct
25 those things.

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1 In about three weeks you will see in your
2 e-mail communication from me that will list some of
3 the problems that have happened in the last few years
4 from as simple as variance that was run into a gas
5 station that resulted in two murders at the site.
6 We opposed that and I'll list for the names of the
7 Planning Commissioners who voted for each of those
8 projects so for history they can be held accountable
9 for the actions they took. PH-34 (cont.)

10 So I would urge you to revisit these issues
11 point by point that people raised tonight and extend
12 the comment period as well as address all these issues
13 in the final EIR in a detailed basis not in a summary
14 fashion or the limited manner that the City has
15 responded in the last nine years.

16 Thank you.

17 COMMISSIONER McCLURE: Commissioner Lighty,
18 you have been here nine years, haven't you? Close.

19 COMMISSIONER LIGHTY: It just seems like it.

20 CHAIR JANG: Does that do it for public
21 speakers?

22 MR. KIMELBERG: It does. There are no
23 remaining cards.

24 CHAIR JANG: All right. I'd like to take
25 a five-minute break before we go into commissioner

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1 comments.

2 (Recess taken.)

3 CHAIR JANG: First of all, I want to express
4 my appreciation for all those that stayed for the
5 whole meeting so far.

6 So anyway, I'd like to have -- one of the
7 Commissioners want to start with comments? Any
8 takers?

9 COMMISSIONER McCLURE: I'll start.

10 CHAIR JANG: In other words, I'll have
11 Mr. Lighty start.

12 COMMISSIONER McCLURE: Then none of us will
13 have anything to say because he will already have
14 stated it. I want to make myself irrelevant here.

15 Actually, this is directed to you. I recall
16 not too long ago I requested that we have someone come
17 to this meeting from the Web department or the website
18 department from the City and I, that hasn't happened
19 and this discussion reminded me that I had asked for
20 that.

21 MS. CAPPPIO: That's right.

22 COMMISSIONER McCLURE: We tend to be the
23 sounding board for the complaints regarding the
24 website, so it would be nice to actually have someone
25 come here and explain why we're having such

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1 difficulties in providing the information on the
2 site.
3 MS. CAPPIO: Okay. And I also want to make
4 sure that the public knows, both the public who's here
5 and the reviewing audience, that we have made some
6 improvements in the last week. And I'll have Margaret
7 Stanzone, the project planner, explain the Web links
8 to the Oak to Ninth project and make sure people know
9 how to link up.
10 COMMISSIONER McCLURE: Thank you.
11 Then I just have a couple questions.
12 MS. CAPPIO: Could we do that now?
13 COMMISSIONER McCLURE: Oh, sure.
14 MS. STANZIONE: The front page of the city's
15 website Oaklandnet.com right on the central column
16 very last item on the central column says Oak to Ninth
17 EIR. And if you click on that, it takes you right to
18 the Oak to Ninth page, Web page that we created.
19 It is -- this is a direct way to get to all
20 the information and documents that have been prepared
21 for this project. But normally you would have to go
22 into our Planning and Zoning page and then scroll down
23 to our Planning Department to find some of these,
24 the staff reports and the items. But for this project
25 there's a direct link and it was just put up last

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1 Friday or Monday, just in the last couple of days.
2 UNIDENTIFIED SPEAKER: Commissioner, the
3 column is called Events. The central column
4 doesn't -- it's Events. How many people would go to
5 Events?
6 COMMISSIONER McCLURE: This is kind of an
7 event really. I look at it is an event.
8 MS. STANZIONE: That decision was made by our
9 Web team.
10 COMMISSIONER McCLURE: They should come down
11 and give us some feedback on how they list these
12 things, so they can benefit from our experience.
13 MS. CAPPIO: I'll follow up on that.
14 CHAIR JANG: Mr. Handa seems to be able to
15 enlighten us on this.
16 COMMISSIONER McCLURE: Mr. Handa, let me just
17 finish my question and answer here.
18 Thank you.
19 MR. HANDA: That's all right.
20 COMMISSIONER McCLURE: Ms. Cappio, the public
21 testimony confused me a little bit. Is this project
22 receiving any City subsidies? PH-35
23 MS. CAPPIO: At this time the developer has
24 not requested any City subsidies, so I --
25 COMMISSIONER McCLURE: So the way you phrased

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1 that, are we anticipating it or is the answer just
2 simply no, they are not getting any subsidies.
3 MS. CAPPIO: At this time the developer, the
4 development team have not asked for any subsidies.
5 That doesn't mean that during the course of project
6 review to come there will not be those discussions.
7 Particularly in the area of providing affordable
8 housing, because as you know, a portion of this
9 project is within the Central City East Development
10 Area and we have increment that is potentially coming
11 to the city from development of this site should it
12 occur, that must be used to provide housing affordable
13 to people of low and moderate income or below moderate
14 income.
15 COMMISSIONER McCLURE: I did notice in the
16 staff report that there is part of proposal is to set
17 aside 6 acres; is that correct.
18 MS. CAPPIO: No, it's not that specific yet.
19 But we are in discussions with the development team
20 again about how the redevelopment agency's obligations
21 under the redevelopment plan concerning affordable
22 housing will be fulfilled and we will bring you those
23 specific recommendations during the merits of the
24 project phase.
25 COMMISSIONER McCLURE: Okay. So the comments

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PH-35 (cont.)

1 about this being public land and public money
2 supporting this project aren't necessarily accurate at
3 this point?
4 MS. CAPPIO: Well, the land is --
5 COMMISSIONER McCLURE: Can I talk now,
6 please? Thank you.
7 MS. CAPPIO: The land is currently owned by
8 the Port of Oakland.
9 COMMISSIONER McCLURE: Okay.
10 MS. CAPPIO: That is a public entity.
11 Part of the City of Oakland.
12 COMMISSIONER McCLURE: No, I understand.
13 But would it be sold to the developer or...
14 MS. CAPPIO: That is also not, at this point
15 that has not been, those negotiations and how that
16 will finally be concluded has not been finalized yet
17 simply because again there are issues complicates
18 this, as you may know, as I'm sure you've got through
19 the EIR pertaining to the state public trust lands.
20 That some portions of these lands are encumbered by
21 the public trusts and that has certain complexities
22 associated with it with regard to stuff that must be
23 traded out if those lands are to be used for housing
24 and other kind of complications concerning long-term
25 ownership by a private entity. So again --

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1 COMMISSIONER McCLURE: So it's a work in
2 progress? PH-35 (cont.)
3 MS. CAPPIO: It's a moving target, work in
4 progress. Whatever you want to call it.
5 COMMISSIONER McCLURE: Thank you for that
6 clarification.
7 MS. CAPPIO: You're welcome.
8 COMMISSIONER McCLURE: And I do understand
9 that they have adopted a PLA for the project?
10 MS. CAPPIO: That's my understanding.
11 COMMISSIONER McCLURE: Okay. And it's to the
12 Port of Oakland standard, so I can say personally I'm
13 very sympathetic to all the testimony about affordable
14 housing and inclusive labor and union jobs. And I
15 think it's as incumbent on the unions that are going
16 to benefit from this and the general labor counsel to
17 work with the developer and the community to make sure
18 that we have the kinds of apprenticeship programs and
19 the kind of local hiring that has been suggested by
20 the coalition.
21 I also think that, having been through this
22 process partially through the Four City project, which
23 was approved and we're waiting for movement on that,
24 and the Wood Street project that all of these, all of
25 these projects are moving targets and they go through

1 an adoption of a Specific Plan and there was some
2 further suggestion that that might open the City up to
3 litigation on this matter if for some reason we did
4 not require a Specific Plan being adopted. And so
5 I would just ask you, is that an accurate statement on
6 the part of the public or not?
7 MS. LEE: I would refer to Director Cappio on
8 that.
9 MS. CAPPIO: It's a policy matter rather than
10 a legal matter at this point.
11 The Estuary Policy Plan does include the
12 recommendation to prepare a Specific Plan for the
13 entire Oak to Ninth area. And we at staff level,
14 working with the developer during the last couple of
15 years, decided that the process that we were entering
16 into were pertaining to the degree of policy changes
17 that would need to be considered by this body and the
18 City Council would be equivalent to if not more than
19 the preparation of the Specific Plan.
20 I need to tell you my personal bias is that
21 the plan now before the city represents a very
22 specific development proposal and that offers us
23 a consideration at a level of detail that normally we
24 don't get with a Specific Plan. So the public
25 hearings, the general plan amendments that are

1 a negotiations process. PH-36
2 And I think it's important that the Planning
3 Commission take a leadership role in not just instruct
4 the developer to negotiate with community groups and
5 come back with a solution that we can then approve.
6 I think it's important that we stay involved through
7 the whole process and consider all the community
8 comments not just those communities, those community
9 organizations that have come together and give
10 themselves a name. We need to pay attention to the
11 individuals as well as those groups.
12 And I think that in the past on Wood Street
13 we I think we did an okay job, but I think that myself
14 included the suggestion came that hey, look, let's
15 send the developer out of the room and, you know,
16 negotiate with the community and then come back.
17 I think we need to take a more active role in this
18 project because of its significance.
19 Thank you.
20 CHAIR JANG: Thank you, Commissioner McClure.
21 Well, let's start with on the other end with
22 Commissioner Boxer.
23 COMMISSIONER BOXER: Actually, I have a
24 question for the City Attorney. It was in testimony
25 there was a reference made to the requirement of

1 required, as you would a Specific Plan, are also
2 required as part of this process as well.
3 COMMISSIONER BOXER: Thank you.
4 You know, I'm relatively new to this process.
5 I'm sure a lot of you in the audience haven't seen me,
6 so I must say that watching the public, the folks in
7 the room once again reminds me kind of why I chose to
8 live in Oakland. The diversity represented working
9 people. It really is a testament to this City and one
10 I think to echo Commissioner McClure's comments it's
11 one that is eye-opening at least to this Commissioner
12 that makes us I think really need to take a look at
13 this project as a whole.
14 Obviously, Mr. Handa has stated that these
15 comments have been going on for some time and there
16 are these large projects that come before us and I
17 think that Mr. Ghielmetti of course is here hearing
18 these comments. They're not unique to the Oak to
19 Ninth project.
20 That being said, my understanding of what
21 we're doing here tonight is reviewing a Draft EIR
22 with specific impacts, with specific mitigations.
23 Obviously, the folks from the community wanted to talk
24 about the project and how it's been put together. And
25 I am hopeful that we'll have the opportunity to do

1 that just with the specific impacts of the project
2 in and of itself. PH-37 (cont.)

3 I heard some discussion of preservation and
4 cultural resources and things like that and I just
5 want the public to know that I do listen and I do hear
6 the comments generally about, about what's happening
7 in Oakland. And I take those into account as I view
8 this specific project and further projects, future
9 projects that come at least to me.

10 Thanks.

11 CHAIR JANG: Thank, you.

12 Commissioner Lee.

13 COMMISSIONER LEE: When I decided to accept
14 the encouragement to come to on this Planning
15 Commission, I had thought about, a lot about what I'm
16 doing. I'm going to do, I'm trying to do when
17 I accepted this opportunity to so-called pay my dues
18 to serve as a social responsibility, to serve on this
19 commission.

20 And my consideration is very complex, because
21 part of it is my effort to be here in the commission
22 meetings, you know, twice a month to listen. To
23 listen not only to testimonies that people come here
24 and I always, I always look further than just what
25 we are looking at, we're considering here and what

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PH-38

1 we heard is to look way beyond. And in other words,
2 not just to collectively hear what we, you know, we
3 heard in this, like in this chamber in a hearing room
4 normally. But it's also to consider, take into
5 consideration the voice that was not presented here.

6 And there's another component that I always
7 like to put into my consideration is that what if this
8 project is going on or what if this project is not
9 going on. So the consideration often becomes very
10 broad. For instance, this project is not -- you know,
11 many people have said this is the last project on the
12 waterfront. And I don't look at it in that specific,
13 but I do look at it as one of a very rare opportunity
14 for the Oakland people.

15 And I remember this, passing by this area
16 many, many, many times over the last 25 years of
17 myself living in this Oakland. I always felt like
18 because we used to live in Baltimore and we had seen
19 the transformation of Oakland waterfront. Of course,
20 back then there's a lot of time and money and then
21 being close to Washington D.C. and they had a
22 different, a very unique opportunity to develop the
23 waterfront in Baltimore.

24 But I often feel sad that Oakland did not
25 have the leadership, did not have the opportunity, did

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1 not have the money to develop our waterfront, precious
2 waterfront side.

3 So by saying all that, and I do feel strongly
4 that we do have a very unique opportunity here to do
5 something. And as much as I have said that I thought
6 so much about it, I do agree with Commissioner McClure
7 whole heartedly and I think we, not only we wanted to
8 look at, listen to what we have heard tonight, we have
9 to look at a much broader sense and even look at it in
10 five years, ten years from now and what if. And only
11 if we have done that and I think we will have done our
12 responsibility. PH-38 (cont.)

13 And so not going to a whole lot of specific
14 things and I think a lot of things have been said.
15 And I just wanted to put in this element and this is
16 what we need to go into this project and think about
17 it thoroughly.

18 CHAIR JANG: Okay. Thank you, Commissioner Lee.
19 Commissioner Lighty.

20 COMMISSIONER LIGHTY: Thank you, Chair Chang.

21 As the other Commissioner comments, I think
22 that we need to take very seriously not only the
23 merits of this proposal but also what we think the
24 best development is for this site. Because there are
25 two competing visions at stake: The Estuary Policy

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1 Plan has a fundamentally different vision than this
2 development proposal. We see things like the
3 Tidelands Trust as kind of, we may see that as kind of
4 an obstacle to what we take as a common sense
5 development, which is well, yeah, it's near water
6 so let's put some apartments. That kind of just makes
7 sense because that's done in a lot of places. But
8 there is a reason that the Tidelands Trust does
9 prohibit long-term private ownership and requires
10 maritime related uses. There is an underlying policy
11 assumption there that that land needs to relate to the
12 water it's next to and that views in and of themselves
13 of long-term ownership, residential use is not what
14 they mean by related. PH-39

15 Secondly, the parks and the open space that
16 the Estuary Plan vision, they're not being achieved by
17 this project, so. And they're not, it's not close.
18 It's not really close. 42 acres, 24 acres is one
19 thing. I visited those sites that the applicants and
20 others have talked about. The Marina Green isn't
21 close to high rises. The Willamette River that goes
22 through Portland is separated from high rise building
23 by a lot of space. That's a park along the river.
24 There are not high-rises along that park to take
25 two examples. I'm not saying that the residential

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1 isn't legitimate here.
2 I'm not saying the project isn't legitimate.
3 What I'm saying is it's fundamentally different from
4 what has been approved for that site. And so we have
5 competing, I think fundamentally competing different
6 approaches. And the Commission has to ask itself
7 what's best.

8 The alternative is not between nothing and
9 this project. The alternative is fulfilling the
10 Estuary Policy Plan or radically amending it? And if
11 we -- some of us believed that high-rises belonged in
12 uptown not along the estuary. Okay. There are mid-
13 rises in uptown. But there's still that legitimate
14 question about whether high-rises belong here.

15 The, in the Environmental Impact Report the,
16 one of the significant impacts that can be reduced to
17 less than significant with mitigation is the project
18 would not be consistent with the current existing
19 Estuary Plan land use classification, zoning districts
20 for the project site. Is that an environmental impact
21 under the EIR? It's cited A2 page 216.

22 We can evaluate whether the mitigation
23 measure, which is the proposed zoning for the site and
24 the amendments to the Estuary Policy Plan are an
25 appropriate mitigation measure. We can decide that.

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PH-39 (cont.)

1 We can say no, that's not appropriate mitigation
2 measure and, in fact, the policy objectives of the
3 EPP, the Estuary Policy Plan are superior. That's
4 a legitimate, under the EIR that is a legitimate and
5 appropriate determination. It's not, it's not
6 separate. It's not a project evaluation separate from
7 the EIR.

8 I think the EIR should study project
9 alternatives that were submitted by Naomi Schiff and
10 commented by others known as Alternative A and B.
11 I think that the small-lot development on Fifth Avenue
12 is more appropriate. I think -- and it should be
13 considered.

14 I think that the Community Benefit Program is
15 important and the affordable housing.

16 And I think on the cultural resource
17 question, it's, you know, and again, I understand
18 where the project's going and I don't want to be
19 overtly critical at that point. But it is hard to
20 understand how the achievement of open space is
21 dependent upon the destruction of a Class A historic
22 landmark. That's a little hard to take. And
23 I don't -- and again, I don't mean disrespect because
24 I voted for Signature Properties' projects. I think
25 you've done great work. But I just think, that it's

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1 a little cynical to me, that's all. And that's just
2 my personal read of it.

3 So we should not be faced with that choice,
4 because I think, again, I think the OHA proposal
5 should be considered. The '50s portion of the
6 building, okay, it's doesn't have the same
7 significance. Open it up, right. Open it up to,
8 you know, an open-air pavilion, save the '20s portion,
9 live/work. PH-39 (cont.)

10 Those are things that should seriously be
11 considered. And I think if we approach it in those
12 terms, then I think we get at what vision, what type
13 of development is best for the site. If it turns out
14 that economics are purely the driver, say Hey, we
15 can't do anything else, we can't have 42 acres of
16 open space, we can't make it the major recreational
17 destination in Oakland, which is what the Estuary
18 Policy Plan as Mr. Sutter pointed out says.

19 We say Hey, we can't afford that, we can't do
20 it. We don't have the money. The only thing we can
21 do is let a private developer maximize density and
22 create a small park on the water's edge. And if
23 that's the decision, let it not be because we think
24 that's the best project for the site. Let us not fool
25 ourselves that that's consistent with the Estuary

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1 Policy Plan or that provides a great community benefit
2 to Oakland. Let's just recognize it for what it is
3 which is Hey, we'll take what we can get.
4 I personally don't think that's good enough.

5 CHAIR JANG: Following Michael Lighty,
6 you also have to end up being a counterpoint, I think.

7 I think this project, you know, has been
8 a tough one to evaluate because we do have an
9 Estuary Plan that had a very long public process. But
10 I really see it as a vision. And it's not a recipe
11 for success, you know, it's not such a formula that if
12 you have X number of acres of open space that will be
13 successful. I think that what we have here is
14 a proposal to build a project, you know, admittedly
15 a very dense project, but what it does is it pays for
16 the amenities that are the core of the Estuary Plan
17 and that is having open space, having connections
18 along the waterfront as well as connections back
19 inland. PH-40

20 And I think those are really kind of the core
21 concepts that Estuary Plan has and with that,
22 you know, we have a project before us that can achieve
23 that and it's a real project. And so, you know,
24 I recognize that the Estuary Plan is kind of a,
25 you know, sacred cow, but by the same token I think

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1 that, you know, we have a project here and so the
2 question is do we, you know, do we look at it as a
3 project that can achieve those goals? And I believe
4 that they are.

5 And I think that we're kind of given the task
6 of determining, okay, if we don't get the acreage,
7 you know, whatever those numbers are, then I think
8 the emphasis should be on quality, you know,
9 are we getting the quality of parks, open space,
10 connections that the Estuary Plan calls out for?
11 And so I can't say yes, we have them yet, but I think
12 that we're heading in that direction.

13 As far as the Class A historical building,
14 you know, I'm very interested in preserving buildings
15 in Oakland, but I often feel that historical
16 preservation of buildings is such that if you let them
17 sit around long enough somebody will come along and
18 renovate it and then they will be applauded for having
19 the foresight of saving it. But, you know, it's
20 contingent on need and time just like real estate is
21 related to location, I think historical buildings
22 there's that element of time that buildings can stay
23 vacant for 20 years.

24 Well, in some situations it, you know,
25 20 years there might never be a use. But all of a

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PH-40(cont.)

1 sudden the surrounding areas, economics, make it
2 feasible to, you know, rehab it and so all of a
3 sudden, you know, people who do that become heroes
4 because they came along and saved a building.

5 So I think there's this time pressure of
6 whether this building, which is Class A, can be saved
7 in time, you know, as part of the development.

8 Which kind of brings me to the EIR, because
9 in it it talks about phasing maybe perhaps either
10 the staff or the applicant can tell me about. Are
11 we looking at phasing in such a way that's already
12 set, because it does indicate proposed phasing?

13 MS. CAPPPIO: The developer has proposed
14 a phasing of the project that we have taken in the
15 EIR and adapted to make sure that the impacts
16 associated with certain levels of development are
17 studied appropriately. So at the end of a particular
18 phase we knew we were at a particular level of impact,
19 particularly with traffic and air quality. The noise
20 impacts, because of the long construction period or
21 conceivably long construction period is another set of
22 impacts.

23 So we've basically taken the developer's
24 basic phase-in program and had to turn it into worst-
25 case with regard to what level of development was most

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1 feasible within the shortest amount of time. So we
2 were able to measure those impacts in the worst-case
3 way as required by CEQA. Does that make sense?

4 I guess the short story is, we've studied the
5 worst case under CEQA and therefore, have a lot of
6 flexibility in how we choose to work with the PH-40
7 developer for phasing of the project. (cont.)

8 CHAIR JANG: Okay. Because I think,
9 actually, when I look at the phasing I thought that
10 the most appropriate phasing would be to develop
11 Clinton basin from, in my view, because I think that
12 you're going to do a project like this you don't start
13 in the corner, you know, where, you know, everything
14 else is still industrial, run down, and dilapidated,
15 but you develop something that's very visible in the
16 very beginning and then you make a bold statement that
17 this is a project here, here's the open space which is
18 a lot of people are talking about as far as it
19 visible from the freeway, is it visible from the
20 neighborhoods?

21 And I think that if you start kind of in the
22 area that gives you that immediate impact in the first
23 phase then, you know, I think it kind of snow balls as
24 far as a project that can be successful.

25 MS. CAPPPIO: If I can just respond quickly?

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PH-41

1 CHAIR JANG: Okay.

2 MS. CAPPPIO: The comment is well taken and
3 noted. We must overlay that comment on the degree of
4 toxic contamination at this site and what must be done
5 to remediate it and that has to be overlaid on any
6 practical phasing program given the dirt removal and
7 heavy equipment that is required in certain areas of
8 the site.

9 So I certainly will take that comment and we
10 can bring you back the information during the merits
11 of the project's consideration pertaining to what the
12 regional agencies, the Department of Toxic Substance
13 Control and other agencies are requiring of the
14 developer with regard to the sequencing of remediation
15 of the site pertaining to ground, I think it's mostly
16 soil contamination.

17 CHAIR JANG: Okay. And then kind of an off
18 subject or maybe on subject, but, you know, I have a
19 strong interest in pedestrian safety and I know that
20 CEQA doesn't address that. PH-42

21 However, you know, in looking at the EIR, and
22 I not so unrandomly picked the intersection that
23 interested me which is Eighth and Webster. I noted, I
24 noticed one in chart figure C2(b) that the, let's see,
25 there's a double right turn from Webster into H Street

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1 and it's noted incorrectly it is a single turn.
2 And that leads me to another section where it
3 talks about level service and it talks about how
4 having a scramble phase, which is a 3-phase at an
5 intersection, where pedestrians are allowed to cross
6 the middle of the street. According to the EIR, that
7 seems to come up as being a bad thing, because it
8 reduces the green time that, you know, autos are
9 allowed to travel, but in fact if you take into
10 consideration the double-right turns, the double-left
11 turns there's an immediate conflict green light
12 between autos and pedestrian.

13 And so when you look at EIRs, you know,
14 you're dealing with the attitude that because it
15 doesn't facilitate autos therefore there's congestion.
16 So I advocate, if not for this EIR but for future
17 ones, that pedestrian safety become an important
18 element. So that is kind of an off subject.

19 Commissioner McClure?

20 COMMISSIONER McCLURE: Actually, I have
21 a question for staff. You talk a lot about the
22 Ninth Avenue Terminal, but what is the accessibility
23 to that facility? Can we arrange a --

24 MS. CAPPIO: Tour?

25 COMMISSIONER McCLURE: A tour, yeah.

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PH-42 (cont.)

1 MS. CAPPIO: I think a site tour including
2 the Ninth Avenue terminal would be a great idea and
3 I can do that with the developer and the Port.

4 COMMISSIONER McLURE: Okay, great. I don't
5 want to just go out there and, you know, perhaps
6 create a security issue if that's still being used as
7 a Port facility.

8 MS. CAPPIO: There is, I think there is some
9 warehousing activities, but I have been out there and
10 we can provide the necessary equipment to assure your
11 safety.

12 Commissioner McClure.

13 COMMISSIONER McCLURE: I don't want to
14 disrupt anything.

15 MS. CAPPIO: No, I know. It's actually very
16 big out there.

17 COMMISSIONER McCLURE: I thought I would have
18 an official tour.

19 MS. CAPPIO: We are. We would do that.

20 COMMISSIONER McCLURE: Okay. And I actually
21 have a question for Commissioner Lighty. You were
22 part of the estuary policy process; is that correct?

23 COMMISSIONER LIGHTY: I think actually it
24 came, there was some discussion when I first got on
25 the Commission. It may actually have been formally

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1 approved prior to that. It was June '91 and I don't
2 think I started until after that. PH-42 (cont.)

3 COMMISSIONER McLURE: To your recollection,
4 what was the rationale behind the amount of acres
5 that was set aside as open space? Was there a lot of
6 discussion about why that number was the right number?
7 In the context of the, of this whole?

8 COMMISSIONER LIGHTY: I think it was just
9 someone alluded to it. I think it was the fact that
10 it was a Tidelands Trust. The perception was it was
11 Tidelands Trust land so the open space was going to be
12 sort of the easiest and most consistent thing to do
13 with that, that chunk of the acreage. I mean, I think
14 that was pretty much it, as I understand it.

15 MS. CAPPIO: Compatible with increased public
16 access, because obviously some maritime uses you don't
17 want the public nearby, you know, dropping containers
18 on them and stuff.

19 COMMISSIONER LIGHTY: Exactly. So you figure
20 how do you have public access still the commercial
21 uses are allowed by Tidelands?

22 COMMISSIONER LEE: It was never a
23 consideration for anybody to live there.

24 COMMISSIONER McCLURE: So now we're
25 considering people living there.

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PH-43

1 MS. CAPPIO: Well, actually, it's not that
2 clear.

3 Mark, the land-use designations in the plan
4 right now don't completely prohibit; is that right?
5 The PWD-1? The actual adopted Estuary Policy Plan
6 land-use destination right now does not completely
7 prohibit housing?

8 MS. STANZIONE: It doesn't specifically say
9 "housing" in it. It refers to live/work and it has,
10 the designation has a density standard, a residential
11 density standard.

12 So I'm thinking that live/work and there's
13 a policy expanding the live/work is probably what was
14 considered residential.

15 COMMISSIONER LIGHTY: Potentially compatible
16 with its legal status, yeah.

17 COMMISSIONER McCLURE: I'm just trying to
18 understand if there was any, is there a specific
19 formula that they allowed this acreage?

20 COMMISSIONER LIGHTY: Not that I know of.

21 COMMISSIONER McCLURE: Or I think what's
22 going to happen probably in this process is we're
23 going to arrive at a number.

24 Do you have an answer?

25 UNIDENTIFIED SPEAKER: I have the answer.

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1 COMMISSIONER McCLURE: You do?
 2 UNIDENTIFIED SPEAKER: I do. Having sat
 3 through all those meetings, yes. PH-43 (cont.)
 4 Mr. Lighty said it very well. We saw that
 5 the land was designated as Tidelands Trust. Roughly
 6 80 percent of it is Tidelands Trust, which prohibits
 7 privatization, so we said what else can we do with it?
 8 So we did mixed use and the hotel on the nontrust and
 9 then the trust for the parks.
 10 So what we were working from is an assumption
 11 that we have found not to be necessarily true, that
 12 the Tideland Trust is forever.
 13 COMMISSIONER McCLURE: Okay. Thank you for
 14 the clarification.
 15 COMMISSIONER LIGHTY: In politics nothing is
 16 forever.
 17 Can I ask a question of Sam?
 18 Are you done? I'm sorry.
 19 COMMISSIONER McCLURE: Yeah, I'm done.
 20 Thank you.
 21 COMMISSIONER LIGHTY: Just on the
 22 Specific Plan question, is the same amount of space
 23 being considered under all the review that we're in
 24 the midst of here, is the full 120 acres with the
 25 Specific Plan anticipated under review under the

1 processes you described?
 2 MS. CAPPIO: No.
 3 COMMISSIONER McCLURE: 120 acres.
 4 COMMISSIONER LIGHTY: That's what the
 5 Specific Plan required 120 acres.
 6 MS. CAPPIO: The Estuary Policy Plan now
 7 outlines a recommendation that the Oak to Ninth as
 8 a district be studied as a Specific Plan and the
 9 decision was made that the area that was under the
 10 control of the Port and obviously the development
 11 entity that was interested in developing it would be
 12 a focus, because we didn't really have the, the
 13 ability to work with other property owners at that
 14 time. And we still don't. I mean, there's
 15 complications there, too. PH-44
 16 COMMISSIONER LIGHTY: I mean, just from a
 17 planning perspective, it would be ideal if we studied
 18 the whole area that's contiguous? I mean, that's at
 19 least one loss in not doing the full Specific Plan.
 20 MS. CAPPIO: I don't think it's a loss
 21 so much as obviously you could, you could consider
 22 a larger area making sure the decisions that you make
 23 pertaining to this particular area of the Oak to Ninth
 24 district does not preclude access.
 25 I mean, I think that we're talking account of

1 those kinds of issues, particularly the access issues
 2 with the other side of, you know, the estuary and the
 3 connections to Lake Merritt and the division that's
 4 created by the highway and the Embarcadero and the
 5 railroad now. So I'm, our planning, because of
 6 Measure DD and some of the Lake Merritt master
 7 planning issues is not, I don't think I can present
 8 you with the equivalent of looking all the those
 9 larger issues as you consider the specific decisions
 10 pertaining to this particular part of Oak to Ninth.
 11 COMMISSIONER LIGHTY: And do you think that
 12 the community involvement and the process has been
 13 equivalent in this review as it would be under the
 14 Specific Plan? Because certainly some community
 15 members feel the Specific Plan would have offered them
 16 more opportunity for a kind of workshop engagement as
 17 opposed to a comment-type engagement?
 18 MS. CAPPIO: Right. Certainly those
 19 participation requirements as listed in the Government
 20 Code are clearly equivalent. A public hearing or
 21 public hearings before both the Commission and the
 22 City Council prior to adoption. A Specific Plan is
 23 really the equivalent of a General Plan amendment.
 24 And you can incorporate other planning and
 25 participation methods in what you do. And we did do

1 that actually earlier this spring with the report that
 2 you have from circle point as one point of beginning.
 3 And you may build off of that, too.
 4 We've included in your staff report what we
 5 considered to be sort of a process, a development
 6 review process including Landmarks Advisory Board,
 7 Park and Recreation Commission, yourself, and the
 8 City Council. And if you want to comment on other
 9 kinds of opportunities or forums that we could build
 10 into that, I would be glad to take your suggestions.
 11 COMMISSIONER LIGHTY: Thank you.
 12 CHAIR JANG: Okay. Are there any additional
 13 comments from Commissioners? Okay.
 14 COMMISSIONER McCLURE: So you will e-mail us
 15 with the date for the tour of the Terminal?
 16 MS. CAPPIO: I guess I'm thinking that
 17 I'm going have to get a couple of dates and make sure
 18 that we poll you and see what the best one is. In the
 19 next -- and we'll have to notice it up as a public
 20 meeting, because the entire Commission will be
 21 invited. So the members of the public can come as
 22 well.
 23 COMMISSIONER McCLURE: Great.
 24 Thank you.
 25 MR. BOXER: I don't want to prolong this any

1 longer, but I do have a question for my edification,
2 was there not a process when the property went through
3 its determination as to whether or not to obviously
4 put out an RFQ, search for qualified developers, make
5 some, have some public hearings with regard to that,
6 or am I incorrect in that?

7 MS. CAPPPIO: Yes. The port followed a
8 request for qualifications, and I believe a request
9 for proposal process, that occurred about three or
10 four years ago and that did have a public, the ability
11 for the public to review and consider proposals that
12 were submitted to the Board.

13 CHAIR JANG: Okay. Perhaps Director Cappio
14 can kind of recap what we've, the process that
15 we've gone through today and the next steps.

16 MS. CAPPPIO: Sure. I would be glad to do
17 that.

18 At this point the public comment period for
19 the EIR will continue until October the 24th at 4:00
20 in the afternoon. Just to make sure there's a date
21 and time. Comments should be directed to Margaret
22 Stanzione at either 3315, excuse, me, 150 Frank Ogawa
23 Plaza, Suite 3315 in Oakland, California, 94612, or
24 mstanzone, S-t-a-n-z-i-o-n-e, at Oaklandnet.com.

25 After that, the comments will be reviewed and

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1
2 STATE OF CALIFORNIA)
 : ss
3 COUNTY OF ALAMEDA)
4

5 I, the undersigned, a Certified Shorthand
6 Reporter of the State of California, do hereby
7 certify:

8 That the foregoing proceedings were taken
9 before me at the time and place herein set forth; that
10 any witnesses in the foregoing proceedings, prior to
11 testifying, were placed under oath; that a verbatim
12 record of the proceedings was made by me using machine
13 shorthand which was thereafter transcribed under my
14 direction; further, that the foregoing is an accurate
15 transcription thereof.

16 I further certify that I am neither
17 financially interested in the action nor a relative or
18 employee of any attorney of any of the parties.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21 Dated: _____
22
23
24

25 _____
DANA M. FREED
CSR No. 10602

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1 compiled and then each comment will be responded to
2 in a final EIR document and any revisions,
3 corrections, and clarifications to the Draft EIR will
4 also be included. And that will be presented to the
5 Planning Commission prior to any formal
6 recommendations or actions on the project itself.

7 In the meantime, as outlined in the staff
8 report, we have estimated and sort of put forth a
9 schedule of review including review by the Landmarks
10 Preservation Advisory Board, the Public Park and
11 Recreation Commission, and the Design Review Committee
12 about aspects of the project and the applicant is
13 proposing to formally submit a revised or embellished
14 proposal of the project sometime in November.

15 So we will get back to you with that as we
16 are preparing, as we are preparticipating the final
17 comments on the EIR or responses to comments on the
18 EIR we will be coming back to you with specific issues
19 on the merits of the project itself and our
20 recommendations concerning them.

21 CHAIR JANG: Okay. Great. I believe we are
22 going to wrap up the business today for this item?

23 MS. CAPPPIO: I believe so.
24
25

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Comments from the Planning Commission

PH-1 **Commissioner Lighty** asks Mr. Ghielmetti, representative of the project sponsor, to elaborate on why the Estuary Policy Plan does not work for the proposed project. In response, Mr. Ghielmetti outlines information about the project site and requirements for development that may not have been considered fully, and relevant information that may not have been available, during the Estuary Policy Plan process. Specifically, these include the extent of site contamination, cost of environmental cleanup, infrastructure needs, access issues (including transit), expense to demolish existing structures, including the Ninth Avenue Terminal and acquire the property from the Port of Oakland. Mr. Ghielmetti discusses his opinion that the project includes an appropriate high-intensity development necessary for the currently isolated site. He also comments on the questionable economic viability of uses envisioned in the Estuary Policy Plan and the relatively newer commercial development on adjacent properties (low-intensity hotels).

Comments from Members of the Public

PH-2 **Leonor Godínez** states her position on the project and desired benefits is should provide the community. No specifics are stated. The comment is noted.

PH-3 **Andy Nelson** states that if the project has impacts that there should be acceptable tradeoffs – benefits for existing Oakland residents. Where feasible, mitigation measures are identified to reduce significant impacts that would result with the project to less-than-significant levels. For impacts are significant and unavoidable, and the City elects to approve the project (or an alternative) with these unmitigable impacts, it must adopt a statement of overriding considerations that states how benefits of the project outweigh the environmental impacts. As adopted in the City’s statement of overriding consideration required for adoption of the Estuary Policy Plan, benefits include the development or expansion of publicly-accessible open spaces on the waterfront revitalization and the creation of new housing and jobs. Additional and more specific (tangible) benefits resulting from the project are not related to the environmental review under CEQA and would be considered by the City as part of the conditions of approval for the project and/or a Development Agreement between the City and the project sponsor.

Mr. Nelson points out issues of high housing costs and lack of good paying jobs facing the Bay Area and the need for the project to address these issues. These are not issues relevant to the project impacts under CEQA, as discussed in Master Response H, nor does the comment address the adequacy of the DEIR analysis and is noted.

PH-4 **Muang Saechoa** mentions the need for affordable housing in Oakland, which would prevent existing residents from purchasing homes elsewhere. Starting on page IV.J-41, the DEIR discusses the potential for indirect impacts on housing market effects (additions to housing supply, development of affordable housing, improvement to job/housing relationship, potential effects on rents and prices in Oakland and vicinity). This

- discussion concludes that the project would not lead to significant indirect physical impacts (DEIR p. IV.J-46). See also Master Response H, which describes the project's current proposals for the provision of affordable housing.
- PH-5 **Chandu Mae** comments on the need for affordable housing. The topic is not relevant to the project impacts under CEQA, as discussed in Master Response H. The DEIR discusses affordable housing on page IV.J-42, and Master Response H also discusses the project's current proposal for the provision of affordable housing. The comment does not address the adequacy of the DEIR analysis and is noted.
- PH-6 **Antonio Varruz** states that the construction jobs created by the project should go to Oakland residents. The topic is not relevant to the project impacts under CEQA, as discussed in Master Response H, which also discusses the project's current proposal for local hiring. The comment does not address the adequacy of the DEIR analysis and is noted.
- PH-7 **Quan Tut** speaks to the need for a stable job in the construction field and sustainable job training and job placement. The topic is not relevant to the project impacts under CEQA, as discussed in Master Response H, which also discusses the project's current proposal for local hiring. The comment does not address the adequacy of the DEIR analysis and is noted.
- PH-8 **Gloria Lomeli** states concerns about project impacts on housing. See Response to Comment PH-4 regarding potential indirect impacts on housing.
- PH-9 **Disheng Huang** speaks to the need for the project to provide more affordable housing. The topic is not relevant to the project impacts under CEQA, as discussed in Master Response H, which also discusses the project's current proposal for the provision of affordable housing. The DEIR discusses affordable housing on page IV.J-42. The comment does not address the adequacy of the DEIR analysis and is noted.
- PH-10 **Reverend Jim Hopkins** speaks to the merits of a Community Benefits Agreement that addresses adequate housing, opportunities to good paying jobs, access to natural beauty. Regarding adequate housing, the project would create 3,100 new high-quality housing units in Oakland. The topic of job opportunities is not relevant to the project impacts under CEQA, as discussed in Master Response H, which also discusses the project's current proposal for local hiring. Regarding access to natural beauty, the project will transform an area along that water that is not accessible to the public into a location where the water can be accessed, viewed, and enjoyed. The comment is noted.
- PH-11 **Andre Spearman** speaks to the need for sustainable jobs. The topic is not relevant to the project impacts under CEQA, as discussed in Master Response H. See Response to Comment KK-30 regarding the use of public land for the project, part of which would be private development.

- PH-12 **Jennifer Lin** speaks to the need for good paying construction jobs and affordable housing. These topics are not relevant to the project impacts under CEQA, as discussed in Master Response H. The DEIR discusses affordable housing on page IV.J-42, and Master Response H discusses the project's current proposal for the provision of affordable housing.
- PH-13 **Ms. Kuan** speaks to desire for the project to provide affordable housing and job opportunities. These topics are not relevant to the project impacts under CEQA, as discussed in Master Response H. The DEIR discusses affordable housing on page IV.J-42, and Master Response H discusses the project's current proposal for the provision of affordable housing and local hiring.
- PH-14 **Iliana DeLa Torres** speaks to the opportunity for the project to provide affordable housing and job opportunities. These topics are not relevant to the project impacts under CEQA, as discussed in Master Response H. The DEIR discusses affordable housing on page IV.J-42, and Master Response H discusses the project's current proposal for the provision of affordable housing and local hiring.
- PH-15 **Rod Divelbliss** speaks acknowledges that the development project will contribute to Oakland's housing supply and thereby help relieve the pressure the increases housing prices. The speaker also recognizes traffic issues with the project and supports the project locating housing near jobs. The comment is noted.
- PH-16 **Tersita Cruz** supports a project labor agreement that addresses prevailing wages and also calls for the project to provide affordable housing. This topic is not relevant to the project impacts under CEQA, as discussed in Master Response H. The DEIR discusses affordable housing on page IV.J-42, and Master Response H discusses the project's current proposal for the provision of affordable housing.
- PH-17 **Doug Block** states that the project should provide housing that is affordable to people that live in the flatlands and that jobs created by the project should be 100 percent union labor. These topics are not relevant to the project impacts under CEQA, as discussed in Master Response H. The DEIR discusses affordable housing on page IV.J-42, and Master Response H discusses the project's current proposal for the provision of affordable housing and local hiring.
- PH-18 **Susan Yee** comments that the project should provide affordable housing and job opportunities, both of which have impacts on public health care and education. These topics are not relevant to the project impacts under CEQA. The DEIR discusses affordable housing on page IV.J-42, and Master Response H discusses the project's current proposal for the provision of affordable housing and local hiring.
- PH-19 **Orna Sasson** suggests that the project site could have been developed as a park or a garden. The project would create 28.4 acres of new public parks and open space where none currently exists. Development of the entire site as a park or garden is not consistent

- with the vision in the Estuary Policy Plan. The comment states, "...it's not very attractive. It's not as attractive as it should have been." It is not clear if the comment refers to the existing condition of the project site or the proposed project. These comments likely address the design aspects of the project, which are not relevant to the project impacts under CEQA as discussed in Master Response H. The comment also calls for more preservation of the Ninth Avenue Terminal and potential creative reuses. See Response to Comment Q-2 regarding preservation alternatives and Master Response B regarding further analysis of reuse alternatives for the Ninth Avenue Terminal.
- PH-20 **Charles Lerrigo** states that the project's report has not adequately addressed inclusive housing requirements. There is no inclusive housing requirement for the project. As stated in Response to Comment S-45, the DEIR discusses affordable housing on pages IV.A-28 and IV.A-29 within the context of the *Central City East Redevelopment Plan* and the *Central City Urban Renewal Plan*. Additional detail is provided on page IV.J-42 within the detailed analysis of Potential for Indirect Physical Impacts (*Development of Affordable Housing*).
- PH-21 **Naomi Schiff** states that a revised Draft EIR should study reuse of the Terminal. Master Response B addresses the matter of further analysis regarding potential reuses for the Terminal. The comment describes alternative project options that maximize open space and affordable housing. See the second paragraph of Response to Comment S-5 regarding open space alternatives analyzed in the DEIR. The DEIR discusses affordable housing requirements on pages IV.A-28 and IV.A-29, however this is not a project impact under CEQA, as discussed in Master Response H, which also discusses the project's current proposal for the provision of affordable housing. The comment states that a specific plan should be prepared, and Master Response A addresses this issue.
- PH-22 **Ken Katz** states that the project does not implement the Estuary Plan. Section IV.A (Land Use, Plans, and Policies) of the DEIR includes a detailed discussion of the project's relationship to the Estuary Policy Plan's policies starting on page IV.A-13 and concludes that the project would not conflict with the Plan. The comment also states that the proposed open spaces and trails are not "usable spaces, but thoroughfares that buffer spaces between the water and the community and propose housing. The project would create a series of waterfront open spaces ranging from 2.3 to 9.7 acres and between 200 to 400 feet in depth set back from the shoreline. Pedestrian and bicycle paths are primarily proposed along the shoreline and likely as internal access to certain open spaces or parks. The comment also outlines additional potential reuses for the Ninth Avenue Terminal, which is addressed in Master Response B.
- PH-23 **Darrel Carey** states his support of the project of the proposed magnitude being done with private capital and that will replace the Cash and Carry building that is visible from adjacent existing residences. The comment also speaks to outreach efforts by the project sponsor. The comment does not address issues relevant to CEQA of the project's impacts and is noted.

- PH-24 **Pamela Weber** suggests that the proposed parks would not be used by the public but by residents of the project. The comment is speculative and does not provide specific justification. The park and open spaces proposed by the project would be public areas. The comment also describes the retail percentage of the project and projected sales, which is addressed in response to Ms. Weber's Comment KK-21. The comment also states that the project should be developed in accordance with the Estuary Policy Plan. As stated in Response to Comment PH-22, above, the DEIR includes a detailed discussion of the project's relationship to the Estuary Policy Plan's policies starting on page IV.A-13 and concludes that the project would not conflict with the Plan.
- PH-25 **Charles Weber** comments that, with the project, "the specific plan was scrapped and the Estuary Policy Plan is to be dumped." See Master Response A regarding preparation of a specific plan. As stated in Response to Comment PH-22, above, the DEIR includes a detailed discussion of the project's relationship to the Estuary Policy Plan's policies starting on page IV.A-13 and concludes that the project would not conflict with the Plan.
- PH-26 **Helen Hutchison** addresses the need for preparation of a specific plan, which is responded to in Master Response A. The comment also suggests preferable methods for long-term maintenance of open spaces. See Response to Comment R-9 regarding maintenance mechanisms being considered by the project sponsor and the City.
- PH-27 **Joyce Roy, speaking on behalf of the Sierra Club**, states concern that the project does not meet the open space aspect of the Estuary Policy Plan. This response assumes that the comment refers to the total acreage proposed, which is less than that analyzed in the Estuary Policy Plan EIR. See Response to Comment S-5 regarding the comparative open space acreage of the project and the Estuary Policy Plan EIR.
- PH-28 **Windy Tinsley** identifies concerns regarding project and cumulative significant and unavoidable adverse affects on traffic congestion and surface parking in the Jack London District. See Master Response C that describes the nature of the significant and unavoidable transportation impacts being related to physical constraints or jurisdictional issues. The DEIR does not identify impacts that would affect surface parking.

The comment also mentions opportunities to retain the entire Ninth Avenue Terminal and the use of historic preservation tax credits for rehabilitation and adaptive reuse of the structure; see response to Ms. Tinsley's Comment S-2.

The comment describes the project as a "series of towers at the waterfront surrounded by small sections of green space," and states that this configuration will "effectively curtain that section of the waterfront off from the existing surrounding community." As described on DEIR page III-8 and depicted in Figure III-5 (DEIR p. III-13), the project proposes a mix of medium-height buildings from six to eight stories (up to 86 feet) in height, and five of these medium-height buildings would include highrise tower elements of up to 24 stories (240 feet). The project would create a series of waterfront open spaces

ranging from 2.3 to 9.7 acres. See response to Ms. Tinsley's comment at Response to Comment S-3.

The comment requested further "refinement, study and analysis of the project design, impacts, and alternatives in order to provide a project that achieve consistent with existing adopted City plans and policies...." See response to Ms. Tinsley's Comment SS-4.

PH-29 **Pamela Drake** comments that "the traffic is a real problem." As stated in Master Response G, for each significant traffic impact, the DEIR identifies feasible mitigation measures to achieve acceptable levels of service. The exceptions are intersections for which impacts are significant and unavoidable because physical constraints make mitigation infeasible or jurisdictional issues make mitigation infeasible because its implementation is beyond the City of Oakland's sole control.

The comment states concert with the proposed proximity of development to the waterfront, the internal location of retail, and the density of housing. The comment offers alternative scenarios for the project (more public space, performance-art space, more retail, including waterfront-oriented retail). These topics pertain to the project's design and program which are not environmental impacts under CEQA, as discussed in Master Response H. City decisionmakers will evaluate the appropriateness of the proposal as it considers the merits of the project.

The comment asserts that the proposed development of the project site would have adverse economic effects. DEIR Section IV.J (Population, Housing, and Employment) includes a detailed discussion of the project's potential direct and indirect impacts on businesses and jobs. Impact J.2 (DEIR p. IV.J-28) identifies and discusses the less-than-significant impact that the project would have regarding the displacement of existing businesses and jobs. As stated in Response to Comment S-46, starting on DEIR page IV.J-33, the DEIR discusses the potential indirect impacts of the proposed retail development and concludes on page IV.J-40 that the project would not lead to significant indirect physical impacts related to retail markets. Starting on DEIR page IV.J-41 the DEIR discusses the potential indirect impacts on housing markets from the proposed residential development and concludes on page IV.J-46 that the project would not lead to significant indirect physical impacts related to housing markets.

PH-30 **Sandra Threlfall, representing Waterfront Action**, discusses support of the Estuary Policy Plan vision, specifically that of waterfront access and the visibility of open spaces. Existing structures on the project site (Jack London Aquatic Center, Jethro Cash and Carry) limit visibility of the existing Estuary Park, as noted by the comment, and the project proposes a new building (Parcel N) on the location of one of the existing structures. A Parcel N Variant is described in Chapter II of this FEIR that provides opportunities for additional open space between the Aquatic Center and Parcel N development. Also, each of the alternatives (except Alternative 1A: No Project) presented in Chapter V of the DEIR includes a scenario in which Parcel N would be redeveloped as

open space. See also Response to Comment B-8 and U-17 regarding impacts on views of new open space areas and the waterfront. Prior to its action on the project, City decisionmakers will evaluate the project alternatives and ultimately reject the alternatives and adopted the proposed project, or alternatively elect one or a combination of the alternatives analyzed, instead of the project.

PH-31 **John Sutter** addresses the comparative open space of the Estuary Policy Plan to that of the proposed project. The DEIR provides this analysis starting on page IV.L-15.

The Estuary Policy Plan depicts Crescent Park on land created by demolition of the Ninth Avenue Terminal. The comment mistakenly suggests that Crescent Park is not located on the site of the demolished Ninth Avenue Terminal, and that only the project proposes to demolish the Terminal to create the comparable Shoreline Park. Alternatives that retain all or parts of the Ninth Avenue Terminal, and thus provide varied open space configurations and acreage, are described and analyzed in DEIR Chapter V (Alternatives) for consideration by City decisionmakers on the project.

Also, Mr. Sutter provides the following inaccurate response to the Commission: “The early draft [of the Estuary Policy Plan] did say that [advocate demolition of the Terminal], and then I think when it got to the City Council changed their mind but they didn’t change the graphics.” The adopted Estuary Policy Plan (June 1999) includes the following policy statement on page 90:

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.

The policy discussion that follows onto page 91 of the Estuary Policy Plan includes the following:

Recognize that the Ninth Avenue Terminal shed, or portions thereof, may be suitable for rehabilitation and adaptive reuse. However, the terminal building impedes public access to and views of a key area of the Estuary.

The Port and City should investigate the feasibility of keeping and reusing the building (or portions thereof). A Specific Plan for the entire District should be initiated prior to development.

This adopted text reflects revisions outlined in the February 10, 1999 staff report to the City Planning Commission regarding “Consideration of Draft Estuary Policy Plan” (Case File NO. GP98-114 / ER98-12). on June 8, 1999, the City Council approved City Resolution 75037 C.M.S. to adopt the Estuary Policy Plan as revised by the Planning Commission and with no further revisions to Policy OAK-2.4, its supporting text, or illustrations related to the depiction of the Ninth Avenue Terminal.

Illustrations in the Estuary Policy Plan consistently show the Ninth Avenue Terminal removed. These specifically include Estuary Policy Plan Figure III-10 (Oak to 9th District Illustrative Open Space Key Map on p. 97), Figure III-11 (Oak to 9th Bird's-eye Perspective on p.89), and Figure III-14: Oak to 9th District Illustrative Circulation on p. 99). Additionally, Resolution No. 75037 C.M.S. included confirmation of the certification of the Estuary Policy Plan EIR that included the following mitigation to address the significant and unavoidable impact that would result from demolition of the historic resource:

Mitigation Measure 4: Analyze alternative configurations of the park proposed for the Ninth Avenue Terminal Shed area. Prior to issuance of demolition permits, the lead agency for the project will complete an analysis of alternative configurations of the park to determine if an alternative configuration could result in the preservation of the Ninth Avenue Terminal Shed or portions thereof.

The resolution also approved the City's statement of overriding considerations of why the benefits of the project (Estuary Policy Plan with Terminal potentially demolished) would outweigh the significant and unavoidable impact.

PH-32 **Chris Durazo** states concerns regarding project impacts on affordable housing and jobs. The comment specifically outlines considerations and opportunities that may facilitate accessible affordable housing opportunities and avoid displacement. City decisionmakers will consider this information in addition to the DEIR analysis of affordable housing (DEIR p. IV.J-42), the displacement of existing housing units/population (Impact J.1) and businesses/jobs (Impact J.2) on DEIR p. IV.J-28.

The comment also states concern with industrial land conversion, which is a policy issue that the City of Oakland is currently deliberating at a citywide level. Its decision on the proposed project would reflect the City's policy position on this issue for the Oak to Ninth Avenue project site. The existing General Plan land use designations on the project site do not envision industrial uses.

PH-33 **James Vann, on behalf of the Coalition of Advocates for Lake Merritt (CALM)**, calls for the City to ensure that the project provides minimum 45 percent open space; maximum views of the Estuary as defined in the Estuary Policy Plan; quality amenities; jobs and housing provisions outlined by the Community Benefits Coalition; and preservation of all or part of the Ninth Avenue Terminal. See response to CALM's Comment AA-2 that restates these issues.

PH-34 **Sanjiv Handa** urges the Commission to consider previous comments regarding the project not following the Estuary Policy Plan and issues of long-term consequences of the project in light of its consideration of non-CEQA related matters (labor-related). The comment acknowledges the City's stated lack of resources for public services (park maintenance, police service, etc.), mentions the City's consideration of a future surcharge

for new development, and the City's responsibility to ensure that public information is consistently accessible on the City's website. Last, Mr. Handa states his intention to provide information regarding problems that have resulted from past Planning Commission actions. These issues are not relevant to the project impacts under CEQA and do not address the adequacy of the DEIR analysis. The comment is noted.

Resumed Comments from the Planning Commission

- PH-35 **Commissioner McClure** asks if the project is receiving any City subsidy or set-aside areas for affordable housing. Claudia Cappio, Development Director, responds that the developer has not, at this time, requested subsidies and recognizes the potential for subsidies to be discussed during the course of project review, particularly related to affordable housing. The comment is not relevant to the project impacts under CEQA and does not address the adequacy of the DEIR analysis. However, as stated in Master Response H, since publication of the DEIR, Development Agreement discussions among the City, the Oakland Redevelopment Agency, and the project sponsor are underway and include negotiations on a number of affordable housing units to be provided within the Oak to Ninth Avenue Project site and a number within the Central City East Redevelopment Plan Area in an effort to help the City meet its requirements under state law.
- PH-36 **Commissioner McClure** provides comments that do not address project impacts under CEQA, the adequacy of the DEIR analysis, or any aspect of the project. The comment is noted.
- PH-37 **Commissioner Boxer** asks for direction regarding potential litigation on the matter of a requirement to adopt a specific plan. See Master Response A regarding the direction in the Estuary Policy Plan regarding preparation of a specific plan and legal context of the issue.
- PH-38 **Commissioner Lee** provides comments that do not address project impacts under CEQA, the adequacy of the DEIR analysis, or any aspect of the project. The comment is noted.
- PH-39 **Commissioner Lighty** provides comments regarding the fundamental different visions in the Estuary Policy Plan and the project and discusses the underlying policy assumptions associated with the Tidelands Trust designation on the site that prohibit "long-term private ownership" and require "maritime related uses." The DEIR describes and evaluates the Estuary Policy Plan vision and the project in DEIR Section IV.A (Land Use Plans, and Policies) starting on page IV.A-11 and throughout the impact analysis starting on DEIR page IV.A-35. The Estuary Policy Plan scenario is also described and evaluated starting on DEIR page V-10 as Alternative 1B (No Project / Estuary Policy Plan). See Response to Comment GG-18 that discusses considerations related to the Tidelands Trust designation on the site and the separate land exchange transaction that is not a part of the proposed project.

The comment acknowledges the fundamental difference in the amount of open space proposed by the project and that analyzed in the Estuary Plan EIR and illustrated in the Estuary Policy Plan (DEIR p. IV.L-16 and Table IV.L-2), which the Commission must consider.

The comment asks if the project's inconsistency with the Estuary Plan land use classification and zoning district is an environmental impact. Consistent with the City of Oakland's 2004 CEQA Thresholds/Criteria of Significance Guidelines provided on DEIR page IV.A-34, the project would result in a significant impact if it would "fundamentally conflict with any applicable land use plan..." However CEQA acknowledges that conflict with a General Plan does not inherently result in a significant effect on the environment. Section 15358(b) states that "effects analyzed under CEQA must be related to a physical change." The City has, as is within its discretion, elected to identify the project's inconsistency with the existing Planned Waterfront Development (PWD-1) Estuary Plan land use classification and existing M-40 Heavy Industrial Zone a potentially significant impact (Impact A.2) in the DEIR. The proposal for a General Plan Amendment and Planning Code Amendment (and subsequent City approval of each) constitute mitigation measures (Mitigation Measures A.2a and A.2b on DEIR p. IV.A-38) that will effectively reduce this impact to less than significant. To the extent that the project's General Plan conflict or inconsistency could result in a physical impact, those impacts are identified and fully analyzed in the relevant sections of Chapter IV (Setting and Impact Analysis).

The comment states that the EIR should study project alternatives specifically put forward by Naomi Schiff (Oakland Heritage Alliance) and alternative development along 5th Avenue. Key aspects of these alternatives, and several other alternatives put forward by the community that include preservation of all or larger parts of the Ninth Avenue Terminal, are incorporated in the alternatives analyzed in Chapter V (Alternatives) of the DEIR. The approach and specifics regarding this effort is discussed under *Suggestions Incorporated into the Selected Alternatives*, starting on DEIR page V-2.

The comment also questions the idea that the achievement of open space is dependent on the demolition of the landmark Terminal, which is an issue the City must consider during its deliberations on the project. The comment does not address the adequacy of the DEIR analysis and is noted

PH-40 **Commissioner Jang** comments on the core concepts of the Estuary Policy Plan vision and the City's charge to evaluate the proposed specific regarding residential development, parks, open space, and connections therein. The comment also addresses considerations of historic preservation in light of a development proposal and economic considerations. These comments do not address the adequacy of the DEIR analysis and re noted.

PH-41 **Commissioner Jang** also opines that the project should consider alternative phasing that might put initial development and open space in the most visible section of the project site. Developer Cappio responds consistent with Master Response G, which discusses the

phasing of open space and the key consideration of the required site cleanup that must occur and drives the proposed project phasing.

- PH-42 **Commissioner Jang** notes a typographical error in the DEIR Appendix Figure C.2b regarding the lane configuration at the intersection of Webster Street and 8th Street, and the corrected figure is included as **Figure III-2** in Chapter III (Changes to the Draft EIR) of this FEIR. The comment also states concern with pedestrian safety issues. Impact B.6 addresses pedestrian safety and is discussed in detail in the context of existing traffic control devices and the relationship of vehicular traffic volumes and pedestrian safety starting on DEIR p. IV.B-55.
- PH-43 **Commissioner McClure** asks if there was a specific formula or rationale used for the amount of open space envisioned in the Estuary Policy Plan. Commission discussion and an unidentified public speaker offered that the existence of the Tidelands Trust designation on the site essentially limited these areas to park use. The comment does not address the adequacy of the DEIR analysis and is noted.
- PH-44 **Commissioner McClure** asks if the 120-acre Oak to 9th District that would have been addressed by a specific plan is considered in the project. Director Cappio responds that the proposed project addresses approximately 62 acres of the Oak to 9th District south of the Embarcadero and under Port control. She discusses that aspects of the project and other unrelated efforts (i.e., Measure DD, Lake Merritt Master Plan) that address issues in the area north of the Embarcadero, and area not controlled by the Port (and thus not part of the proposed project).

The comment also asks about the community involvement process for the project and whether it is equivalent to what would be under a specific plan process. See Master Response A, which addresses this topic in detail.

CHAPTER VIII

Responses to Comments at the Parks and Recreation Commission Public Hearing on the Draft EIR

The Parks and Recreation Commission (PRAC) held a public hearing on the Draft EIR (DEIR) on October 12, 2005. The following is the transcript of the public hearing, and responses to each comment are provided following the transcript. Responses provided in this section specifically focus on statements that pertain to environmental topics under CEQA and the adequacy of the analysis in the DEIR. Statements regarding the project are identified and responded to as appropriate.

Comments relevant to the DEIR start on page 15 of the transcript.

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OAK TO NINTH AVENUE PROJECT
DRAFT ENVIRONMENTAL IMPACT REPORT
PARKS AND RECREATION ADVISORY COMMISSION

PUBLIC COMMENTS

OAKLAND, CALIFORNIA

WEDNESDAY, OCTOBER 12, 2005

PUBLIC COMMENTS

Reported by:
DANA M. FREED
CSR No. 10602
JOB No. 39388

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OAK TO NINTH AVENUE PROJECT
DRAFT ENVIRONMENTAL IMPACT REPORT
PARKS AND RECREATION ADVISORY COMMISSION



PUBLIC COMMENTS, taken at Lakeside Park
Garden Center, Vista Room, 666 Bellevue Avenue,
Oakland, California, beginning at 5:12 p.m. and ending
at 6:46 p.m. on Wednesday, October 12, 2005, before
DANA M. FREED, Certified Shorthand Reporter No. 10602.

1 Oakland, California
2 Wednesday, October 12, 2005
3 5:12 p.m. - 6:46 p.m.

4
5 CHAIR WEBB: Moving on to 12C. We have
6 several speakers. If you have not filled out
7 a speaker card, if you could please fill out the card
8 before you speak.

9 And what we're going to do, I guess we're
10 going to have a staff presentation.

11 MS. JONES-TAYLOR: Yes, are you ready?

12 You have before you a huge file and
13 information that was sent to you prior to regarding
14 the Oak to Ninth Street Project. And Claudia Cappio
15 is the director for that and she certainly is ready to
16 answer any questions and to make a report.

17 MS. CAPPIO: Thank you, Commissioners and
18 members of the public.

19 This is a public hearing to allow the public
20 and the Commission to review and comment on the Draft
21 Environmental Impact Report for the Oak to Ninth
22 Project. The key purpose of this meeting is to
23 provide comments on the actual report in front of you
24 which I know is rather intimidating but you've
25 probably only read parts germane to your topic area

1 and also allow the public to review and comment as
2 well. The purpose of an EIR is an information base,
3 an appropriate and adequate information base in order
4 to determine, identify, and mitigate environmental
5 impacts of the proposed project. With that
6 information base, the public and the decision makers
7 will then be better informed and they must review and
8 comment on the document prior to taking final action
9 on it.

10 The project entails residential, commercial,
11 and recreational uses on a 64-acre site called the
12 Oak to Ninth site. It's in the City's Estuary Policy
13 Plan as a specific area for change and redevelopment
14 and also the inclusion of new park and recreational
15 areas. The PRAC by local ordinance is charged with
16 reviewing new recreational facilities and making
17 recommendations to the Planning Commission.

18 So in terms of your role here, we're bringing
19 you the Environmental Impact Report in an effort to
20 introduce you to the project and then so you're better
21 ready to make actual recommendations. You don't have
22 to do that today, but you do have to do that in the
23 future.

24 At this time again we request, our practice
25 is to request to take public testimony, give public

1 comments to me and to the developer. And, thereafter,
2 all the comments that are received will be compiled in
3 the Final Environmental Impact Report and that will,
4 that report will be brought back to you in time for
5 you to make recommendations and spot any other
6 comments you wish to make to the Planning Commission
7 during consideration of the actual project.

8 With that, I'd like to introduce
9 Michael Ghielmetti of Signature Properties. He is one
10 of the development team.

11 CHAIR WEBB: So what we will do is that
12 we will have the developer give a 10-minute
13 presentation, open it up to the public, and then we'll
14 give the developer up to 10 minutes to respond.

15 And again, just to remind everyone, if you
16 want to speak at today's, at today's hearing including
17 the developer to sign a speaker card and give that
18 to Mary.

19 MR. GHIELMETTI: Is this working?

20 CHAIR WEBB: It's working fine.

21 MR. GHIELMETTI: So I just want to introduce
22 myself, Mr. Chair, members of the Commission. I'm
23 Michael Ghielmetti with Signature Properties.

24 We are a mixed use and residential developer.
25 We've done several projects in Oakland. We're here

1 today to talk to you about the Oak to Ninth area. I
2 don't know if everyone can see.

3 A little about the project. We got involved
4 in it about 2001, so we have been working with the
5 Port of Oakland for about four years, owned by the
6 Port. The Port is selling it to us and -- well, the
7 project area is, the project area is this roughly 64
8 acres with the exception of an area in the middle of
9 the Fifth Avenue area. As you can see, the site is
10 fairly well isolated from most of the city
11 (indicating). It is by the freeway, the train tracks,
12 et cetera. The site is very contaminated so we had
13 a distinct challenge here.

14 Maybe we can do a couple other.

15 These are pictures taken from various vantage
16 points. This again is the shoreline conditions.

17 And the next one. This is our slide that
18 somehow got whited out, but we have parkland on about
19 28 acres of the site; and Boris Bramov from ROMA is
20 going to talk more about the parks. I know that's the
21 emphasis for today.

22 But just to give you a little update on
23 the rest of it. There's 3100 units. We're proposing
24 roughly 200,000 square feet of retail commercial uses
25 and a little under 200 marina slips in this 28-acre

1 park. We saw it as our task not only to obviously
2 make a financially viable project but to make
3 a project that could contribute to Oakland's welfare
4 by cleaning up the contaminated site, by generating
5 the typical amount of tax revenue, by market rating
6 affordable housing, and being able to produce jobs for
7 the city.

8 The parks -- here again Boris will get
9 into -- these are indicative of some of the shapes and
10 scale of the parks. And this is what we have in mind
11 for retail, wide sidewalks, some these are Oak to
12 Ninth. That's the Market Hall in Oakland. Some of
13 these are from various cities around California and
14 the West Coast. We want to create these dynamic
15 residential districts, so that all the sidewalks feel
16 friendly with front doors or retail that face them
17 so you don't have dead streets.

18 Again, wide sidewalks, street tree programs.
19 This is a big park in Vancouver that is separated by
20 a street from some very tall residential buildings.

21 And again, the (inaudible) smart growth
22 density being able to serve the site with transit,
23 being able to be close to transit and jobs and other
24 retail like Jack London Square helps support its
25 development. That was a goal of ours.

1 And I'll turn it over to Boris in half
2 a second.

3 One other thing I did want to point out is
4 we have been working with the public for a little over
5 four years now. I've met with dozens of community
6 groups, business groups, civic groups, and
7 neighborhood associations around Oakland to try and
8 make this project what it is today. And we've learned
9 a lot in the process and met a lot of nice people.

10 So Boris is going to talk about the parks
11 in a little bit more detail, then obviously we'll be
12 available after to answer questions.

13 CHAIR WEBB: And for the benefit of the
14 court reporter, if you could state your name and spell
15 your name and speak slowly and distinctly, that would
16 be appreciated.

17 MR. BRAMOV: My name's Boris Bramov,
18 B-o-r-i-s, B-r-a-m-o-v. I did a pretty good job of
19 spelling that. And I'm president of ROMA Decision
20 Group.

21 One of the things -- I'm going to try to do
22 this really fairly quickly so that we keep to our time
23 frame. But I did want to point out a few of the
24 things that we have learned as a context for the
25 Oak to Ninth area.

1 We spent about 25 years working on the
2 transformation of urban waterfronts and the real issue
3 is how do we make them a sustainable place, how do
4 we bring activity? How do we reconnect them back to
5 the City?

6 A great example of one that we worked on
7 almost 20 some years ago was the Northeast waterfront.
8 This industrial area here as it is today. And we
9 learned a lot about what it really takes. That
10 balance between activities and the right scale of
11 open space in order to really make them a meaningful
12 part of the city that serves the community.

13 I know in San Francisco they really didn't
14 want this piece of downtown waterfront to just be
15 a tourist attraction. They wanted it to be part of
16 the community as a whole.

17 Go on.

18 You know, similarly in smaller scale, this is
19 Suisun up in the Delta, the transformation of this
20 area. And again, making it work for that community.
21 And this is one of the parks that we built right on
22 the waterfront area and we cleaned that entire
23 shoreline.

24 Next one.

25 Portland South Downtown Waterfront, an old

1 plywood factory. Here it is today. And with
2 a significant amount of open space directly adjacent
3 that work in a whole variety of ways. Similar sizes
4 of open space, by the way, that we're talking about
5 here in the Oak to Ninth area.

6 Next one.

7 And Vancouver. Much higher density. Again,
8 this was a rail yard when we began the master plan.
9 And here it is being built today, still a few
10 high-rises to go.

11 Wait a second. Oh, there it is. Sorry.
12 Still a few high-rises to go. So really, you know,
13 major open space area in conjunction with a
14 significant amount of residential development that
15 goes with it.

16 Next one, please.

17 Let's look at, let's look at Oak to Ninth
18 very quickly. One of the big things we found here
19 right from the beginning and we looked at this as part
20 of the estuary plan and then subsequently continuing
21 on with Michael and his group and the Port to develop
22 a plan. But we've got a very significant barrier
23 here, very significant barrier that's not going to go
24 away (indicating).

25 So one of the major considerations is how do

1 we reconnect Oakland to the estuary? How do we create
2 enough activities there? How do we create open space
3 that's sustainable, you know, that can be maintained
4 over a period of time feeling comfortable, safe,
5 usable, that doesn't become a drain onto the
6 community. And our feeling right from the beginning
7 was that we needed to have a new neighborhood here in
8 order to bring Oakland to the waterfront and reconnect
9 it.

10 One of the problems at the time of the
11 Estuary Plan was that there was not a desire to look
12 at the constraints of the Tidelands Trust which was
13 on this property, which subsequently has been agreed
14 to be looked at. And therefore, the opportunity for
15 making that neighborhood happen has been opened up
16 since the development of that plan.

17 Next one.

18 So part of what we really work very hard is
19 how do we create a viable neighborhood here that
20 brings Oakland to the waterfront and then puts enough
21 activity so that the open spaces that we create here,
22 which is a significant goal of the area, can be really
23 successful and meaningful to the city.

24 Next one.

25 Very quickly. Again, I'm sorry, all the

1 slides seem to get washed out in this environment of
2 life. But one of the things right from the beginning
3 was to create a structure for all of the public ways
4 that would enhance both views to the waterfront and
5 access to the waterfront area.

6 So one of the first things you do in making
7 a neighborhood that really improves the accessibility
8 to the estuary is to really connect it in a variety of
9 ways. But not only connect it from the point of view
10 if I'm driving down the Embarcadero I have a view,
11 but really creating the vistas to the waterfront from
12 the areas and not deteriorating those vistas with some
13 of the barriers that already exist here as well.
14 So all streets connect to the waterfront, all streets
15 connect and open up views to the waterfront, and all
16 streets create public access to the public open space
17 along the shoreline.

18 One of the key things in terms of waterfront
19 open space is, how do you make it enhance aquatic
20 resources and recreational boating? I mean, this is
21 a case of where we want the open space to create
22 an immediacy to the waterfront and the opportunities
23 for recreational use.

24 The plan very quickly. We move some covered
25 areas, dredges other areas, improves other areas for

1 boating. So the significant goal is really not only
2 make open space on land, but create the open space and
3 recreational activities associated with the estuary as
4 a whole.

5 Next one.

6 So examples, you know, the kind of boating
7 activities that exists here now that can be enhanced
8 even further.

9 Same thing. Improving the quality of the
10 shoreline. You saw in one of the slides that Michael
11 was showing you of the existing conditions what it's
12 like now. But this plan enhances the entire shoreline
13 in the area and enhances public accessibility at the
14 same time in the waterfront environment and certainly
15 prevent flooding.

16 So just very quickly some different
17 conditions here a soft green edge that improves the
18 habitat value of that shoreline.

19 Next one.

20 Other areas where there might be more of a
21 ruffraff edge. And in all of these, which are hard to
22 see on the slide, are the bikeways and trails, the
23 extension of the Bay Trail along the entire edge of
24 the project as a whole.

25 Next one.

1 Again, different kinds of conditions along
2 the shoreline.

3 Next.

4 Here in Clinton Basin a much more urban edge
5 with a bulkheaded wall really creating
6 a different sense of the waterfront looking directly
7 down to it and to the boating activities. And
8 an example of that kind of condition (indicating).
9 So not only the more natural setting, but also the
10 kind of urban recreational opportunities that Clinton
11 Basin provide.

12 Next one.

13 The existing bulkhead wall improved. This is
14 an existing wall improved with public access and
15 shoreline trails along the edge.

16 Next one.

17 And even the piles-supported structure of the
18 Ninth Avenue Terminal being used for recreation and
19 open space. And one of the things people ask, well,
20 can you do recreation on a pile-supported structure?
21 Here's an example. Battery Park City. The entire
22 area is on a pile supported structure. Great green
23 and accessible park created that way.

24 Next.

25 So, you know, a whole series of open spaces.

1 We have 28-and-a-half acres approximately of open
2 space here with 20.7 of new open space. The remainder
3 are in the existing Estuary Park, which is also being
4 enhanced and made a part of this area. So you can see
5 each one of these along the area.

6 Flexible open spaces, more of a natural
7 environment of wetlands that are being restored here.
8 Opportunity for children's play areas, bocce ball,
9 informal gatherings, et cetera, all along the
10 shoreline and more urban experiences right here in
11 Clinton Basin (indicating). You know, this is going
12 to be one of the unique places not only in all the
13 Bay Area, but probably in the world.

14 Next.

15 Just some quick examples of what happens when
16 we enhance the recreational experience, that immediacy
17 to the water's edge that is so critical.

18 Next.

19 The promenade. Some of these are from
20 Vancouver, these are from other places. But again,
21 enhancing these --

22 Oops. I forgot to turn off the phone. Sorry
23 about that.

24 Enhancing the accessibility but also
25 connecting all of these different park areas. Again,

1 examples of how some of these open spaces -- this
2 would be an example of the kind of open space that
3 might be located closer to the Lake Merritt area.

4 Next one.

5 These are examples of the more flexible kind
6 of open spaces. These are all from the Marina Green
7 area, the kinds of activity that could take place in
8 some of these.

9 We would definitely be connecting to the
10 Bay Trail along the entire shoreline and providing
11 future connections along the Lake Merritt Channel to
12 Lake Merritt itself as those are being developed.

13 Basically, a program that creates a
14 sustainable and vibrant estuary and brings Oakland
15 to the waterfront, brings activities and a sense of
16 neighborhood to the waterfront and creates the kind
17 of publicly accessible open space that is, enhances
18 the immediacy and the activities along the waterfront.

19 Thank you.

20 CHAIR WEBB: All right. Thank you.

21 Do any Commissioners have questions?

22 I notice in the plan that you have a, you
23 state that 43 percent of the project is for other than
24 open space and 60 percent is open space. How do you
25 define "open space" and what does that 43 percent

1 comprise? 43 percent open space and proposed project
2 is 43 percent.

3 MR. GHIELMETTI: The open space I think is
4 44 percent or probably 44 percent. It was a little
5 over 28 acres, and so that's what --

6 CHAIR WEBB: I'm sorry?

7 MR. GHIELMETTI: The Estuary Plan called for
8 more. I think it was closer to 60 percent.

9 CHAIR WEBB: Okay.

10 COMMISSIONER MAGID: Do we have some
11 questions now?

12 CHAIR WEBB: Yeah, the Commissioners have
13 a few questions then we'll open it up.

14 Commissioner Abad.

15 COMMISSIONER ABAD: Yeah. I'm not sure
16 whether you want to just kind of list these and if
17 they aren't asked again then we pick them up again,
18 but I've got quite a few questions.

19 Number one is the park-maintenance issue and,
20 you know, how that's going to be maintained.
21 Are there going to be condo or residential fees,
22 you know, a lot of times these are going to be
23 supposedly public, you know, areas. However, when you
24 build these kind of residential there's usually some
25 kind of a fee that goes along with the upkeep of the

PR-1
cont.

PR-2

1 area. You know, who -- really is this just strictly
2 a private developer who's benefiting by the sales or
3 whatever's happening with these residences?

PR-2
cont.

4 Parking spaces, you know, for 3100 spaces of
5 200,000, you know, feet of retail they plan to provide
6 parking. Is this going to infringe upon existing
7 recreational facilities there? And whether there's
8 been any thought about recreational sitters since
9 you're going to have 28 acres of recreational space.
10 Is there going to be a place where something can
11 happen with that? What's going to happen with park
12 patrol? If these are all public park areas, will
13 there be additional park patrol?

PR-3

PR-4

14 CHAIR WEBB: I don't want to go through these
15 questions one at a time. Why don't we do this?

16 COMMISSIONER ABAD: That's why I thought
17 I'd give them all to him.

18 CHAIR WEBB: I think some of these, some of
19 these questions are going to be raised by members of
20 the public.

21 COMMISSIONER ABAD: Exactly. That's why
22 I'm just going through testimony and I'm not asking
23 him for an answer now. But if anything is not
24 answered in the end, I'd like to make sure we have
25 them answered.

1 MR. GHIELMETTI: Would you like me to wait?

2 COMMISSIONER ABAD: Yeah. The last one thing
3 is just, you know, if you are bringing in 3,000
4 residential units, you're going to need to have a
5 school in that area because there are not schools in
6 that area to absorb 1500 to 3000 students.

7 So anyway, that's my list.

8 MR. GHIELMETTI: What's the academics plan
9 to do.

10 CHAIR WEBB: Why don't we do this? Why don't
11 we open it up to public comment and then if the
12 Commissioners have any specific questions.

13 What we're going to do -- again, if you have
14 not filled in a speaker card and you want to have
15 something to say, please do so and turn that in to
16 Mary.

17 We're going to just start with Keith Miller.
18 And each speaker is going to be limited to two
19 minutes. So we have Keith Miller, Helen Hutchison,
20 and Sandy Threlfall.

21 MR. MILLER: Should I use this?

22 CHAIR WEBB: Yes.

23 MR. MILLER: Keith Miller, K-e-i-t-h,
24 M-i-l-l-e-r.

25 My name is Keith Miller. I'm the president

PR-5

PR-6

1 of California Canoe and Kayak, Jack London Square.
2 I'm a resident of Oakland and 90-plus percent of my
3 employees live in Oakland. I'm on the board of
4 directors of the Jack London Aquatic Center, although
5 I don't speak for the Board. I have a degree in
6 Recreation. I'm a big parks fan. My company over the
7 last 12 years has raised and donated close to \$20,000
8 and donated to Friends of Oakland Parks and Rec and
9 that money has gone to the Lake Merritt and day camp
10 programs and also to JLAC.

11 When I first heard about this project years
12 ago, I wrote a frightening e-mail to several people
13 scarily thinking that the Port of Oakland was selling
14 off our beloved Aquatic Center and our Aquatic Center
15 was going to disappear under this huge development.

16 Since then I'm liking this project more and
17 more. I need to know, I need to learn more about it
18 and listen to more comments. But from a business
19 perspective, you know, I have a vested interest in
20 what goes on on the waterfront. Having a kayak shop
21 without water access is like having an airplane shop
22 without a runway nearby.

23 So I'm liking what I see, I like the number
24 of people that are going to be there. From what
25 I'm seeing, it's a very thoughtful project. It

PR-6
cont.

1 started out with I believe less than 18 acres of open
2 space and now it has upward of 28 acres, so I'm, I'm
3 liking what I see.

PR-6
cont.

4 And I'll stop my comments here. There will
5 be plenty of time later.

6 CHAIR WEBB: Okay. Thank you.
7 Helen Hutchison.

8 MS. HUTCHISON: I'm Helen Hutchison, it's
9 H-e-l-e-n, H-u-t-c-h-i-s-o-n. And I am president of
10 the League of Women Voters of Oakland.

11 The League is preparing a formal response to
12 the Draft EIR. But for today I would just have the
13 statement of position and a series of questions. The
14 first is just a statement of position.

15 The League supports full compliance with the
16 Estuary Policy Plan. The Estuary Policy Plan was
17 developed through a process that included lengthy
18 public decision, debate, and compromise with
19 representation from developers as well as
20 the community at large and that process should be
21 respected.

PR-7

22 And then I have a series of questions that
23 because this is, we're focusing on parks today focus
24 on the parks phase. And so we ask when you evaluate
25 this proposal you pay attention to some of these

1 questions, some of which you've already raised. Just
2 the total amount of open space in the area as compared
3 to what was recommended there, what was stated in
4 the Estuary Policy Plan.

5 Parking.

6 Visual access to the open space, the
7 varieties of usage within the development and how it
8 balances within that development and also with the
9 rest of the waterfront. The ability of homeowners
10 around the park to limit public access or use of that
11 land. The Estuary Policy Plan calls for the
12 development in Oak to Ninth area to create a strong
13 tie between Lake Merritt and the estuary. And then
14 we'll just ask, does this plan facilitate that?

15 Finally, we request that you look at the
16 maintenance issues. If homeowners are paying for the
17 maintenance, how do we insure that the full public has
18 access to that land over the long-term? And does the
19 guarantee of maintenance costs include maintenance for
20 that wooden pier over the long haul?

21 Thanks very much.

22 CHAIR WEBB: Thank you.

23 We have Sandy Threlfall. And then after that
24 we're going to have John Sutter, Marina Carlson, and
25 Margaret Elizares.

PR-7
cont.

1 MS. THRELFALL: Good afternoon,
2 Commissioners. Thank you for this opportunity to
3 speak. My name is Sandra, S-a-n-d-r-a, Threlfall,
4 T-h-r-e-l-f, as in Frank, a-l-l. I am the executive
5 director of Waterfront Action and part of our mission
6 is support of the Estuary Policy Plan.

7 I would like to make clear that the
8 Waterfront Action does not have a position on housing.
9 We are looking at it from a land use point of view,
10 open space, access to the water. So we are in support
11 of the original 41.5 acres that the Estuary Plan
12 set up as opposed to the 28.4 that is offered in the
13 Oakland Harbor Partners.

14 There are a couple of things I would like
15 to share with you, given that you are park
16 commissioners.

17 Over 120 years ago Frederick Wall Homestead
18 made a proposal for a chain of parks throughout the
19 City of Oakland. And as a result, Lake Merritt, which
20 is one of our true gems, was realized. One of the
21 real draws of Lake Merritt is that it's easily
22 visible. You can drive by, you can see it, you can
23 see people there, people feel safe there because of
24 its visibility.

25 Later in the 1900s Mayor Mott engaged planner

PR-8

PR-9

1 Charles Mulford Robinson to a plan of the city. And
2 his comment was that residents had no access to their
3 glorious waterfront and part of that, speaking about
4 planner, is Estuary Park to me is a very good example
5 of a park that does not work. It's on the west side
6 of the channel, it has a large concrete building,
7 Jethro Park and Shop or something. Anyway, you can't
8 see it so people don't use it.

9 This park was designed by Lawrence Halpern.
10 I mean, where are the whistles and bows? People need
11 to see open space in order to know that it belongs to
12 them. When we put impediment into their visual
13 landscape then it privatizes the plan by default.

14 Thank you.

15 CHAIR WEBB: Thank you.

16 John Sutter.

17 MR. SUTTER: I'm going to distribute some
18 maps.

19 My name is John Sutter. I'm the member of
20 the Board of the East Bay Regional Park District
21 representing most of Oakland on the Park District
22 Board, but I come here as an Oakland citizen.

23 I have been concerned about the waterfront
24 for many years. This is our property. One thing that
25 needs to be emphasized. This is our public land and

PR-9
cont.

PR-10

1 this land was acquired only after a long, bitter
2 fight. The first layer of the City of Oakland
3 basically robbed the waterfront and it took 60 years
4 of litigation to get it back. The Port of Oakland has
5 been operating it since then, but this is a program to
6 privatize our waterfront and I'm not saying that's
7 a bad thing to do on the part of Oakland, but this is
8 our one chance and by golly we better do it right.

9 So I hope you take the time it needs to look
10 at this important project. It may be the most
11 important thing you do when you serve on the PRAC.
12 This is our last opportunity on the waterfront.

13 Now others have looked at it. The Estuary
14 Policy Plan was developed by the City after a two-year
15 study. There was a 27-member advisory committee.
16 This City spent a million dollars on this plan.
17 It was adopted by the Planning Commission and by the
18 City Council. It is part of the General Plan. It was
19 also adopted by the Port.

20 It calls for a lot more open space than the
21 developer's plan provides for. In fact, there's about
22 a 40-percent reduction of the new open space which was
23 called for by the Estuary Policy Plan as compared to
24 this developer. If you look at that map, that will
25 show you, the shaded areas show you the open space

PR-10
cont.

PR-11

1 which was provided by the Estuary Policy Plan.
2 It opened up Estuary Park. Sandy Threlfall has just
3 explained how it's a stealth park, you can't see it
4 from the Embarcadero. The policy plan would open it
5 up by removing the big warehouse there. The
6 developer's plan, however, would keep it a stealth
7 park by building condos where the warehouse is now
8 located.

PR-11
cont.

9 Now, then if you look on the other side of
10 the Lake Merritt Channel, there is the, what is shown
11 as the open meadow. All of the property west of
12 Fifth Avenue was to be open space. Under the
13 developer's plan there was going to be condos as part
14 of that space. At the Ninth Avenue Terminal there was
15 going to be an 11-acre Crescent Park. That disappears
16 in the waterfront, in the developer's park.

17 And what the developer proposes is to
18 demolish the Ninth Avenue Terminal and put a park
19 on top of it. Well that, of course, puts park
20 advocates in a conflict position with the
21 preservationists, because the preservationists want to
22 preserve the Ninth Avenue Terminal and if they prevail
23 there goes maybe 2 to 4 more acres of parkland.

PR-12

24 So you are dealing with a great loss of
25 the potential and I think you have to look at what can

PR-13

1 we do? What is potential for this area? And I hope
2 that you take the time to study it, to tour it, and
3 maybe to have additional meetings so we can have
4 additional input.

PR-13
cont.

5 And I would like to show you what finally --

6 CHAIR WEBB: Quickly.

7 MR. SUTTER: A map. I don't have a fancy
8 draft, but these show you the -- the yellow on this
9 map shows you the areas that were open space under
10 the Estuary Policy Plan but disappeared and become
11 condos or some other buildings under the developer's
12 plan.

PR-14

13 I'm not saying that there's anything wrong
14 with some developer or anything wrong with Signature
15 Properties, but we have a tremendous opportunity here
16 and let's not screw it up.

17 And I just want to say something about some
18 organizations who have looked at this. The, the
19 DD Coalition, which is all the organizations that were
20 involved in Measure DD, have had excessive meetings on
21 this. They've passed a motion which expressed concern
22 about the loss of open space. It also expressed
23 support of the idea of public/private partnerships.
24 The Sierra Club you'll probably hear from and a number
25 of other environmental organizations have said

PR-15

PR-15
cont.

1 don't let us lose our open space.

2 CHAIR WEBB: All right. Thank you.

3 And for the record, Sutter is S-u-t-t-e-r.

4 Again, when you come up to speak, please
5 spell your name for the court reporter.

6 MR. SUTTER: Sorry.

7 CHAIR WEBB: Marina.

8 MS. CARLSON: Yes, my name is Marina Carlson,
9 M-a-r-i-n-a, Carlson, C-a-r-l-s-o-n. I'm
10 a resident of Oakland and live on Tenth Avenue not far
11 from the proposed Oak to Ninth mixed-use development.
12 The people of Oakland who work long and hard to bring
13 good planning policies to Oakland.

14 Our open-space plan and the land-use plan,
15 both which have received awards, and our Estuary Plan
16 specifically call for our public shoreline to be made
17 more accessible to the neighborhoods. It was a major
18 accomplishment to pass those plans and to bring
19 consensus around the need of Oakland.

20 We have also passed by a wide margin the
21 Measure DD money in order to pay to clean up and
22 improve the estuary area. The people of Oakland did
23 this for themselves. It was not done to strip away
24 our public shore and sell it off for private use.
25 I feel betrayed.

PR-16

1 I urge you to vote today and advise
2 the Planning Commission to choose the no-project
3 alternative. At least and until we have implemented
4 better accessibility for the public from the
5 neighborhood. Right now the project gives us some
6 leftover space. The project proposes a high rise that
7 will block views of the water's edge.

8 We should not alter our well thought out
9 General Plan just because a private developer wants to
10 grab the views to condos. I'm very upset that this
11 document would try to pit preservations against
12 open-space advocates. We are one and the same.
13 Advise the Planning Commission to retain the terminal
14 and dock. The highest and best use of the terminal is
15 industrial and could be a jobs-generator. It would be
16 foolish to tear it down. Require an adaptive reuse
17 study before any demolition takes place.

18 I am sure that some of you have heard many
19 complaints from the people living near Estuary Park.
20 They think of the park as their private yard space.
21 We should not repeat the mistakes of the past. Have
22 the EIR include any records of complaints to the City
23 after an event at the park or complaints received of
24 excessive noise from trains.

25 I'd also like to draw your attention to

PR-17

PR-18

1 the section of the document entitled Geologic Hazards.
2 Erosion, settlement, imperfection are all important
3 issues that cannot be adequately mitigated. What this
4 document infers is that the City Building Department
5 would have standard and code requirements that would
6 protect future residents from such hazards.
7 Would this make the City liable in the event we pull
8 out?

9 The streets lightings and utility would all
10 be damaged when there was a seismic event. The City
11 would be responsible for repairing the infrastructure.
12 How much would this cost? Would we depend on FEMA for
13 help? Will the developer take on that responsibility?
14 The cure for this problems is vague.

15 The DEIR states that the developer will do
16 some studies and extra foundation work to make these
17 buildings sound. Would the buildings be built to
18 withstand the seismic event and remain habitable, or
19 are the standards simply to keep the buildings from
20 total collapse and save lives?

21 We've gone to a meet -- I've gone to meetings
22 on a new Bay Bridge -- just one more sentence. I've
23 gone to meetings on the new Bay Bridge and have
24 watched the engineers struggle with the engineering
25 problems associated with building on fill and bay mud

PR-18
cont.

1 that is 100 feet deep. Do we have any information on
2 the depth of mud in this location?

3 Please protect the public trust, protect the
4 public from a private taking of these public lands.

5 Thank you.

6 CHAIR WEBB: Thank you.

7 Margaret Elizares. And then after her we
8 have Joyce Roy, Caroline Kim, and Charles Weber.

9 MS. ELIZARES: My name is Margaret Elizares,
10 M-a-r-g-a-r-e-t, E-l-i-z-a-r-e-s. I'm a retired
11 court reporter.

12 I live out by the Leona Quarry and
13 I invite everyone to come out there and take a look at
14 what's being done there and ask yourself how long it's
15 going to be before that whole thing comes down in the
16 deluge or in an earthquake. That's really good
17 planning. Thank you, Ms. Cappio, our neighbors love
18 you.

19 This Oak to Ninth project is a questionable
20 legality, a specific plan is required and should be
21 done as promised. This project does not comply with
22 the General Plan and the General Plan amendment must
23 be done and it shouldn't be folded into the EIR, CEQA
24 process.

25 I worked as a volunteer on the Estuary Policy

PR-18
cont.

PR-19

1 Plan, spent many hours. The Port and City hired
2 people to thwart the public interest at every turn.
3 Our dream has turned into this nightmare.

PR-19
cont.

4 I will make written comments on the EIR
5 specifically, but for today, I want to say there's
6 insufficient open space, there's lousy access to this
7 area only through narrow Oak Street and Ninth Avenue.
8 There is insufficient parking and no public transit.
9 This is way too dense and too tall. Any good
10 geologist will tell you not to build dense and high
11 housing on bay fill muds. The next big earthquake
12 will liquify those soils, snapping piles, and more
13 dangerously gas maintenance bringing conflagration.

PR-20

14 Oakland has wonderful neighborhoods.
15 We don't need another neighborhood down there.

16 Thank you.

17 CHAIR WEBB: Joyce Roy.

18 MS. ROY: Joyce Roy, J-o-y-c-e, R-o-y.

19 Probably one of the easier ones.

20 I'm speaking on behalf of the Sierra Club.
21 And I passed this out to you, so I don't think
22 I'll read the whole thing except to make a point.

PR-21

23 Sierra Club supports the open-space aspect of
24 the Estuary Policy Plan that was adopted by the
25 City of Oakland after years of public input and they

1 are concerned that this project does not meet it.
2 The main purpose of the plan is to provide for
3 publicly oriented activity and enhance public access.
4 This is a major destination park for the whole city.
5 It's a place where large events should take place.

6 And now I'll put on my Oakland Heritage
7 Alliance hat and speak for them.

8 We are very concerned particularly about
9 the Ninth Avenue Terminal and it's not true that the
10 EPP, the Estuary Policy Plan said they could just be
11 demolished. That's where the graphics are very
12 important. In your graphics you see it gone, but
13 in the text that says that is yet to be studied.

14 So the Port and the City should investigate
15 the feasibility of keeping and reusing the building or
16 portions thereof. A specific plan for the entire
17 district should be initiated prior to development.

18 Now, this, you know, as it's proposed here,
19 this would be torn down and we would have about
20 3- to 4-acres of open space on the piling. I don't
21 know whether it would be Astroturf on top of that or
22 what. This would be much more useful if it became
23 a Fort Mason type use. And in fact, this was where
24 I think the Sierra Club would be happy we should have
25 solar panels on the top of that. It could be really

PR-21
cont.

PR-22

1 well used.

2 And the, the BCDC and the State Lands
3 Commissions have indicated that, because it's
4 a historic building, uses that are normally not,
5 could not be located at this site could be located
6 there. So I, you know, this is I think an important
7 resource we don't want to lose. Public resource.

8 Thank you.

9 CHAIR WEBB: Thank you.

10 Caroline Kim.

11 MS. KIM: Good afternoon. Good afternoon.
12 My name is Caroline, C-a-r-o-l-i-n-e, Kim, K-i-m. And
13 even though I'm a member of numerous groups, I'm here
14 today as a private individual and resident of Oakland.

15 I have several points first and most of them
16 have been made by other people more eloquently than
17 I'm going to do.

18 The 3100-unit project doesn't meet the
19 Estuary Plan and is contrary to what Signature
20 presented for its RFP. The correct process has not
21 been followed.

22 Two, the developer is not exactly up front
23 in presenting the project. I've heard him present it
24 before and on the KPFA Morning Show of October 6th,
25 Michael Ghielmetti said the project is near public

PR-22
cont.

PR-23

1 transportation. At other meetings Michael has
2 downplayed or not mentioned the traffic problems from
3 the railroad which comes, the train comes maybe 2 to
4 4 times a day can stop traffic for 20 minutes at a
5 time or the limited access to the roads and freeway
6 and impact on the residents and businesses of
7 Fifth Avenue.

8 Signature's proposal to tear down most of
9 an end-use historic building and put the last bulk
10 brake cargo in Oakland out of business seems contrary
11 to Oakland's wanting to help small business.

12 The Signature want to turn part of that site
13 into a park, but the building is tangentially over
14 water and in the long-term this site is not good for
15 a park.

16 This development will not help Jack London
17 Square as the developer claims. There is only minor
18 consideration for wildlife and habitat, and the
19 developer seems to be playing the citizens by offering
20 the promise of affordable housing.

21 The development with three high-rises would
22 bring in perhaps 6,000 people. The City of Oakland
23 does not have the public schools, transportation, or
24 infrastructure to accommodate them. The development
25 has no design features that make it fit into the

PR-23
cont.

1 waterfront. It could be put anywhere.

2 The people of Oakland worked hard to prepare
3 the Estuary Plan. Community groups such as COM work
4 to create a wonderful street reconfiguration around
5 the 12th Street dam that added land to Lakeside Park.
6 This plan was adopted for Measure DD and I suggest
7 that Signature Properties, because of the City's
8 failure to follow the correct process, resubmit a
9 proposal that is in line with the Estuary Policy Plan
10 and work in conjunction with COM to create something
11 beautiful.

12 It's time the City of Oakland started taking
13 the needs of its residents into consideration and
14 listening to our voices.

15 Thank you.

16 CHAIR WEBB: Thank you.

17 We have Charles Weber and then after him
18 Steve Lowe. And that's the last speaker we have
19 signed up.

20 If you wish to speak, please feel out
21 a speaker card and give that to Mary Perisic.

22 MR. WEBER: Ladies and gentlemen, good
23 afternoon. My name is Charles Weber, C-h-a-r-l-e-s,
24 W-e-b-e-r.

25 I'm here to do a couple of things. (A), to

PR-23
cont.

PR-24

1 support Alternate Plan 3, which reuses all of
2 Ninth Avenue Terminal and greatly reduces the number
3 of units.

4 The thing about Ninth Avenue Terminal it
5 could be our most specific use of having a Fort Mason
6 of the East Bay. We have been talking about that now
7 for about three years and it's been kind of brushed
8 under the carpet, put off and on. And in tearing it
9 down we lose the ability to maintain the pier
10 underneath the structure. But if you keep it, it will
11 provide an income stream. The developer wants to tear
12 it down and he expects the condo association to
13 maintain that pier. And it is the kind of thing if
14 you have to do measured structures, you're talking
15 about millions of dollars. So it will either fall
16 down or it will be reverted back to the City to
17 maintain it.

18 Also, the developer says he is not going to
19 take possession of the parks. That's going to be
20 retained by the Port of Oakland. Including the
21 Estuary Park, the Aquatic Center. And they seem to be
22 using that Aquatic Center and Estuary Park as all part
23 of their parkland that they use as their acreage.

24 In the original proposal they asked to
25 purchase, if you look at the original units they are

PR-24
cont.

PR-25

PR-26

1 buying everything and they will maintain possession of
2 all of the land, take fee-simple right to all of the
3 land. After the Tidelands Trust issue came up, the
4 Port and CEDA said well, we've move things around so
5 that the land under the parks will take all the, as
6 much as possible the Tidelands Trust, but they say
7 we'll maintain and keep it.

8 But now it's gotten, it's gotten mushy.
9 In the proposals you see all this and nothing is
10 clear. Are they going to own it? Are they going to
11 manage it? And if they're going to manage it, are
12 they going to pay for it out of condo association?
13 And if they do, it will be their dog walks. It will
14 not be -- it will not be in any way welcoming to the
15 City. Any of this. It will be their private dog-walk
16 parks, no matter what they tell you.

17 We had a meeting the other night, a person
18 from San Francisco who's a planner stepped up and
19 talked about this. The South of Market the same thing
20 you have these and it doesn't turn into friendly.
21 It turns into private parks for the people who live
22 there. And this will be a travesty to lose all this.

23 I have lots of other things that I will
24 address in the EIR, but thank you for your time.

25 I am, by the way, from the Fifth Avenue

PR-26
cont.

PR-27

1 Institute. We are a 501(3)(c). We're the people who
2 sued the City and the Port and won.

3 CHAIR WEBB: Thank you.

4 Steve Lowe.

5 MR. LOWE: Steve Lowe, L-o-w-e.

6 The trouble with going last is that everybody
7 steals all your lines. So I don't know what to say
8 here. I agree a lot about the idea of --

9 MR. TAYLOR: Use the handheld, please.

10 THE WITNESS: Sorry. L o-w-e.

11 I agree with all the things about Fort Mason
12 with the East Bay. I think that's a valuable use that
13 we ought to take a look at. The building is unique in
14 the East Bay and probably the last thing like it that
15 we could stage an academic development kind of
16 strategy by using that as the center of this project.

17 There is another building that we haven't
18 talked about and it's the torpedo factory in
19 Alexandria, Virginia which can be downloaded. I don't
20 have with me the website information, but it's I think
21 on the, on the Heritage Alliance website. It might
22 be. So that --

23 CHAIR WEBB: Naomi Schiff [phonetic sp] has
24 all that.

25 MR. LOWE: Okay. So anyway, that is

PR-28

1 something to take a look at. It is amazing when you
2 do download it that the, the facade of the building
3 looks a whole lot like the Ninth Avenue Terminal, the
4 torpedo factory. I believe that the visitors to the
5 torpedo factory on any given weekend are a tremendous
6 amount of people who have energized Alexandria, which
7 was an industrial town. It is kind of nowhere. Maybe
8 Judge Sutter knows more about that, because he's also
9 been there.

10 So anyway, that's about all I was going to
11 say. We need a study, a reuse study to take a look at
12 whether or not this terminal should be kept.

13 And thank you very much.

14 CHAIR WEBB: Okay. That is the final
15 speaker. What I'm going to do is I did mention that
16 I would give the developer up to 10 minutes to
17 respond. However, since they have, they went over
18 their initial 10 minutes, I'm going to limit this to
19 5 minutes' response. And then we will open it up to
20 the specific questions from the Commissioners to ask
21 of the developer.

22 Do you want to go 5 minutes?

23 MR. GHIEMMETTI: Sure.

24 Is this on?

25 Just want to make sure I understand. So you

PR-28
cont.

1 want me to make a response to the comments, or do you
2 want me to take questions from you?

3 CHAIR WEBB: If you want to respond to the
4 specific, respond to the comments of the audience and
5 then we'll open up for questions from the
6 Commissioners.

7 MR. GHIELMETTI: There are too many comments.
8 Maybe we'll just take questions.

9 MS. CAPPPIO: You're going to get a response
10 to all of that.

11 MR. GHIELMETTI: I think some of it may come
12 from questions anyway, so I'll be happy to just take
13 questions.

14 CHAIR WEBB: That's fine.
15 Commissioner Abad had some specific
16 questions.

17 COMMISSIONER ABAD: What I also brought up
18 was the park-maintenance issue and how the open space
19 that you were intending on having is going to be
20 maintained.

21 MR. GHIELMETTI: Well, that's a great
22 question. And just a half of a step back from that,
23 we are anticipating to pay for this open space versus
24 taking any city money, DD money, or anything like
25 that. There was some 20-some-odd million dollars

1 allocated to this site that we said we don't want, or
2 don't need to use until -- so we'll go ahead and solve
3 it ourselves. The second thing we said was we will
4 maintain it ourselves through the community facility
5 district, community service district which basically
6 goes on your tax bill like an assessment district
7 basically, or through homeowners association dues and
8 whatnot.

9 The 3100 units will be able to support this
10 amount of open space. And we will enter into
11 a maintenance agreement with the City to make sure
12 that it's maintained at a certain standard.

13 And so to clarify that the open space will
14 need to be owned by the City or the Port. It's to be
15 determined. But will be owned by the public, will be
16 maintained by our project and installed by our
17 project, maintained by our project but managed by
18 either, you know, the Oakland Parks and Rec or whatnot
19 so that people can, that our people can't limit hours
20 of when they're open or what type of activity can be
21 allowed there.

22 COMMISSIONER ABAD: Could I? Could you
23 explain a little bit of what you just said? I heard
24 assessment district in there, so although you are
25 intending on being responsible for maintenance, you're

PR-29
cont.

1 intending on taking money in from city and --

2 MR. GHIELMETTI: Just from this area. We'd
3 set up a specific community service or community
4 facilities district to this area. It's a quite common
5 practice in California.

6 COMMISSIONER ABAD: And once the public is
7 paying, once your tenants or, you know, residents are
8 paying for this, is there going to be, do you see
9 an expectation on their part as they're paying for
10 this area therefore it's their area?

11 MR. GHIELMETTI: Well, several things.
12 I think we showed some examples of other areas.
13 I mean, Portland, Vancouver, et cetera, where these
14 types of parks are in close proximity to residents'
15 use, Marina Green is another example. They're not
16 as tall as we have but there's a residential
17 neighborhood right next door and there's lots of
18 activity that happen there.

19 I live in San Francisco near where they start
20 the Bay to Breakers. I'm aware of that every year.
21 They have parades and festivals there all the time.

22 COMMISSIONER ABAD: Are they paying an
23 assessment district in your area?

24 MR. GHIELMETTI: No, they're not. But our
25 people would here and they would know they were public

PR-29
cont.

1 parks. It would be fully disclosed in their deed,
2 recorded in their deed and on file at the City so that
3 everyone would know they're paying for park
4 maintenance. They know up front before they sign
5 a contract for a rental unit here that they would be
6 city parks. And we would talk about up front in our
7 marketing process the various events that happen.

8 Like I said, over in the Blues Festival in
9 Portland in the same type of park configuration.

10 CHAIR WEBB: Commissioner Ricards.

11 We'll just go around.

12 COMMISSIONER RICARDS: You expressed one of
13 your goals was to overcome the barriers of the
14 dividing freeway and the railroad. Yet in your
15 proposal I see no sort of other connections,
16 pedestrian connections particularly, that would,
17 you know, facilitate people from Lake Merritt getting
18 to what is called regional recreational space of the
19 waterfront here.

20 Can you explain why you are not including
21 an over-the-railroad connection to Lake Merritt in
22 your proposal? After all, this is a substantial
23 development proposal.

24 MR. GHIELMETTI: We are basically providing
25 connections to the property boundary. Beyond that,

PR-29
cont.

PR-30

1 for one, we don't control the land. In cases there,
2 the City doesn't even control the land. Union Pacific
3 Railroad has this piece, Caltrans has this piece.
4 I shouldn't be a surgeon because I can't get this
5 straight. East Bay Mud has lines here, Union Pacific
6 has lines here. The City and Laney College own these
7 pieces in here (indicating). So I can't force someone
8 to provide access, for one. But the other thing is
9 there's engineering issues.

10 First of all, that freeway is undergoing
11 a retrofit plan right now and will be somewhere
12 between 25 and 30 feet taller than it is now. That
13 construction project has been slated to start every
14 year for the last three or four, but now we're told it
15 will start next year.

16 So the pure logistics to make an
17 ADA-complaint ramp, you know, you'd have to start way
18 over here and you'd have to end up way over here by
19 the time you made that work. And it's tens of
20 millions of dollars to do what I know the City had
21 been planning on doing through it's Measure DD efforts
22 was improving under the freeway in these areas.

23 MS. CAPPPIO: It's being designed right now?

24 MR. GHIEMMETTI: It's being designed right
25 now, so...

PR-30
cont.

1 MR. RICARDS: But it stops short, I guess,
2 of getting to your property. And it just seems to me
3 that it's only fair that the request be made to
4 the freeway, to the East Bay Mud, to Laney College
5 that some kind of joint effort or contribution of
6 funds go towards making that happen and these
7 buildings have to bridge, for example. I would like
8 to encourage those pedestrian connections along the
9 Lake Merritt Channel.

PR-30
cont.

10 MR. GHIELMETTI: Okay.

11 Was there any questions?

12 COMMISSIONER McCLURE: Can I ask two
13 questions or do we only get one?

14 CHAIR WEBB: You can ask two questions.

15 COMMISSIONER McCLURE: The first question
16 a lot of people expressed a lot of concern about
17 parking. I wasn't really sure if it was for residents
18 there or people coming there. And I just wondered how
19 you can address parking of people who live here and
20 people coming to these public areas?

PR-31

21 MR. GHIELMETTI: I don't think there's
22 a differentiation. I think there's just a concern
23 overall of parking. All the streets will be public
24 streets which there will be no gates, publicly owned,
25 publicly maintained streets, and they'll be markings

1 along each one of the streets. Parallel parking in
2 some cases. In certain areas where we have more
3 intensive use like some of the retail there will be
4 diagonal parking. And I pointed out like Lakeshore
5 that type of parking allows for more parking.

6 Last one. More intensive uses like a program
7 for children's park. We have a little parking lot
8 near there next to the portion of Ninth Avenue
9 Terminal that we proposed to save where we would like
10 to put a maritime museum. There's extra parking
11 there, et cetera. We also have structured parking in,
12 actually, that's a bigger one in this building here
13 because we plan on having retail down there. And
14 we've been working with Caltrans for the notion of
15 being able to do parking underneath the freeway.
16 Again, like they do by the Farmers Market and
17 Lakeshore on Saturdays.

18 And all the parking that we have in there was
19 minimum parking. There weren't maximum. And so each
20 one of the parking, each one of the residential
21 buildings will have parking within the podium unit.

22 We'll, I'm sure, work with BCDC and the City
23 to make sure that certain amounts of that parking are
24 say two-hour only or something like that so people
25 can't use them overall. We can work on a parking

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cont.

1 program for meters or zones, et cetera.

2 COMMISSIONER McCLURE: It's a code? It's not
3 up to Signature to decide how many spaces? Is it
4 code-driven?

5 MR. GHIELMETTI: There's a minimum code and
6 we exceed the minimum code.

7 COMMISSIONER McCLURE: My second question,
8 I'm similarly concerned about the seismic. That's not
9 something you have either, in terms of the seismic
10 protection of the building and foundation, that's also
11 a code driven?

12 MR. GHIELMETTI: That's a code. UBC, is it
13 unified, Uniform, excuse me, Building Code and --

14 COMMISSIONER McCLURE: That exists anywhere
15 in California?

16 MR. GHIELMETTI: Anywhere in California.
17 Quite frankly, there are large sections of California
18 for instance Mission Bay, that's a huge development
19 in San Francisco that is all built on conditions that
20 are similar or worse than this.

21 COMMISSIONER ABAD: Can I just clarify on
22 the parking?

23 CHAIR WEBB: Yeah.

24 COMMISSIONER ABAD: What I just kind of heard
25 you say, maybe I'm wrong, is that there is going to be

PR-31
cont.

1 no unit parking, that you're going to rely on street
2 parking?

3 MR. GHIELMETTI: No, each one of the
4 buildings will have parking within the building,
5 so all the residents of the individual buildings will
6 have parking within that building. They drive up,
7 push their clicker, opens up, and they go inside
8 the building.

9 COMMISSIONER ABAD: It will be like a parking
10 garage at the bottom?

11 MR. GHIELMETTI: Yes, that's exactly right.

12 COMMISSIONER ABAD: So how many, you're
13 planning on, what, one space per --

14 MR. GHIELMETTI: A minimum of one per unit.

15 COMMISSIONER ABAD: How does that work, a
16 minimum of one per unit?

17 MR. GHIELMETTI: Well, within one unit you
18 get one and a half. You could get one and a half, you
19 could get two, depending on what the market accepts.
20 In our experience in various developments in Oakland
21 and San Francisco of similar size and scale, similar
22 unit type, that's been a sufficient amount.

23 We're working with A.C. Transit on bus
24 service to the area, we are not that far, BART is
25 right here (indicating) and our project -- I mean, at

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cont.

1 this point it's 8 blocks and, you know, it's anywhere
2 from 8 to 16 blocks.

3 COMMISSIONER TAYLOR: Long blocks.

4 MR. GHIELMETTI: We also are working on with
5 private shuttle service between us and Jack London
6 Square and BART and Amtrak. So we're working on kind
7 of a multimodal transit plan.

8 COMMISSIONER MAGID: Two questions. The
9 first question is what BCDC review has taken place and
10 what still is pending and what kind of comment you've
11 gotten from BCDC staff.

12 The second question very specific to the
13 Aquatic Center. We heard from some of the public
14 comment concerns about the Aquatic Center and
15 I understand that it's something like 6 of the
16 28 acres is already the existing Aquatic Center.

17 What changes do you propose to make to that
18 acreage or the immediate adjacent acreage of the
19 Aquatic Center?

20 Those are my questions.

21 MR. GHIELMETTI: Okay, so. Let's see, the
22 Aquatic Center is here (indicating). Our plan is to
23 obviously leave it there and we'd like to build a
24 building next door to it where the current Cash and
25 Carry building is. Our building footprint is

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cont.

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PR-33

1 a smaller footprint than the Cash and Carry
2 footprint is. We'll also have ground-floor retail.
3 We have talked to the Jack London Aquatic Center about
4 letting them expand into a charitable right like
5 a dollar-a-year type thing so they can come in and
6 expand their operations.

7 So in terms of the footprint of the existing
8 Estuary Park, it wouldn't change. But the existing
9 Estuary Park is in not the best shape and we would
10 propose to rehabilitate it along with the building of
11 the rest of the parks in the rest of the development.

12 COMMISSIONER ABAD: The other question was
13 about BCDC.

14 MR. GHIEMMETTI: Sorry. BCDC. We took it to
15 BCDC Design Review Commission, I guess they're called,
16 as a courtesy to say: Hey, this project is out there.
17 We have a lot more to do in Oakland. Oakland needs to
18 decide whether it wants the project, whether it wants
19 the uses, whether it wants to amend the General Plan,
20 but we wanted to get some initial thoughts and
21 comments from you. We'll be back after Oakland gives
22 us its blessings. If it doesn't, well, then we won't
23 come back.

24 COMMISSIONER MAGID: Have you gotten any
25 feedback from DCBC?

PR-33
cont.

resume
PR-32

1 MR. GHIELMETTI: We just had that one hearing
2 and we had comments all over the board, so... Some
3 folks said: Hey, it would be great to allow portions
4 of it to stay industrial. We heard some of the same
5 comments you heard today. Some were more sympathetic
6 to those comments.

7 I did hear sympathetic to the project is that
8 the critical mass and the density of the project is
9 what helps connect it to the City because it is
10 so isolated. But the people, they were sympathetic,
11 in fairness, to some of the open-space concerns. They
12 wanted to have a better understanding why we align the
13 street various ways, which we said we could bring back
14 and explain to them why we did that.

15 So there were not really a total comment.
16 There were just kind of cursory ones.

17 COMMISSIONER MAGID: But ultimately would you
18 have to get the permits from BCDC?

19 MR. GHIELMETTI: Yes, BCDC. It's
20 contaminated, so. BCDC regional water board more than
21 likely on the clean-up issues. State Lands Commission
22 needs to approve a final exchange that the Port wants
23 to undertake.

24 MS. CAPPIO: Army Corps.

25 MR. GHIELMETTI: Army Corps of Engineers

PR-32
cont.

1 more than likely, and, obviously, the City of Oakland
2 to name a few.

PR-32
cont.

3 CHAIR WEBB: Commissioner Nelson.

4 COMMISSIONER NELSON: I have a number of
5 questions and comments, so maybe I'll just run through
6 these and you can respond rather than doing them
7 one by one.

8 MR. GHIEMMETTI: Okay.

9 COMMISSIONER NELSON: My overriding concern
10 is privatizing of public land at public expense.
11 I was on the Commission when we heard many people
12 testify about this plan (indicating). And finally
13 gave, give our recommendation that it be supported,
14 which it was. And it called for 60 percent of this
15 development to be open space. We now see a proposal
16 for 43 percent. Primarily because of the addition of
17 an enormous amount of housing it is not a perfect
18 plan.

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19 I don't see the justification, other than
20 it obviously is financially better for you guys, for
21 the citizens to accept the delivery of this public
22 asset for private gain without getting a whole lot
23 back in return. I think 43 percent is inadequate,
24 number one.

25 Number two, I'd like to ask the staff to

PR-35

1 address why no specific plan has been done for this
2 project that was promised. Page 95 of the Estuary
3 Plan it was promised. We've had six years. It should
4 have been done by now. And whatever the conclusion of
5 it was it should have been done and I think it
6 probably would have addressed a lot of the concerns
7 we have now.

PR-35
cont.

8 I also have a question around traffic
9 impacts. One space per unit, two spaces, whatever it
10 is, we're also talking about trying to open this up
11 to the public and having the public get there.
12 It doesn't have good public access. And, frankly,
13 very few people are certainly ever going to walk to
14 this area from a BART station. It's just too darn far
15 and we know there's no A.C. Transit at this point. A
16 lot of people will drive there.

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17 I don't see how we can accommodate the public
18 given the demand you will have from the housing
19 development. There may be one space per unit but
20 a lot of those people will have two cars. They're
21 going to take whatever public parking there is means
22 the public won't have any access, so I'd like to know
23 how you're going to solve that. Make sure that the
24 public has access.

25 Third, I'd like to know why you cannot move

PR-37

1 the housing, the building from Estuary Park down to
2 the Ninth Street area. People will walk to
3 Estuary Park. They do now a little bit. Although
4 all kinds of things block it. Part of the addition to
5 this is to have this open to Estuary Park so people
6 will actually get there. I've heard a lot of people
7 say nobody uses it. Some people do. Anybody that's
8 got a kid that plays soccer has probably been there.
9 You go there and you say great views, but it sure
10 feels weird. You can't even tell it's there. And
11 you're not even sure when you go down that street
12 if you're going the right way. You can't even see it.

13 That encapsulates the next. I'd like to know
14 why you located it there and why not cluster it
15 further towards Ninth, so that this would be more open
16 and more connected to Jack London Square that the City
17 has put so much money into?

18 The next question is, really has to do for
19 around the whole aspect of visual and view access
20 which I think has been addressed a little bit. But
21 you almost really can't see the waterfront from much
22 of this project. Almost every street or other access
23 is cut off by a building.

24 Now I'm sure you guys could have designed
25 this in a way that there's visual access, because

PR-37
cont.

1 people will not go to parks that they can't see. And
2 we know that from many parks in Oakland that have been
3 designed in a spot that was left over from some
4 project by Caltrans or whatever but nobody knows it's
5 there. And then what happens is that inappropriate
6 use of the park and then we have some giant, you know,
7 illegal dumping or crime problem.

8 If people don't know it's there, the public
9 won't use it and the perceptions will become a
10 reality: that it's a private playground for the
11 homeowners nearby and that's not acceptable to me.
12 This has to have public view, public access, public
13 availability for public land and public parks. Now,
14 that said, so I'd like to know why you can't realign
15 these so that we have that kind of public access?

16 And finally, and I know you may be surprised
17 at this, I don't have a problem with the idea of
18 greater density than what was called for in some of
19 the earlier discussions in order to maintain better
20 views and better access and more open space. When
21 I look at what was done in Farantino (phonetic sp),
22 some of that actually looks pretty good and it's much
23 higher than what we're talking about here. I'd like
24 to see us preserve and meet that 60-percent
25 requirement for the Estuary Plan.

PR-37
cont.

PR-38

1 And I also think the City should be
2 reconsidering why this land should be sold instead of
3 being leased like most of what was done by the
4 Embarcadero San Francisco.

PR-39

5 So those are my questions.

6 MR. GHIELMETTI: Wow.

7 COMMISSIONER NELSON: I read the report.

8 MR. GHIELMETTI: Okay.

9 COMMISSIONER NELSON: And I was here when
10 we did this whole thing, so I remember what was
11 discussed.

12 MR. GHIELMETTI: The traffic impacts.
13 Certainly any time you get people in a population
14 there are traffic impacts. And there are traffic
15 impacts in this project. We think we will be
16 successful in getting AC Transit to serve this site
17 before Planning Commission or Council votes on a yeah
18 or nay on an EIR.

19 We will commission ourselves to do private
20 shuttle service. And this may get some shuffle, but
21 when you add density like this, it actually reduces
22 traffic because you allow more retail and other types
23 of uses; like, you could have a dentist office could
24 come in here and there's one less trip that someone
25 takes.

resume
PR-36

1 You go to Vancouver, which was just voted the
2 most liveable city in the world, you can find a place
3 to park rather easily and there's not as much traffic
4 because it's a denser type of park relation based and
5 more of those services are nearby. That's not exactly
6 what this is going to be but it's more toward it than
7 other portions of Oakland are.

8 So between the transit that we envision
9 for the site, the shuttle and the parking --

10 CHAIR WEBB: Would you please turn off all
11 cell phones? Turn it off.

12 MR. GHIEMMETTI: So I lost my train of
13 thought.

14 Anyway, there are some traffic, there's some
15 existing traffic problems that are bad that this
16 project makes a little worse and there's some ones
17 that are okay that this makes bad.

18 Hopefully the Planning Commission and Council
19 and this Board here will like the benefit of
20 the project and think they will outweigh some of the
21 negatives with regard to some traffic congestion in
22 that area.

23 COMMISSIONER NELSON: So what about housing
24 for Estuary Park so Estuary Park really is an open
25 space?

PR-36
cont.

resume
PR-37

1 MR. GHIELMETTI: I think you're referring to
2 the housing we have here (indicating)?

3 COMMISSIONER NELSON: Yeah.

4 MR. GHIELMETTI: Well, the reason we put it
5 there was again to help activate that park. Parks,
6 yes, parks want to be seen. There is no question
7 about that. But this park here in Harbor Green, which
8 you saw an aerial view of, is surrounded by high-rises
9 and it is one of the more popular parks in Vancouver
10 because not only does it have a critical mass that
11 makes it feel friendly and inviting but they can
12 actually program it. There's a restaurant here,
13 a children's water park (indicating). These are
14 the types of amenities we want to put down here.

15 If we wanted this to be private we wouldn't
16 put any amenities down there: dogs park, children's
17 park, maritime museum. All these types of amenities
18 are some of the signals we're sending that this is
19 going to be public. There's going to be a lot of
20 things out here.

21 Part of our reuse idea for Ninth Avenue
22 Terminal again the community center like the building
23 we're standing in, a maritime museum, and an outdoor
24 area where, you know, a band or something could come
25 play and it could be programmed so people can go watch

PR-37
cont.

1 it. Just like they're doing here in the blues
2 festival. And this park right here has festivals and
3 there are thousand of units all around it. They have
4 festivals all the time. As a matter of fact it was
5 fenced off here because they had so many festivals
6 they needed to let the grass grow back (indicating).

7 So we have been to neighborhoods all over
8 the country and Canada and seen this type of stuff
9 before. And we think it's very viable and doable in
10 Oakland. We don't think that these are back yards.
11 We don't think they're privatized. As a matter of
12 fact, they're all separated by streets. If you look
13 at the Bellview area just around the corner we have
14 the residential area, then a street and a then you
15 have
16 a park with some active uses and some passive uses.
17 Those parks are heavily used, even though there's
18 a lot of residential just across the street. So the
19 separation with the street and the cell phones and
20 the, and the wide, usable space we think will overcome
21 that.

22 Your direct question with regard to this is
23 we think housing here will make this park better.
24 I go down to that park quite a bit and I have for
25 four years now trying to survey it. Yes, there are

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cont.

1 organized soccer games there. But aside from that,
2 there are not a lot of people hanging around there
3 just on a Saturday morning at 10:00 watching the ships
4 go by. It just doesn't happen that much.

5 COMMISSIONER NELSON: And you think building
6 this building will encourage more people to venture
7 across that no man's land and squeeze themselves down
8 to find this park? The public -- this is to the side
9 off your drawing.

10 MR. GHIELMETTI: Here (indicating)?

11 COMMISSIONER NELSON: How are people going
12 to see that that's there? It's behind the building.

13 MR. GHIELMETTI: Again, how do people --
14 I don't mean to be argumentative. But how do people
15 discover all these other parks? This is in Fudor's,
16 Tom McCall Park there are high-rises all on the other
17 side of the street of it. Because it's
18 a successful vibrant park, people know it's there.
19 I don't live in the Marina Green. I go there all
20 the time. I don't live near Lake Merritt. I go there
21 all the time.

22 COMMISSIONER NELSON: Marina Green doesn't
23 have huge high-rises across from it.

24 CHAIR WEBB: Let's not argue. Let's just --

25 MR. GHIELMETTI: So your other questions

PR-37
cont.

1 then?

2 COMMISSIONER NELSON: View access. People
3 being able to actually see the parks not just the
4 outside, but throughout the whole thing that the views
5 are cut off by the condos.

6 MR. GHIEMMETTI: That's a great question.
7 And there are a couple things that work here. One,
8 you got the underbelly of the freeway here basically
9 not a nice view and you have the freeway experience.
10 We were trying; some will say we didn't do a good job
11 and that's fine.

12 But we think we tried to do the best job of
13 maximizing visual access in and minimizing visual
14 access out; so you don't smell here and feel
15 the freeway which is there. When you're out on these
16 parks you can enjoy them.

17 This street is thoroughly public. It would
18 be a wide sidewalk, big street trees, et cetera.
19 And yet it won't be a thoroughfare, a 4-lane or 6-lane
20 thoroughfare that will ruin people's enjoyment of
21 this area.

22 So we tried to shelter all these streets.
23 I mean, yes, these two here you have to get into the
24 project before you see out. But then all the streets
25 are programmed to look straight through. And you're

PR-37
cont.

1 going to have good views from here. You have good
2 views through here. You have good views through here,
3 you have good views from here (indicating). Every
4 area doesn't need to have a view.

5 And the Estuary Plan, even at one- and
6 two-story buildings there, Mr. Sutter is right we
7 didn't have housing here, we didn't have housing here.
8 So this whole area was more open. But they did have
9 buildings along this area (indicating).

10 And guess what, from the freeway you really
11 can't see the water. And quite frankly, you can't see
12 the water very much from here and here (indicating).
13 You can't see it. The distance is too far. You can
14 see the horizon but you can't even see the water.

15 So we want to maximize views in and minimize
16 views back. And I appreciate that you think we may or
17 may not have done it well, but that was our intent.

18 COMMISSIONER NELSON: Remember. The freeway
19 is not the only way that people come to this park.
20 Not only on surface streets like Embarcadero but the
21 other streets going into the heart of the city as well
22 as people who walk and bike. We're talking about,
23 you know, a big trail here. So what happens in terms
24 of what people see from the freeway, frankly, is not
25 as important as a lot of other views.

PR-37
cont.

1 And it's those other views that are the
2 places where people are going to actually approach
3 the park. They're not approaching it from the freeway
4 they're approaching it from the surface streets,
5 Jack London Square, Embarcadero, on bikes and walking
6 and they're not going to see that there are parks
7 on the water there.

8 And that has to do with not just seeing it
9 down the street. It's more than streets. It's how
10 you arranged the buildings. I think you could
11 probably arrange these in a different way to open up
12 vistas that will show people from a variety of angles.
13 And if you look at all the colored pictures you have
14 here, most of them show you don't see much of the
15 buildings. And the EIR comments on that as well
16 in almost every view.

17 MR. GHIELMETTI: And, in fairness, I agree
18 with you on the EIR diagrams, but those show the
19 maximum envelopes in every regard. We're going to be
20 working with the City on design guidelines on how
21 over certain stores there will be setbacks, et cetera.

22 So those are the maximum. The EIR wanted to
23 take the worst-case scenario.

24 COMMISSIONER NELSON: Right. That's what
25 it has to do.

PR-37
cont.

1 So the last question I had is why should we
2 settle for 43-percent when it was supposed to be
3 60-percent open space? And there has never been
4 a specific plan done.

5 MR. GHIEMMETTI: Well, I'll let Claudia maybe
6 talk about the second portion of if, because it's more
7 of a city issue.

8 The reason I think you should accept 43 or
9 4 acres of open space versus 60 is, for one, I think
10 the quality of this open space will be better.
11 Someone chuckles when I say that, but I think it will.
12 It will be vibrant and activated, number one.

13 Number two, the citizens don't have to pay
14 for it. So we save the citizens \$22 million in paying
15 for it. And also the citizens don't have to maintain
16 it and Oakland Park and Rec District doesn't have to
17 maintain it. Which, as stated earlier, they don't
18 have the funds to accept this amount of money anyway.
19 So it's a trade off between quantity versus quality
20 for one. And it's a fiscal issue.

21 There is a ton of contamination on this site.
22 And I don't think -- there were no studies, or not
23 adequate studies done, on the Estuary Policy Plan to
24 show what the engineering challenges were.

25 Someone said earlier about piles. All

resume
PR-38

1 the building types here are going to be much more
2 expensive to build, very doable but very much more
3 expensive to build because all of the piles and
4 whatnot. The streets are going to be more expensive
5 to build. Everything in here is going to be more
6 expensive to build. And I don't think the Estuary
7 Policy Plan took all that into consideration. It's
8 very contaminated. There's all kind of contaminates
9 here.

10 We are going to be cleaning it to residential
11 standards at DTSC and Regional Water Board's
12 discretion. And there would have been, in my opinion,
13 a massive subsidy needed over and above this
14 \$22 million to make the Estuary Policy Plan happen.

15 COMMISSIONER NELSON: Thank you.

16 Do you want to respond?

17 MS. CAPPIO: I'll be glad to.

18 CHAIR WEBB: Briefly.

19 MS. CAPPIO: Absolutely.

20 If you want to follow along you can turn to
21 page Roman numeral IVA dash 16 and 17. A specific
22 plan mandated by state law requires a number of
23 different pieces to it and they're described in the
24 text.

25 Distribution location, extensive uses of land

PR-38
cont.

resume
PR-35

1 including open space --

2 COMMISSIONER NELSON: Would you restate the
3 page number again?

4 MS. CAPPPIO: Sure. Roman numeral IVA dash
5 16, 17.

6 Proposed distribution, location and extent of
7 major components of public and private transportation,
8 sewer, water, drainage, et cetera. Standards and
9 criteria by which development will proceed, a program
10 of implementation measures including the financing of
11 the project and a statement of the relationship
12 between the Specific Plan and the General Plan.

13 I believe that we're getting what we would be
14 getting through the Specific Plan process in a much
15 greater level of detail is number one. We're past
16 the generalities, we already have an established and
17 adopted base of goals, policies, and objectives
18 in the Estuary Policy Plan. And that because this
19 is a real developer with real money that's being
20 brought to the table we can actually look at
21 feasibility a lot more extensively and seriously than
22 we would through yet another planning process without
23 a specific context.

24 So for those reasons, we believe we were
25 more than meeting the requirement of the specific

PR-35
cont.

1 plan. And because the Specific Plan requires a series
2 of public hearings much like the General Plan does
3 which this process will lead to for both zoning and
4 General Plan amendment we thought we were fulfilling
5 it and I would make a case that we are more than
6 fulfilling it.

7 Thank you.

8 CHAIR WEBB: All right. I want to wrap this
9 up, so I'm not going to ask any questions. But I will
10 state a few points of skepticism that I have about
11 this plan.

12 One is that I share the speaker's concern
13 regarding, I believe that was Mr. Weber who talked
14 about the barrier between the park and, the creation
15 of the barrier by the buildings that would create with
16 shoreline park so that it would create a psychological
17 barrier between the members of the other citizens of
18 Oakland and that park and that that park would in turn
19 become the de-facto park of the condominium owners.
20 And I share that concern, because I think that if you
21 have four 120 unit, 120-foot high-rises between the
22 highway and the park, that creates a barrier to the
23 use of that park.

24 Second, I believe that having 3100 units
25 in that area is going to create a traffic nightmare

PR-35
cont.

PR-40

1 both in terms of parking and whether there's residents
2 and members of the public parking. But also,
3 you know, during rush hour to access Highway 880 is
4 just going to create a traffic nightmare.

5 And then you mention the music. I mean,
6 I believe that the, having music in any of the parks
7 in such close proximity to condominiums will last
8 a very short while. I know that the residents around
9 the Kaiser Auditorium basically shut down any music
10 that is in the Kaiser auditorium because of both noise
11 and the traffic. And I think that as soon as you have
12 a blues festival close to those condominiums that
13 you're going to have those condo owners who are going
14 to be pinching a fit. So I don't know if music and
15 the condos are compatible.

16 So those are my -- and I also was present
17 when the Estuary Policy Plan was implemented. And
18 it distresses me that after all the years that went
19 into creating and developing that plan, almost two
20 years after it was implemented it's been subbed. That
21 distresses me.

22 So those are my comments and there's no need
23 for you to respond to those. But I will turn that
24 over to if you have any questions.

25 COMMISSIONER ARMENDARIZ: And I also have

PR-40
cont.

PR-41

1 two more comments just for, I guess for thought as you
2 guys work on this plan.

3 One is I'm going to what others have said
4 about access. But not just about access for
5 pedestrians and bicyclists and all that but access
6 for all the residents of Oakland, because this can
7 turn into another piece of Oakland that low-income
8 residents from East Oakland or West Oakland will not
9 have access to again.

10 And that tends to be something that happens
11 in a lot of urban settings, but I don't want it to
12 become an area just for the residents or for certain
13 people that have access to it or know about it. But
14 make sure that there's accessibility for all people or
15 for young people especially of Oakland.

16 And that also brings up my other point about
17 more, how are you creating a sense of community?

18 And I know in the proposal it mentions that there will
19 not be a school for this area. But it seems that if
20 you're trying to build a neighborhood you will have
21 the need for a school at some point, especially if
22 there isn't great vehicle accessibility for families.

23 So I would -- I want you guys to reconsider
24 some of those issues and maybe talk with the District
25 about what options there might be for a school,

PR-41
cont.

PR-41
cont.

1 although those are limited to you as well.

2 COMMISSIONER TAYLOR: Okay. I have several
3 concerns. My first one again, as you just said, about
4 it being a part of the community. You obviously have
5 the freeway there separating it from the rest of
6 Oakland. I work in West Oakland and I just can't see
7 my students catching a bus or riding their bikes
8 through apartment buildings or residences to get to
9 a park to play. I don't see that happening. Because
10 as an adult I would automatically assume that that's
11 their park, the way that is designed.

12 And I talked to my students and I asked them:
13 Where is Estuary Park? They can't tell you. One,
14 you can't see it. It's not visible and they don't
15 know where it is. And it's a good park, but they
16 don't know. And to spend more money and put some nice
17 parks there that nobody can use except for the
18 residents there, I just can't support that.

19 And I like what Ms. Abad said about, she
20 questioned why not have a recreation center there?
21 Was that ever considered?

22 MR. GHIEMMETTI: Yes. As a matter of fact,
23 I said that we intend, we intend on putting a,
24 in addition to the maritime museum, a community
25 center, recreation center in the portion of the Ninth

PR-42

1 Avenue Terminal building that we intend to save.

2 COMMISSIONER TAYLOR: Okay. And who would
3 manage that?

4 MR. GHIEMMETTI: It's being determined
5 right now.

6 COMMISSIONER ABAD: Sorry.

7 Why wouldn't something like a school, a lot
8 of the schools now have recreation programs within the
9 schools for after school, you know, weekend sort of
10 thing. Why couldn't a combination be put together so
11 you have an elementary school? I'm not saying all
12 the way to twelfth grade but an elementary program and
13 recreation facility?

14 MR. GHIEMMETTI: I would actually probably
15 defer to the School District. But in preliminary
16 discussions, they are having trouble maintaining
17 the schools they have. And they said that they could
18 adequately take students from this into the schools
19 right across the freeway.

20 So they said they have room for the students
21 and our project would pay millions of dollars in state
22 mandated fees to those districts to help fix up
23 facilities, in addition to moneys that they've already
24 raised.

25 COMMISSIONER ABAD: Do you recall what

PR-42
cont.

1 schools they were talking about?

2 MR. GHIELMETTI: Franklin Elementary I think
3 was one of them.

4 MS. CAPPPIO: It's in the EIR.

5 MR. GHIELMETTI: They're all in the EIR.

6 COMMISSIONER TAYLOR: But Franklin is a long
7 way away from that.

8 MR. GHIELMETTI: I can't say for the
9 School District.

10 COMMISSIONER TAYLOR: I know because I work
11 for the School District. It's a long way away.
12 It's not within walking distance definitely. You
13 would have to drive at least 10 minutes to get to
14 Franklin from that facility.

15 MR. GHIELMETTI: They said they could
16 adequately handle the student load generated from
17 this. And so --

18 COMMISSIONER TAYLOR: I don't want to belabor
19 that point.

20 My next concern is I keep seeing the City
21 come up with these projects for new development. But
22 I don't see how it's addressing the needs of people
23 who already live in Oakland, because you're talking
24 about building condominiums and townhomes. One-,
25 two-bedrooms, maybe three. But we have families that

PR-42
cont.

PR-43

1 live in Oakland now who are being squeezed out
2 and pushed out of Oakland, which is why our
3 School District enrollment is going down is because
4 our families are being pushed out of Oakland.

5 And the only people I see moving into that
6 area are people who don't want to pay the exorbitant
7 amounts to live in San Francisco. And they'll come
8 over here and buy in that area and benefit from land
9 that belongs to us that we gave away to a private
10 organization. So I don't see how me as a citizen of
11 Oakland could benefit from this project.

12 And then also you talked about the
13 Aquatic Center and involved in that, which also
14 belongs to Oakland Parks and Rec, have you guys had
15 any conversation with Parks and Rec in how they fit
16 into this picture?

17 MR. GHIELMETTI: We have just started having
18 conversations with Oakland Park and Rec about that.
19 But we've had conversations with the Aquatic Center
20 about basically giving them free space, not telling
21 them how to manage that facility.

22 COMMISSIONER TAYLOR: But again, that
23 Aquatic Center is Oakland Parks and Rec. Have you
24 guys had a conversation about that?

25 MR. GHIELMETTI: It's actually not -- from

PR-43
cont.

PR-44

1 the way I understand it, it's a nonprofit entity that
2 leases that from Oakland Parks and Rec. The
3 Jack London Aquatic Center is a separate nonprofit.

4 MS. JONES-TAYLOR: It is under their
5 jurisdiction.

6 MR. GHIEMMETTI: Right.

7 MS. JONES-TAYLOR: And they're on a contract,
8 you know, which is every three years, so it actually
9 is our facility. And, no, I have not had any conversations.

10 COMMISSIONER TAYLOR: So I just don't see how
11 this is going to benefit me as a citizen of Oakland or
12 people I know of Oakland, so...

13 That's all I have.

14 COMMISSIONER NELSON: Ms. Cappio, what
15 I don't understand about the specific plan is that in,
16 like, 15 years of being around zoning issues
17 in Oakland, I've never heard of the City ceding
18 the specific planning process to a developer. The
19 specific plan is supposed to be for the community not
20 part of a specific development. And the idea that,
21 well, we save all this time and energy by just letting
22 the developer do it through the EIR is to me
23 completely contrary to the purpose the specific plan.
24 When you're doing an EIR it's about a specific project
25 and that's not what a specific plan is about.

PR-44
cont.

PR-45

1 So I still don't see how this community is
2 getting what it should be getting from a specific plan
3 when you look at things that are about a particular
4 proposed development. They're two different things.

5 Why has the City not done a specific plan?
6 You've had six years to do it long before they ever
7 signed an agreement, long before. Why hasn't that
8 been done? How much was it going to cost to a do
9 specific plan?

10 MS. CAPPPIO: Between the planning process for
11 the specific plan and the EIR for the specific plan,
12 roughly a half million dollars, maybe more.

13 COMMISSIONER NELSON: How much just for
14 the specific plan?

15 MS. CAPPPIO: Probably 250- to 300,000,
16 depending how detailed you got. But you need to do
17 civil engineering, environmental review. It's a very
18 lengthy and detailed process.

19 COMMISSIONER NELSON: Yeah, I have been
20 involved with other specific plans. And that's why
21 I see the value of having a specific plan to guide
22 the development process in the absence of a specific
23 development proposal being on the table. That it's
24 there to guide. It's not replaced by an EIR for
25 a specific proposal.

PR-45
cont.

PR-45
cont.

1 \$300,000 seems like a good investment to me
2 when you're looking at millions of dollars of
3 public land being lost to the public. And the
4 public -- \$300,000 is not that much. Oakland's blown
5 \$300,000 on a lot of other things. I think that
6 should have been done and should still be done.

7 MS. CAPPPIO: You can make that recommendation
8 to the council.

9 COMMISSIONER NELSON: We will.

10 CHAIR WEBB: Thank you.

11 All right. We're going to move on.

12 I'm not going to let you. I want to move to
13 wrap this up, because we are going to lose our quorum
14 in just a few minutes.

15 This is a, this is a public hearing.
16 We're taking comments. This is not an action item.
17 And so the actual action item will come before PRAC in
18 the months ahead, but this is a, just to receive
19 public comment and information.

20 So with that, we're going to move on to our
21 next items on our agenda. And we thank you for coming
22 and we will revisit this issue when it comes before
23 the PRAC.

24 MS. CAPPPIO: Thank you, Commissioners, for
25 your time.

1 STATE OF CALIFORNIA)
 : ss
2 COUNTY OF ALAMEDA)

3

4 I, the undersigned, a Certified Shorthand
5 Reporter of the State of California, do hereby
6 certify:

7 That the foregoing proceedings were taken
8 before me at the time and place herein set forth; that
9 a verbatim record of the proceedings was made by me
10 using machine shorthand which was thereafter
11 transcribed under my direction; further, that the
12 foregoing is an accurate transcription thereof.

13 I further certify that I am neither
14 financially interested in the action nor a relative or
15 employee of any of the parties.

16 IN WITNESS WHEREOF, I have this date
17 subscribed my name.

18

19 Dated: _____

20

21

22 _____
DANA M. FREED
CSR No. 10602

23

24

25

Comments from the PRAC Commission

- PR-1 **Chair Commissioner Webb** asks how “open space” is defined for purposes of the project and what does the proposed 43 percent of open space includes. Mr. Ghielmetti, representative of the project sponsor, clarifies that the project proposes approximately 28 acres (28.4) which is approximately 44 percent of the 62-acre project site. This is stated on page III-12 of the DEIR under *Proposed Parks, Open Spaces and Trails*. As also stated therein, the DEIR uses “park” and “open space” in combination (or sometimes interchangeably), which is particularly appropriate since the specific programming for the proposed parks/open spaces has not been established. The comment does not address the adequacy of the DEIR analysis and is noted.
- PR-2 **Commissioner Abad** asks about the proposed park maintenance mechanism. As discussed in Master Response G, the DEIR (pp. III-18 and IV.L-17 and IV.L-18) explains that the project sponsor will be responsible for providing for the maintenance of the open spaces. It continues that the project sponsor could do so through the establishment of 1) a project homeowners association, 2) a Community Facilities District or Community Services District (in conjunction with the City), or 3) other mechanism approved by the City. The specifics of a maintenance mechanism would be established through the required conditions of approval for the project or a Development Agreement between the City and the project sponsor.
- PR-3 **Commissioner Abad** asks if the proposed parking will infringe upon existing recreational facilities. Existing recreational facilities on the site are Estuary Park and the Jack London Aquatic Center adjacent to Parcel N. As stated in Response to Comment R-6, the proposed project parking supply on Parcel N is 300 off-street spaces and 34 on-street spaces. As stated on DEIR page IV.A-32, the project would incorporate a parking control and management program that would ensure available public, street parking for park and open space users as well as visitors of the onsite retail/commercial uses. See Master Response D for a description of the Transportation Demand Management Plan for the project, including parking management measures. As stated on DEIR page IV.D-19, no changes are proposed to the Aquatic Center *and related parking areas* that make up approximately three acres of impervious surface (*emphasis added*). The Parcel N Variant, however, described and analyzed in Chapter II of this FEIR reconfigures the access and circulation to Parcel N in a way that provides primary access to the existing Aquatic Center parking area (shown in **Figure II-1**).
- PR-4 **Commissioner Abad** asks about park patrol for the additional public parks. As stated in Response to Comment I-5, it is anticipated that the City of Oakland Police Department and Fire Department would provide services to the project site, including all private development and public areas (parks), and private police/security services would be

provided to augment those services as necessary or desired by the project sponsor or project tenants.

- PR-5 **Commissioner Abad** asserts that with development of 3,000 residential units, a school would be required in the area because there are not schools in the area to absorb 1,500 to 3,000 students that could result with the project. Response to Comment GG-48 discusses that the information presented in the DEIR discussion of public school impacts (DEIR pp. IV.L-13 through IV.L-14) is based on consultation and information provided for the DEIR by the managing staff of the Oakland Unified School District, Facilities Management and Planning. Information provided by OUSD specified the capacity of the district's facilities to accommodate potential new enrollment generated by the project throughout the period of project development.

Comments from Members of the Public

- PR-6 **Keith Miller** states his interest in the aspects of the project that would affect his water-recreation related business interest. The comments do not address the adequacy of the DEIR analysis or issues relevant to the project impacts under CEQA and is noted.
- PR-7 **Helen Hutchison** states her support of full compliance with the Estuary Policy Plan. Section IV.A (Land Use, Plans, and Policies) of the DEIR includes a detailed discussion of the project's relationship to the Estuary Policy Plan's policies starting on page IV.A-13 and concludes that the project would not conflict with the Plan. The comment asks the PRAC to pay attention to the amount of open space, parking, visual access to open space, strong ties between Lake Merritt and the Estuary, and maintenance and how the approach will ensure full public access over the long term. The comments do not address the adequacy of the DEIR analysis and is noted.
- PR-8 **Sandra Threlfall** states that Waterfront Action supports the open space acreage set by the Estuary Policy Plan versus the proposed project. (Note that the Estuary Policy Plan does not specify open space acreage, however, specific acreage is analyzed in the Estuary Policy Plan EIR.) The comment does not address the adequacy of the DEIR analysis and is noted.
- PR-9 **Sandra Threlfall** mentions the need for public visual access to open. See Response to Comment B-8 and U-17 regarding impacts on views of new open space areas and the waterfront.
- PR-10 **John Sutter** describes background of the Oakland waterfront ownership and the Port of Oakland's operation of the project site. The comment does not address the adequacy of the DEIR analysis and is noted.
- PR-11 **John Sutter** describes background of the Estuary Policy Plan development process and compares the open space envisioned therein to the proposed project. The comment does not address the adequacy of the DEIR analysis and is noted. The comment continues with

- concern about development proposed west of 5th Avenue and on Parcel N that would continue to prohibit visual access to Estuary Park. See Response to Comment PR-30.
- PR-12 See response to **Mr. Sutter's** Comment PR-31, second paragraph, regarding the demolition of the Ninth Avenue Terminal for new open space.
- PR-13 **John Sutter** encourages consider for additional potential reuses for the project site and conduct additional study, site visits and additional meetings to gain additional input. The comment does not address the adequacy of the DEIR analysis and is noted. As discussed in Response to Comment GG-63, the project sponsor has conducted over 100 community meetings (See detailed description in Master Response A), and the City retained CirclePoint to conduct a community outreach process which involved nine small group and two community-wide meetings. A number of official City hearings have been conducted on the project and its proposed approvals, including hearings at the Landmarks Preservation Advisory Board, the Park and Recreation Advisory Committee, and the Planning Commission in connection with the Draft EIR. Recently, the Planning Commission sponsored a publicly-noticed tour of the project site. In summary, numerous opportunities for public input on the proposed project have occurred and additional opportunities will occur in the future.
- PR-14 **John Sutter** shows a comparison of open space shown in the Estuary Policy Plan and what would be developed under the proposed project. (This exhibit was not submitted as part of the DEIR comment.)
- PR-15 **John Sutter** conveys the Measure DD Coalition's concern about the loss of open space (compared to that envisioned in the Estuary Policy Plan) that would occur with the project. City decisionmakers of the project will ultimately consider the adequacy of the proposed new parks and open space acreage. The comment is noted.
- PR-16 **Marina Carlson** mentions that the City's plans call for the public shoreline to be more accessible to the neighborhoods and the project should comply with such plans. Additionally, the comment mentions the adoption of Measure DD intended to fund clean up and improvements to the Estuary area. As stated in Response to Comment KK-4, the project sponsor does not proposed to utilize Measure DD funds to implement the 20.7 acres of new, City-owned and operated waterfront parks/open space and trails along the Estuary. This would not, however, preclude the future use of Measure DD funds for other improvements within the project area.
- PR-17 **Marina Carlson** states support for the No Project Alternatives, which would result in no change to the project site from existing conditions. See Response to Comment B-8 regarding views of the water's edge relative to new highrise development.

The comment also suggests reuses of the preserved Ninth Avenue Terminal and calls for additional reuse studies. See Master Response B regarding further analysis of reuse alternatives for the Ninth Avenue Terminal.

The comment also requests that the EIR include complaint records submitted to the City after public events at Estuary Park or excessive noise from trains. Such information is not relevant to the analysis of environmental impacts under CEQA. Noise impacts are analyzed in Section IV.G (Noise) of the DEIR according to Oakland's 2004 CEQA Thresholds/Criteria of Significance Guidelines provided on DEIR page IV.G-16. Additional response regarding train noise is provided in Response to Comment M-7.

- PR-18 **Marina Carlson** asks about liability responsibility regarding geologic hazards, seismic events, and specific engineering considerations regarding the site. The DEIR provides a detailed discussion and analysis of these issues in Section IV.F (Geology, Soils, and Seismicity). See Response to Comment S-37 and II-6. Concerns regarding costs and responsibilities for infrastructure repair in the event of a seismic event are not relevant to the project impacts under CEQA. The comment does not address the adequacy of the DEIR analysis and is noted.
- PR-19 **Margaret Elizares** comments that a specific plan is required and should be conducted. See Master Response A regarding this issue.
- PR-20 **Margaret Elizares** comments that the project is insufficient regarding open space, public access, parking, transit, and is too dense and too tall given the potential for liquefaction. The comment addresses aspects of the project that the City decisionmakers will consider in light of the environmental analysis provided in the DEIR in Impact L.4 (parks and recreation); Section IV.A on pages IV.A-10, IV.A-15, and IV.A-32 (public access); Section IV.B on page IV.B-70 (evaluation of parking supply); Impact B.4 (transit impacts); Impacts F.1 (injury and damage due to groundshaking) on page IV.F-14; and Impact F.2 (exposure to liquefaction) on page IV. F-15 and Impact F.6 (exposure to expansive soils) on page IV. F-20.
- PR-21 **Joyce Roy, speaking on behalf of the Sierra Club** (and as stated in Ms. Roy's Comment PH-27), states concern that the project does not meet the open space aspect of the Estuary Policy Plan. This response assumes that the comment refers to the total acreage proposed, which is less than that analyzed in the Estuary Policy Plan EIR. See Response to Comment S-5 regarding the comparative open space acreage of the project and the Estuary Policy Plan EIR. Regarding the Estuary Policy Plan vision for large events to take place, the project proposes a series of waterfront open spaces ranging from 2.3 to 9.7 acres and between 200 to 400 feet in depth set back from the shoreline. As such, the project would not preclude the use of existing or new open spaces for festivals or any public special events, subject to the application and granting of appropriate City permits.

- PR-22 **Joyce Roy, speaking on behalf of Oakland Heritage Alliance (OHA)**, comments on the Estuary Policy Plan intention regarding demolition of the Ninth Avenue Terminal. See Response to Comment PH-31. The comment suggests that BCDC and the State Lands Commission would allow reuses not normally permitted on the site (due to Tidelands Trust designation and BCDC's 100-foot shoreline band). See Master Response G, which discusses public trust use restrictions.
- PR-23 **Caroline Kim** states that the project does not meet the Estuary Policy Plan and that the correct process has not been followed. Section IV.A (Land Use, Plans, and Policies) of the DEIR includes a detailed discussion of the project's relationship to the Estuary Policy Plan's policies starting on page IV.A-13 and concludes that the project would not conflict with the Plan's policies. See Master Response A regarding preparation of a specific plan (assumed to be the process referred to by the comment). The comment counters statements made by the project sponsor in forums outside the environmental review process, but does not address the adequacy of the DEIR analysis. Also, the comment asserts that the City of Oakland does not have public schools, transportation, or infrastructure to accommodate the proposed population that would result from the project. See Response to GG-48 regarding public schools. The impact analysis provided in Section IV.B (Impact B.4) discusses the less-than-significant transit impacts. Also, the impact analysis provided in Section IV.L (Public Services and Recreational Facilities) and Section IV.M (Utilities and Service Systems) do not identify significant infrastructure impacts for the project.
- PR-24 **Charles Weber** states his support for Alternative 3 (Reduced Development/ Ninth Avenue Terminal Preservation) analyzed in Chapter V (Alternatives) of the DEIR. The comment suggests reuse possibilities that could provide income streams. See Master Response B regarding further analysis of reuse alternatives for the Ninth Avenue Terminal.
- PR-25 **Charles Weber** mistakenly asserts that the project assumes the acreage of Estuary Park and the Jack London Aquatic Center in the proposed parkland acreage. The total 28.4 acres of open space that would occur on the project site include the existing 7.7-acre Estuary Park and Jack London Aquatic Center. As stated in Response to Comment B-1, the DEIR states and footnotes on p. IV.L-16 and Table IV.L-2 (and consistently throughout), "Approximately 20.7¹ of the 28.4 total acres of permanent open space that would exist on the project site at buildout would be new, usable park area that does not currently exist." In no instance does the DEIR present the acreage of *new* open space proposed by the project as including the existing Estuary Park area.
- PR-26 **Charles Weber** suggests that intended ownership and maintenance of all portions of the project site is unclear, including intentions for Tidelands Trust lands. The project sponsor would be responsible for installing improvements and maintenance of parks/open spaces

¹ 28.4 acres total proposed, less 7.7 acres of the existing Estuary Park and Aquatic Center.

in the project area, with the appropriate maintenance mechanism to be established through an agreement with the City. The City or Port would own the open spaces, and the City would be responsible for approving park improvements, programming allowable park uses, and granting/permitting activities within parks. The ownership and maintenance responsibilities of parks and open spaces, however, do not affect the project's impacts on the physical environment under CEQA. Additionally, as discussed in Response to Comment GG-18, the Tidelands Trust designation on the site and the separate land exchange transaction that that is not a part of the proposed project.

PR-27 **Charles Weber** discusses the potential for the project parks to turn into private parks for people who live in the project. See Response to Comment Q-1 regarding this topic.

PR-28 **Steve Lowe** discusses examples of possible reuse opportunities for the Ninth Avenue Terminal. See Master Response B regarding further analysis of reuse alternatives for the Ninth Avenue Terminal.

Resumed Comments from the PRAC Commission

PR-29 **Commissioner Abad** restates his Comment PR-2 regarding park maintenance. (See response to Comment PR-2.) Mr. Ghielmetti, representative of the project sponsor, provides additionally detail regarding implementation of a maintenance assessment district (or other maintenance mechanism approved by the City).

PR-30 **Commissioner Ricards** asks why the project does not proposed over-the-railroad connections to Lake Merritt Channel and suggests that a request be made to the affected jurisdictions that a joint effort or contribution of funds go toward this effort. Mr. Ghielmetti states that the project is providing connections to the property boundary, the land that the project sponsor would control. Response to Comment M-3 that discusses the significant topographic, engineering, and environmental constraints that limit the ability of the developer or the City of Oakland to construct grade-separated rail crossings in the project area.

PR-31 **Commissioner McClure** asks how the project will address parking for residents and people coming to public areas on the site. First, Mr. Ghielmetti explains that all streets within the project site will be ungated public streets that would be publicly owned and maintained. Streets would be marked for parking (a mix of diagonal and parallel). Also, the project would create parking areas in close proximity the special use areas, such as the Ninth Avenue Terminal Bulkhead Building. Additionally, each of the residential buildings would have residential parking at a minimum ratio of one space per dwelling unit. See Master Response D regarding the draft Transportation Demand Management (TDM) that discusses additional recommended and required measures related to parking supply and management.

PR-32 **Commissioner Magid** asks about BCDC review that has occurred and/or pending. As BCDC states in its comment letter on the DEIR (Comment Letter B in this FEIR), the

- BCDC Design Review Board reviewed the project on May 9, 2005, and provided preliminary comments, which are stated in its comment letter. As stated in Response E-5/7, aspects of the project within BCDC's purview would be considered by BCDC prior to the City decisionmakers' action on the project.
- PR-33 **Commissioner Magid** asks what changes are proposed to the Jack London Aquatic Center facility. Mr. Ghielmetti states that no changes are proposed as part of the project. A Parcel N Variant is described in Chapter II of this FEIR that provides opportunities for additional open space between the Aquatic Center and Parcel N development. See also Response to Comment PR-3 regarding the Parcel N Variant changes related to the Aquatic Center parking lot.
- PR-34 **Commissioner Nelson** states that the provision of 43 percent (28.4 *total* acres) of the total project site as open space is inadequate, even with the provision of new housing that would occur. The alternatives in the DEIR demonstrate a range of varying open space scenarios ranging from 7.7 *total* acres (Alternative 1A: No Project) to 41.5 *total* acres (Alternative 1B: No Project / Estuary Policy Plan Alternative). This analysis provides a range of options for the City decisionmakers on the project to consider prior to acting on the project.
- PR-35 **Commissioner Nelson** asks why a specific plan was not prepared for the project. See Master Response A regarding this topic. Director Cappio responds consistent with the Master Response.
- PR-36 **Commissioner Nelson** states concerns with how the project would accommodate the public given the demand for parking from the proposed residential development, specifically given the distance of the project site from BART, the lack of transit that currently exists at the site, and that, as the commenter asserts, a lot of residents will have two cars. See Master Response D regarding the draft Transportation Demand Management (TDM) Plan that discusses additional recommended and required measures related to parking supply and management. The draft TDM Plan concludes that the project would have a surplus of parking with implementation of measures identified therein. In response to Commissioner Nelson's comment, Mr. Ghielmetti states efforts to get AC Transit service to the site.
- PR-37 **Commissioner Nelson** asks why the building proposed at Estuary Park (Parcel N) could not be developed at the east area of the site. Mr. Ghielmetti explains that the proposed development on Parcel N is intended to help activate Estuary Park by providing critical mass in close proximity to it, and discusses examples of similar scenarios in other cities.

Additionally, each of the alternatives (except Alternative 1A: No Project) presented in the Chapter V of the DEIR includes a scenario in which Parcel N would be redeveloped as open space. Prior to its action on the project, City decisionmakers will evaluate the project alternatives and ultimately reject the alternatives and adopt the proposed project,

or alternatively elect one or a combination of the alternatives analyzed, instead of the project. See also Responses to Comments B-8 and U-17 regarding impacts on views of the waterfront relative to new buildings and street configuration.

PR-38 **Commissioner Nelson** states that he has “no problem” with the proposed density, but states that the project should “meet the 60 percent [open space] requirement for the Estuary Plan.” Mr. Ghielmetti responds that the proposed 4 acres of open space would be more “vibrant and activated” and that the citizens would not have to pay for it or maintain it. He also discusses the challenges facing the site related to contamination, expensive building methods required, and infrastructure - considerations that the Estuary Policy Plan may not have taken into consideration when proposing the amount of open space envisioned. City decisionmakers of the project will ultimately consider the appropriateness of the proposed parks and open space acreage prior to taking action on the project.

PR-39 **Commissioner Nelson** states that the City should reconsider why this land should be sold instead of leased. The comment does not address the adequacy of the DEIR analysis or issues relevant to the project impacts under CEQA and is noted. The

PR-40 **Chair Commissioner Webb** restates his and others’ previously-stated concerns about the open spaces being a de-facto park for project residents which would create barrier to public park use, the traffic impacts and provision of adequate resident and public parking, noise impacts to adjacent residences from music [at public events], and inconsistencies with the Estuary Policy Plan.

PR-41 **Commissioner Armendariz** states that the project area needs to be accessible to all people/young people, especially of Oakland. The comment does not address the adequacy of the DEIR analysis or issues relevant to the project impacts under CEQA and is noted.

The comment suggests that the project sponsor consider building a school at some point, especially given limited accessibility to the site. (See Response to Comment PR-42, below.)

PR-42 **Commissioner Taylor** echoes concerns about limited visual access to Estuary Park, which limits its use. See Response to Comment PH-30 regarding visibility of Estuary Park. The comment also questions whether a recreation center, even as part of an elementary school, was considered. Mr. Ghielmetti described the proposed maritime museum, community center/recreational uses that could occur in the Ninth Avenue Terminal Bulkhead Building.

As stated in Response to Comment PR-5, response to Comment GG-48 discusses that the information presented in the discussion of public school impacts (DEIR pp. IV.L-13 through IV.L-14) is based on consultation and information provided for the DEIR by the managing staff of the Oakland Unified School District, Facilities Management and Planning. Information provided by OUSD specified the capacity of the district’s facilities

to accommodate potential new enrollment generated by the project throughout the period of project development. No new school would be required to accommodate school-aged children that would result from the project.

- PR-43 **Commissioner Taylor** suggests that the type of residential condominiums and townhomes (one-, two-, three-bedrooms) being developed would not accommodate families in Oakland. The comment is speculative and not relevant to the analysis of environmental impacts under CEQA. Starting on page IV.J-41, the DEIR does discuss the potential for indirect impacts on housing market effects (additions to housing supply, development of affordable housing, improvement to job/housing relationship, potential effects on rents and prices in Oakland and vicinity). This discussion concludes that the project would not lead to significant indirect physical impacts (DEIR p. IV.J-46).
- PR-44 **Commissioner Taylor** asks if the project sponsor had communications with Oakland Parks and Recreation regarding the project, specifically regarding the Jack London Aquatic Center. Mr. Ghielmetti clarifies that the Aquatic Center is a nonprofit entity that contract leases from the Oakland Parks and Recreation Department, and states that initial conversations with the department were underway.
- PR-45 **Commissioner Nelson** revisits his Comment PR-35 regarding preparation of a specific plan and asks why the process has not occurred in the six years since adoption of the Estuary Policy Plan. Director Cappio discusses the costs for a specific plan, environmental review, and civil engineering that would be required, and the lengthy process that would be entailed. Director Cappio states that the PRAC can recommend to the City Council that a specific plan still be done.

CHAPTER IX

Responses to Comments at the Landmarks Preservation Advisory Board Public Hearing on the Draft EIR

The Landmarks Preservation Advisory Board held a public hearing on the Draft EIR (DEIR) on October 17, 2005. The following is the transcript of the public hearing, followed by responses to each comment. Responses provided in this section specifically focus on statements that pertain to environmental topics under CEQA and the adequacy of the analysis in the DEIR. Statements regarding the project are identified and responded to as appropriate.

Comments relevant to the DEIR start on page 18 of the transcript.

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LANDMARKS PRESERVATION ADVISORY BOARD

RE: OAK TO NINTH AVENUE PROJECT



PUBLIC HEARING

Oakland, California

Monday, October 17, 2005

Reported by:
DIANE M. GALLAGHER, RPR
CSR No. Michigan 2191
JOB No. 3-39389

1 LANDMARKS PRESERVATION ADVISORY BOARD

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6 RE: OAK TO NINTH AVENUE PROJECT

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15 Public Hearing at City Hall, 1 Frank Ogawa

16 Plaza, Hearing Room 1, Oakland, California,

17 beginning at 7:36 p.m., and ending at 8:51 p.m.,

18 on Monday, October 17, 2005, before DIANE M.

19 GALLAGHER, Certified Shorthand Reporter, Michigan

20 No. 2191.

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PRESENT:

LANDMARKS PRESERVATION ADVISORY BOARD

BARBARA ARMSTRONG, CHAIR
KELLEY KAHN
ROSEMARY MULLER
NEAL PARISH, VICE CHAIR
KIRK PETERSON

JOANN PAVLINEC, SECRETARY

SIGNATURE PROPERTIES

MICHAEL GHIEMMETTI
PATRICK VANNESS

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STEVE LOWE	21
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KEITH MILLER	28
SANDRA THRELFALL	31
NAOMI SCHIFF	33

1 Oakland, California - Monday, October 17, 2005

2 7:36 p.m. - 8:51 p.m.

3

4

R E C O R D

5 MS. ARMSTRONG: We are ready to begin Item
6 No. 3.

7 MS. PAVLINEC: Board Member Kershaw left due to
8 a conflict of interest on this item, and Board Member
9 Kahn will need to leave at eight o'clock for a family
10 commitment. Thank you.

11 MS. ARMSTRONG: Thank you. Item No. 3, Oak to
12 Ninth. Approximately 64.2 acres bounded by Embarcadero
13 Road, the Oakland Estuary, Fallon Street, and 10th
14 Avenue.

15 MS. PAVLINEC: The purpose of this hearing is
16 to provide an opportunity for the Landmarks Preservation
17 Advisory Board and the public to comment on the Draft
18 Environmental Impact Report.

19 Comments are due on October 24th. That is the
20 end of the review period.

21 The LPAB is requested to take public testimony
22 and to comment on, or submit questions about, the DEIR
23 or the project. This is mainly focusing on the
24 cultural and historic resources.

25 I want to talk a little bit more about the

1 Ninth Avenue Terminal, one of the main pieces of
2 historic resources.

3 With this proposal, there is a maximum of
4 165,000 square feet of the existing 180,000 square-foot
5 Ninth Avenue Terminal Building and a portion of its
6 existing wharf would be demolished to create the largest
7 of a series of interconnected parks and waterfront
8 spaces.

9 Generally, as this project goes along, the site
10 will be remediated and developed from east to west in up
11 to eight phases from 2007 to 2018.

12 The Ninth Avenue Terminal is the last surviving
13 maritime terminal building in Oakland.

14 The building was constructed in two phases:
15 The original section closest to the I-880 freeway and
16 attached to the actual Bulkhead Building was constructed
17 in 1930; an addition, located closer to the Estuary, was
18 added to the building in 1951.

19 The building is constructed in the Beaux Arts
20 architectural style and is 1,004 feet long by 180 feet
21 wide and it's 47 feet high.

22 The Oakland Cultural Heritage Survey designates
23 the Ninth Avenue Terminal Building as an "A" - the
24 highest rating. Buildings designated "A", highest
25 importance, are considered outstanding architectural

1 examples or extreme historical importance. "A"-rated
2 properties are considered eligible for individual
3 listing on the National Register of Historic Places.

4 According to the Carey & Co. analysis, who did
5 an historical report for this project, only the Ninth
6 Avenue Terminal and Wharf were considered eligible for
7 the National Register as individual resources.

8 An application to designate the Ninth Avenue
9 Terminal and Wharf as a City of Oakland landmark was
10 prepared in 2003 and accepted by the City in May of
11 2004.

12 The Carey & Co. report concurs with the
13 designation for the historical significance included in
14 the application for the structure.

15 In terms of integrity, Carey & Co. also concurs
16 that the major additions to the structure on the 1951
17 were in keeping with the original design and intent, and
18 that the building retains an overall high level of
19 integrity. Therefore, both the original portion of the
20 building constructed in 1930, as well as the 1951
21 addition, qualify as an historic resource under federal,
22 state and local criteria.

23 The Landmarks Board recommended that the Ninth
24 Avenue Terminal be designated as a City Landmark in
25 2004. This recommendation has not yet been forwarded

1 to the Planning Commission and City Council pending
2 review and consideration of the proposed project.

3 The Draft Environmental Impact Report
4 identifies the following impacts as relates to the Ninth
5 Avenue Terminal.

6 The first is the project would result in the
7 substantial demolition of the Ninth Avenue Terminal,
8 which is an historic resource as defined in CEQA.

9 Second, The project would substantially alter
10 the wharf structure and surrounding areas, which is an
11 historic resource, as defined in CEQA.

12 Third, the project would construct a new mixed-
13 use, multi-story development within approximately 100
14 feet of the remaining Bulkhead Building which may not be
15 architecturally compatible with this structure as a
16 potential future City of Oakland Landmark.

17 And, finally, the substantial demolition of the
18 Ninth Avenue Terminal, in combination with the previous
19 loss of the other two Oakland Municipal Terminals, would
20 result in cumulative impacts to historic resources.

21 The Draft Environmental Impact Report concludes
22 that by removing approximately 90 percent of the
23 building its ability to convey its historic significance
24 would be permanently altered and materially impaired.

25 Therefore, all of the listed impacts would be

1 deemed significant and unavoidable.

2 In such cases, prior to approving a project,
3 the Planning Commission and the City Council must make
4 a, what is called, a "Statement of Overriding
5 Considerations." This type of finding essentially
6 presents a rationale for letting the impact stand if the
7 City finds that specific overriding economic, legal,
8 social, technological, or other benefits of the project
9 outweigh the significant effects on the environment.

10 The Draft Environmental Impact Report includes
11 alternatives to the proposed project.

12 One of the sub-alternatives is a full Ninth
13 Avenue Terminal preservation and adaptive reuse.

14 This stand-alone sub-alternative would retain
15 and reuse the entire Ninth Avenue Terminal Building and
16 related wharf structure. This sub-alternative could be
17 combined with the proposed project or any other
18 alternative.

19 There are numerous adopted city plans and
20 documents that provide policy direction on preservation.

21 The first I will address is the Historic
22 Preservation element.

23 The Historic Preservation Policy 3.5 sets forth
24 the findings that need to be made when altering or
25 demolishing an historic resource.

1 So for any project involving complete
2 demolition of Heritage Properties or Potential
3 Designated Historic Properties requiring discretionary
4 City permits, the City would have to make the finding
5 that (1) the design quality of the proposed project is
6 at least equal to that of the original structure and is
7 compatible with the character of the neighborhood; or
8 the public benefits of the proposed project outweigh the
9 benefit of retaining the original structures; or the
10 existing design is undistinguished and does not warrant
11 retention and the proposed design is compatible with the
12 character of the neighborhood.

13 The other document staff report discusses the
14 Estuary Policy Plan adopted in June 1999.

15 The Estuary Policy Plan acknowledges that the
16 Oak to Ninth Avenue District is likely to be redeveloped
17 as many of the port-related activities were relocating
18 to other land areas under the jurisdiction of the Port.

19 The Plan recognizes that with the changes of
20 land use, there are opportunities for "a-large scale
21 network of open spaces and economic development that
22 extend for over 60 acres from Estuary Park to Ninth
23 Avenue."

24 The Plan also contains policies and action
25 programs that are specific to the Ninth Avenue Terminal.

1 Some of the policy directs to establish a large
2 park in the area of the existing Ninth Avenue Terminal
3 to establish a location for large civic events and
4 cultural activities.

5 The Plan goes on to say that it should
6 "recognize that the Ninth Avenue Terminal shed, or
7 portions thereof, may be suitable for rehabilitation
8 and adaptive reuse. However, the terminal building
9 impedes public access to and views of a key area of the
10 Estuary."

11 Finally, the Open Space, Conservation and
12 Recreation element includes a discussion of the
13 potential waterfront parks, let's see, the Clinton
14 Basin/Ninth Avenue Terminal area and recommends this
15 area for a shoreline park if large-scale redevelopment
16 is proposed. It also states that "the Marine Terminal
17 itself has historic value and should be preserved as
18 part of any new development."

19 So, therefore, as you can see, the City's
20 adopted plans present competing priorities among
21 historic preservation objectives, open space objectives
22 and view objectives, with no clear direction on what
23 policies should prevail.

24 The project staff is recommending they ask the
25 Board look at a list of questions they have outlined:

1 What portion of the Ninth Avenue Terminal
2 should be retained? For instance, the wharf, which is a
3 key element of historic use for this site is slated for
4 demolition. Is it feasible to reuse and rebuild this
5 feature into a recreational element for the shoreline?

6 They also ask, what are the key elements of the
7 historic characteristics of the site that must be
8 retained in order to make the findings, which I
9 mentioned earlier, required by Historic Preservation
10 Policy 3.5?

11 How important is this site and whatever is
12 retained of the building to designate it as a City
13 landmark?

14 Are the proposed Mitigation Measures
15 commensurate with the historic importance of the site
16 and the demolition of a portion of the Ninth Avenue
17 Terminal building?

18 And, a very important one, what approaches can
19 be used to strike a balance between open space and
20 development, such as leaving a greater portion of the
21 structural elements of the Ninth Avenue Terminal
22 Building in place, but removing the walls to gain
23 waterfront views?

24 The staff's final recommendations for the Board
25 are to hold a public hearing and receive public

1 testimony on the Draft Environmental Impact Report.

2 Provide staff and project sponsors any
3 direction regarding issues to be addressed in the Final
4 EIR or the project pertaining to cultural resources,
5 specifically the Ninth Avenue Terminal.

6 Consider the manner in which the Board wishes
7 to work in formulating recommendations to the Planning
8 Commission and the City Council as the development
9 review process proceeds.

10 This project will come back to the Board again
11 in the later stages for design and review, and the Board
12 will continue to accept written comments on the Draft
13 EIR until 4:00 p.m. on October 24th. Thank you.

14 (Board Member Kahn not present.)

15 MS. ARMSTRONG: Thank you. Would the
16 developer like to make a presentation?

17 MR. GHIELMETTI: Well, members of the Landmarks
18 Preservation Advisory Board, I am Mike Ghielmetti,
19 Signature Properties. Thank you for having us tonight.

20 We would like to make a brief presentation
21 about some of the general aspects of the project and
22 then end because I think it's important to have a little
23 background about the project.

24 (POWERPOINT PRESENTATION)

25 The project is about 64 acres here on either

1 side of the Lake Merritt channel. This is the Lake
2 Merritt channel running up from the Estuary.

3 This is the building in question, this is the
4 older portion of it. This is the newer portion. It's
5 basically half and half, and then the wharf area sits
6 underneath it. Something shaped like this.

7 The site, it has some challenges from a
8 development perspective and from a compatibility with
9 the rest of the city perspective because you have the
10 freeway on one side, you have Union Pacific rail yards,
11 BART tracks, BART maintenance yard, and so it's
12 separated from the rest of the city.

13 In fact, this freeway is going to be made
14 taller, and with the upcoming CalTrans retrofit
15 somewhere in the neighborhood 20, 25, 30 feet taller
16 when they start retrofitting that freeway.

17 We have been working on this plan since about
18 2001 when the Port selected us in the competitive
19 process, and our first inclination was to make this a
20 residential and mixed-use neighborhood because it's so
21 isolated from the rest of the city and bring it to a
22 critical mass down here and help integrate it, bring it
23 with the rest of the city and make it a destination.

24 We have several models. This is an old plywood
25 factory and power plant in Portland called River Place.

1 In the mid '90s it was redone. This is that same area.

2 This is Tom McCall Park here, and a little
3 marina. They are building several phases down here,
4 which are much taller buildings.

5 This was in the northern portion of the central
6 business district area of Vancouver. This was an old
7 rail yard which became parks and housing and other
8 recreational uses, a children's water park here, and you
9 know it's now -- not in this picture -- but there's
10 marinas around there.

11 This is what the site looks like now.

12 This is the underbelly of the freeway looking
13 up this way, the shoreline, which I will show you in the
14 next slide. It's in fairly dilapidated condition.

15 This is what the existing shoreline looks like.

16 So our site plan -- sorry for the color, didn't
17 come out that well -- our site plan here shows 3100
18 units, about 200,000 feet of retail, and a little under
19 200 retail slips and 28 acres or about 44, 45 percent
20 open space.

21 The Terminal Building in question is here.

22 And our idea was to save about 15,000 feet of it and
23 turn the rest into parks, much as I showed earlier in
24 Portland, Tom McCall Park or Harbor Green in Vancouver.

25 We are looking to save most of the wharf area,

1 although this portion here is in really bad shape, and
2 basically we are looking, in essence, to give it back to
3 the water.

4 This is, again, a shot of the parks.

5 Again, one of the primary problems with this
6 building is its location. It's impossible to have a
7 waterfront park even inland of it because, with that
8 building there, you will never be on the water. We felt
9 it was critical to have a waterfront park here.

10 These are some of the view corridors, and,
11 again, you see the effects of that, if that building
12 were to stay in its entirety to the views corridors in
13 the area.

14 This is some of the uses, ground level uses,
15 etc. We would like to have a really exciting, vibrant
16 retail area in these places, a little, in essence, a
17 central park here, and, again, retail and housing along
18 the ground floors of all of these.

19 One of the things we are after on this site is
20 world-class waterfronts.

21 This is that Children's Park I was pointing out
22 earlier in Harbor Green in Vancouver. This is the same
23 configuration as what we are proposing on the site of
24 the current Ninth Avenue Terminal shed building.

25 This is the Bay Trail section, we are copying

1 this from Vancouver. They did a fabulous job. So you
2 have sections for bicyclists and roller bladers in one
3 area, and a section for pedestrians in another.

4 This is where the plywood factory was in
5 Portland, and this is the same thing when they have a
6 blues festival.

7 We want to create vibrant retail corridors,
8 bring people down there to use these parks.

9 We want to create dynamic residential districts
10 where you have ground-floor activity and we want to
11 create some park row density. We want to create density
12 near transit and jobs versus continuing to go out to the
13 Central Valley or other locales.

14 This is in the Pearl District of Portland,
15 which is not too far away from the waterfront I showed
16 you.

17 Again, living on the waterfront. These
18 buildings, on average, are much taller than what we
19 have. These are probably more indicative of the
20 building massing that we have around there.

21 And this is what we would like to, how we would
22 like to reuse the Ninth Avenue Terminal Building.

23 Now, we didn't get the details in here, but we
24 would make the details of the front facade come back to
25 life and bring it back somewhere around 80 or 100 feet.

1 We would like to make this a cultural resource for
2 Oaklanders.

3 We would like to put in a maritime museum, a
4 community center, kind of like the garden center on Lake
5 Merritt there so anyone could come and use it and
6 potentially some visitor services like a bike shop or
7 canoe shop or other kinds of things that would help
8 bring people down there, and then leave an overhang at
9 the end where we could set up a little stage or whatnot.
10 I think it's a better view from this side. And have
11 parks where people can enjoy whatever activities are
12 going on around here.

13 So this wouldn't be used for private use. It
14 would be used for public use; like I said, a museum and
15 community center, and then the park which extends, as
16 you saw earlier, extends way down would be a fabulous
17 gathering place, a place to have either active or
18 passive type recreational uses.

19 Other types of uses we envision in the parks,
20 children's park, dog park, bocce ball park, other types
21 of things to get people down there.

22 Again, we view this building as an integral
23 part of this new system of parks that we would like to
24 create down there.

25 And this is kind of a sample shot of an

1 interior where we can preserve the big, kind of the
2 grandiose center portion, and then have things on the
3 sides, again, museums and community centers and that
4 type of stuff.

5 So I wanted to keep it fairly brief. I know
6 there are several comments from the public, and if you
7 have any questions, I would be happy to answer them.

8 MS. ARMSTRONG: Thank you. Are there any
9 questions of the presenter? This might be a good time,
10 or you can hold off and we can ask later, if you have no
11 questions now, but they will come up. Any other
12 speakers on this item?

13 MS. PAVLINEC: We have eight speakers on this
14 item.

15 MS. ARMSTRONG: Go ahead and call the speakers,
16 please.

17 MS. PAVLINEC: I'll call the first four
18 speakers: Joyce Roy, Steve Lowe, Charles Weber, Pam
19 Weber.

20 MS. ROY: My name is Joyce Roy.

21 I would say the program for this whole project
22 was brought to shoehorn as many units as possible on
23 this site and provide only the amount of parking space
24 as required for local use because that's what this is,
25 and this was supposed to be an area for all of Oakland

LB-1

1 for public use.

2 And the only thing that can prevent this
3 development from appearing as if it were transplanted
4 from an East Contra Costa clean-slate site and that it
5 belongs to Oakland are things that exist here like the
6 Fifth Avenue Community and this terminal.

7 So this really needs to be reused for the
8 citizens of Oakland with a large park in front of it,
9 might not be crescent shaped, but some shape that it
10 really belongs to Oakland citizens and not just for the
11 residents here.

12 Now, in the BCDC presentation some of the
13 members said that with a historic resource like this
14 they could allow uses in here that they normally would
15 not allow within 100 feet of the water, and I think
16 somebody from the Public Lands Commission also said you
17 could allow uses here that -- a wide variety of uses --
18 not just what is normally limited for the waterfront.

19 So there is a great opportunity to really use
20 this and make this area, you know, follow the Estuary
21 Policy Plan.

22 But some of the spirit of it, that it's a
23 public, it will be for public use and not just this
24 little isolated community that does not have any transit
25 and that has a lot of, it has a lot of pollution from

LB-1
cont.

LB-2

LB-2
cont.

1 the freeway that they were blessed with.

2 Thank you.

3 MS. ARMSTRONG: Thank you.

4 MR. LOWE: Steve Lowe. Well, I just look at
5 that building and think of all of the uses that could be
6 brought to it and that it really does need a more -- I
7 don't know how to say it -- another planning effort, I
8 guess, to make sure that the building is going to be
9 reused to its highest and best use.

10 I know there are several architects who could
11 do wonders with that building and retain it all or even
12 add to it.

13 It's just a phenomenal piece of architecture
14 that is unique in the Bay area. It's unique to the East
15 Bay, certainly; and when you think of all of the good
16 uses that Fort Mason has put together and has been used
17 over there in San Francisco, we could duplicate that
18 here.

LB-3

19 But we don't, I don't think we have a clear
20 enough idea on the multiplicity of uses that could be in
21 that building, and somehow that needs to be brought into
22 this picture.

23 How can we better reuse it than cutting it all
24 down, as has been proposed, or most of it, anyway.

25 I just think there's a higher or better use

LB-3
cont.

1 than that.

2 MS. ARMSTRONG: Thank you.

3 MR. WEBER: Good evening. Ladies and
4 gentlemen, my name is Charles Weber. I think you have
5 got some handouts that may have been given to you: a
6 brochure, there's a ring binder that kind of pertains to
7 what we are talking about.

8 Good evening. My name is Charles Weber. I
9 have operated my boat building at the Fifth Avenue Point
10 Community for over 40 years. My wife and I have lived
11 there for the past 22 years.

12 I am here as a director of the Fifth Avenue
13 Institute, a 5013-C organization dedicated to the
14 education, craftsmanship, the arts, preserving artistic
15 enclaves and communities, including historic structures;
16 and, by the way, we have just recently taken possession
17 of the old cupola that was on the Webster Building at
18 7th and Broadway and then went down to Jack London
19 Square. We now own it and are restoring it, and it will
20 be put on display. So we are involved in historic
21 restoration.

22 The Ninth Avenue Terminal is the last remaining
23 link to Oakland's waterfront history.

24 The Fifth Avenue Institute proposes that it be
25 preserved intact to create a cultural, educational and

LB-4

1 recreational center that reflects the unique history,
2 talents and interests of the people of Oakland and the
3 East Bay, much like Fort Mason, which serves the
4 citizens of San Francisco and the Greater Bay Area.

5 We propose the adaptive reuse of the structure
6 to accommodate a conference center, festival pavilion,
7 theater, exhibition hall, meeting spaces, art gallery,
8 museum, sailing school, maybe a junior yacht club,
9 restaurants, whatever.

10 Fort Mason has been in operation for 28 years,
11 and it is the role model for other such facilities all
12 over the United States.

13 Fort Mason hosts 1.6 million people a year --
14 by the way, Yosemite only gets 4 million a year -- and
15 at about 70 percent capacity collects a rental income of
16 over \$4 million per year.

17 We feel that it is financially feasible to
18 reuse the Ninth Avenue Terminal in the same manner.

19 This could be the East Bay's answer to Fort
20 Mason.

21 The Port of Oakland spent a great deal of money
22 in the early 1970s relocating the Jack London Cabin from
23 the Yukon to Jack London Square, at a great expense in
24 junkets of Board of Port Commissioners to Alaska.

25 We feel the same dedication to preservation

LB-4
cont.

1 should be directed toward the Ninth Avenue Terminal.

2 Two-hundred square feet, this is in the EIR
3 mitigation, 200 square feet of display space about the
4 history of the terminal and landscaping depicting the
5 footprint of the original building does not constitute
6 historic preservation.

7 Thank you very much.

8 MS. ARMSTRONG: Thank you.

9 MS. PAVLINEC: Okay. The next speakers are Pam
10 Weber, Anna Naruta and Keith Miller.

11 MS. WEBER: I will concede my time to Naomi.

12 MS. PAVLINEC: Thank you.

13 MS. NARUTA: Hi. My name is Anna Naruta. I am
14 an Oakland resident and historical archeologist, and I
15 came today to talk about that other portion of the
16 cultural resources section, the archeology portion.

17 I am not an archeologist specializing in native
18 California sites, but I am quite familiar with the
19 record of cultural resource management excavations in
20 Oakland; and so it is with interest that I looked at the
21 Draft EIR portions relating to archeology.

22 They are rather inadequate, and I would be
23 interested to hear your feedback on how they should be
24 modified.

25 The Draft EIR mentions a 1909 survey published

LB-4
cont.

LB-5

1 by N.C. Nelson where he was going around and recording
2 some of the standing Bay area shellmounds at that time,
3 just the ones that were standing above ground at that
4 time, and he had mentioned that over the last 40, 50
5 years they had lost a lot of the above-surface
6 indications.

7 And the EIR notes that in that 1909 walk-around
8 survey there were no shellmounds recorded in the project
9 area.

10 But that actually has no bearing on whether
11 there might be legally significant remains of
12 Native-American shellmounds in the project area.

13 N.C. Nelson did describe the types of areas
14 that were likely to have shellmound remains and the
15 project area fits within that kind of thing.

16 Also, the 1909 survey was not meant to be
17 comprehensive of shellmound sites. It didn't discover,
18 for example, the major shellmound sites that we know
19 about in the city of Oakland; for example, reported
20 shellmounds within five blocks of the project area.

21 Shellmound sites, well, in our City Center area
22 shellmounds were first discovered in 1876, then
23 rediscovered in 1928, and then rediscovered again when
24 BART was coming through town.

25 It didn't discover the shellmound at Harrison

LB-5
cont.

1 and Second Street, which wasn't discovered until 1952.

2 And a third shellmound site near the
3 southeastern edge of Lake Merritt.

4 So actually within a half-mile of the project
5 area, or within one mile you are getting two shellmound
6 sites already -- two to three.

7 So there is the potential for legally
8 significant historic shellmound sites in the area.

9 Also, the Draft EIR mentions that in April 2005
10 a registered professional archeologist conducted a
11 reconnaissance level survey of the project site to
12 determine if undisturbed soils or areas suitable for
13 survey exist. That's a quote from the Draft EIR, page
14 12, and that person decided that there were no such
15 soils.

16 However, this conflicts with the earlier
17 portion of the Draft EIR that mentions that the early
18 layer of the strata shellmounds now are currently found
19 6 meters below ground surface. Six meters.

20 So it's hard to see how someone kind of walking
21 around the site was able to detect anything about
22 whether there are shellmounds there or not.

23 In the Broadway area shellmounds they have
24 found things 15 feet below the surface. So you can have
25 quite a bit of archeology quite deep when you are

LB-5
cont.

1 talking about shellmounds.

2 What is proposed in the Draft EIR currently is
3 to have the construction workers act as monitoring
4 archeologists.

5 A construction worker who uncovers evidence of
6 an archeological site, as far as this proposal goes, is
7 supposed to then notify some sort of channels and stop
8 the project.

9 If I were a construction worker -- first of
10 all, I don't have training to recognize an archeology
11 site, and I am probably not going to get it from my
12 employer.

13 Secondly, if I am a construction worker, I am
14 really not going to stop a major project. You know,
15 it's likely to cost me my job.

16 So having a construction worker serve as a
17 cultural resource management person doesn't really work,
18 and we found it didn't work for the Broadway/West Grand
19 project where the agreement with the City was that if
20 there was, if there was just one artifact found that the
21 project was supposed to be stopped and an archeologist
22 brought in.

23 You know, I saw the site and there was plenty
24 of those one artifacts that could have had evaluation,
25 but there wasn't anything.

LB-5
cont.

1 So let's not try to make construction workers
2 be archeologists. It doesn't meet adequate treatment
3 under CEQA, and it can cause a project a lot of delay
4 and cost if things are left until the end.

5 What this project should do is they should have
6 an archeologist compile land use history of the area,
7 predict what areas are filled, test those areas. We
8 often find archeological sites underneath fill.

9 In this case, you can go ahead and have like a
10 mechanical auger survey of drilling different holes
11 around the area. That's fine for a shellmound. That's
12 a good discovery method.

13 So it doesn't take much just to have that study
14 out of the way because we are legally obligated to
15 protect these remains whether we know about them ahead
16 of time or not.

17 If they are likely to be in the area, the City
18 of Oakland is legally obligated to take measures to
19 protect them.

20 Thank you.

21 MS. ARMSTRONG: Thank you.

22 MS. PAVLINEC: The next speakers are Keith
23 Miller, Sandra Threlfall, and Naomi Schiff.

24 MR. MILLER: Well, that brought back memories.
25 I spent most of 1975 working on a Miwok Indian dig in

LB-5
cont.

1 Marin County, part of a Laney College class, and found a
2 beautiful obsidian projectile point. Wow! So if you
3 find a shellmound, I volunteer.

4 I am Keith Miller. I am the owner of
5 California Canoe and Kayak in Jack London Square. I was
6 on the Estuary Planning Committee, and I recognize
7 Rosemary as being a member of the Advisory Committee too
8 because her name appears right below mine on the
9 document.

10 I want to read something from back about two
11 years ago when I first heard about this project. I took
12 a "shoot from the hip approach" because I'm also on the
13 board of directors of the Jack London Aquatic Center,
14 and I wrote this about this project:

15 I am aghast -- and this is an e-mail to Nancy
16 Nadel, who I've paddled with down the Estuary --

17 I am aghast. This port/signature plan makes a
18 mockery of years of hard work formulating the Estuary
19 Plan. It also has the potential of scuttling JLAC,
20 whose "bang for the buck" in providing access to low and
21 no-cost paddling and rowing opportunities for Oakland
22 "is unprecedented nationally."

23 So it's kind of odd to come tonight and
24 participate in some of these meetings.

25 Basically, I have gone 180 degrees, and I like

1 quite a bit of what is being proposed with this project.

2 I know that there's parking and traffic issues,
3 and I am fully aware that there's disagreements over the
4 amount of open space.

5 However, I look back on what the Port did on
6 the Lincoln properties deal several years ago. That was
7 the land between Webster Street and Channel 2, and that
8 is where Cirque Du Soleil was set up, as you may recall.

LB-6
cont.

9 Cirque Du Soleil did a tremendous amount for my
10 business and my company. It brought people in and they
11 basically saw my shop in Jack London Square and
12 consequently they said, Hey, let's go kayaking. Let's
13 go paddling. Let's learn how to do this.

14 So I would kind of like to see that giveaway of
15 that great open space recovered somehow.

16 This is a difficult question, because, as it
17 has been mentioned, the Estuary Plan clearly states in
18 one paragraph, consequently the terminal shed should be
19 demolished. Related maritime sport activities adjacent
20 to the terminal be relocated. And then in two
21 paragraphs it also says, it is recognized that the Ninth
22 Avenue Terminal shed may be suitable for rehabilitation
23 and adaptive reuse.

LB-7

24 The Port and City should investigate the
25 feasibility of doing so and evaluate the potential

1 impact of keeping and reusing the building, and so on
2 and so forth.

3 It's tough. There is no clear direction.

4 I just have to say that in my opinion, and I am
5 a resident of the City of Oakland here, I would like to
6 see a lot more open space down there.

7 I think -- I don't want to get into an argument
8 about the Fort Mason comparison -- I sat on the board of
9 directors of the Friends of the River for five years and
10 I know Fort Mason quite well because FOR has an office
11 down there. I don't think the comparison is a very
12 solid, very good comparison, personally.

13 I think the project will create a lot of open
14 space, enough so Cirque Du Soleil and those types of
15 activities could come down there again.

16 I think having the front of it saved, showing
17 what was there is a very good compromise. I think
18 that's a good way to go.

19 So, thank you.

20 MS. ARMSTRONG: Thank you.

21 MS. THRELFALL: Good evening, once again.
22 Sandra Threlfall, Waterfront Action.

23 The Ninth Avenue Terminal, you need to walk
24 through it. You need to experience it. The height
25 alone is -- it takes your breath away. It's a

LB-7
cont.

LB-8

1 remarkable structure.

2 Now, I am not a historian. The whole debate
3 about the whole building or just the 1920s building, I
4 am not going to weigh in on, but I would, I really
5 believe that Oakland is losing its history.

6 The rate at which development is occurring on
7 the shoreline, the old building where they soldered the
8 steel for the Golden Gate Bridge is now going to be
9 housing, and housing is important.

10 I don't have a problem with this plan in terms
11 of the footprint of the original Estuary Plan.

12 My concern is that we hold on to what Oakland
13 was all about, which was a waterfront industrial city.

14 We have the very contemporary cranes, but we
15 have no more sheds once this one goes, and I think the
16 cotton mills, and all of the other things that we are
17 going to lose where Jack London worked and so many other
18 people, this is all part of who we are and why we are
19 here.

20 And, the other point, which is a side point, is
21 that the Estuary Plan really speaks to events, a place
22 where we can have large community events.

23 It's difficult, with the amount of housing that
24 is proposed for this site, unless in the deed or in the
25 rental agreement it says, there will be public events,

LB-8
cont.

LB-9

1 they will be noisy, you will not be able to complain,
2 because we had a jazz festival at Estuary Park for a
3 number of years until the Portobello apartment people
4 got organized and stopped it. They didn't want noise
5 after ten o'clock at night. And, living there, I think
6 that, which came first, is a problem.

LB-9
cont.

7 And I don't want to lose our last shore space
8 and our last terminal to housing that will impact how we
9 can use the open space.

10 Thank you.

11 MS. ARMSTRONG: Thank you.

12 MS. SCHIFF: Well, the Landmarks Preservation
13 Advisory Board, I don't have to convince you, I think,
14 that the Ninth Avenue Terminal is a valuable building
15 because this is the board that voted unanimously to
16 recommend that it be landmarked. I am not going to
17 belabor that.

18 And, in fact, the Environmental Impact Report
19 is very clear in supporting that conclusion, quoted
20 liberally from our landmarks application and from the
21 board's decision, and I don't think we have to argue
22 about the fact that it's a valuable building.

LB-10

23 I did bring along my cheap architectural model
24 here. (Indicating.) If this were the Ninth Avenue
25 Terminal -- and I saw you at the Berkeley Bowl,

1 right -- this is how much is saved, and this much is
2 demolished; and, by the way, put into a landfill, not a
3 green kind of an activity, putting buildings into
4 landfills.

5 So you end up with this much.

6 And I must say I was a little shocked. I had
7 never seen those renderings before today of how they
8 managed to take a large, grand industrial building and
9 turn it into a kind of a shed of rather uninspiring
10 proportions, but I don't think it cuts it.

11 So what do we do?

12 Well, first of all, I thought to myself, how
13 bad off is this thing? So this week we went down there
14 and took a look at that building with a structural
15 engineer who is licensed and knows a lot about
16 structures standing in water and not standing in water,
17 and just asked him, well, you know, how bad is this?

18 And he said, you know, he wasn't doing a deep
19 study, just looking around. He's a pretty educated guy.

20 Couple things. He said he would like to move
21 his office there. He thinks he knows a lot of
22 architects and designers who would like to be in that
23 building. He loves the steel structure. And he felt it
24 would be really very straight forward to do any required
25 seismic additional bracing.

LB-10
cont.

LB-11

1 He thought it was pretty good, by the way. He
2 said the trusses in there actually prevented a lot of
3 lateral motion and that he did not see any sign of the
4 thing caving in.

5 You know, there were not areas that were badly
6 out of plum and terribly cracked concrete.

7 There certainly is the damage of age, but he
8 was real enthusiastic about this thing.

9 And so I asked him a couple of questions.

10 One was, if you knock the shed down, and you
11 put a park on it, does it then mean that you don't have
12 to maintain the wharf because you now have a bunch of
13 dirt and grass over water on those same old pilings, I
14 guess? And he said, No, you know, that, I mean, you got
15 pilings, you got pilings.

16 So that doesn't seem -- that seems like a wash.
17 You know, that doesn't seem to be an issue, if they are
18 willing to put a bunch of dirt and grass, and by the
19 way, fertilizer, and irrigation and goose poop out
20 there, then they might as well leave the shed up.

21 Then there's the question of whose view are we
22 talking about? What view? Whose view?

23 Those of you who have been down there probably
24 know the water side of that shed, it isn't sheer to the
25 water. There's a big, wide edge there between the shed

LB-11
cont.

LB-12

1 and the edge of the wharf. There is room for a rail car
2 and an off-loading operation from ships. So it's quite
3 wide, and if the Bay Trail were to run around it, it
4 would be wonderful.

5 You could come from Mr. Ghielmetti's Park and
6 you could walk around this building, and you could
7 suddenly have a little retro experience of walking along
8 a wharf in the industrial era, and it is quite wide
9 enough for that to be a very substantial piece of the
10 Bay Trail and far more interesting than walking along a
11 rather sterile development.

12 So I think, you know, there's great potential.
13 There are also many doors penetrating, and so you could
14 open that up. You could have windows or doors. It's
15 not an entirely opaque structure.

16 There are a lot of other cities that have big
17 buildings, and some of them tear them down and some of
18 them reuse them.

19 I have given you a handout which shows a few of
20 the reuses. It doesn't include a couple of the obvious
21 ones.

22 Yeah, there's Fort Mason and there's also the
23 Ferry Building, and this might be, might be a good place
24 for a ferry to stop.

25 There's going to be some kind of need for

LB-12
cont.

LB-13

1 community services. Maybe they could go in that
2 building.

3 I was sort of curious about how many hotel
4 patrons does 3100 units generate. Like, if you go visit
5 your friend, and they live in a small apartment, with a
6 million dollar view on the 28th floor of Mr.
7 Ghielmetti's house there, then where do they stay when
8 they come visit if there's no spare bedroom?

9 Well, 3100 units, not people, but units would
10 generate a fair number of visitors.

11 So wouldn't it be kind of cool to have the
12 Ninth Avenue Terminal Inn? You could stay on the water,
13 and it would be kind of cool.

14 And I want to say two other things:

15 One, about the views. That the streets in the
16 proposed design are all bent. They don't actually
17 provide views. If you went from Embarcadero and you
18 looked down the street, you would see the development.
19 You would not see water.

20 So, in fact, Ninth Avenue Terminal is not the
21 problem.

22 Secondly, or a sub-category of that, Ninth
23 Avenue Terminal in itself is something to look at. You
24 know, it's kind of an interesting old building, and
25 there's nothing wrong with looking at an interesting old

LB-13
cont.

LB-14

LB-14
cont.

1 building.

2 The other thing I want to say is I hope you
3 will comment because the deadline here, it's not just
4 for us to give comments to you, but also for you to give
5 comments that can be forwarded as part of the record.
6 So I am hoping that the counter to those really
7 feel-good projects we just heard, that on this one you
8 will really give it some thought and make comments, if
9 not today, then, subsequently; if not as a group, then
10 individually, because this thing is on kind of a fast
11 track. We don't have a lot of opportunities to make our
12 views known.

LB-15

13 If you would really like to have an impact on
14 the historic preservation of the Ninth Avenue Terminal,
15 I would suggest that this board take a look at the
16 alternatives and take a look at the historic analysis
17 and make some clear comments, even if you don't all
18 agree, but clear comments, so that the Planning
19 Commission and City Council can benefit from your
20 somewhat greater knowledge about historic buildings than
21 they've got; Colland Jang excepted, of course.

22 Thank you. And if anybody wants some bread...

23 MS. ARMSTRONG: It's getting late, so it looks
24 good.

25 MS. PAVLINEC: There are no more speakers.

1 MR. PETERSON: I have a series of comments. I
2 guess the things I think should be addressed at greater
3 length in the EIR, there are alternatives, I think
4 Section C, they are less than a page, and I don't think
5 they have been explored well at all. I would like to
6 see the EIR talk about those more.

7 One of the speakers brought up something that
8 is half a sentence here that there could be alternatives
9 or more varied uses in this building because of the
10 historic structure. I am an architect. I work for
11 developers. I look at that, it's an enormous building.
12 You don't have to get permission to let it exist.

13 It looks like an opportunity to me, but that's
14 an economic thing. I am not so concerned about that.

15 It probably has a viable economic future if it
16 continues to exist.

17 I would like to address, apparently the
18 proposal demolishes, it demolishes 93 percent of the
19 historic structure, and I would like the DEIR to address
20 how you can destroy 93 percent of something that
21 complies with the Secretary of Interior standards. It
22 seems like some kind of a token gesture to me. Doesn't
23 look like historic preservation to me.

24 It is interesting to note that the newer
25 portion of the building was born the same year I was.

LB-16

LB-17

1 I am not sure I like it being called historic.

2 The question of the view, I have been on the
3 promenade there. It's a really cool space with the
4 building behind and the wharf and you can be high up on
5 the water, and there's plenty of opportunities along the
6 waterfront to walk on a path with a bunch of riffraff,
7 and it's not a natural setting, but it's not really very
8 inspiring. For example, I think along the Portobello
9 development, I mean, it's just kind of a nothing space.
10 It's nice, it's near the water, but that opportunity is
11 available to anybody along the waterfront.

12 And I think preserving the building and the
13 sort of spacial character of the wharf with the building
14 behind it is something that's unique. It's historic.
15 It's a built-in environment. There's nothing like it
16 all along the waterfront.

17 And I would also concur with Naomi that the
18 building is, you know, we just talked about being able
19 to see the auditorium, and this, of course, isn't the
20 same sort of building, but it is part of the view. When
21 you are on the water, it's a major building.

22 And I think it doesn't preclude views of the
23 water from the public. It precludes views of the water
24 from residents of the proposed building.

25 So I would like the EIR to talk about, be more

LB-18

1 clear about whose views and views of what?

LB-18
cont.

2 I think, Joann, you said one of the required
3 findings was that the design quality of the new project
4 had to be better or equal or something. What was that?

5 MS. PAVLINEC: The design quality of the
6 proposed project is at least equal to that of the
7 original structure and is compatible with the character
8 of the neighborhood.

9 MR. PETERSON: I would say the latter is almost
10 impossible because it's just not -- it's an industrial
11 neighborhood, and I don't think any new residential work
12 is compatible with.

LB-19

13 As far as the quality, I don't want to get on
14 the architect's case, but I know the buildings we build
15 now are not just kind of durable, you know, concrete and
16 steel, but wood, old, rough wood in the building. So at
17 least at that level the quality is quite different. I
18 would like that to be addressed.

19 And, well, that's enough.

20 MS. MULLER: I feel like I am sort of at a
21 loss as to what to say.

22 I was on the Estuary Plan Advisory Board when
23 we came up with the plan; and at the time I did vote for
24 demolition of this historic building, even though it's
25 historic, and that was based on a thought that the

LB-20

1 design that was in the plan and the public open space
2 that was going to be created was of higher value than
3 the historic building.

4 However, when I see this plan in front of me, I
5 don't see that quality of open space. It's certainly
6 not adjacent to Brooklyn Basin.

7 I see a remanent of the historic building being
8 left, and, in my mind, to block other people, to keep
9 the public away from this green space that is being
10 created, in my mind, just for the residents of the
11 apartment building.

12 And so the remaining portion of the historic
13 building that's there is serving more as a barrier to
14 use of the space than is becoming open by removing the
15 rest of the building rather than a significant public
16 space that the original Estuary Plan showed on it; and
17 the EIR does identify the demolition of 90 percent of
18 this building as an unmitigable, negative impact.

19 And I guess that City Council may vote that
20 they are overriding considerations, but I must admit I
21 don't see them from a spacial point of view when I look
22 at this particular plan.

23 So, as I say, I am sort of at a loss as to what
24 to say in terms of the Environmental Impact Report. I
25 think it's correct. I think it correctly identifies

LB-20
cont.

1 that this is an unmitigated, negative impact of the
2 plan.

LB-20
cont.

3 MS. ARMSTRONG: Thank you.

4 MR. PARISH: I agree. I think the EIR does a
5 good job of documenting that the demolition of the
6 entire 90 percent of it, all but the crust, is
7 definitely significant impact.

8 From that aspect, I think the EIR is
9 appropriately written.

10 I agree also with Naomi's comments on the views
11 and your comment on the blocking. I hadn't really
12 thought of it, but it blocks the view and access from
13 that section of the Embarcadero, and with the curve and
14 bent streets, as Naomi pointed out, you really don't
15 have any views of that park from the rest of Oakland.

LB-21

16 The only views, like my office is up on the
17 24th floor of the APO Building. I have a nice view of
18 that building right now. Then I would be able to see
19 the park.

20 Where I think the EIR falls down a little bit,
21 and I have a little bit of trouble figuring out what to
22 do with that building, is I don't think that the Fort
23 Mason comparison works all that well either, partly
24 because the access to that area would be a little
25 tricky, and where the heck would everybody park?

LB-22

1 There's no discussion in the EIR on the
2 preservation alternatives of how visitors to that
3 building would park.

4 So I see in the diagrams the building, and then
5 immediately adjacent to it is park and the other side of
6 that is development.

7 So I have a hard time figuring out what to do
8 with that building if you don't tear it down.

9 But that's why I am an attorney not a
10 developer.

11 Somebody should be able to come up with
12 something and have it analyzed properly and figure out
13 what the impact would be for the preservation of it.

14 And with respect to the findings that you need
15 to make, HP policy 3.5, I agree with Rosemary, the
16 alternatives are the City defines that the design
17 quality of the project is at least equal to the original
18 structure and compatible with the neighborhood -- and I
19 don't think that you can find that -- or that the public
20 benefits of the proposed project outweigh the benefit of
21 obtaining the original structure.

22 That was probably the basis of the original
23 finding in the Estuary Plan that it was okay to demolish
24 the project because you were getting a lot from it.

25 I don't think you are getting a lot from it.

LB-22
cont.

LB-23

1 I don't think it's possible for the city
2 council to realistically make the finding that HP policy
3 3.5 is satisfied. I just don't think it's possible with
4 this current design.

LB-23
cont.

5 So I don't know what to do on that. I think
6 those are my comments.

7 MS. ARMSTRONG: I have a few questions to ask.
8 So I will ask staff, and maybe I could ask the developer
9 as well.

10 When you are talking about turning this
11 building into grass, which is really what it looks like,
12 because you're removing the building and putting grass
13 down, are you removing the existing pilings and putting
14 in new pilings, or are you using the existing pilings?

15 MR. GHIEMMETTI: Probably a combination of
16 both. We would basically do everything we could to
17 structurally secure the platform, the marina, or the
18 wharf that's still there.

LB-24

19 MS. ARMSTRONG: And have you retained the
20 services of a structural engineer to ask them what it
21 would take to have a live load in that building as far
22 as piling strength?

23 MR. GHIEMMETTI: There wouldn't be a heck of a
24 lot of difference with the pilings themselves because
25 there wouldn't be that much load difference, quite

1 frankly.

2 It would be putting on, as was mentioned,
3 structure, concrete structure, top soil, you know,
4 plants, trees, grasses, etc.

5 MS. ARMSTRONG: Okay.

6 MR. GHIELMETTI: There would be some.

7 MS. ARMSTRONG: There would be some. Thank
8 you.

9 And then my next question is the uses of the
10 building and what it could be used for, and evidently
11 that is, there are certain restrictions on the uses, and
12 I am unsure as to what we really could put there.

13 One speaker talked about what Fort Mason does.
14 I have actually gone to Fort Mason numerous times. I
15 didn't know they made \$4 million a year. That's not a
16 bad income. That's a good income.

17 My question, what can that building really be
18 used for, because of the Tidelands issue, the BCDC
19 issue, the Estuary Policy?

20 It seems to me what we are trying to do is
21 solve all of this by putting a park in and saying there
22 are not enough parks in Oakland and therefore there
23 should be a park when, in fact, maybe we really need to
24 rethink it and give this project a little bit more
25 thought as far as the angling the streets for views. A

LB-24
cont.

LB-25

1 few people mentioned that that might be a very simple
2 thing to do, and really thinking about what we can use
3 that building for.

4 And I am not saying they have to preserve all
5 of the building, but certainly it's a building that
6 looked very different in some of the photographs I've
7 seen, as opposed to the projections I saw in the
8 PowerPoint.

9 MS. PAVLINEC: If you're asking with respect to
10 what the uses can be, and I believe maybe the Applicants
11 can address this, there are some restrictions on uses
12 due to the Trust.

13 However, as Joyce Roy mentioned in her
14 comments, there was a conference on this and they did
15 indicate at that conference that there was some leeway
16 that they could look at for historic structures to
17 expand the uses that are allowed under for new
18 construction.

19 MR. GHIEMMETTI: Yeah. The first part of your
20 question, technically speaking, forget that it's
21 historic for half a second.

22 Uses that are allowable under the Tidelands
23 Trust Easement are basically ones that bring visitors
24 down to the water, for one.

25 You could use it for maritime navigation,

LB-25
cont.

1 fisheries type stuff, waterfront commerce.

2 Also, you could put a hotel down there because
3 that would be deemed visitors serving retail. You know,
4 an example, Fisherman's Wharf brings tourists down to
5 the area. Those are considered trust allowable uses.

6 Parks are considered a trust allowable use
7 because you bring people down to the water.

8 Locals serving retail, generally frowned upon.
9 Residential, generally frowned upon in those areas.

10 There is some flexibility with both BCDC and
11 the State Lands Commission with regard to historic
12 buildings, but I do not know exactly how much
13 flexibility.

14 So we can certainly pose those questions and
15 they are good ones.

16 MS. ARMSTRONG: I think there are enough
17 nonprofits that could rent the space, enough --
18 certainly I know that your project is, will take a
19 number of years to build, and you are going to do it in
20 phases, but I think really you could actually make some
21 income from this too. It might not be a bad idea.

22 MR. GHIELMETTI: We are listening to all of
23 your comments.

24 MS. ARMSTRONG: So I want to address something
25 else that I saw when I was looking through all of this

LB-25
cont.

LB-26

1 was the parking.

2 It looks like you have one-to-one parking, and,
3 is that correct, one-to-one parking?

4 MR. GHIELMETTI: Those are minimum parking
5 guidelines; but, yes, the minimum number is one-to-one
6 for residential.

7 MS. ARMSTRONG: One-to-one parking.

8 MR. GHIELMETTI: For residential.

9 MS. ARMSTRONG: For residential. So
10 basically you have 434 parking places that are not
11 restricted to residents, and I would ask you to build in
12 a lot more parking.

13 I think that reusing this building would, you
14 would have to have parking too if you were going to have
15 people using the building. But I really think that this
16 is, this doesn't even come close to what you need.

17 If we really want to have the citizens of
18 Oakland use this space, there's not very good transit
19 down there, and I don't know if there are any plans to
20 talk to AC Transit.

21 MR. GHIELMETTI: There are plans. We have been
22 talking to AC Transit, and we hope to have the question
23 resolved by the time the final EIR comes out.

24 We also have a condition in there about shuttle
25 services that we will agree to.

LB-26
cont.

1 MS. ARMSTRONG: From BART?

2 MR. GHIELMETTI: Jack London Square, BART and
3 the project, basically.

4 MS. ARMSTRONG: Like the Emeryville Ramp? Are
5 you familiar with that?

6 MR. GHIELMETTI: Very familiar.

7 MS. ARMSTRONG: So I really think you need to
8 have parking, absolutely and positively.

9 Let me see. There was one other item. Panel,
10 this is a letter, I am reading a letter we got from the
11 panel. It said, Panel endorsed Measure DD with the
12 understanding that some monies would go to implementing
13 the waterfront plan for this area.

14 Is, in fact, DD money available for this?

15 MS. SCHIFF: Yes.

16 MS. ARMSTRONG: Have you contacted anyone
17 about DD?

18 MR. GHIELMETTI: There was, I believe, I can't
19 be sure, but I think \$22 million available for DD. I
20 don't know whether it's specified. I think it was for
21 parks, but I don't know that it couldn't be used for
22 other purposes, and we have said that we do not need
23 that money, and are not contemplating tapping into it.

24 These parks would be privately built. No
25 public money involved.

LB-26
cont.

LB-27

1 MS. ARMSTRONG: So money is not the issue?

2 MR. GHIELMETTI: Well, money is partly the
3 issue, in trying to figure out uses for the building,
4 cost to rehabilitate the building are issues; but, also,
5 as I said, you can't have a park inland of that and call
6 it a waterfront park, and some of the best examples,
7 like I said, from Portland and Vancouver are these
8 beautiful waterfront parks that are not like the
9 Portobello operation. They are vastly bigger spaces
10 that the public can come and enjoy.

11 There's a shortage of park space on the water
12 and this is close to people who live right across the
13 freeway there.

14 MS. ARMSTRONG: I would ask you to take
15 another look at the project design. I would ask you to
16 provide more parking, not only for the residents, but
17 for people who are going to use any sort of open space
18 to look at reusing the building.

19 I am not opposed to taking some of the building
20 down for some park space, but, to be very honest with
21 you, I think a lot of grass isn't a lot of park.

22 MR. GHIELMETTI: Well, the grass is not
23 necessarily the design. There are landscape areas,
24 portions would be grass, public art, trees, bushes
25 structures, etc.

LB-27
cont.

LB-28

1 I do hear your point, and we will be studying
2 that.

3 MS. ARMSTRONG: Yeah. I would really welcome
4 you to do that.

5 MR. GHIEMMETTI: Thank you. We appreciate
6 that.

7 MS. ARMSTRONG: Thank you.

8 MR. PETERSON: I concur. Just looking at the
9 Plan, the terminal is proposed to be removed and on the
10 yacht basin the buildings are all up to the water.
11 Maybe you can look at rearranging things.

12 I go to the boathouse all of the time. Row.
13 People playing soccer. You are a hundred feet from the
14 water playing soccer. You don't see the water anymore.
15 I don't know that the depth of the park is that critical
16 to the waterfront experience.

17 And I am wondering how the City, I think the
18 EIR should address the overriding consideration for this
19 much housing.

20 This density is like the Tenderloin.

21 When I look at the height of the buildings, and
22 I like dense development, I like cities, but the city's
23 General Plan calls for the housing element, a lot more
24 housing here, but I don't know that it has to be here as
25 to this extent when there are other, there are many,

LB-28
cont.

LB-29

1 many places in the city where there could be more
2 housing.

3 This is a nice, big site, but the loss of other
4 amenities to the public permanently, I don't know that
5 those are, the need for this much housing here can be
6 considered an overriding consideration.

7 Something else to figure out what, how -- an
8 attorney probably has to figure that out, right -- are
9 there precedents for what the overriding consideration
10 is?

11 MR. PARISH: The Council can basically decide
12 whether they think the benefit of the project outweighs
13 the significant impacts, and they don't have to be too
14 detailed, I believe.

15 MR. PETERSON: But they have to make specific
16 findings.

17 MR. PARISH: Specific findings.

18 MR. PETERSON: Existing documents.

19 MR. PARISH: One of the findings relates to
20 the HPE, the historic preservation elements we are
21 talking about too. That finding.

22 Part of it has to be on the basis that housing
23 and parks are more beneficial than the building, they
24 would have to find.

25 MR. PETERSON: We can't just say something is

LB-29
cont.

1 a landmark. We like it. We have to have criteria that
2 we'll make a decision to. I wonder what those criteria
3 are.

4 MR. PARISH: Consistent with the General Plan
5 for the rest of the housing.

6 MS. ARMSTRONG: And, of course, there's new
7 zoning. It's the waterfront plan. So none of the
8 zoning -- it's my understanding when I was reading the
9 EIR, that's new zoning.

10 MR. WEBER: The zoning would be given over to
11 the developer.

12 MR. PETERSON: By the third meeting, I will
13 know it all. Forgive me for all of the questions.

14 MS. ARMSTRONG: Please, Mr. Ghielmetti.

15 MR. GHIELMETTI: It was called Planned
16 Waterfront District and the Estuary Policy Plan. The
17 Estuary Policy Plan had a series of goals, had an
18 illustrative picture of what those goals may look like.
19 And so we came forward with our plan.

20 Part of our proposal is to have a planned
21 district zoning for the site.

22 MS. ARMSTRONG: Well, I think this is an
23 opportunity to try to balance the Estuary Policy Plan,
24 which is in conflict with some of the other issues.

25 So I would say that, I would ask you to take

LB-29
cont.

LB-30

1 another look at the project, see what we can do for open
2 space, try to reuse some of that building. I think it's
3 really worthy.

4 I thought initially it was a cost issue that
5 there would be new pilings that had to be put in. It
6 would be terribly expensive.

7 And so if money is really not the issue, then I
8 would ask you to take another look at it, please, and
9 maybe work with some members of the community. I would
10 ask maybe that you kind of open your doors a little bit.

11 MR. PARISH: The comments about the Bay Trail
12 going along side of it, and I have explored many
13 sections of the Bay trail with my family, and I am
14 looking forward to be able to go past the Richmond-Ford
15 plant on the Bay trail, and it's very, it's interesting
16 and entertaining to be riding next to a building with
17 the water right on the other side, and, I mean, that is
18 a park experience, even though it's a very urban
19 environment. I think the same thing could happen here.

20 You don't need a huge waterfront park to have a
21 waterfront park experience. It could be right next to
22 the building, the Bay Trail, and that definitely adds to
23 the vitality of the area.

24 MS. ARMSTRONG: In our staff recommendations,
25 I was looking through this item 3.C, the manner in which

LB-30
cont.

LB-31

1 the Board wishes to work in formulating recommendations
2 to the Planning Commission and the City Council as the
3 development review process proceeds, such as forming a
4 subcommittee.

5 Is anyone interested in being on a
6 subcommittee? Formulating recommendations? Taking
7 another look at the developer's plan? Thought I would
8 put it out there.

9 MR. PETERSON: I will do it.

10 MS. ARMSTRONG: A committee of two? Board
11 member Muller just volunteered.

12 So maybe what we could do is form a
13 subcommittee. When you take a look at your plans,
14 bring it to the subcommittee, get feedback from them.
15 Maybe we can make this a work in process.

16 I want to thank you for bringing the proposal
17 to us and thank you all for attending.

18 MR. PARISH: No action to take.

19 MS. ARMSTRONG: No. It's simply comments.

20 MR. PARISH: So now close the public portion.

21 MS. ARMSTRONG: So we'll now close the public
22 hearing on the Draft EIR and we will continue to accept
23 written comments on the Draft EIR until 4:00 p.m. on
24 October 24th, 2005, and we are very happy to work with
25 the developer on this project, and we would like also to

1 compliment you on the brochure and the presentation.

2 (Off the record.)

3 (Whereupon, this portion of the hearing

4 regarding Oak to Ninth concluded at 8:51 p.m.)

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1 STATE OF CALIFORNIA)
 : ss
2 COUNTY OF MARIN)

3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of Michigan, Notary Public of the
5 State of California, do hereby certify:

6 That the foregoing proceedings were taken
7 before me at the time and place herein set forth; that a
8 verbatim record of the proceedings was made by me using
9 machine shorthand, which was thereafter transcribed
10 under my direction; further, that the foregoing is an
11 accurate transcription thereof.

12 I further certify that I am neither financially
13 interested in the action nor a relative or employee of
14 any attorney of any of the parties.

15 IN WITNESS WHEREOF, I have this date subscribed
16 my name.

17

18 Dated: _____

19

20

21

Diane M. Gallagher, RPR
CSR No. (Mich) 2191
California Notary Public No. 1419258

22

23

24

25

Comments from Members of the Public

LB-1 **Joyce Roy** states that the Ninth Avenue Terminal needs to be reused with a large park in front it. See Response to Comment Q-2 regarding preservation alternatives and Master Response B regarding further analysis of reuse alternatives for the Ninth Avenue Terminal.

LB-2 **Joyce Roy** states that BCDC members stated that uses not normally allowed within the 100-foot BCDC Shoreline band may be allowed given the historic resource. See Master Response G, which discusses public trust use restrictions.

The comment suggests that reuse of the Terminal would “follow the Estuary Policy Plan.” See Response to Comment PH-31, which clarifies the Estuary Policy Plan policy statement, direction, and vision regarding preservation of the Terminal.

LB-3 **Steve Lowe** states that additional consideration of reuses of the Terminal should be considered to ensure the higher and better use than its demolition. See Master Response B regarding this topic.

LB-4 **Charles Weber, speaking for the Fifth Avenue Institute**, proposes that the Ninth Avenue Terminal be preserved intact and discusses possible adaptive reuses and their income streams. See Master Response B regarding further analysis of possible reuses for the Terminal. The comment refers to Mitigation Measure E.8 on DEIR page IV.E-30. First, the mitigation does not intended as “historic preservation,” particularly as it would not eliminate the significant and unavoidable impact to the historic resource, but that it would lessen the impact to some extent. Also, 200 square feet of floor is stated as a *minimum* area to be set aside

LB-5 **Anna Naruta** states that the DEIR discussion relating to archeology are inadequate in its use of the N.C. Nelson 1909 survey as reference for the likelihood of shellmound findings on the project site and the reliance on a reconnaissance level survey of the project site to determine areas suitable for survey. See response to Ms. Naruta’s Comments JJ-1 and BB-4 regarding this topic.

The comment also states concern that the mitigation measures for Impact E.1 (archeological resources) (DEIR p. IV.E-24) would effectively have construction workers act as monitoring archeologists. The comment suggests reconstruction research and survey methods that should occur. See responses to Ms. Naruta’s Comments and JJ-5 and JJ-8 that modifies mitigation measures relevant to Impact E.1.

LB-6 **Keith Miller** states his past concerns with the project and his current support, particularly with respect to the potential benefits to his business. The comments do not address the adequacy of the DEIR analysis or issues relevant to the project impacts under CEQA and is noted.

- LB-7 **Keith Miller** supports that the Port and the City should investigate the feasibility of rehabilitating the Ninth Avenue Terminal for adaptive reuse, and an alternative that preserves the “front (1920s) portion of the Terminal, still providing desired open space. See Response to Comment Q-2 regarding preservation alternatives and Master Response B regarding further analysis of reuse alternatives for the Ninth Avenue Terminal.
- LB-8 **Sandra Threlfall** states her concern that the City preserve the Ninth Avenue Terminal which reflects Oakland’s history as a waterfront industrial city. See Response to Comment Q-2 regarding preservation alternatives.
- LB-9 **Sandra Threlfall** states concern with the proposed public spaces for public events in proximity to residential uses. Noise impacts are analyzed in Section IV.G (Noise) of the DEIR consistent with Oakland’s 2004 CEQA Thresholds/Criteria of Significance Guidelines provided on DEIR page IV.G-16. See Response to Comment U-10 regarding.
- LB-10 **Naomi Schiff** demonstrates the amount of the Terminal proposed to be retained by the project. The comment does not address the adequacy of the DEIR and is noted.
- LB-11 **Naomi Schiff** restates her Comment S-3; see Response to Comment S-3 regarding assertions made about the conditions of the Ninth Avenue Terminal and maintenance requirements of the pier. See also Response to Comment E-8.
- LB-12 **Naomi Schiff** asks about view impacts and the potential for views from the waterside of the Terminal where the Bay Trail could be located. See Response to Comment LB-18 below, which raises this topic.
- LB-13 **Naomi Schiff** offers reuse possibilities for the Terminal. See Response to Comment B regarding the exploration of reuses for the Terminal.
- LB-14 **Naomi Schiff** states that the proposed street design prevents views of the waterfront. See Response to Comment U-17 regarding impacts on views from the Embarcadero and street alignments. See Response to Comment LB-20 below, regarding views prohibited by the Ninth Avenue Terminal.
- LB-15 **Naomi Schiff** encourages the LPAB to provide comments and historic analysis in the DEIR. The comment is noted.

Comments from Board Members

- LB-16 **Board Member Peterson** references the Alternatives discussion in Chapter II, the Summary of the DEIR. A full description and analysis of the project alternatives is provided in Chapter V (Alternatives). The comment also speaks to Terminal reuses that should be explored. See Master Response B regarding this topic.
- LB-17 **Board Member Peterson** states that Mitigation Measure E.3b, which requires compliance with the Secretary of Interior’s Standards, would not address the significant

and unavoidable impact that would result with substantial demolition proposed for the Ninth Avenue Terminal. Mitigation Measure E.3b requires that the Bulkhead Building's reuse and rehabilitation comply with the Secretary of the Interior's Standards for Treatment of Historic Property. The mitigation clearly states that further review of detailed final design plans (including, but not limited to, proposed window treatments, materials palette, awnings, signage, and interior configurations) by a qualified professional must occur. This process would establish which standards the project would follow, based on the final approved project, and to what extent. Subsequently, the findings would be subject to review and final approval by the City. Compliance with the standards is required by the project if any portion of the Terminal is retained.

LB-18 Board Member Peterson states that the Ninth Avenue Terminal does not preclude views of the water from the public, but instead from the residents of the proposed project buildings. As depicted in the range of visual simulations provided in the DEIR (Figures IV.K-2 through IV.K-16), there is minimal existing visual access to the waterfront from most viewpoints around the site due to existing buildings and the relatively flat topography of the area. This limited visual access from outside the project site is not solely attributable to the Ninth Avenue Terminal structure, which itself is not readily visible from most viewpoints. From within the site, however, at approximately three stories tall, 1,000 feet long, and situated linearly along and adjacent to the water's edge, the sheer size and location of the Terminal would inevitably limit views that could be created from new open spaces and public rights-of-way (streets) within the project site. Figure IV.K-16 specifically shows a possible new view of open space taken from the edge of the proposed Shoreline Park at 6th Avenue. The comment suggests that the Terminal would block views from the proposed project buildings, namely the residential buildings. However, the height of the Terminal would not likely substantially preclude such views since most residential units would be located above the lower levels of commercial/retail uses and parking. Thus, views from residential units would likely be from elevations high enough not to be affected by the Terminal building and that would likely have more expansive views to the southeast and southwest, beyond or away from the Terminal.

LB-19 Board Member Peterson asks about the findings that must be made pursuant to Historic Preservation Element Policy 3.5 (Historic Preservation and Discretionary Permit Approvals), and opines that the project, as designed, may not meet those findings and directs the project sponsor to address the "quality" of the project in terms of building materials. The comments do not address the adequacy of the DEIR analysis or topics relevant to the project's environmental impacts.

L-20 Board Member Muller states that the quality of open space proposed does not warrant demolition of the historic resource. The comment suggests that the approximately 18,000 square-foot portion of the Ninth Avenue Terminal Bulkhead Building that the project proposes to retain is intended to block the public from viewing the proposed new

Shoreline Park to the south of it (where the Ninth Avenue Terminal is currently located). The comment also suggests that the retained Bulkhead Building would be a “barrier to use of the space that is becoming open by removing the rest of the building rather than a significance public space that the original Estuary Plan showed on it.”

The project sponsor proposes to rehabilitate the Bulkhead Building to retain a representative portion of the significant historic structure and to allow its reuse for possible community activities (cultural, educational, recreational) on the project site. Complete demolition of the Terminal, including the portion intended to be retained, would in fact allow for a larger park area or parking area and would expand views of the new Crescent Park and waterfront from the northeast and from public streets within the project site. The expanded medium-range views can be envisioned using Figure IV.K-11 from the shoreline trail along Brooklyn Basin and in Figure IV.K-12 from the Embarcadero looking southwest.

The comment adds that the DEIR correctly identifies the impact on the historic Ninth Avenue Terminal as a significant and unavoidable impact.

LB-21 Board Member Parish echoes that the DEIR appropriately defines the impact on the Terminal as significant.

The comment agrees with comments regarding views relative to the Ninth Avenue Terminal and proposed street configuration. See Response to Comment U-17 regarding impacts on views from the Embarcadero and street alignments. See Response to Comment LB-20 above, regarding views prohibited by the Ninth Avenue Terminal.

LB-22 Board Member Parish comments on the need for the project to figure out potential reuses of the Terminal if it is preserved, and what the resulting impacts would be. See Master Response B regarding further analysis of reuse alternatives for the Ninth Avenue Terminal. See Response to Comment Q-2 regarding preservation alternatives.

LB-23 Board Member Parish restates concerns outlined in Comment LP-19 regarding the project’s ability, as currently designed, to satisfy HPE Policy 3.5 findings. The City decisionmakers will consider the project, as revised through the project design review process, and determine whether the project meets all required findings and criteria prior to acting on the project.

LB-24 Board Member Armstrong asks whether the existing piles (under the Terminal and wharf) would be retained and reused. Mr. Ghielmetti, representative of the project sponsor, states that some piles would be retained and others replaced. He also clarifies that there would be minimal difference in load on the pilings when comparing the existing building load or proposed live loads and open space. The comment does not address the adequacy of the DEIR analysis and is noted.

- LB-25 **Board Member Armstrong** asks about potential reuses for the Ninth Avenue Terminal and what the building can be used for under the Tidelands Trust, BCDC, and the Estuary Policy Plan designations. Mr. Ghielmetti describes the uses allowed under the Tidelands Trust. See Master Response G, which discusses public trust use restrictions. Uses currently allowed by the Estuary Policy Plan are those allowed by the existing Planned Waterfront Development-1 (PWD-1) land use classification discussed on page IV.A-11 of the DEIR under *Estuary Policy Plan*, and those described for the existing M-40 Heavy Industrial Zone and the S-2/S-4 Civic Center Zone / Design Review Combining Zone (which would not accommodate the project) as discussed on DEIR page IV.A-27 under *Zoning Regulations*. The amendments to the existing PWD-1 land use classification and zoning designations on the project site proposed to accommodate the uses and development intensity of the project are described starting on page IV.A-37 of the DEIR, under *General Plan Use and Development Standards and Zoning Regulations*. BCDC's land use purview focuses on uses and development that facilitate public access to the bay, to the maximum extent feasible, and applies to areas within the 100-foot BCDC shoreline band. Area near Estuary Park is designated as a Waterfront Park Priority Use Area, and there is not other Port Priority Use Area on the project site (as designated in the *San Francisco Bay Plan*).
- LB-26 **Board Member Armstrong** requested that the project build in a lot more parking for public users (non-residents). The DEIR does not identify a significant impact related to parking supply, however this is addressed in the draft Transportation Demand Management (TDM) Plan that concludes that, with implementation of the TDM, a parking surplus would occur. Mr. Ghielmetti confirms that there are ongoing discussions with AC Transit regarding service to the project site, and states that the project would be required to provide a private shuttle from the site to specific transit and activity nodes as well.
- LB-27 **Board Member Armstrong** asks whether Measure DD funding is available to the project. Measure DD allocates funding for a series of improvements and maintenance related to parks and open spaces and specifically identifies improvements to Estuary waterfront parks, including the expansion of Estuary Park. The project sponsor does not propose to use Measure DD funding to develop 20.7 acres of new public waterfront parks along the Estuary, which does not preclude future use of Measure DD funds for improvements in the project area on other related projects. The comment does not address the adequacy of the DEIR analysis or pertain to the project's environmental impacts and is noted.
- LB-28 **Board Member Armstrong** directs the project sponsor to provide more parking on the project site and more detail on the design of Shoreline Park. The comment does not address the adequacy of the DEIR analysis or pertain to the project's environmental impacts and is noted.

LB-29 **Board Member Peterson** states that the City decisionmakers should carefully consider the question of the potential overriding consideration of new housing development in Oakland as it considers the loss of other amenities to the public permanently. If the City chooses to allow full or partial demolition of the Terminal, it would be required to prepare and adopt statement of overriding considerations in support of its choice, as it previously did prior to adoption of the Estuary Policy Plan for which a significant unavoidable. Board Members add that specific findings related to historic preservation findings (Policy 3.5) must be made in order to approve the project (see Responses to Comments LB-19 and LB-23) in addition to findings of consistency with the General Plan and Zoning (as proposed for amendment).

LP-30 **Board Member Armstrong** directs the project sponsor to revisit the proposed open space (the comment is not specific as to what aspect) and the reuse of a greater portion of the Terminal. The comment is noted.

LP-31 **Board Member Parish** restates the points in Comment LB-12 and Comment LB-18 regarding the alignment of the Bay Trail along the waterside of the retained Terminal. See Response to Comment LB-12 and LB-18.

APPENDIX A

Draft Transportation Demand Management Program

January 2005

Oak to Ninth Project Transportation Demand Management Plan

DRAFT

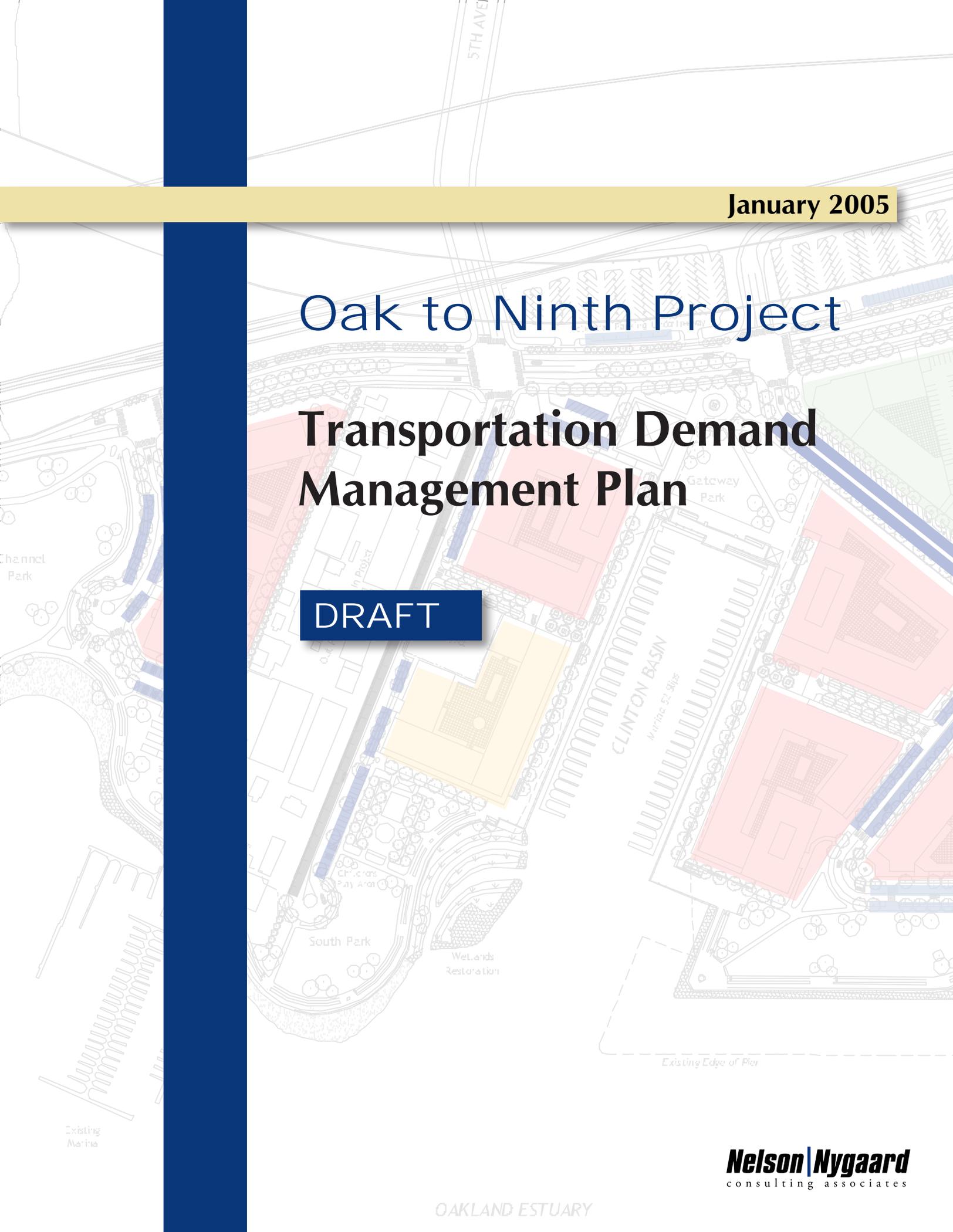


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CHAPTER 1 INTRODUCTION

Purpose of the Plan

The Oak to Ninth Project represents one of the most exciting opportunities for dense, urban development in the Bay Area, not least because of its size. This report presents the proposed Transportation Demand Management (TDM) plan for the project. It sets out a series of measures by which the developer and property manager can reduce vehicle travel to and from the site, and promote transit, walking and cycling. These measures capitalize on the mix of uses, walkability and future transit accessibility of the development, giving people a choice whether or not to use their vehicles.

At the same time, the TDM plan is designed to manage the demand for auto travel and ensure that the parking system works well, and that spaces are readily available for all users. The project is designed using “urban” parking ratios, rather than the “suburban” model of unlimited free parking. While this brings numerous advantages – increased development potential and reduced auto use, to name just two – it also requires careful management of the parking system and the provision of alternatives to the auto. The analysis is intended to provide assurances to the developer, lenders, the City and the public that the transportation system will be sufficient to meet the needs of residents, employees, visitors and recreational users.

In summary, the plan concludes that a comprehensive transportation demand management plan can reduce auto trips to and from the site,

improve the accessibility of the site to all users and ensure that all modes of transportation including the parking system function well. The basic building blocks of the transportation demand management plan are summarized in Figure 1-1.

Measures Included in the Plan

Chapter 2 proposes transit improvements to serve the site. Chapter 3 describes the proposed facilities for bicyclists, while Chapter 4 details a recommended parking management plan.

The full set of recommended measures is shown in Figure 1-1. Many of these, particularly the bicycle facilities, have already been incorporated into the project design from an early stage. The table divides the measures into *required mitigations*, which are considered essential for the project's success, and *recommended actions*.

Figure 1-1 Planned TDM Measures

Transit

Required Mitigations

- Create a shuttle line that will begin operation with the first residential move-ins. The shuttle will connect the development with the Aquatic Center, Jack London Square and Downtown Oakland, operating at 15 or 30 minute intervals. This route would connect with AC Transit Route 72 in Jack London Square as well as Amtrak, the Ferry Terminal, 12th St. BART and other AC Transit bus routes.

Recommended Actions

- Work with AC Transit to consider the extension of Line 72 from its current terminus at the Jack London Amtrak station to the development site. This route would circulate and layover within the development, providing enhanced “front door” service to businesses and residents in the development.
- Provide enhanced transit information specifically tailored to residents and visitors
- Develop an “eco-pass” deeply discounted transit pass, ideally utilizing Translink which will enable residents to access all Bay Area transit systems without any out-of-pocket expenses for fares
- Implement AC Transit’s proposed extension of Line 11 service, providing service every 20 minutes during the week to both Lake Merritt and downtown Oakland, serving BART stations and other local trips
- Provide high quality stop amenities and wayfinding for residents and visitors to the site. Bus shelters should be provided at all stops, and signage should indicate key locations within the development, especially the Bay Trail
- Coordination between bicycle and transit modes is critical, especially for visitors who will want to access the site for recreational trips

Bicycles

Required Mitigations

- Provide an on-site network of bicycle and pedestrian paths to ensure public access to the shoreline, in line with Bay Trail design standards
- Provide Bay Trail signage
- Provide sufficient long-term bicycle parking to meet demand, with cages and/or lockers

in the residential garages

Recommended Actions

- Provide good connections to the City bicycle network, particularly to BART and Downtown Oakland, through ensuring safe crossings at Ninth Avenue and Fourth Avenue
- Provide long-term bicycle parking at an initial ratio of 1 space per 5 units, adjusted upwards as necessary to cater for demand
- Provide secure short-term bicycle parking, with bicycle racks provided along retail frontages in line with City of Oakland placement standards
- Provide distinctive gateway signage to direct cyclists off Embarcadero to follow the shoreline

Parking

Required Mitigations

- Charge for parking separately from the costs of residential units
- Offer residents the option of a reserved, dedicated space at a higher price, or a discounted, shared space
- Manage on-street parking, for example through pricing and/or time limits

Recommended Actions

- Charge non-residents an hourly or daily rate for parking
- Charge the right price to maintain availability, through adjusting prices to ensure that spaces are available
- Price all on-street parking using meters or pay-on-foot technology
- Provide smartcard access to residential garages, ensuring security for residents while allowing employees to use this parking
- Charge a higher rate for the most convenient on-street parking on Main Street
- Provide at least two City CarShare vehicles, and provide free memberships to residents and employees
- Regularly monitor parking occupancy
- Depending on parking demand in Phase I, consider the potential to lease additional space for overflow parking for special events. Caltrans, for example, has historically been willing to lease space under freeways for this purpose

TDM Coordinator

One overarching recommendation is to employ a full-time Transportation Demand Management coordinator for the project. This person would be based in the property management office, and be easily accessible to residents and employees – ideally from a “storefront” location. He or she would take overall responsibility for implementing and adjusting the TDM program; promoting it to the public; and selling parking permits. Two full-time positions may be warranted in Phase II of the project, as this person would have a wide range of responsibilities, including:

- Transit
 - o Marketing transit service
 - o Selling or distributing transit passes
- Bicycling
 - o Allocating bicycle cage spaces and lockers and issuing keys
 - o Distributing bicycle maps
 - o Monitoring bicycle rack usage and the need for more racks
- Parking
 - o Selling parking permits and allocating spaces
 - o Overseeing parking administration, enforcement and maintenance
 - o Monitoring parking occupancy
 - o Recommending parking price adjustments
 - o Marketing the City CarShare program
 - o Special event planning
- General marketing
 - o Publicizing City, County or regional programs such as 511 and the car-pooling matching database
 - o Organizing transportation information displays
 - o Providing transportation information for “new resident” welcome packets
 - o Liaising with City transportation staff
 - o Responding to public complaints

Each element of the TDM plan is documented in subsequent chapters. The importance of implementing a TDM plan is highlighted on Figure 1-2, which summarizes the results of a study recently completed by the City of Portland. This study showed that with a combination of good transit service and mixed-use development, auto ownership can be reduced by nearly 50% from approximately 2 vehicles per household to one. This type of success is dependant on the combination of mixed-use development, such as the proposed Oak to 9th Plan, and the availability of good transit service, as proposed in Chapter 2. As the figure shows, providing only a mix of uses will not achieve the same results. While these results have been calibrated for Portland, national studies support these findings throughout the Country.

Figure 1-2 Impacts of Transportation Demand Management and Mixed Use Development on Auto Use (Calibrated for Portland, OR)

Land Use Type	Mode Share (percent)					Vehicle Miles per Capita	Auto Ownership per Household
	Auto	Walk	Transit	Bike	Other		
Good Transit and Mixed Use	58.1	27.0	11.5	1.9	1.5	9.80	0.93
Good Transit Only	74.4	15.2	7.9	1.4	1.1	13.28	1.50
Suburban Multnomah Co.	81.5	9.7	3.5	1.6	3.7	17.34	1.74
Portland Region	87.3	6.1	1.2	0.8	4.6	21.79	1.93

Source: City of Portland, 2002

While the transportation demand management plan focuses on transit, biking and parking services and policy, the greatest benefit to the combination of mixed-use development and high quality transit service can be seen on Figure 1-2 under the mode shift to walking trips. All three of these elements enhance the walkability of the development with substantial increases seen in walking trips.

CHAPTER 2 TRANSIT ACCESS PLAN

Encouraging Transit Use

Encouraging transit use on the site requires more than simply providing a bus line. To create a culture of transit use, transit must compete favorably with auto use on speed, cost and convenience to encourage choice riders to use transit. This requires a combination of techniques including enhanced transit information, transit pass provisions, and transit service, including comfortable and secure bus stops. Provisions should be made for combining bicycle and transit trips by accommodating bicycles at transit stops and on-board transit vehicles. Each of these concepts is described below.

Enhanced Transit Information

Transit information is widely available through AC Transit and BART's website and the 511 website and telephone service in the Bay Area. Information on transit service should be provided to all prospective residents and included in a "welcome packet" for all new homeowners and renters on site. Information should include routes and schedule information as well as connection information for the two local BART stations, the Jack London Ferry and AMTRAK. The location of car-sharing vehicles should also be identified and marketed as part of the transit program.

This plan calls for the implementation of a TDM Coordinator to manage the parking operations on site, and distribute transit passes and information. Ideally, this person would be located on site and would be reachable in person and by telephone to answer specific transit information questions. The TDM Coordinator would also

be responsible for managing the shuttle, which will likely be contracted with a private operator. While transit information is widely available through other sources, a consolidated local source will help newcomers orient to available transit services, and may encourage them to try transit for the first time.

Transit information should also be available to visitors who may wish to travel to the site for recreation and other purposes. East Bay Regional Parks and others provide information about using transit for recreation. The developer should coordinate with as many of these sources as possible to provide information about services available, including information about bicycle facilities and coordination with transit.

Defraying the Cost of Transit

Discount fare programs that provide special discounts to identified groups such as employees of a particular business, students at a University, or residents of a large development are increasingly common in the United States, and in the Bay Area. These types of fare discounts are often referred to as "Eco Passes" because they encourage transit use by making the cost of transit invisible to the user and by dividing the cost of transit service over both users and non-users. In some cases, the sponsoring agent, usually a large employer, simply reimburses the transit agency for all fares incurred. Employees of the City of Berkeley ride AC Transit for free for all trips, reimbursed by agreement with the City. More sophisticated sponsored programs are used by organizations with a large number of members. In these programs, the sponsor allocates the cost

of transit equally across all members regardless of how often they use the system. Since only a percentage of any group will actually use transit regularly, the cost per person remains low. For example, King County Transit in Seattle, WA uses this type of pricing scheme for its participation in employer-subsidized “flexpass” agreements established with King County employers. Pricing is based on transit usage which is gathered from periodic surveys. Closer to home, AC Transit has a “Class Pass” arrangement with all students and staff at UC Berkeley. AC Transit currently receives about \$22.00 per SEMESTER for all students on campus, paid by student fees. In exchange, all students may take all AC Transit services, including local and transbay routes, at no additional charge. The university estimates the value of these services to a student who regularly commutes to school at over \$1,000 per year. The deep discount is possible because some students will never or seldom ride AC Transit, while others will ride regularly, and the average fare can be covered with the class price pass. An advantage to AC Transit is a guaranteed revenue stream and an increase in ridership associated with providing “free and unlimited” service to students.

Eco pass programs involving residential developments are less common but do exist. In the Santa Clara Valley, VTA has extended its Eco Pass program to residential developments. Similar programs exist in Portland, OR and Boulder, CO. The cost of the Eco pass for residential customers varies tremendously depending on the expected level of transit use and the number of residents involved, but generally range from \$40 to \$100 per year per resident.

One of the difficulties in developing an Eco Pass program for Oak to Ninth residents is the high percentage of multi-jurisdictional transit

trips in the area. Commuters traveling to San Francisco, for example, would typically take an AC Transit bus to a BART station, then a BART train, and possibly transfer to San Francisco’s Muni. Some may prefer to take the ferry into the City, all of which require different fares and fare instruments.

AC Transit local fares are \$1.75 per ride, with 10-day and monthly passes available. Combined bus and BART trips offer a \$0.25 discount with transfers distributed by BART. BART’s fare system is distance based, using stored value tickets that are not compatible with the AC Transit pass and ticket system.

The Bay Area region is in the process of implementing a universal fare media called Translink. This “smart card” will be good on all Bay Area transit systems. The new fare media is currently in its test phase, with initial roll out of a full system anticipated in early 2006. AC Transit will implement the system in stages, with initial implementation anticipated in the first quarter of 2006. With full implementation, Translink will replace AC Transit’s prepaid pass programs, including, potentially, existing Eco Passes. BART will be one of the last systems to fully implement Translink, with implementation expected by 2008.

The full implementation of Translink will offer new opportunities for special pass programs, since an Eco Pass could be developed that would cross all transit carriers. Without precedent, it may be difficult to price this pass, but this opportunity should be aggressively pursued before the opening of the first phase of the development.

Transit Service

At present, the Oak to Ninth development area does not have transit service. However, future transit access will be a major factor in managing transportation and parking demand from residents, employees, visitors, and recreational users. The amount that transit service reduces overall demand depends upon its frequency, span (e.g., 7am—10pm), and usefulness – its speed, cost, convenience, and how well it connects people to other transit service and key destinations.

As Oak to Ninth is developed, increased transit service will also be required to serve the needs of residents and visitors to the area. For residents, transit service must connect to local and regional transit networks and job centers, as well as provide a way for residents to make local and regional non-work trips (e.g., shopping, educational, or recreational). Transit service also needs to provide a way for people to access the development’s employment, retail, and recreational opportunities.

Key transit linkages include:

- Connections with downtown Oakland including the 12th Street BART station. This all day demand will include commuters, and trips for a full range of trip purposes in downtown Oakland. Connections to the Lake Merritt BART station are also desirable, but would not be adequate without additional service to downtown Oakland, which has more rail options and is itself a major destination. This primary service should operate 7 days a week, providing fast and frequent service for residents accessing transportation connections and services downtown, and also for connecting visitors to the site.
- Connections with Jack London Square, the closest retail and entertainment complex to the development. Residents will need access to goods and services at Jack London, while visitors may want to “make a day” of a trip to both locations. A connection between Jack London and the site could also provide connections to the Aquatic Center, the Ferry Terminal, and to Amtrak, all within reasonable walking distance.

Initially, there will be relatively low demand for transit service on site as development is phased. It is important, however, for transit service to be available from the time the first residents are in place, to encourage a culture of transit riding on the site. AC Transit has committed to rerouting its Line 11 service to the project site as an initial transit service to the new development. Figure 2-1 shows the current Line 11 and the potential reroute of service to the development. Line 11 would run along the Embarcadero, but would not penetrate the site. However, the bus stops would be within convenient walking distance to most residents and activity centers on site. The route will provide service to both Lake Merritt and 12th Street BART and downtown Oakland, which will be the end destination of many trips. Line 11 operates every 20 minutes from approximately 6:00 AM to 7:00 PM during the week and hourly from 7:00 AM to 7:00 PM on weekends. The reroute would abandon the current segment on 12th Street, which carries relatively low ridership. The line would be rerouted via the 16th Street Bridge to Embarcadero, where it would continue on Embarcadero to 5th Street, rejoining the current route. Riders losing their service on 12th Street would continue to be served on 14th Street, a major transit corridor, two blocks away.

Bus stops along the Embarcadero would be located in the vicinity of 8th Street and Main Street, with enhanced treatments for the Main Street stop. Should senior housing be located on the northeast side of the development, the stop at 8th Street should be located to best serve this parcel. The stop at Main Street would be the gateway to the development and should be a high amenity stop with bus shelters and orientation to the development. The developer and AC Transit should work together to design the amenities at this location, particularly way-finding signage and other information to orient visitors to the development and encourage safe access for pedestrians and cyclists.

The reroute provides at least some transit service to the development, which can be offered as soon as people are living on the site. This route alone, however, does not fully meet the needs of the ultimate development, even at the Phase 1 build-out. A key issue with the proposed Line 11 is the lack of frequency, especially on weekends when visitors may want to access the site. The route provides service to both Lake Merritt and downtown Oakland, but does not provide service to Jack London Square, the Ferry Terminal, Amtrak or the Aquatic Center. Service to downtown is circuitous and somewhat indirect, which may discourage ridership.

There are two alternatives for adding service which will better meet the needs of the development. In the short term, a shuttle route, designed specifically around the needs of the development could be contracted to provide service to Jack London Square and Downtown Oakland. In the long term, discussions could also be conducted with AC Transit to extend a route to the development.

The shuttle route would operate on 9th from

the Embarcadero to the intersection at 9th and Main, to the Embarcadero and across the Lake Merritt Channel, serving the Aquatic Center and crossing the railroad tracks at Oak Street. Service could be provided to the Amtrak station, Jack London Square and continue up Broadway to the 12th Street BART station. At select times, the shuttle could deviate to the Ferry Terminal to provide direct connecting service.

The advantages of the shuttle include:

- Direct service between the development, the Aquatic Center, Jack London Square and downtown Oakland.
- Transit service that penetrates the development. This would be a particular enhancement for any senior housing, allowing for penetration into the development and eliminating the need to cross Embarcadero for seniors and disabled residents.
- Direct connecting service to AC Transit Route 72 that provides service along the entire San Pablo Corridor, one of the most diverse and highest ridership corridors in the AC Transit system, as well as BART at 12th Street, Amtrak, the Ferry Terminal, and other AC Transit routes.
- Opportunities for enhanced frequency, especially on weekends, when Line 11 provides only hourly service.
- It is likely to be more economically feasible than extending AC Transit Route 72 to the development.

The proposed route would be just over 2 miles long each way, and could be operated by one bus providing service every 30 minutes, or with two buses, providing service every 15 minutes. The frequency of the shuttle will depend to some extent on the size of the vehicle operating the route. A larger bus may provide adequate service every 30 minutes, while a smaller bus may need to operate more frequently to handle

variations in demand. At a minimum, all buses should accommodate 16-seated passengers, and should be fully accessible to passengers using wheelchairs and other mobility devices. Capacity for carrying bicycles on the bus is essential, and should be accommodated on all vehicles.

Key stops along this route would be at the Aquatic Center, 5th Avenue, Main Street and Embarcadero, Main and 9th Avenue and 9th at Embarcadero in addition to existing AC Transit stops along Broadway to the 12th Street BART station.

Stops should be characterized by quality amenities and wayfinding. The developer will have greater flexibility in designing those stops that are internal to the site, providing signage identifying Main Street businesses, and orienting pedestrians and cyclists to the Bay Trail, the Marina, and other recreational sites. A layover point with high amenity treatments would be located on Main Street. Bus stops within the development should be designed to accommodate full 40-foot coaches, even if the initial service phase utilizes smaller vehicles.

The cost of this service would be dependant on the size of the vehicle and bids from vendors. Smaller vehicles are generally offered for \$60-80 per hour while larger buses are more likely to cost between \$80 and \$100 per hour for shuttle service. Using the same vendor to operate parking facilities and the shuttle can result in lower cost shuttle operations. As a rough estimate, assuming 1 bus operating every 30 minutes over a 15-hour service day and 365 days per year, the cost would range from \$330,000 for a small bus every half hour to \$550,000 for a larger bus every half hour. Increasing to 15-minute frequency would double the cost. The cost of the shuttle would likely be lower than

the alternative of extending AC Transit Route 72, since that would require adding a vehicle to an already long route.

Presumably, this service would be established as a “free fare” shuttle, with no revenue to offset the operating cost. Provided that residents were provided with “eco-passes,” the shuttle would not result in any revenue loss to AC Transit, and free transfers could be made to other AC Transit routes. Fares and transfer policy for non-residents would need to be negotiated with AC Transit.

In the long term, discussions should be conducted with AC Transit to extend Route 72, the local San Pablo Corridor Service, to the development. A possible extension for this route is shown on Figure 2-1. This route currently begins in Richmond and covers the entire San Pablo Corridor through Berkeley and Oakland, terminating at the Amtrak Station at Jack London in Oakland. A relatively short extension of that route would bring it across the railroad tracks at Oak Street continuing along the Embarcadero and terminating within the development. This extension would require just over a mile of travel, and would add about 10 minutes to the round trip.

The key stops for the extension would be the same as for the Shuttle Line. Bus stops within the development should be designed for quality transit operation and customer experience, with curb extensions (bus bulbs) where possible marking the stop and providing easy stop access. Bicycle parking should be conveniently located near bus stops, especially on Main Street, where cyclists may choose to pause in their trip.

The primary drawbacks for this extension are that the route cannot be extended without added cost and that the extension would elongate

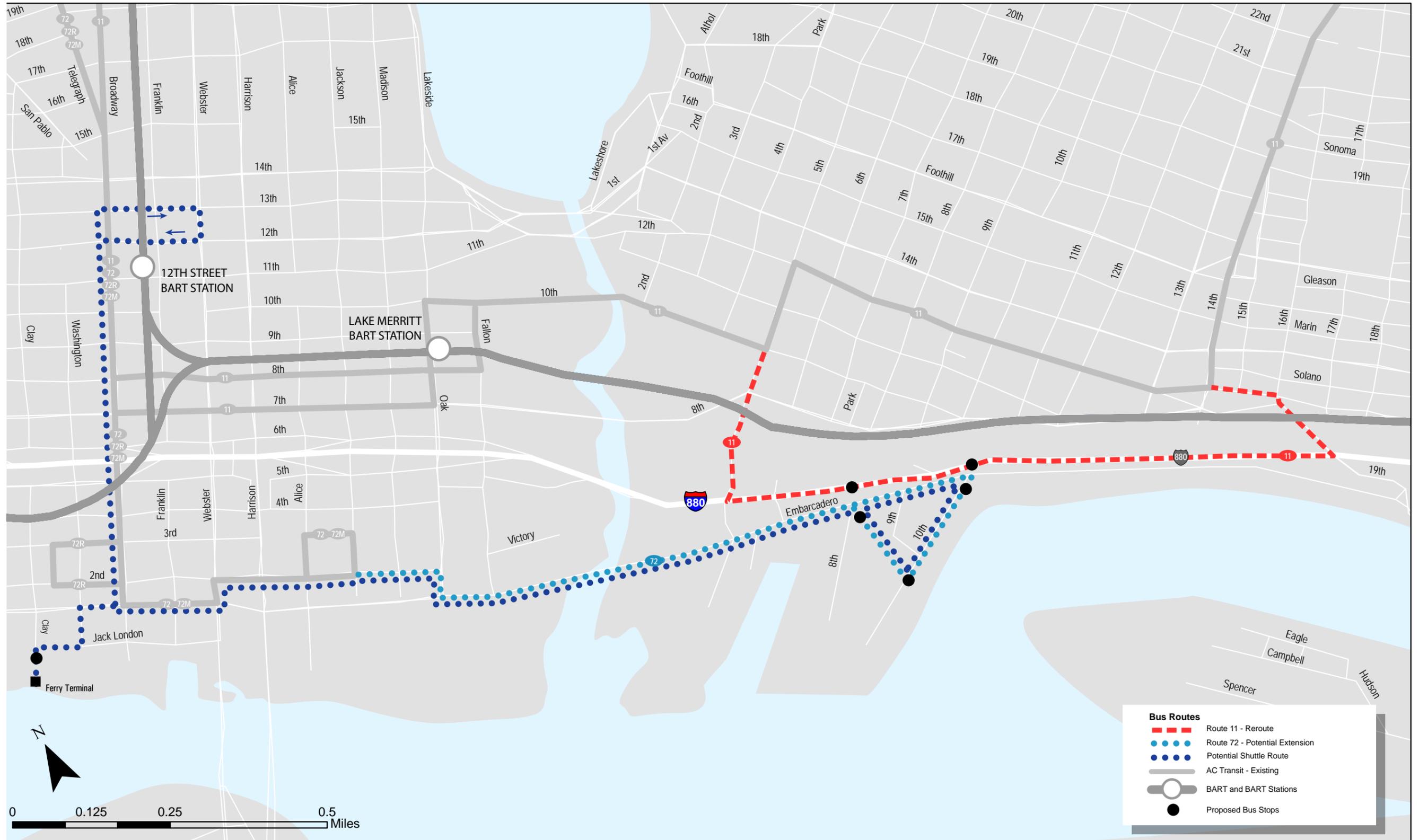
a route that is already very long. Although the extension itself is just over a mile, adding this additional service would increase the number of vehicles required to operate the service by one.

The cost of this extension would need to be negotiated with AC Transit, assuming they would be interested in this service. However, because the extension would require an additional bus and driver to be in service over the entire service day, the extension would cost several hundred thousand dollars, and may not be cost effective.

The proposed shuttle or Line 72 extension should be seen as a complement to, rather than as competition for, the Line 11 extension proposed by AC Transit. Line 11 will be the fastest route to Lake Merritt and the Lake Merritt BART station. It will also provide access to the site from East Oakland neighborhoods. The shuttle, and in the long term a possible Route 72 extension, on the other hand, are also of great importance, as they will be the fastest route to Jack London Square and downtown Oakland.

Combined, these services will provide adequate coverage to all key demand points for both residents and visitors to the site. All residents will live within comfortable walking distance of a bus route, and all routes will serve downtown and at least one BART station.

Figure 2-1 Oak to Ninth Street Potential Transit Service (GIS)



Bus Routes

- Route 11 - Reroute
- ... Route 72 - Potential Extension
- ... Potential Shuttle Route
- AC Transit - Existing
- BART and BART Stations
- Proposed Bus Stops

Source: MTC and ESRI

CHAPTER 3. BICYCLE FACILITIES

Introduction

Bicycle facilities are a critical part of the Oak to Ninth Project. They will allow easy access for residents and visitors to and from nearby destinations and transit hubs, particularly Jack London Square, downtown Oakland and Lake Merritt BART station. These are all between one and two miles from the project site – a long walk, but a brief bicycle ride. In turn, bicycle facilities will help to reduce parking demand and traffic impacts from the development.

At the same time, provision of bicycle facilities can help the wider community take advantage of the recreational opportunities that redevelopment will bring. The San Francisco Bay Trail runs through the project site, and many trail users will enjoy the facility by bicycle.

This chapter of the Transportation Demand Management Plan discusses how bicycle facilities will be integrated into the Oak to Ninth Project. The first section outlines the proposed bikeway network, including the Bay Trail and links to the City of Oakland network. The second section covers bicycle parking facilities.

Bikeways

Bikeway Network

Bikeways must meet the design standards specified in Chapter 1000 of the Caltrans Highway Design Manual. In this chapter, three types of bikeways, are defined:

- Class I Bike Path. Provides a completely

separated right of way for the exclusive use of bicycles and pedestrians with cross-flow minimized.

- Class II Bike Lane. Provides a striped lane for one-way bike travel on a street or highway.
- Class III Bike Route. Provides for shared use with pedestrian or motor vehicle traffic.

At the Oak to Ninth Project, Class I bike paths will primarily provide for recreational use. The path will follow the shoreline, as part of the Bay Trail. Class II bike lanes, meanwhile, will provide a higher-speed, direct route along the Embarcadero. Fifth Avenue, Main Street and Eighth Avenue will carry some bicycle traffic, and should be treated as Class III bicycle routes, although need not be signed.

The planned bikeway network is shown in Figure 3-1. Along the Embarcadero, 6' wide Class II bicycle lanes will provide the most direct route past the project site. For recreational users or less experienced cyclists, a Class I Bike Path will follow the shoreline, as follows:

- From Fourth Avenue to Clinton Basin, this will provide a 40' section, including a 10-12' bike path separated from the pedestrian path (Figure 3-2).
- Around Clinton Basin, there will be a 35' Promenade Zone, shared between pedestrians and bicycles, stepped down from a 15' Cafe Zone (Figure 3-3).
- Along Ninth Avenue and along Fourth Avenue, the Bay Trail will split into separate bicycle and pedestrian sections. The pedestrian route will hug the shoreline, while the bicycle path (Figure 3-4) will follow the roadway.

Main Street will also be an important access

route to the project site, particularly for more experienced cyclists. For this reason, we recommend that back-in/head-out angled parking be provided along Main Street, to improve visibility of cyclists to motorists leaving a parking space.

Figure 3-1 Planned Bikeway Network

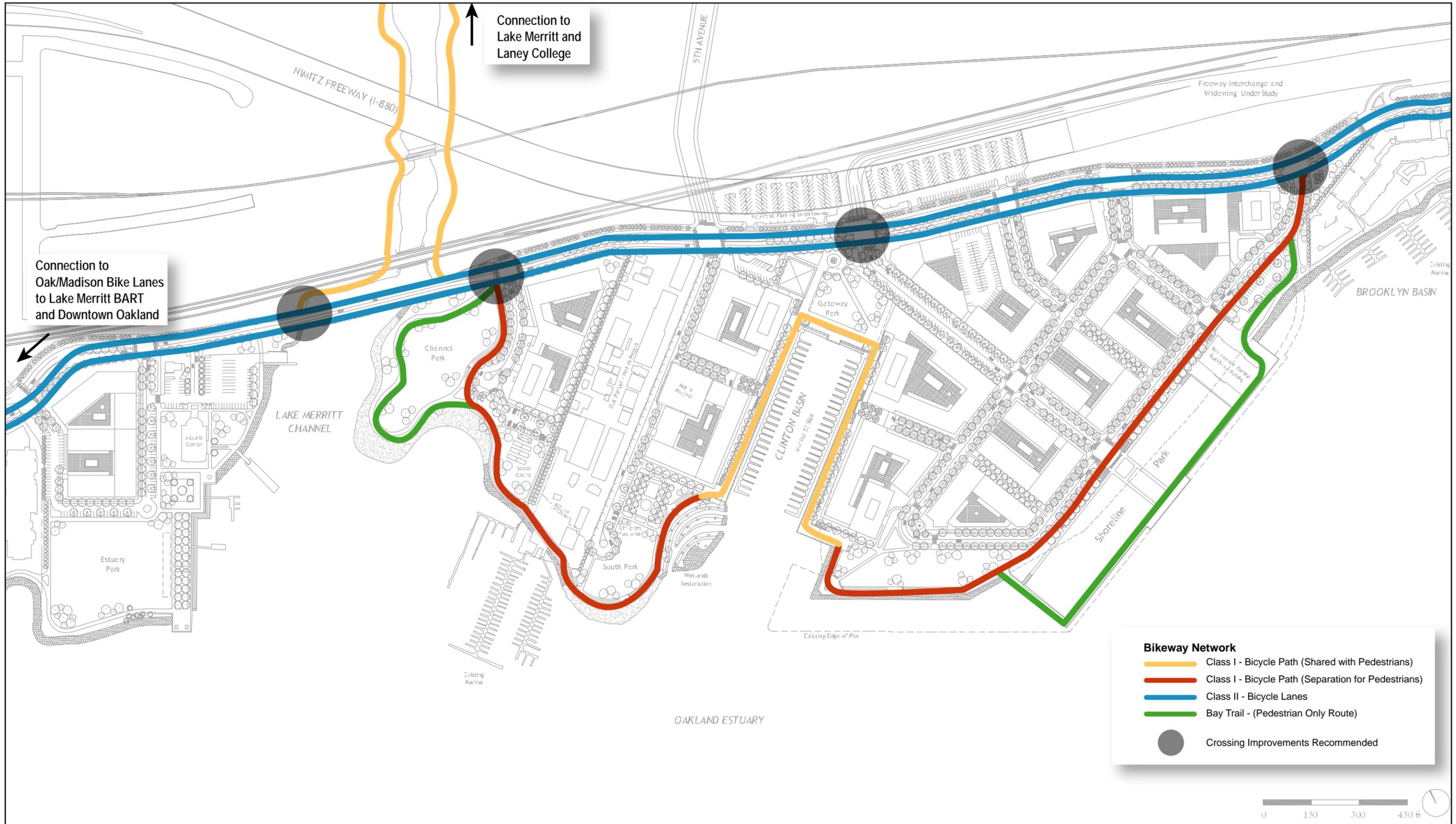
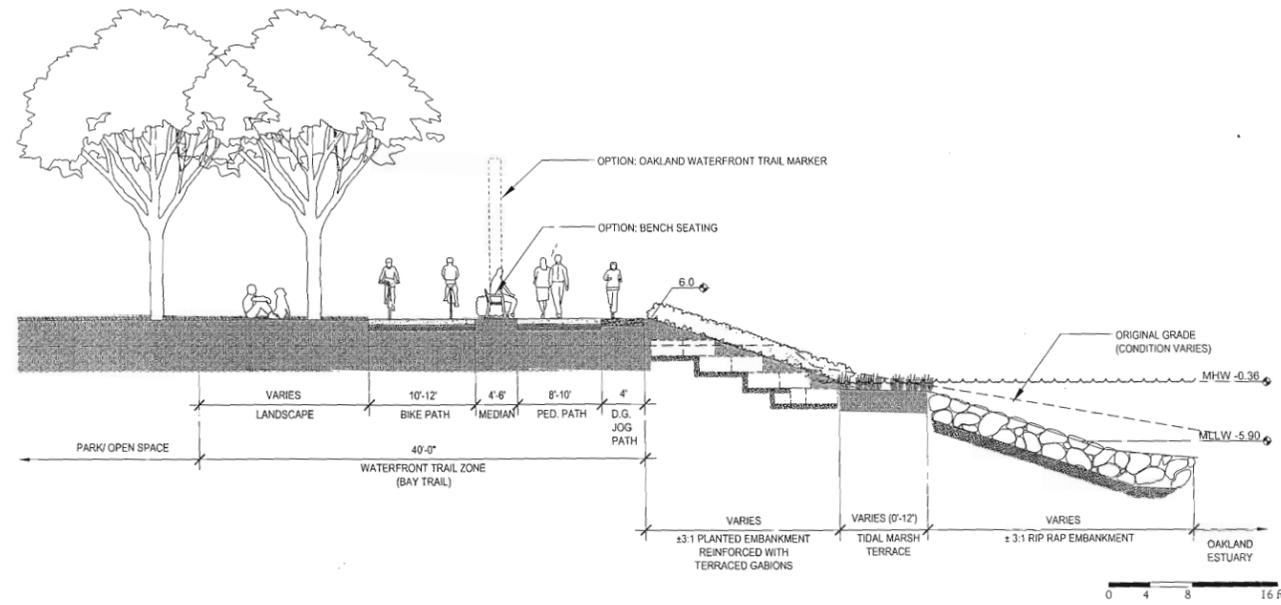
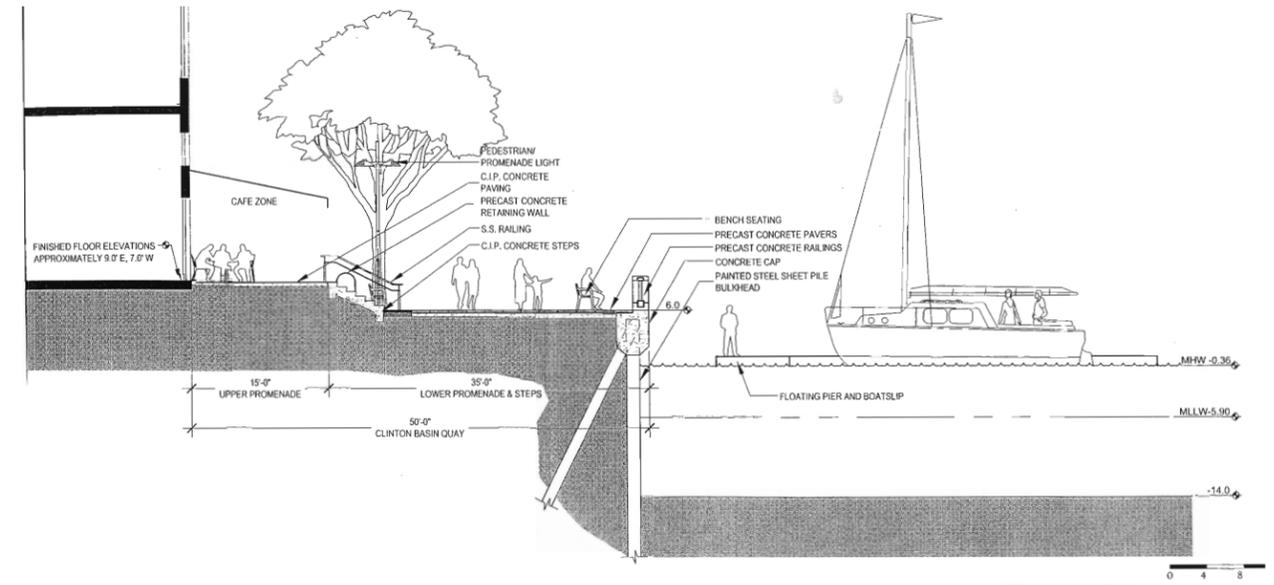


Figure 3-2 Typical Bay Trail Section



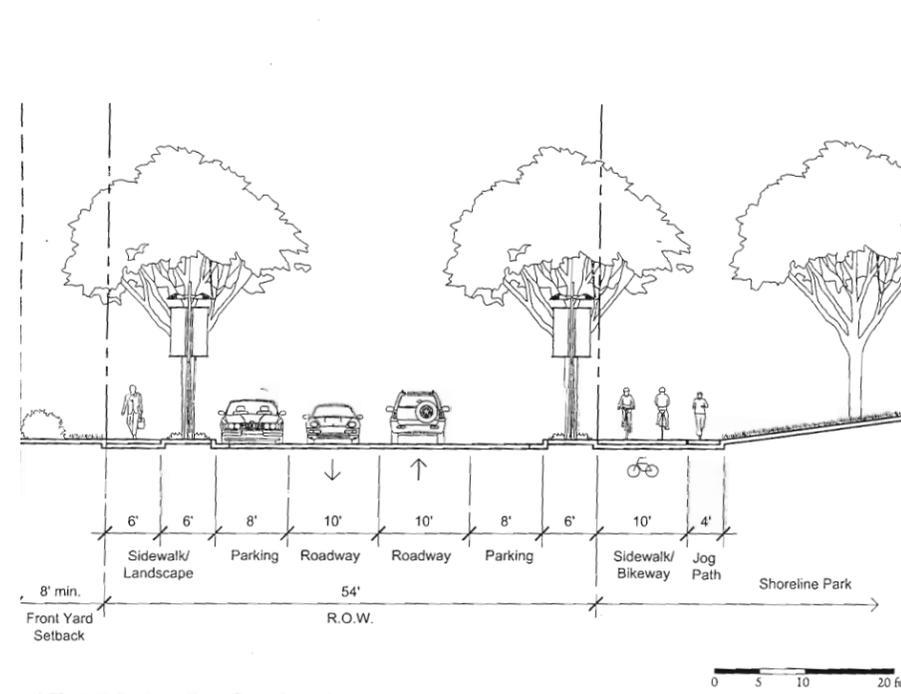
Source: Prepared by ROMA Design Group in association with MVE Architects, Moffatt & Nichol and BKF Engineers

Figure 3-3 Clinton Basin Section



Source: Prepared by ROMA Design Group in association with MVE Architects, Moffatt & Nichol and BKF Engineers

Figure 3-4 Ninth Avenue Section



Source: Prepared by ROMA Design Group in association with MVE Architects, Moffatt & Nichol and BKF Engineers

Bay Trail

In addition to Caltrans Highway Design Standards for bikeways, the San Francisco Bay Trail Plan sets out trail alignment and design policies in order to ensure high-quality public access to pedestrians and bicycles as close to the

shoreline as possible. The Oak to Ninth Project will implement the Bay Trail according to these policies through the project site, as shown in Figure 3-5 and 3-6.

Figure 3-5 Relevant Bay Trail Alignment and Design Policies

Policy	Implementation
Trail Alignment Policies	
Ensure a feasible, continuous trail around the Bay.	The trail will be continuous through the project site.
Locate trail, where feasible, close to the shoreline.	The trail will follow the shoreline through the project site.
In selecting a trail alignment, use existing stream, creek, slough and river crossings where they are available. This may require bridge widenings in some locations.	The trail will cross Lake Merritt Channel via the existing Embarcadero bridge.
In order to minimize the use of existing staging areas along the shoreline and to reduce the need for additional staging areas, the choice of trail alignment should take full advantage of available transit, including rail service (e.g. Caltrain, BART), ferries and bus service.	The trail can be accessed by a bike path from Lake Merritt BART station, and by planned new AC Transit and shuttle service.
Trail Design Policies	
Provide access wherever feasible to the greatest range of trail users on each segment.	The trail will be fully accessible through the project site.
Wherever possible, new trails should be physically separated from streets and roadways to ensure the safety of trail users.	The trail will be fully separated from roadways through the project site (Class I facility). However, the trail will use the Embarcadero bridge to cross Lake Merritt Channel.
Create a trail that is as wide as necessary to accommodate safely the intended use, with separate alignments, where feasible, to provide alternative experiences.	Bay Trail design standards will be adhered to within the project site (Figure 3-6). The north part of the site will offer several different alignments through Channel Park and South Park (see Figure 3-1).
Highlight the interpretive potential of certain trail segments, including opportunities for interpretation, education, rest and view enjoyment.	Benches, cafes and other amenities will be provided throughout the project site.
Incorporate necessary support facilities, using existing parks, parking lots, and other staging areas wherever possible.	Through shared parking, the project will minimize the need to construct dedicated parking facilities for Bay Trail users.
Design new segments of trail to meet the highest practical standards and regulations, depending on the nature and intensity of anticipated use, terrain, existing regulations, and standards on existing portions of the trail.	Design standards for both the Bay Trail and City of Oakland will be adhered to.
Minimum and maximum standards by use, width, surface, etc. should be developed, to ensure safe enjoyment of the trail and compatibility with surroundings and existing facilities, and to encourage use and design of surfaces for which long-term maintenance will be cost-effective.	Bay Trail design standards will be adhered to within the project site (Figure 3-6).
Design and route the trail to discourage use of undesigned trails.	In general, the alignment will provide the most direct route along the shoreline.

Figure 3-6 Bay Trail Design Guidelines

Item	High-Use Facilities (Separate Paths)	Multi-Use Paths	Bicycle-Only Paths
Minimum width (one-way)	8-10'	10'	8'
Minimum width (two-way)	10-12'	10-12'	10-12'
Surface	Asphalt	Asphalt	Asphalt
Horizontal clearance (incl. shoulders)	12-16'	14-16'	10'
Shoulder	2'	2'	2'
Vertical clearance	10'	10'	10'
Cross slope	2% max	2% max	2% max
Maximum grades*	5%	5%	5%

* Percentage grade for short distances with flat rest areas at turn outs, except where site conditions require a greater slope for short distance.

Bicycle Access

There will be two major access routes to the project site for bicyclists, shown in Figure 3-7:

- Embarcadero, which will have a 6' bicycle lane and 6' sidewalk, buffered from the roadway with a 6' planting strip, in each direction. The Embarcadero provides some of the most important connections to the site. To the northwest, it links to Jack London Square and the Amtrak station, and to the Oak/Madison bicycle lanes which provide access to Lake Merritt BART station and downtown Oakland.
- Lake Merritt Channel Pathway, which is a multi-use bicycle and pedestrian path linking to Laney College and Lake Merritt, and a planned east-west Class I bicycle path along the Union Pacific right-of-way.

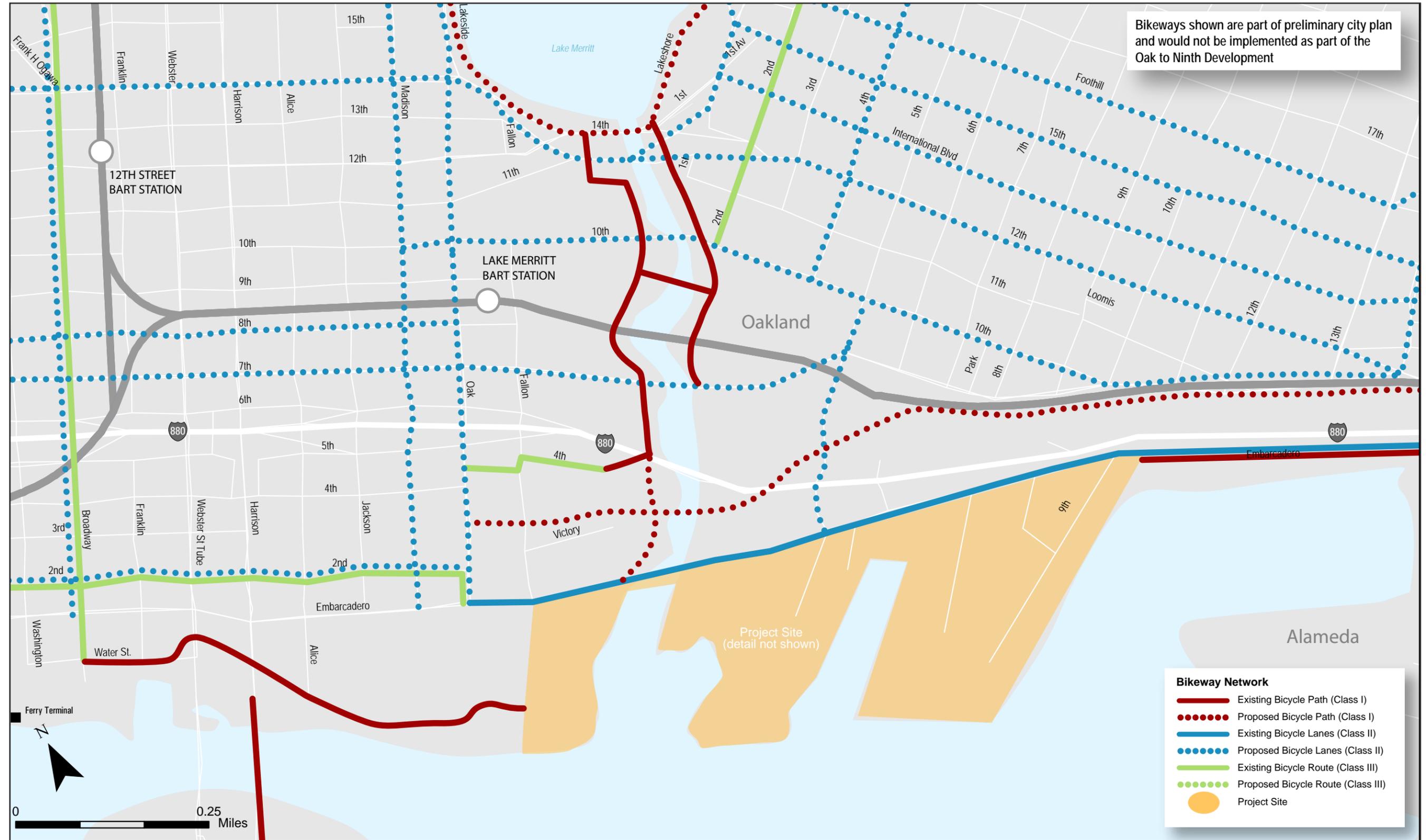
Note that these projects are identified in the City of Oakland bicycle plan; they would not be implemented as part of the Oak to Ninth project. The City is also considering the potential for Fifth Avenue bicycle lanes to link Embarcadero to 10th Street; again, however, this is a separate City project.

Slight modifications to several proposed intersection designs are recommended to provide good connections from the project site to

these access routes, particularly for left-turning cyclists:

- Crossings. The Bay Trail connects to the Embarcadero at Fourth Street and at Ninth Avenue. These intersections would be unsignalized; at Ninth Avenue, a median would prevent left turns for vehicles. We recommend that a crossing be provided to serve both bicycles and pedestrians, with design elements such as bulbouts and adequate median refuges to facilitate crossing and improve pedestrian visibility.
 - o At Ninth Avenue, the crossing should be on the east leg of the intersection. The curb should be dropped at the intersection and in the median to allow cyclists to cross.
 - o At Fourth Avenue, only the crossing on the west leg of the intersection needs to accommodate bicycles; again, the curb should be dropped.
 - o A similar treatment could be provided where the Lake Merritt Channel Pathway intersects with Embarcadero.
- Bicycle lane. A bicycle lane is not necessary along the length of Main Street given relatively low traffic volumes and speeds. However, many cyclists may use this as the most direct access route to the Embarcadero. To allow safe turns, a left-turn bicycle lane may be striped between the two travel lanes.

Figure 3-7 Bikeway Connections



Source: MTC, ESRI, and City of Oakland

Wayfinding

Wayfinding signage will be provided along the length of the Bay Trail within the project site. This will help visitors to locate the trail once they arrive at the site, and also to stay on the trail. Gateway signage will be provided at every intersection with the Embarcadero, although the most important locations are:

- Gateway Park. This will be the primary point of access for many visitors, since it is adjacent to the freeway off-ramp. The park is also directly across the street from the proposed overflow parking facility under the freeway, which will primarily be utilized on sunny summer weekends. As well as signage, there will be a direct line-of-sight connection to the Bay Trail and the cafes around Clinton Basin, which will help to draw visitors in.
- Channel Park. This marks the western entrance to the Bay Trail; good signage here is important in drawing pedestrians and cyclists off the Embarcadero and down to the waterfront.
- Ninth Avenue. In a similar way to Channel Park, Ninth Avenue marks the eastern entrance; good signage will help to draw pedestrians and cyclists off the Embarcadero.

Secondary markers such as a map kiosk, light marker or interpretive signage marker will be provided at regular intervals along the trail, where there is a choice of paths. This will comply with Bay Trail policies, which state:

A consistent signing program should be established throughout the trail system, using a Bay Trail logo which will identify trails within the Bay Trail system as distinct from other connecting trails. The choice of materials used should be the concern of the individual implementing jurisdictions and agencies.

Bicycle Parking

Bicycle parking on the project site serves two important markets.

- Long-Term parking is needed for bicycle storage for residents and employees. This parking will be in secure, weather-protected, restricted access facilities (Class I parking).
- Short-Term parking will serve shoppers, trail users and other visitors (Class II parking). As well as security, convenient locations are a priority – otherwise, bicyclists will tend to lock their bicycles to poles or fences close to their final destination.

Long-Term Parking

A mix of long-term bicycle parking facilities is recommended in each parking garage.

- Bicycle racks at garage entrance. These will primarily serve employees, and are particularly important on Parcel G which will be a staffed garage. Here, racks should be located in clear view of the garage attendant, and may replace one or more vehicle parking spaces. In other garages, racks can make use of nooks and corners that are too small for a vehicle parking stall, provided that these are close to the entrance.
- Bicycle cages are needed in all garages, and will primarily serve residents. The cage will be secured with a locked gate (ideally using an electronic keycard). Within the cage, cyclists will be able to lock their bicycles to a rack, providing an additional level of security.
- Bicycle lockers will provide an additional option for the most security-conscious bicycle users (both residents and employees). Since they are more space-intensive than other options, they should be made available for a modest fee. A small number of lockers can be introduced initially,

with the demand being closely monitored.

The parking garage is the most suitable location, as bicyclists can use the vehicle entry without the need to navigate stairs or elevators. Bicycle parking should be on the ground floor, as close to the entry as possible.

Keys or access cards would be managed by the on-site TDM coordinator. The coordinator would also need to monitor the cages and racks regularly, for example to identify and remove abandoned bicycles and assess security.

Figure 3-8 shows the number of long-term caged bicycle parking spaces that are recommended initially. However, these will need to be adjusted in line with demand; should a cage fill up or lockers be oversubscribed, additional parking must be provided, even if this replaces a vehicle parking space. The initial parking requirements are deliberately set at the lower end of the range, on the understanding that new bicycle parking can quickly be added. They are calculated as follows:

- The City of Oakland bicycle plan calls for one long-term space per two units. However, this recommendation is likely to be revised downwards, and this is much

higher than several comparable cities such as Portland, OR which requires one space per 5 to 10 units; and San Jose which requires 1 space per 4 units. San Francisco is considering a 1:4 requirement in the mid-Market neighborhood. A baseline is therefore set at 1 space per 5 units.

- The number of cages is rounded down.
- Bicycle parking provision for Phase II should be readjusted based on experience in Phase I.
- Any parcel that includes senior housing could include a lower number of cages.

Employee demand will be greatest on parcels “G” and “H”, where secure racks will be available within sight of the Parcel G garage attendant. On other parcels, employee bicycle parking demand is likely to be minimal and can be catered for with the racks located in nooks and corners, with lockers available as required.

A typical cage can be sized at slightly less than one vehicle parking stall (i.e. 9’ by 16’). This cage would accommodate 4 to 5 racks holding 8 to 10 bicycles¹. Any cage that is larger than ten bicycles poses a security risk due to the number

¹ This sizing accommodates the dimensions recommended by the Association of Pedestrian and Bicycle Professionals. There would be two rows of three parallel racks with the middle rack in one row to provide access from the 9” side of the cage. Each row would be 6’ wide with a 4’ aisle in between. The racks would be spaced at 2.5’ intervals, with 2’ clearance to the wall.

of keyholders.

Figure 3-8 Initial Bicycle Parking Provision

Parcel	Number of Units	Baseline Number of Spaces	Initial Cages Recommended	Bicycle Parking Ratio (Spaces per Unit)
A	375	75	9	0.19
B	160	32	4	0.20
C	160	32	4	0.20
D	160	32	4	0.20
E	86	17	2	0.19
F	164	33	4	0.20
G	280	56	7	0.20
H	335	67	8	0.19
J	292	58	7	0.19
K	310	62	7	0.18
L	144	29	3	0.17
M	334	67	8	0.19
N	300	60	7	0.19

Total	3100	620	74	0.19
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* Each cage measures at least 9' by 16', and holds 4 racks or 8 bicycles. Most cages will replace a single vehicular parking space.

other obstructions. Additional racks are easy to install and this should be done based on demand. The on-site TDM coordinator will need to conduct regular observations.

Short-Term Parking

Short-term parking will be provided by means of on-street racks immediately adjacent to high-demand locations, in the following locations:

- On all retail frontages
- Around Clinton Basin
- Next to the primary transit stops; this will allow cyclists to park their bicycle should the on-bus racks be full
- In other locations, where the presence of bicycles locked to fences or railing indicates demand

Initially, a single “U” or similar rack should be placed as close as possible to the entrance of all retail businesses where this is not prevented by

The street furniture zone will generally be the most appropriate place for racks, where they can be placed in between street trees and lights. This maintains the maximum clear width for pedestrians. The City of Oakland has developed detailed standards for rack placement, as follows:

Measurements

- Footprint: 6' long x 2½' wide (the “footprint” is the area occupied by a bicycle when it is parked at the rack)
- Rack: 36” tall x 21” wide

Location Details

- Commercial district
- On public property

- With business owner's permission
- On a flat concrete sidewalk
- Sidewalk must be free from cracks or other damage

Clearance

There should be a minimum of 5½' clear for pedestrian right-of-way outside the footprint; 7' in areas of heavy pedestrian traffic. Rack should be located a minimum of:

- 5' from Fire Hydrant
- 4' from AC Transit Red Zone, Loading Zone, Blue Zone (disabled parking), Curb/Curb ramps, Crosswalk or BART entrance
- 3' from Newspaper Racks, US Mailbox, Light Pole, Sign Pole, Bus Shelter, Drive-way, Surface Hardware (PG&E, Cable grates, etc.), Street Furniture, Standpipes, Bus Benches, Trash Cans, or other sidewalk obstructions
- 30" from light pole
- 18" from the curb

CHAPTER 4 PARKING

Introduction

This chapter presents Nelson\Nygaard's parking analysis for the planned Oak to Ninth development. It covers two areas:

- Quantification of parking demand
- Discussion of parking management arrangements

Effective parking management and a correctly sized supply are extremely important if the potential of this development is to be fully realized. The strategies presented in this chapter will ensure that the parking system works well, and that spaces are readily available for all users at all times. This Transportation Demand Management plan provides a detailed parking demand analysis; it takes into account surplus/deficits in each parcel and also includes impacts of parking pricing, which will be a very important tool to reduce parking demand for both residents and employees. This chapter analyzes several parking management measures in detail.

For residents, it will be a matter of unbundling the parking costs. Typically, when a residential unit is bought or rented, the costs of providing parking are included in the price or the rent. At Oak to Ninth, this Plan proposes that residents will be able to choose how many parking spaces they need, and will be charged for these costs separately – providing a financial incentive to own fewer cars, and to take advantage of alternatives such as City CarShare. Residents who do not park in the structures would benefit from lower housing prices or rents. Of course, this calls for on-street parking management and pricing, to avoid congesting on-street parking.

Parking demand will also to a great extent depend on how the development is marketed and presented to the public, due to a “self-selection” process. A marketing message that stresses the availability of good regional transit connections, the mix of uses and the availability of car sharing (if provided) is likely to disproportionately attract households who want the choice to own just one vehicle – or in some cases none at all.

The strategies outlined here also analyze parking demand in two phases; Phase I which includes construction of Parcels A, B, C, G and F; and project build-out.

Since there are very few similar developments that can be used as a model to estimate travel behavior and thus parking demand, it is difficult to provide precise estimates of parking demand with a high degree of certainty. Parking supply ratios can thus be more generous in early phases, taking account of the fact that parking demand will be higher in earlier phases until the mix of uses matures and future transit services begin. In later phases of development, the supply of parking can reflect both this initial surplus and the actual level of demand.

Summary of Results

The analysis in this chapter shows that parking supply will be adequate to meet demand, provided that parking is charged for and shared between different users. The peak time of demand is expected to be weekday evenings, meaning that ample parking will be available on weekends for Bay Trail users and other recreational visitors. It is estimated that there will be more than 220 on-street parking spaces available on Saturday afternoons. Figure 4-1 shows the summary of peak parking demand.

Figure 4-1 Summary of Peak Parking Demand

	Supply	Demand*	Occupancy
Phase I	1,602	1,226	77%
At build-out	3,902	3,340	86%

Figures are for weekday evening peak. Daytime and weekend demand will be lower.

* Excluding recreational use

These estimates are conservative, as they do not take into account the impact of transit service improvements, bicycle facilities or car-sharing. These investments will serve to reduce demand further, but – more importantly – provide amenities to residents and realistic alternatives to paying for parking.

Parking Supply

The proposed project will provide covered parking at a rate of one space per residential unit, one space per 500 sq. ft. of commercial space, and one space per five boat slips, which is consistent with parking requirements for the planned Waterfront Zoning District. Figure 4-2 shows the number of on-street and off-street parking spaces provided after Phase I and at project build-out.

Figure 4-2 Parking Supply

Parcel	On-street			Off-street		
	Phase I	Phase II	Total	Phase I	Phase II	Total
A	67		67	375		375
B	32		32	160		160
C	33		33	160		160
D	7	26	33		160	160
E		36	36		86	86
F	13		13	164		164
G	79		79	480		480
H	32	7	39		390	390
J		6	6		294	294
K		26	26		339	339
L		20	20		180	180
M		36	36		360	360
N		34	34		300	300
Total	263	191	454	1339	2109	3448

Parking Demand Analysis: No Pricing

This section, together with Appendix A which documents the full analysis, provides a quantitative estimate of parking demand in the development that can be used to guide the initial management of parking. Rather than using generic estimates of parking demand, they are adapted to consider how vehicle ownership and use patterns are likely to vary on the site:

- Estimates of residential parking demand are made using current vehicle ownership levels in an Oakland census block with similar characteristics
- Employee parking demand estimates are based on the expected number of employees in each parcel and employee mode split from two neighboring census block groups, rather than standard parking ratios from the Institute of Transportation Engineers¹
- Visitor parking demand is derived from assuming a commercial parking demand of two spaces per 1,000 sq. ft. and then

¹ Problems with the Institute of Transport Engineers' standard ratios are discussed in Shoup, Donald (2002), "Truth in Transportation Planning", Journal of Transportation and Statistics.

subtracting employee parking demand (since these two together constitute the commercial demand)

- Marina parking demand is a conservative estimate based on standard parking ratios from the Institute of Transportation Engineers
- Recreational parking demand has not been estimated, since little or no data exists for estimating the number of recreational visitors. However, the figures show the number of parking spaces available for these visitors during daytime on weekdays and weekends.
- Allowance is made for shared parking, as different users will have different times of peak demand

Methodology

Residential Parking Demand

To estimate vehicle ownership amongst potential residents, 2000 census data from one of the adjacent block groups (Block Group 1, Census Tract 4033, Alameda County, California) was used. This method generates an estimate of 1.19 vehicles per household, which is in between typical urban and suburban residential peak parking demand ratios. Vehicle ownership is much lower for renters than for owner occupiers; it was assumed that 70% of the units would be owner-occupied and 30% renter-occupied.

Parking demand is not only lower for rental units, but also for senior housing. Any senior housing on site would be expected to 30% less parking demand, based on findings for Bay Area senior residents (above the age of 65 years) from the 1990 MTC Household Survey.

Employee Parking Demand

Typically employee and customer/visitor parking demand are combined into a single analysis for commercial parking demand. However, these

two components are separated in this analysis, since a key aim is to manage the parking to ensure that the most convenient, visible spaces are available for customers. The 1995 Commercial Buildings Energy Consumption Survey from the Energy Information Administration reveals information about typical number of employees per 1,000 sq. ft. of gross floor area for more than 15 types of commercial uses, such as retail and grocery stores. This data was used to retrieve the expected number of employees in each parcel in the development.

The second step was to estimate the number of employees who will need a parking space in each parcel. The Census Transportation Planning Package (CTPP 2000) for two relevant census block groups (Block Group 1, Census Tracts 4032 and 4033, Alameda County, California) was used to estimate expected employee mode split on the site. One of these block groups contains the site of Jack London Square. This method generates an estimated parking demand of 0.74 spaces per employee, based on 68% of employees driving alone and 14% carpooling.

Visitor Parking Demand

A review of parking demand of “main street districts” comparable to the Oak to 9th development found that parking occupancy rates for successful mixed-use districts ranged from just 1.6 to 1.9 spaces per 1,000 sq. ft. of non-residential built areas (see Figure 4-3). We have therefore assumed a commercial parking demand of 2 spaces per 1,000 sq. ft. of gross floor area in the Oak to 9th development. By subtracting employee parking demand in each parcel we get visitor parking demand (since these two together constitute the commercial demand).

Figure 4-3 Summary of parking occupancy in four Main Street districts

	City Population	Mode Split ¹							Occupied Parking Spaces per 1,000 Sq.Ft. ³
		Drove Alone	2 or More Person Carpool	Transit	Bicycle	Walked	Other Means	Worked at Home	
Chico	59,900	61%	12%	1%	11%	13%	1%	1%	1.7
Palo Alto	58,600	80%	9%	4%	3%	3%	1%	0%	1.9
Santa Monica	84,100	74%	11%	11%	1%	2%	1%	0%	1.8
Kirkland, WA ²	45,600	77%	12%	4%	0%	2%	1%	4%	1.6

1 Source: Census Transportation Planning Package (CTPP) 2000.

2 Commuter mode split for Kirkland, Washington is not limited to the main street district, but covers commuting to the entire city, due to lack in data from CTPP 2000.

3 Sq. Ft. refers to occupied non-residential built area in Chico and Palo Alto and both vacant and occupied non-residential built area in Santa Monica and Kirkland.

Marina Parking Demand

There is very little known about parking demand generated in marinas. There are several factors influencing parking demand, such as presence of guest boats (which typically will not need any parking), size of each boat, and the potential for public attraction. The ITE Parking Generation manual only refers to one study, where Saturday demand is 0.35 parking spaces per boat slip and Sunday demand is 0.59 spaces per slip. During weekdays parking demand is even lower.

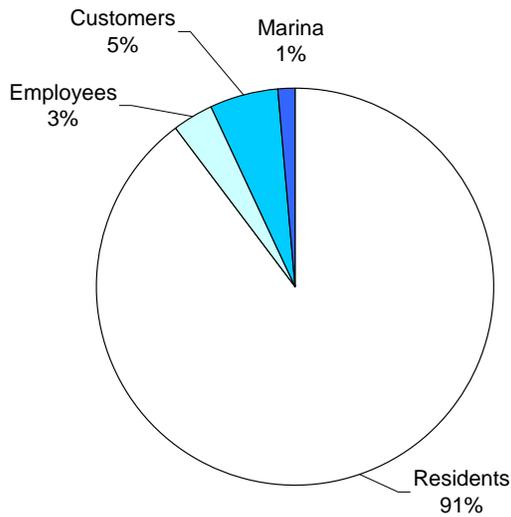
In this plan, we have assumed that its parking demand will be held constant during the entire week. To keep the analysis conservative, the Saturday parking demand for marina users was chosen over the weekday parking demand.

Overall Parking Demand with No Parking Management

Figure 4-4 shows how parking demand would be distributed between the four major parking user groups. Based on the methodology described above, there would be a deficit of 214 parking spaces (4,116 spaces needed of a total of 3,902 spaces) at project build-out, if no parking management strategies were implemented. In Phase I there would be a surplus of 89 parking spaces, or 6%, in large part because of surplus parking in parcel G and on street. See Appendix A for full details on this baseline scenario.

This analysis indicates that active parking management will be required to ensure that residents and employees as well as commercial and recreational visitors can easily find a space. This will help reduce the baseline parking demand. At the same time, these management strategies will help reduce the traffic impacts of the development, and encourage travel by transit, bicycle and walking. The group that is the most important to reach with parking management techniques is residents, who account for almost 95% of the total parking demand.

Figure 4-4 Parking Demand Distribution – No Parking Management



Proposed Management Approach

There are two key principles that should govern the management of parking in order to realize more “urban” demand ratios: charge the appropriate rate to maintain availability, and build and manage as much parking as possible as a common pool. These two principles will do the most to ensure that parking is readily available to all users. At the same time, these principles support other goals such as development marketability, improving walkability, reducing the cost and land requirements for parking, and maintaining public access to the shoreline.

Charging for Parking

(1) Parking should be priced to reflect the real costs of its provision, and leased separately from residential or commercial space.

Although it is often provided at no charge to the user, parking is never free. A typical cost for structured parking in California is \$20,000

in construction costs alone. This equates to a monthly cost of \$130 per space, including debt service, operations and maintenance, insurance and enforcement. Where parking takes up land that could be put to other uses, it is appropriate to add in land costs as well. Even on-street spaces incur costs in terms of land value and maintenance.

Parking fees are generally subsumed into lease fees or sale prices for the sake of simplicity and because that is the more traditional practice in real estate. However, providing anything for free or at highly subsidized rates encourages use and means that more parking spaces have to be provided to achieve the same rate of availability. Charging for parking is also the single most effective strategy to encourage people to use alternatives to the single occupant vehicle.

It is important that parking fees not be seen as being punitive to “bad” car drivers. Parking fees can be made more acceptable by ensuring there are good alternatives to driving, by making it clear that the fees cover the costs of parking, and by providing different parking options at different price points.

It is also critical that residents and tenants are made aware that rents, sale prices and lease fees are reduced because parking is charged for separately. Rather than paying “extra” for parking, the cost is simply separated out – allowing residents and businesses to choose how much they wish to purchase. No tenant, resident, employer or employee should be required to lease any minimum amount of parking.

Effects on Employee Parking Demand

In the Bay Area, parking charges have been found to reduce vehicle trips from 8% to 21%, with reductions of up to 38% in other California locations. See Figure 4-5 for some examples of the effects of parking incentives on parking demand. These results indicate that

a parking demand reduction of at least 20% can be expected if all Oak to Ninth employees are charged a monthly parking fee of \$130, the amount equal to the monthly cost of providing a parking space.

Figure 4-5 Pricing Impacts on Employee Parking Demand

Location	Scope of Study	Financial Incentive per Month (1995 \$)	Decrease in Parking Demand
Group A: Areas with little public transportation			
Century City, CA ¹	3500 employees at 100+ firms	\$81	15%
Cornell University, NY ²	9000 faculty and staff	\$34	26%
San Fernando Valley, CA ¹	1 large employer (850 employees)	\$37	30%
Bellevue, WA ³	1 medium-size firm (430 empl)	\$54	39%
Costa Mesa, CA ⁴	State Farm Insurance employees	\$37	22%
Average		\$49	26%
Group B: Areas with fair public transportation			
Los Angeles Civic Center ¹	10,000+ employees, several firms	\$125	36%
Mid-Wilshire Blvd, LA ¹	1 mid-sized firm	\$89	38%
Washington DC suburbs ⁵	5500 employees at 3 worksites	\$68	26%
Downtown Los Angeles ⁶	5000 employees at 118 firms	\$126	25%
Average		\$102	31%
Group C: Areas with good public transportation			
University of Washington ⁷	50,000 faculty, staff and students	\$18	24%
Downtown Ottawa ¹	3500+ government staff	\$72	18%
Average		\$102	31%
Overall Average		\$67	27%

Sources:

1 Willson, Richard W. and Donald C. Shoup. "Parking Subsidies and Travel Choices: Assessing the Evidence." *Transportation*, 1990, Vol. 17b, 141-157 (p145).

2 Cornell University Office of Transportation Services. "Summary of Transportation Demand Management Program." Unpublished, 1992.

3 United States Department of Transportation. "Proceedings of the Commuter Parking Symposium," USDOT Report No. DOT-T-91-14, 1990.

4 Employers Manage Transportation. State Farm Insurance Company and Surface Transportation Policy Project, 1994.

5 Miller, Gerald K. "The Impacts of Parking Prices on Commuter Travel," Metropolitan Washington Council of Governments, 1991.

Effects on Residential Parking Demand

It is important to note that construction costs for residential parking spaces can substantially increase the sale/rental price of housing. This is because the space needs of residential parking spaces can re-strict how many housing units can be built within allowable zoning and building envelope. For example, a study of Oakland's

1961 decision to require one parking space per apartment (where none had been required before) found that construction cost increased by 18% per unit, the number of units per acre decreased by 30% and land values fell by 33%.²

² Bertha, Brian. "Appendix A" in *The Low-Rise Speculative Apartment* by Wallace Smith UC Berkeley Center for Real Estate and Urban Economics, Institute of Urban and Regional Development, 1964.

As a result, bundled residential parking can significantly increase “per-unit housing costs” for individual renters or buyers. Two studies of San Francisco housing found that units with off-street parking bundled with the unit sell for 11% to 12% more than comparable units without included parking.³ One study of San Francisco housing found the increased affordability of units without off-street parking on-site can increase their absorption rate and make home ownership a reality for more people. In that study, units without off-street parking:

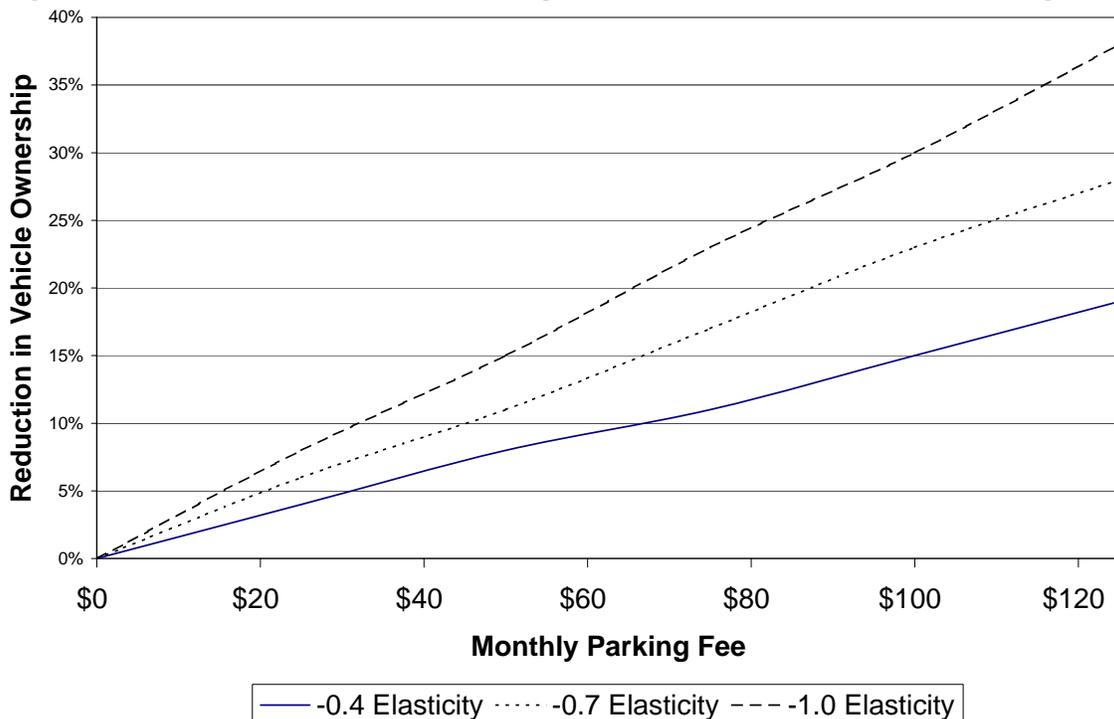
- Sold on average 41 days faster than comparable units with off-street parking

3 Wenyu Jia and Martin Wachs. “Parking Requirements and Housing Affordability: A Case Study of San Francisco.” University of California Transportation Center Paper No. 380, 1998 and Amy Herman, “Study Findings Regarding Condominium Parking Ratios,” Sedway Group, 2001.

- Allowed 20% more San Francisco households to afford a condominium (compared to units with bundled off-street parking)
- Allowed 24% more San Francisco households to afford a single-family house (compared to units with bundled off-street parking)

Charging separately for parking is also the single most effective strategy to encourage households to own fewer cars, and rely more on walking, cycling and transit. According to one study, unbundling residential parking can significantly reduce household vehicle ownership and parking demand. These effects are presented in Figure 4-6. Based on this data, we assume residential parking demand at Oak to Ninth to fall by 15% if parking is unbundled from housing costs, and is charged for at cost – approximately \$130 or more per month.

Figure 4-6 Reduced Vehicle Ownership with Unbundled Residential Parking

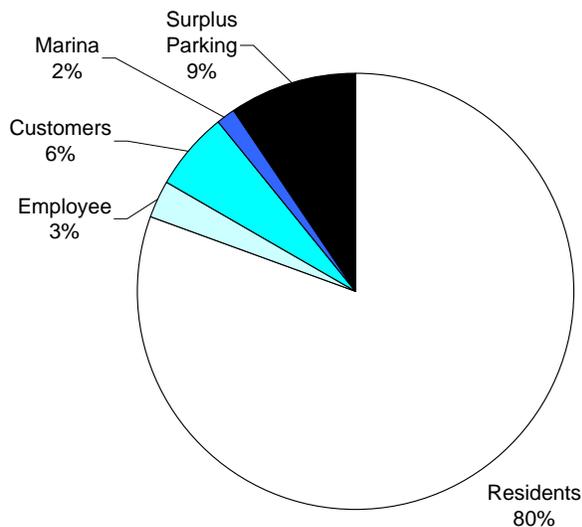


Source: Litman, Todd. “Parking Requirement Impacts on Housing Affordability.” Victoria Transport Policy Institute, 2004.

Effects on Total Parking Demand

Figure 4-7 shows the impacts of a \$130/month parking charge for employees and residents. There will be a parking surplus of 9%, or 368 spaces, at project build-out, with 232 on-street parking spaces available. In phase I, the parking surplus will be even larger, with 19% or 303 spaces available (of which 178 spaces are on-street) at peak times. See Appendix B for the full parcel-by-parcel calculations.

Figure 4-7 Parking Demand With Priced Parking



The policy of pricing parking does not preclude the charging of different rates to different users or in different areas. For example:

- Businesses might cover the cost of visitor parking. They could also subsidize employee parking, provided that equal benefits were offered to employees who do not drive and park (i.e., a parking cash-out program)
- Lower rates or free parking might apply for short-stay parkers to attract shoppers
- Residents might pay a premium for an assigned space

These and other recommendations are discussed in later sections of this chapter.

Allow for a public and shared parking system

(2) As many parking spaces as possible should be built and managed as a common pool.

The mix of uses at Oak and Ninth, their physical proximity to each other and their staggered times of peak parking demand set the stage for a successful shared parking arrangement. Uses that could share parking include:

- Residential
- General commercial
- Grocery store
- Marina
- Public shoreline access

There is likely a shared parking reduction for retail of up to about 160 spaces, which is largely achieved by the mixed-use nature of the development rather than physical sharing of spaces. There are potentially greater reductions that could be achieved through the strategies discussed below, particularly through a move away from assigned residential spaces for some users. Greater use of shared parking will allow for a greater “buffer” that can absorb the natural variations in parking demand, and account for the uncertainties in demand analysis. It also allows potentially greater shared parking reductions to be factored into Phase II of the development.

A common management framework for parking spaces allows the supply to be utilized in the most efficient way possible. It facilitates the sharing of parking between commercial and residential uses and recreational users, and allows the greatest availability for a given level of supply. This principle capitalizes on the

Unbundling Parking in Owner Occupied Condominiums

Parking can easily be unbundled in renter-occupied units by a separation of the rent for parking from the rent for housing. However, how can it be done in a condominium complex? Some options for Oak to Ninth are discussed in a later section of this chapter. However, according to Donald Shoup, professor of urban planning at UCLA, there are two different ways¹:

“Developers can offer the option to buy parking spaces separately from housing units or to lease the parking spaces from the condominium association rather than buy them. Under the first option, the market would reveal how much residents value the parking spaces, and developers could cease building spaces residents do not think are worth the construction and maintenance costs. Under the second option, the association could own the parking spaces as common property and lease them to the residents at a price that equates demand and supply. The rent from commonly owned parking spaces could then replace all or part of the association fees residents pay to maintain their association. Parking wouldn’t be free, but those who own fewer cars would pay less.”

Unbundling parking in condominium complexes is the norm in both downtown Washington D.C. and Brooklyn, NY and not unusual in downtown Chicago.² Even in car-oriented Los Angeles, a new development at 1100 Wilshire, a high-rise downtown condo development, is now selling assigned parking spaces through the homeowners association at a cost of \$20,000 per space. Condo owners who do not want an assigned space have access to free but less convenient spaces in the parking structure.³

Typically, the spaces are rented or assigned to condo owners through the homeowners association. In Chicago, several homeowners associations provide and manage parking at a monthly cost of around \$150-\$250 per space. Tandem parking is provided at a lower cost in some complexes, with valet parking provided at a premium. In addition, the privately owned Field Harbor Parking Condominium in New East Side in Chicago is actually selling its 400 parking spaces to residents and employees in the area as well as to yacht-owners at a nearby harbor. Another 200 parking spaces are being built and currently sell for \$35,000-\$50,000.

The City of San Francisco has recently begun requiring the unbundling of parking in new multi-family developments in downtown, a process that has been supported by several developers. For instance, the Four Seasons Residences on 735 Market Street rents parking to condo owners. The parking is owned by the developer Millennium Partners and managed by City Park. The residents are now in the process of buying the parking spaces from Millennium Partners; each resident can pay a lump sum and receive a contract for a specific space. There is a \$150/month fee for self-park, or \$250/month for valet parking. At 300 3rd Street, a 233-condo unit development in SOMA, all parking is owned by a third party, and residents lease parking at a monthly rate.

1 Shoup, D. (2005) *The High Cost of Free Parking*. The American Planning Association.

2 Strategic Economics (2004) *Summary of Findings Regarding Higher Density Condominium Parking Ratio Survey & Expert Interviews*. Memorandum to the San Francisco Planning Department.

3 Want Deed to Park Place? <http://www.latimes.com/news/local/la-me-parking9nov09,1,4393294.story?coll=la-headlines-california&ctrack=1&cset=true>

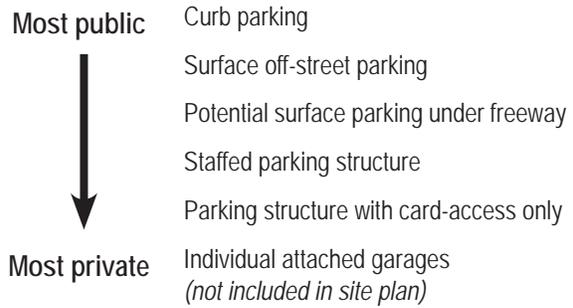
facts that lower-than-expected demand among some users can compensate for higher demand amongst others, and that the demand among users is staggered throughout different times of the day.

A common parking pool allows the supply to be determined by average rates of parking demand. For example, if all residential units are provided with one assigned space, this space is “lost” to other users – even if a household does not own a car, or does not leave it at home during the working day.

The parking supply can be divided into five broad categories, based on the physical location of spaces and their real or perceived degree of ‘public ownership’. At one extreme, garages provide private parking facilities, while at the other end of the spectrum on-street parking is generally perceived as open to all (Figure 4-8). ‘Public’ spaces are the easiest to manage as a common pool, since there are no limitations as to who is allowed to park and there is one administrative body that manages the supply for multiple users. Therefore the proportion of public spaces should be maximized.

The current site plan already ensures that all spaces can be made public. This feature needs to be retained throughout the planning process, to ensure that physical design decisions do not constrain access for any group of users. Note that this principle does not preclude the use of controlled-access systems (e.g. garage access via card) or provision of assigned spaces at a premium cost.

Figure 4-8 Parking Classification



Effects on Total Parking Demand

The analysis shows that peak parking demand for Oak to Ninth occurs around 8:00 PM during weekdays, when residents have returned from work and restaurants on the site are busy. Since there is very little data available for marina usage, we have assumed that its parking demand will be held constant during the entire week (conservative estimate). Appendix C contains details about the effects of shared parking on demand, both for Phase I and at project build-out.

As Figures 4-9 and 4-10 show, there will be more than enough parking during peak demand (8:00 PM during weekdays) at project build-out. Several of the parcels are projected to barely satisfy their residential parking demand on the same parcel. For these parcels, there are surplus spaces on adjacent parcels G, H, K, L and M that can be provided to residents at discounted rates. Overall, 14% of all parking spaces – and 70% of all on-street spaces – will be available at this time. This gives an overall occupancy level of 86%, which will enable users to easily find a space.

On weekend days, there will be more than 200 spaces available on-street and good availability in the Parcel G Garage (which will be open to the public). All of these spaces can be used by recreational visitors to the site.

Figure 4-9 On-Street Parking Demand (8PM on Weekday)

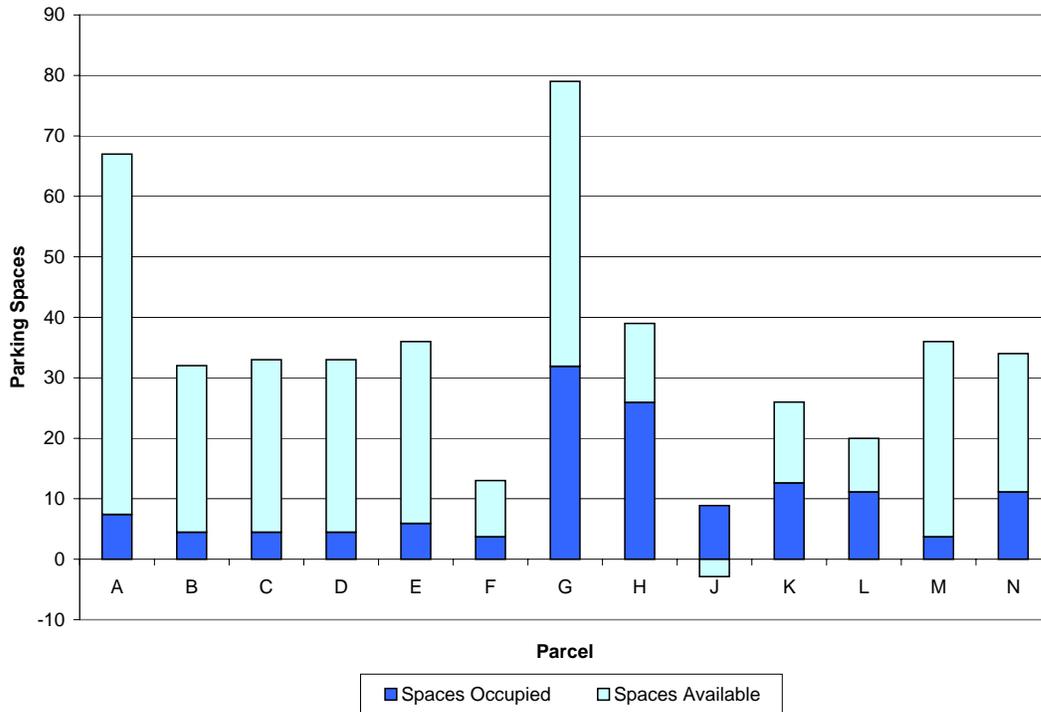
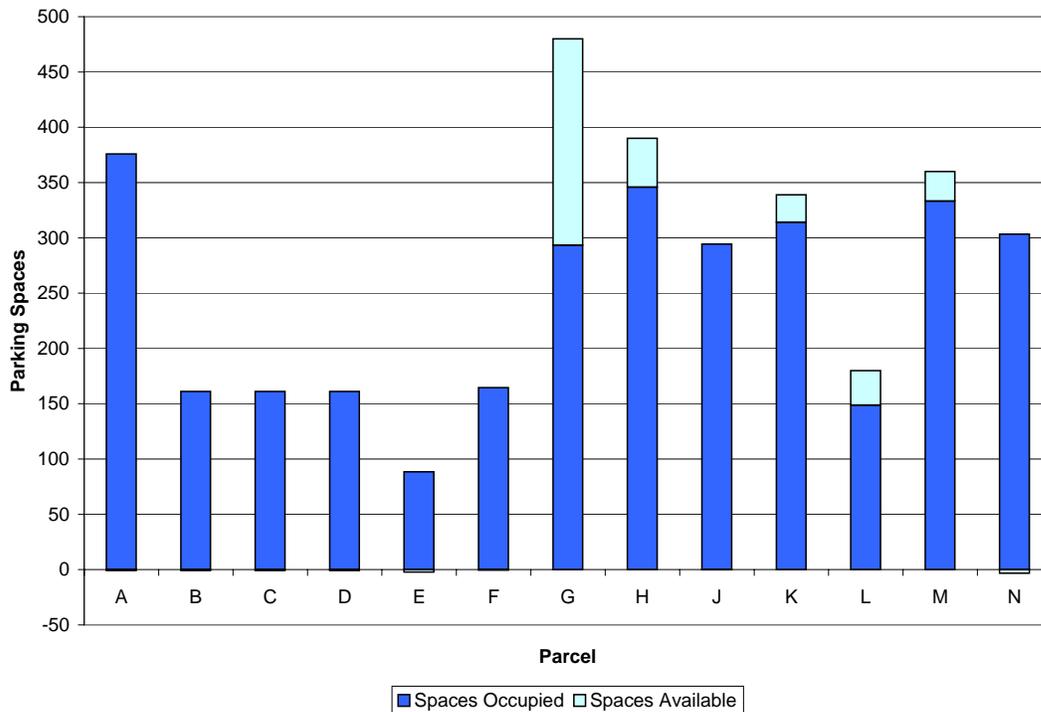


Figure 4-10 Off-Street Parking Demand (8PM on Weekday)



Charge the Right Price to Maintain Availability

The right price for parking is the price that ensures a small number of spaces are available at all times. In a complex project such as Oak to Ninth, this means that parking supply has to be segmented depending on the target users.

For parking facilities that are primarily used for residential and employee parking, target occupancies can be extremely high since demand will be more predictable and stable. A target of 95% is appropriate, allowing some flexibility to reassign spaces when units are rented or sold to another tenant.

For parking facilities that are used by retail customers and other visitors, parking occupancies need to be lower in order to absorb the wider variation in demand, and to ensure that parking is perceived to be plentiful. A target of 85% occupancy is appropriate for the curb spaces, particularly along Main Street, and 85-90% for the Parcel G garage that will be available to retail users.

If target occupancies are regularly exceeded, prices need to be increased. If this relates to a single parking facility or a specific curb segment, the differential with other parking facilities needs to be adjusted or space assignments reviewed (see next strategy), to encourage users to park in places where there is greater availability.

One way to set initial prices is on a cost recovery basis. For a typical parking structure, this might be \$6 per day or \$130 per month per space, as described earlier, (with lower rates for non-assigned, shared spaces). If occupancies fall short of the target, it may be appropriate

to reduce prices (except in the earlier stages of the project as residential and commercial vacancies are being filled). In this instance, however, prices should be set to maximize revenue rather than achieve target occupancies; otherwise, households and commercial tenants that use less than their proportional share of parking will be subsidizing those that use more spaces. As discussed above, charging for parking does not mean that overall housing costs are increased; rather, it means that the cost of parking is separated from the price of the residential unit or homeowners' association fees.

Segment Users Based on Price

Parking pricing is the most effective tool available to manage demand, facilitate shared parking and steer users to parking facilities with spare capacity. The exact pricing structure will evolve over time; this discussion is intended as an example of how users can be segmented based on their individual tradeoffs between price and convenience.

For residential parking, assigned spaces that are reserved for an individual household should command a premium price. These spaces are likely to be close to the garage entrance. Households that do not wish to pay for an assigned space could opt for a lower-cost permit that would allow them to park in their preferred facility (i.e., the parking structure in the same building as their residential unit). This would provide an economic incentive for them to share spaces with employees and other residents.

If necessary to balance demand between various parking structures, permits could be offered at

an even lower cost to households that are willing to park in another structure, and walk the short distance to their residential unit. Permits could double as on-street permits, allowing residents to park on-street as well overnight.

Pricing could also distinguish between households with different numbers of vehicles. For example, residents could receive a percentage discount on the first permit per household, with subsequent permits being sold at full cost.

Similarly, for visitors and other short-term users, the most attractive parking spaces (e.g. curb parking along Main Street) should cost more, while the garage on Parcel G (earmarked for the grocery store) might offer one hour of free parking. While other on-street parking spaces

should still be metered – otherwise they would be congested with employees, residents and visitors seeking free parking – they can be charged for at a lower rate. In summary, there are three tiers of residential parking charges, shown in Figure 4-11.

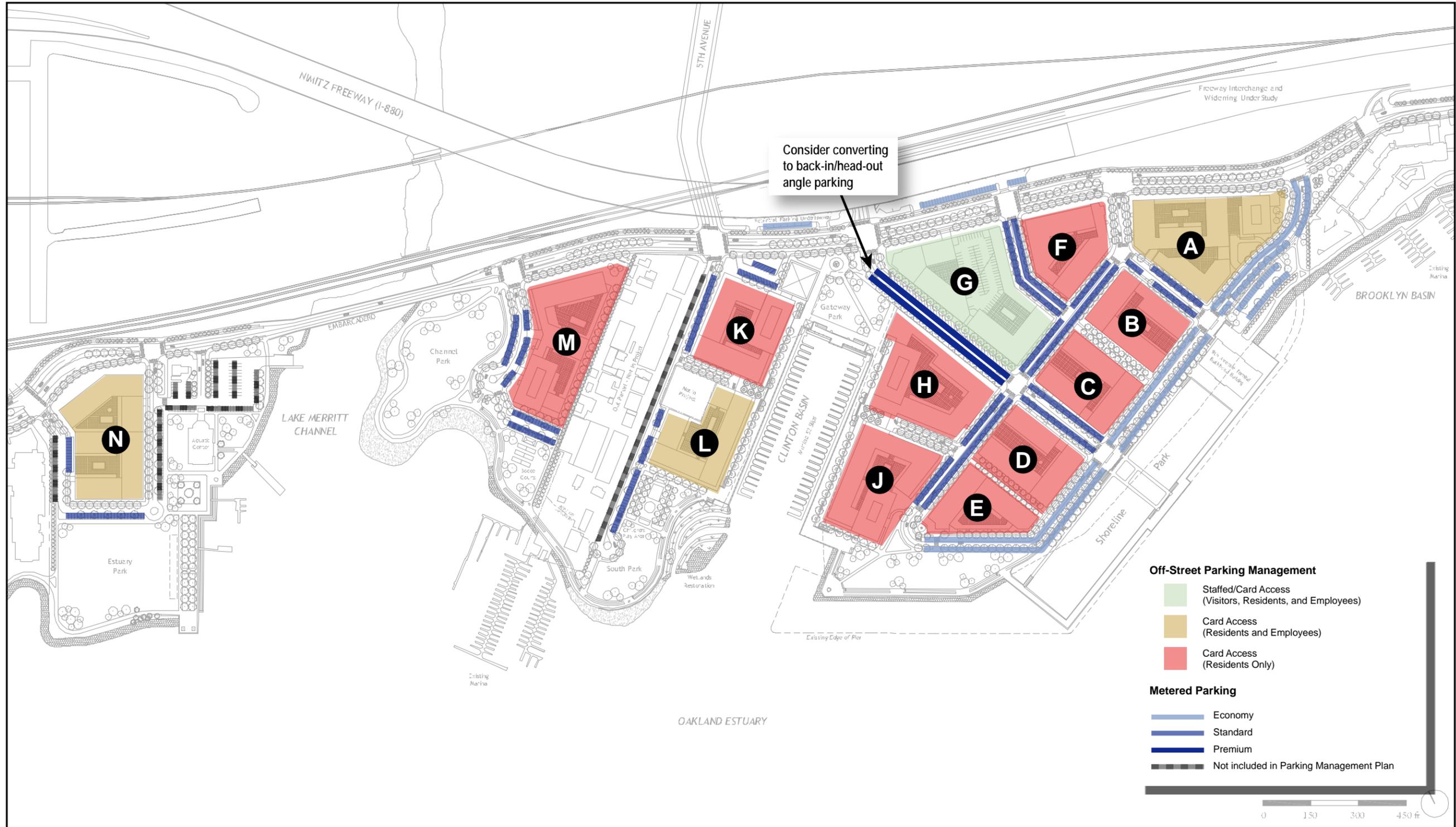
Note that to avoid the need for time limits, the cost of parking at meters must be the same or more as the cost of employee parking in garages.

Figure 4-12 illustrates proposed locations for visitors, employees and residents, as well as the three tiers of on-street parking. This proposal concentrates employee parking in controlled access garages on Parcels G, H, L and M.

Figure 4-11 Proposed Initial Parking Rates

Type of Parking	Description	Proposed Initial Fee
Residents		
Premium	Dedicated space in preferred building	\$130/month
Standard	Unreserved space in preferred building; may be shared with other users	\$100/month
Economy	If their preferred garage is fully subscribed, residents may be offered a discount to park in another building	\$80/month
Other Users		
Premium	Parking along Main Street (in front of parcels G and H)	\$1.00-\$1.50/hour
Standard	All curb parking except on Main Street, 9 th Avenue and Embarcadero Garage G (staffed garage)	\$0.50-\$1.00/hour
Economy	All parking along 9 th Avenue and Embarcadero Employee parking in Garages A, L and M	\$0.50/hour

Figure 4-12 Proposed Parking Locations



Parking

Basemap Source: ROMA Design Group

Optional Parking Policies

Charge Employees and Visitors for the Time Parked

Employees and visitors should have an incentive to carpool, take transit, walk or cycle whenever possible – even if they have to drive alone some or most days. For this reason, parking prices should be charged using a time-based strategy so that long-term or more-frequent parking is not rewarded with discounts. In other words, there should be a standard daily or hourly rate, with no discounts for monthly parking (except for residents). This will provide economic incentives to those using transportation alternatives on an occasional basis, so that someone is not dissuaded from using transit simply because they have already paid for a monthly parking pass.

Similarly, short-stay parking should be charged for at an hourly rate. In order to simplify the management of the supply, we recommend treating all short-stay visitors – shoppers, residents' guests, marina users and other recreational visitors – identically. Charges would depend only on length of stay, time/day of visit and location. However, commercial tenants would be free to subsidize parking for their customers.

Install Controlled Access Systems to All Garages

The varied composition of the parking supply gives an opportunity to direct certain users to different types of parking. This can maximize flexibility, while minimizing revenue collection costs. Figure 4-13 presents one possible categorization. It reserves curb parking along

Main Street and other commercial frontages for short-stay visitors; while there would be no time limit, the pricing structure should be designed to make it attractive for longer-stay users to use the garages instead.

For security reasons and to minimize operational costs, all garages except the Parcel G facility would be card-only access for residents. The garages on parcels H, L and M would be card-only access for residents and employees. The Parcel G garage and other curb frontages would be open to all users.

The smartcards issued to residents and employees would look similar, but function in different ways. For residents, the card would simply provide access, provided that the monthly fee had been paid. For employees, it would function as a payment card, with the appropriate amount deducted based on length of stay.

Currently the City of Oakland's on-street meters are in operation from 8:00 AM to 6:00 PM, Monday through Saturday, with an hourly rate of \$1.25 in the CBD and \$1.00 in all other metered spaces. It is important to realize that the proposed management approach at Oak to Ninth requires regulation of curb parking throughout the day (8:00 AM to 9:00 or even 10:00 PM). Peak parking demand will occur in the evenings when residents return and visitors are patronizing restaurant and retail venues at about 7-8 PM. Regulation and enforcement of evening parking is essential so that residents do not try to avoid fees by simply parking on the street when returning home from work. The simplest approach is to issue residential permits that are valid for both garage and on-street parking.

Figure 4-13 Eligibility for Each Parking Type

Type of Parking	Access Control and Revenue Collection	Eligible Users			
		Residents	Employees* With Pre-Paid Parking Card	Other Employees*	Visitors**
Curb parking (premium and standard meters)	Meters or pay-on-foot (any time); residential permits OK overnight only	(1)	(1)	(1)	√
Curb parking (economy meters)	Meters, pay-on-foot or residential permits	√	√	√	√
Parcel G Garage (grocery store parcel)	Card access or cash at staffed payment booth	√	√	√	√
Parcel A, L and M Garages	Card access only	√	√	-	-
Other Garages	Card access only	√	-	-	-

* Also includes boat owners using the marina.

** Includes shoppers, guests of residents, marina visitors and other recreational users

(1) Residents and employees would not be precluded from daytime parking along commercial frontages, but would have to pay the hourly rate; they would generally park in garages to obtain a cheaper rate.

Use Customer-Friendly Payment Systems

Many complaints about parking charges are unrelated to the principle of paying for parking. Rather, they relate to user-unfriendly payment technologies, whereby parkers need to carry quarters for meters, buy a permit at an inconvenient location during limited hours, or wrestle with confusing time limits and other restrictions. One of the keys to success will therefore be the use of user-friendly payment systems. Figure 4-13 suggests some possible technologies. Note that on-street parking charging will

need to be discussed with the City of Oakland (see below).

There are a wide variety of options to charge for on-street parking, including traditional meters (newer models can take pre-paid cards), multi-space meters, in-vehicle meters and “pay-on-foot” machines which serve a larger number of spaces and accept credit cards. The precise technology is less important than its ability to take a range of payment options.

Figure 4-14 Parking Provision and Payment for Each User Type

User	Possible Payment Mechanism
Residents	Electronic "proximity card" to provide access to garages. This card could also be used as a form of on-street residential permit; residents would leave the card in their vehicles, where it could be detected by readers carried by enforcement staff. Alternatively, residents could be issued with a separate hang-tag or adhesive permit for on-street parking. Residents could be invoiced monthly, and payments combined with homeowners association or similar monthly fees. Permits could also be purchased in person at the management office,
Employees and boat owners	Electronic "proximity card" to provide access to garages; this would be pre-paid, with the daily charge deducted on each use. Cards could also be used to purchase time on parking meters/pay on foot machines for curbside parking. Cards could be recharged at the staffed payment office in the garage on Parcel G.
Shoppers/recreational users/other short-term visitors	Cash or credit card at parking meters/pay on foot machines or the staffed payment booth. Regular users could purchase pre-paid card. First hour could be free for garage parking.
Residents' overnight guests	24-hour permit. Residents could receive a small number of permits free of charge, and purchase additional ones via mail or from the management office. Before each use, residents would write in or scratch off the date. A card-based system is also feasible.

Parking Cash Out

In order to minimize parking demand by employees, employers that want to subsidize parking for their employees should have the option to do so through parking cash-out arrangements. Under a parking cash out program, an employer offers its employees the choice of: free parking; a transit/vanpool subsidy equal to the value of the parking (of which up to \$100 would be tax-free); or a taxable carpool/walk/bike subsidy equal to the value of the parking. Employees who opt for the subsidies would not be eligible to receive free parking from the employer, and would be responsible for their parking charges on days when they drive to work.

Since parking will be leased separately from commercial space, parking cash-out is actually mandated through state law for any employer with more than 50 employees. However, it should be reinforced through its inclusion in tenant agreements, and also applied to smaller employers.

Establish a Car-Sharing Program

Car sharing makes a common fleet of vehicles available to members, and can be an important tool to reduce parking demand. For residents, car sharing reduces the need to own a vehicle, particularly a second or third car. A recent Transportation Research Board study shows that more than half of car-sharing members have sold at least one vehicle since joining their program. For employees, car sharing allows them to take transit to work, since they will have a vehicle available for errands during the day. Developers can attract car-sharing operators by providing visible parking (especially on-street) and subsidizing memberships for residents.

City CarShare provides car-sharing services in San Francisco, Oakland and Berkeley. Viable markets are places with high density, a mix of uses, and low vehicle ownership rates. Car-sharing is likely to be ultimately successful at Oak

to Ninth, but as with most parts of Oakland, it will be a marginal location for car-sharing in the early phases of development. This means that some form of risk-sharing arrangement between City CarShare and the developer, such as a revenue guarantee, may be necessary in order to secure car-sharing service.

The number of car-sharing vehicles should be based on demand. Initially, it makes sense to provide two City CarShare vehicles on Main Street. This is the minimum number to ensure that residents perceive that the service will always be available. Vehicles should be added in line with demand. To maximize usage, car-sharing memberships should be provided free of charge to all residents and employees, and marketing information should be distributed as part of new resident “welcome packs”.

Undertake Continuous Monitoring

Continuous monitoring of parking occupancy is needed to effectively manage the parking supply, so that decisions on pricing and space assignments can be made. Controlled access systems for the parking garages can allow this information to be gathered automatically, but regular counts of on-street parking occupancy will also be needed.

Establish Institutional Responsibilities

Management of the common parking supply by a single entity has the following important advantages:

- Eliminating the propensity for site employers to provide free or reduced-cost parking to certain classes of employees due to union bargaining or other company policies
- Allowing efficient management of parking payment, maintenance, security, operations, information and janitorial services
- Facilitating the sharing of parking between different users, allowing the same availability to be achieved with a lower total supply
- Facilitating parking charges, through making a clear separation between the cost of parking and the cost of the housing unit or leasable space
- Making the system user-friendly, with the same permits or payment cards accepted in all garages and on-street

The appropriate organization to undertake this role will depend on the management arrangements for the project as a whole. Figure 4-15 shows some options for ownership units. It would be extremely advantageous for this organization to be able to manage on-street parking as well, including setting the level of charges and hours of operation and enforcement, although this would require delegation of City of Oakland responsibilities. This should be discussed with the City. The parking manager should also have a wider transportation role as an on-site transportation coordinator (see introduction to this report), and be charged with the following core responsibilities:

- Selling parking permits (revenue collection)
- Revenue distribution to the developer or other body that funded parking construction, with the authority to use surpluses to fund Transportation Demand Management (TDM) programs and other transportation improvements in the area
- Enforcement
- Maintenance
- Rate changes and other parking allocation policies
- Monitoring of parking occupancy and availability
- Management of permit programs
- Special event planning

Special Event Planning

There may be need for special event planning for large events. The precise arrangements will depend on the type of event and the number of attendees expected, but might include:

- Use of temporary overflow lots (especially in the early phases of development, prior to build-out, when land may be available). One potential option may be under the I-880 freeway, as Caltrans has historically been willing to lease similar sites for this purpose.
- Use of valet parking to stack vehicles in aisles
- Shuttles from remote parking facilities (for evening and weekend events, this might make use of garages in Downtown Oakland)
- Special incentives to encourage employees to take transit, carpool, walk or bike to work.

Figure 4-15 Parking Ownership and Management Options for Ownership Units

Arrangement	Advantages	Disadvantages
Residents own individual, assigned spaces; managed by HOA or third party.	Most common and intuitive arrangement.	Difficult to share parking; least flexibility. Residents may buy spaces to protect condo resale value, even if not required.
Owned and managed by HOA; spaces leased by residents.	Keeps resident control while facilitating sharing. Residents can choose how many spaces to lease.	Difficult to share spaces between buildings. HOA may not have parking management experience.
Owned by HOA, managed by third party contractor; spaces leased by residents.	Management expertise from contractor. Residents can choose how many spaces to lease.	May be difficult to share spaces between buildings. Potential for contract complexity.
All parking owned and managed by third party (e.g. Parking District) or jointly by HOAs; spaces leased by residents.	Economies of scale, particularly if same organization runs shuttle service. Greatest sharing potential and demand reductions.	Least control for residents and HOA.

Phasing

Parking demand, particularly for mixed-use, urban projects, is an inexact science; it is difficult to provide precise estimates of parking demand with a high degree of certainty. Parking supply can thus be more generous in an early phase, providing a hedge against higher than expected demand, and also taking account of the fact that parking demand will be higher in earlier phases until the mix of uses matures and transit options expands. In later phases of development, the supply of parking can reflect both this initial surplus and the actual level of demand.

As far as possible, the parking management strategies discussed above should be introduced from the date the first occupants move in. This will help to avoid resistance to the introduction of charges or other regulations, and establish the perception that parking is a valuable, controlled, priced resource. Parking policies should be made clear prior to signing commercial leases or selling residential property.

Experience with Phase I will provide valuable data on actual parking demand by different groups of users at different price levels; this should be taken into account during detailed planning for subsequent phases.

**APPENDIX A.
PARKING DEMAND BASELINE**

Appendix A. Parking Demand Baseline

Assumptions:	Comment:
* Saturday will yield peak demand, with peak in marina and recreational usage, as well as in residential and retail/commercial usage	
* Parking Demand per 1,000 Sq. Ft. Retail: 2 spaces	Based on Main Street parking demand in 6 cities
* Parking Demand per Boat Slip: 0.35 spaces	ITE Parking Generation, Code 420, Saturday demand

Phase 1:

Parcel	Parking Supply		Parking Demand				Total Demand	Net Surplus/Deficit	On-Street Surp./Def.	Off-Street Surp./Def.
	On-Street	Off-Street	Residents	Employee	Visitors	Marina				
A	67	375	447	8	12		467	-25	55	-80
B	32	160	191	5	7		203	-11	25	-35
C	33	160	191	5	7		203	-10	26	-35
D	7	0	0	0	0		0	7	7	0
E	0	0	0	0	0		0	0	0	0
F	13	164	195	4	6		205	-28	7	-35
G	79	480	334	32	52		418	141	27	115
H	32	0	0	0	0		0	32	32	0
J	0	0	0	0	0		0	0	0	0
K	0	0	0	0	0		0	0	0	0
L	0	0	0	0	0		0	0	0	0
M	0	0	0	0	0		0	0	0	0
N	0	0	0	0	0		0	0	0	0
Marina						18	18	-18	0	-18
Total	263	1339	1357	53	85	18	1513	89	178	-89
								6%		

Build-Out:

Parcel	Parking Supply		Parking Demand				Total Demand	Net Surplus/Deficit	On-Street Surp./Def.	Off-Street Surp./Def.
	On-Street	Off-Street	Residents	Employee	Customers	Marina				
A	67	375	447	8	12		467	-25	55	-80
B	32	160	191	5	7		203	-11	25	-35
C	33	160	191	5	7		203	-10	26	-35
D	33	160	191	5	7		203	-10	26	-35
E	36	86	102	6	10		118	4	26	-23
F	13	164	195	4	6		205	-28	7	-35
G	79	480	334	32	52		418	141	27	115
H	39	390	399	28	42		469	-40	-3	-37
J	6	294	348	9	15		372	-72	-9	-63
K	26	339	369	13	21		403	-38	5	-44
L	20	180	172	12	18		202	-2	2	-3
M	36	360	398	4	6		408	-12	30	-42
N	34	300	357	12	18		387	-53	16	-69
Marina						60	60	-60	0	-60
Total	454	3448	3692	142	222	60	4116	-214	232	-446

**APPENDIX B
PARKING DEMAND WITH
EMPLOYEE PARKING PRICING
AND RESIDENTIAL UNBUNDLED
PARKING**

Appendix B Parking Demand with Employee Parking Pricing and Residential Unbundled Parking

Assumptions:	Comment:
* Saturday will yield peak demand, with peak in marina and recreational usage, as well as in residential and retail/commercial usage	
* Parking Demand per 1,000 Sq. Ft. Retail:	2 spaces Based on Main Street parking demand in 6 cities
* Parking Demand per Boat Slip:	0.35 spaces ITE Parking Generation, Code 420, Saturday demand
* Employee parking fee will yield	20% parking demand reduction
* Unbundling of residential parking costs will yield	15% parking demand reduction

Phase 1:

Parcel	Parking Supply		Parking Demand				Total Demand	Net Surplus/Deficit	On-Street Surp./Def.	Off-Street Surp./Def.
	On-Street	Off-Street	Residents	Employee	Visitors	Marina				
A	67	375	380	6	12		398	44	55	-11
B	32	160	162	4	7		173	19	25	-6
C	33	160	162	4	7		173	20	26	-6
D	7	0	0	0	0		0	7	7	0
E	0	0	0	0	0		0	0	0	0
F	13	164	166	3	6		175	2	7	-5
G	79	480	283	25	52		361	198	27	171
H	32	0	0	0	0		0	32	32	0
J	0	0	0	0	0		0	0	0	0
K	0	0	0	0	0		0	0	0	0
L	0	0	0	0	0		0	0	0	0
M	0	0	0	0	0		0	0	0	0
N	0	0	0	0	0		0	0	0	0
Marina			0	0	0	18	18	-18	0	-18
Total	263	1339	1153	42	85	18	1299	303	178	125

19%

Build-Out:

Parcel	Parking Supply		Parking Demand				Total Demand	Net Surplus/Deficit	On-Street Surp./Def.	Off-Street Surp./Def.
	On-Street	Off-Street	Residents	Employee	Customers	Marina				
A	67	375	380	6	12		398	44	55	-11
B	32	160	162	4	7		173	19	25	-6
C	33	160	162	4	7		173	20	26	-6
D	33	160	162	4	7		173	20	26	-6
E	36	86	87	5	10		102	20	26	-6
F	13	164	166	3	6		175	2	7	-5
G	79	480	283	25	52		361	198	27	171
H	39	390	339	22	42		404	25	-3	29
J	6	294	296	8	15		318	-18	-9	-9
K	26	339	314	11	21		345	20	5	14
L	20	180	146	9	18		173	27	2	25
M	36	360	338	3	6		347	49	30	19
N	34	300	304	9	18		331	3	16	-13
Marina			0	0	0	60	60	-60	0	-60
Total	454	3448	3139	113	222	60	3534	368	232	137

**APPENDIX C
PARKING DEMAND WITH
EMPLOYEE PARKING PRICING,
RESIDENTIAL UNBUNDLED
PARKING AND SHARED PARKING**

Appendix C Parking Demand with Employee Parking Pricing, Residential Unbundled Parking and Shared Parking

Assumptions:		Comment:			
* Residential parking demand based on vehicle ownership west and north of the site . Senior housing has a 70% demand of the general public		Based on Main Street parking demand in 6 cities			
* Parking Demand per 1,000 Sq. Ft. Retail:	2 spaces				
* Parking Demand per Boat Slip:	0.35 spaces	ITE Parking Generation, Code 420, Saturday demand			
* Employee parking fee will yield	20% parking demand reduction				
* Unbundling of residential parking costs will yield	15% parking demand reduction				

Shared Parking Assumptions:		Weekday 2PM	Weekday 8PM	Saturday 2PM	Saturday 8PM
Residential:	60%	98%	71%	92%	
Retail:	97%	61%	100%	55%	

Source: ULI Shared Parking Manual.

Note: Look at shaded cells for peak shared parking demand!

Phase 1:		Shared Parking Analysis														
Parcel	Parking Supply		Parking Demand				Weekday 2:00 PM		Weekday 8:00 PM		Saturday 2:00 PM		Saturday 8:00 PM		On-Street Surp./Def.	Off-Street Surp./Def.
	On-Street	Off-Street	Residents	Employee	Visitors	Marina	On-Street	Off-Street	On-Street	Off-Street	On-Street	Off-Street	On-Street	Off-Street		
A	67	375	380	6	12		12	234	7	376	12	276	7	353	60	-1
B	32	160	162	4	7		7	101	4	161	7	119	4	151	28	-1
C	33	160	162	4	7		7	101	4	161	7	119	4	151	29	-1
D	7	0	0	0	0		0	0	0	0	0	0	0	0	7	0
E	0	0	0	0	0		0	0	0	0	0	0	0	0	0	0
F	13	164	166	3	6		6	103	4	165	6	121	3	154	9	-1
G	79	480	283	25	52		51	195	32	293	52	227	29	275	47	187
H	32	0	0	0	0		0	0	0	0	0	0	0	0	32	0
J	0	0	0	0	0		0	0	0	0	0	0	0	0	0	0
K	0	0	0	0	0		0	0	0	0	0	0	0	0	0	0
L	0	0	0	0	0		0	0	0	0	0	0	0	0	0	0
M	0	0	0	0	0		0	0	0	0	0	0	0	0	0	0
N	0	0	0	0	0		0	0	0	0	0	0	0	0	0	0
Marina			0	0	0	18		18		18		18		18	0	-18
Subtot	263	1339	1153	42	85	18	83	751	52	1174	85	879	47	1102	211	165
Total	1602						834		1226		964		1149		376	

Build-Out:		Shared Parking Analysis														
Parcel	Parking Supply		Parking Demand				Weekday 2:00 PM		Weekday 8:00 PM		Saturday 2:00 PM		Saturday 8:00 PM		On-Street Surp./Def.	Off-Street Surp./Def.
	On-Street	Off-Street	Residents	Employees	Customers	Marina	On-Street	Off-Street	On-Street	Off-Street	On-Street	Off-Street	On-Street	Off-Street		
A	67	375	380	6	12		12	234	7	376	12	276	7	353	60	-1
B	32	160	162	4	7		7	101	4	161	7	119	4	151	28	-1
C	33	160	162	4	7		7	101	4	161	7	119	4	151	29	-1
D	33	160	162	4	7		7	101	4	161	7	119	4	151	29	-1
E	36	86	87	5	10		9	57	6	88	10	67	5	83	30	-2
F	13	164	166	3	6		6	103	4	165	6	121	3	154	9	-1
G	79	480	283	25	52		51	195	32	293	52	227	29	275	47	187
H	39	390	339	22	42		41	225	26	346	42	263	23	324	13	44
J	6	294	296	8	15		14	185	9	294	15	217	8	276	-3	0
K	26	339	314	11	21		20	199	13	314	21	234	11	295	13	25
L	20	180	146	9	18		18	97	11	149	18	113	10	139	9	31
M	36	360	338	3	6		6	206	4	333	6	243	3	313	32	27
N	34	300	304	9	18		18	191	11	303	18	225	10	285	23	-3
Marina			0	0	0	60		60		60		60		60	0	-60
Subtot	454	3448	3139	113	222	60	216	2053	136	3204	222	2401	122	3009	318	244
Total	3902						2268		3340		2624		3132		562	

APPENDIX B

Carey & Co. Historic Resources Evaluations for Philbrick Boat Works

Introduction

Carey & Co. has reviewed the Notice of Intent to Submit an Oakland Landmark and S-7 Combining Zone Application Form for the Philbrick Boat building at 603 Embarcadero (Port of Oakland Building H-103), reviewed our preliminary findings and reevaluated the building for potential historic significance at the local level (i.e., Oakland Landmark eligibility). Based on a review of the Notice of Intent Form and supporting materials, a site visit, and additional archival research, it is Carey & Co.'s professional opinion that the building does not warrant Oakland Landmark status nor is it eligible for the National Register of Historic Places or the California Register of Historical Places.

Initially, Carey & Co. included the building in its Historic Resource Evaluation for the Oak to 9th Avenue Redevelopment Project dated August 15, 2005. The evaluation found that:

The property at 603 Embarcadero does not appear to be individually eligible for listing on the NRHP or CRHR. The Oakland Cultural Heritage Survey did not rate the building, and it is Carey & Co.'s professional opinion that the property does not individually appear to be of Oakland Landmark quality. Since it is not listed or eligible for inclusion on federal, state, or local lists, the property is not considered a historic resource under CEQA Guidelines Section 15064.5(a)(1).

To be potentially eligible for listing on the NRHP or CRHR, a building must usually be over 45-50 years old, must have historic significance, and must retain its physical integrity. Since this building was constructed approximately 70 years ago, it meets the age requirement. However, it does not appear to possess sufficient historic significance for listing. In Carey & Co.'s opinion, under NRHP Criterion A/CRHR Criterion 1 archival research yielded no information indicating an association with significant historic events. Under NRHP Criterion B/CRHR Criterion 2, archival research yielded no information indicating an association with significant historic individuals or entities. Under NRHP Criterion C/CRHR Criterion 3, the building's mid-20th century industrial vernacular style does not sufficiently embody the distinctive characteristics of the style, type, or period. Archival research provided no indication that the building has the potential to yield exceptionally important information (NRHP Criterion D/CRHR Criterion 4). Since physical integrity is based on historic significance, and the building does not appear to possess historic significance, its physical integrity can not be evaluated.

Similarly, in Carey & Co.'s opinion the property at 603 Embarcadero does not appear to be of Oakland Landmark quality because it is not an

outstanding or especially fine architectural example and it does not possess extreme or major historical importance.

Reevaluation

In December, 2005 Carey and Co. performed additional research on the Philbrick Boat building at 603 Embarcadero (Port of Oakland Building H-103). Following this research and a site visit, we completed the Oakland Landmarks Preservation Advisory Board (LPAB) evaluation sheet and tally sheet, as well as the Oakland Cultural Heritage Survey (OCHS) evaluation sheet and tally sheet (see attachments).

Carey & Co.'s rating followed the LPAB Evaluation Criteria and Ratings, contained in Appendix D of the Historic Preservation Element of the Oakland General Plan, dated September 1993. The ratings are based on the "Guidelines for Determination of Eligibility for Landmark Designations" contained in Appendix 3 of the Oakland General Plan. To be eligible as an individual Oakland Landmark, it must be rated "A" or "B" under the Oakland rating system. An "A" rated property is an "outstanding architectural example or extreme historical importance," a "B" rating is an "especially fine architectural example, major historical importance."

Carey & Co.'s tally score was 17.55, earning the building a "C" rating (see attached tally sheet). Therefore it is not eligible for Oakland Landmark Status. As this score differs from the score previously assigned to it (36 points or "A" rating) by OCHS in their preliminary review, a discussion of our methodology is presented below.

Methodology

Under Criterion A - Architecture - Exterior/Design (criterion # 1), Carey & Co. rated the building as "FP" or "undistinguished" because it has no clearly identifiable visual or design value as called for under the guidelines. We did not judge the Interior (criterion # 2) because the interior was inaccessible to researchers, and therefore we did not evaluate its method of construction. For Construction (criterion # 3), Builder (criterion # 4) and Style/Type (criterion # 5) we gave it an "FP" or "no particular interest" for its structure and surface materials, designer, and style/type.

Under criteria B – History - Person (criterion # 6), Event (criterion # 7) and Patterns (criterion # 8), we gave it a "G" since the building is associated with the life of a person (Don Philbrick) of "tertiary" importance to Oakland's maritime history but intimately connected with the building. Research has confirmed that Don Philbrick was builder of wooden boats since he was a teenager in 1934. The supporting materials attached to the Notice of Intent Form prepared by the building's current tenant, Russ Donovan states that Philbrick began operating out of the subject building in 1946. (Various sources give slightly different date. A newspaper article dated 1982 says he worked at this location for 38 years, which would make it 1944. The "5th Avenue Peninsula Self Guided Tour"

brochure gives the date as 1947. City Directories for Oakland were not produced for the years 1943-1966.)

Carey & Co. conducted research for the Philbrick Boat Works at the California Historical Society, Oakland Main Library, U.C. Berkeley Newspaper Room, Bancroft Library, the Oakland Tribune Library, and the Internet. As a result of these searches, two newspaper articles were found about the Philbrick Boat Works (a third citation lists Philbrick in the Port of Oakland's *Port Progress* Nov/December 1981 issue, but the copy is missing from the Oakland Library, it could not be found at Bancroft, and the Port of Oakland cannot find its copy.)

The article from the Oakland Tribune, dated April 4, 1978, said that Don Philbrick came back from semi-retirement "to teach the dying art of wooden boat building" to his business partner's sons. A later article in 1982 quotes him as saying that he is the only one of three custom, wooden boat builders in the country. He said he worked alone in the building, although in the 1950s he had six employees. The information that was submitted in support of the Notice of Intent Form contains other facts about Philbrick and it portrays him as an interesting figure in the wooden boat building industry.

However, contrary to the Notice of Intent Form's supporting information, the Philbrick Boat Works was not the subject of a display at the Oakland Museum of California, according to Inez Brooks-Myers, a 30-year veteran of the Museum¹. The Philbrick Boat Works may or may not have been mentioned in exhibits about Oakland's maritime past or in a display about yachting in the 1970s (such records are in deep storage and are not available), but its boats were not displayed in the Museum according to Brooks-Myers. The Philbrick Boat Co. is listed on a web site of Wooden Boatbuilding Companies of the Past (www.classicboat.com/classic-woodenboats) but it does not contain any other information.

However, assuming all the information provided in the Notice of Intent Form and supporting materials are accurate, Philbrick's role in Oakland's history does not rise to the level of even "tertiary historical importance" for Oakland Landmark purposes, i.e., having "a prominent role in the development of a particular neighborhood or of a particular ethnic group or segment of the community." No claim is made that Don Philbrick helped establish the Oakland waterfront or that he helped establish, promote or develop even the local boat building industry. At the peak of his business he employed only six people, and therefore, had a relatively minor role in the history of Oakland's waterfront.

Carey & Co. accepted the building's date (criterion # 9) of 1935 as stated in the Notice of Intent Forms' supporting materials, and gave it a rating of "G" or "established between 1906 and 1945." In terms of the building's relationship to its site (criterion # 10), it

¹ Telephone communication, Richard Brandi, Carey & Co. with Inez Brooks-Myers, Oakland Museum of California, December 8, 2005.

received an “E” rating, i.e., “has not been moved,” since the building has remained in the same location since its original construction.

Under Criterion C, Context, we rated the building “FP” for both Continuity (criterion # 11) and Familiarity (criterion # 12) as the building is not located in an “area of primary or secondary importance” and the building “is not particularly conspicuous or familiar,” following the guidelines.

Under Criterion D, Integrity, we rated Condition (criterion # 13) a “P” as it exhibits considerable surface and structural problems particularly along the south façade and part of the north façade that is visible from the west. Finally, the exterior alterations (criterion # 14) we rated “G,” for minor changes to the exterior.

In addition, Carey & Co. applied the OCHS Evaluation Criteria and Rating system to the property, which is very similar to the LPAB Evaluation Criteria and Rating system. The evaluation tally score produced a rating of 14.25, or “D,” which is below the threshold for consideration of local historic significance (see attached tally sheet).

Conclusion

In summary, after conducting a site visit, performing additional historical research, and completing the LPAB and OCHS evaluation and tally sheets, it is Carey & Co.’s professional opinion that the Philbrick Boat Building at 603 Embarcadero is not eligible as a City of Oakland Landmark.

References

1. Notice of Intent to Submit an Oakland Landmark and S-7 Combining Zone Application Form for the Philbrick Boat building.
2. *Oakland Tribune*, February 17, 1982.
3. *Oakland Tribune* April 4, 1978.
4. “The 5th Avenue Peninsula Self-Guided Tour,” Center for Land Use Interpretation, undated.
5. www.Classic.boat.com/classic-wooden-boats.

Site Photos, December, 2005



Entrance on Embarcadero (*Carey & Co. December 2005*)



Southeast corner (*Carey & Co. December 2005*)



North elevation (*Carey & Co. December 2005*)



Northwest corner (*Carey & Co. December 2005*)



Southwest corner (*Carey & Co. December 2005*)

Oakland General Plan
Historic Preservation Element

DRAFT

Appendix D

LPAB FORM 3 1

City of Oakland -- Landmarks Preservation Advisory Board
EVALUATION SHEET FOR LANDMARK ELIGIBILITY

Address 603 Embarcadero

Name Philbrick's Boat Works

A. ARCHITECTURE		E	VG	G	FP
1. Exterior/Design					FP
2. Interior					FP
3. Construction					FP
4. Designer/Builder					FP
5. Style/Type					FP
B. HISTORY		E	VG	G	FP
6. Person/Organization					FP
7. Event					FP
8. Patterns					FP
9. Age					FP
10. Site					FP
C. CONTEXT		E	VG	G	FP
11. Continuity					FP
12. Familiarity					FP
D. INTEGRITY		E	VG	G	FP
13. Condition					FP
14. Exterior Alterations					FP

Evaluated by _____ Date _____

STATUS Rating: _____ City Landmark Eligibility: <input type="checkbox"/> Eligible <input checked="" type="checkbox"/> Not eligible National Register Status: <input type="checkbox"/> Listed <input type="checkbox"/> In process <input type="checkbox"/> Determined eligible <input type="checkbox"/> Appears eligible <input checked="" type="checkbox"/> Appears ineligible Site of Opportunity <input type="checkbox"/>	
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This evaluation sheet was accepted by the Landmarks Preservation Advisory Board at its meeting of _____ (Date)

Attest: _____ (Secretary)

September, 1999



Oakland Cultural Heritage Survey
Oakland City Planning Department

EVALUATION
TALLY SHEET

ET

Address					Column I	Column II
					Survey Rating	National Register Eligibility
14	8	4	0	1. Exterior		
				2. Interior		
				(a) Space 1		
				(b) Space 2		
				(c) Other Spaces		
10	5	3	0	3. Construction		
6	3	2	0	4. Designer/Builder		
10	5	3	0	5. Type/Style		
8	4	2	0	6. Supportive Elements		
A. VISUAL QUALITY/DESIGN TOTAL (40 Maximum)					0	
20	10	0	0	7. Person/Organization		
20	10	0	0	8. Event		
12	4	0	0	9. Patterns		
8	4	0	0	10. Age *		
B. HISTORY/ASSOCIATION TOTAL (40 Maximum)					15	
8	4	0	0	11. Continuity		
20	10	0	0	12. Familiarity		
C. CONTEXT TOTAL (20 Maximum)					2	
PRELIMINARY TOTAL (Sum of A, B, and C; 100 Maximum)					17	
--	-20	-20	-100	13. Condition (From A, B, and C total)	0.85	
--	-200	-400	-800	14. Exterior Alterations *	0.40	
--	-100	-200	-400	(a) From A and C total (excl. 2)		
				(b) From B total	1.50	
--	-200	-400	-800	15. Interior Alterations *		
--	-200	-400	-800	(a) Space 1		
--	-200	-400	-800	(b) Space 2		
--	-200	-400	-800	(c) Other Spaces		
--	-400	-600	-800	16. Structural Removals *		
--	-250	-300	-500	(a) From A and C total		
--	-250	-300	-500	(b) From B total		
D. INTEGRITY DEDUCTIONS					2.75	
ADJUSTED TOTAL (Preliminary Total minus Integrity Deductions)					14.25	
(3)	(2)	(2)	(2)	18. Reversibility of Item 14 (Exterior)		
(3)	(3)	(2)	(2)	19. Reversibility of Item 15 (Interior)		
(2)	(2)	(2)	(2)	(a) Space 1		
(3)	(3)	(2)	(2)	(b) Space 2		
(3)	(3)	(2)	(2)	(c) Other Spaces		

RATING (FROM COLUMN I TOTALS):
 Present Status (Adjusted Total): A (41+) B (28-40) C (18-27) D (11-17) E (0-10)
 Contingency Status (Preliminary Total plus higher ratings for certain items):
 A (41+) B (28-40) C (18-27) D (11-17) E (0-10) Not applicable
 Contingency Factors: (1) More significant information is learned about the property's history, design, or development (specify evaluation criteria and contingency score for each criterion);
 (2) Existing (exterior) (interior) alterations are reversed; feasibility doubtful or unknown (line 18 or 19 rated "F" or "P") (3) Existing (exterior) (interior) alterations are reversed; feasibility appears good (line 18 or 19 rated "X" or "G").

ELIGIBILITY (FROM COLUMN II TOTALS):
 National Register (individual): Listed (check Federal Register) Determined Eligible (check Federal Register) Appears eligible (Adjusted Total 28+ except *) Potential if restored (Preliminary total 28+ and line 14 is "F" or "P" except *) Potential when over 50 years old (Preliminary Total 28+ and property is less than 50 years old except *) None of the above
 National Register (as part of Group or District only): Listed (check Federal Register) Determined eligible (check Federal Register) Appears eligible (line 11 is "X" or "G" except *) Appears eligible if restored (line 11 is "X" or "G" and line 14 is "P" except *) Appears eligible when more than 50 years old (line 11 is "X" or "G" and property is less than 50 years old except *) None of the above
 City Landmark: Listed (per LM list dated ___/___/___) In 6-7 zone On Study List (per SL list dated ___/___/___) None of the above.

*The National Register generally excludes properties that are less than 50 years old (11c), have been severely altered (11d, 15, 16), or have been moved (11f) unless a moved property is significant primarily for architectural value or as the most important surviving structure associated with a person or event.

This form was adapted from the San Francisco Downtown Inventory, prepared for the Foundation for San Francisco's Architectural Heritage by Charles Hall Page and Associates, and Harold Kalmer's The Evaluation of Historic Buildings, Rev. 6/88

603 Embarcadero
Philbrick Boat Works

Notice of Intent to Submit an Oakland Landmark and S-7 Preservation Combining Zone
Application Form for Preliminary Determination of Landmark Eligibility

**Comments on Planning Staff Recommendations
Staff Report, January 9, 2006**

Prepared by Carey & Co. Inc.

The Oakland Landmarks Preservation Advisory Board (LPAB) is considering taking action on the eligibility of 603 Embarcadero for Landmark or Heritage Property designation. A Notice of Intent to Submit an Oakland Landmark Combining Zone Application Form has been submitted. In addition, planning staff has prepared a LPAB Preliminary Evaluation Sheet for determination of Landmark Eligibility as well as an Oakland Cultural Heritage Survey (OCHS) Evaluation Tally Sheet. Finally, Carey & Co. also completed the LPAB Preliminary Evaluation Sheet and OCHS Evaluation Tally Sheet.

In summary, the planning staff's LPAB Preliminary Evaluation Sheet resulted in an overall rating of 35.9 (high) to 14.7 (low), with an average of 25.3. Carey & Co.'s rating was 17.55. Planning staff's averaged rating places the property in category "B"; Carey's in category "C". For the OCHS Evaluation Tally Sheet, planning staff's rating is 25, or "C". Carey & Co.'s result was 14.55 or "D". The LPAB is asked to make a final determination on these ratings.

LPAB Preliminary Evaluation Sheet

The differences between the planning staff's ratings and that of Carey & Co. appear in several categories. In Architecture, while Carey & Co. placed no value on the building's architecture, which yielded no points, planning staff came up with a range of 2 to 9 points. There are three areas of disagreement: Exterior/Design, Construction and Style/Type.

Under Exterior/Design, the range for the staff evaluation is between FP and G. "A 'G' rating is appropriate for properties, which have any clearly identifiable visual or design value." We would argue that in the case of 603 Embarcadero, the building is "Undistinguished" and therefore should be rated FP. In this case, we have a utilitarian structure with numerous additions to the original structure. Although the dates and association of these modifications are not currently documented, we do not believe that they would rise to the status of contributing features that have gained significance on their own over time from a design standpoint. *Suggested Rating: 0.*

For Construction, the LPAB is asked to decide between FP, G and VG. The former is Carey & Co.'s rating. This conclusion was reached because, in our opinion, the building is not significant example of a particular structural, or surface material, or method of construction. Even if there were some value in this category, it would be for the structural materials alone and not surface materials or method of construction. In our view, the choice is narrowed to FP or G. *Suggested Rating: 0 to 2.*

Style/Type is defined as “Significance as an example of a particular type, style or convention.” Staff’s rating is between G (Good example of any type, style, or convention) and VG (Especially fine or very early example if many survive; good example if few survive). Carey & Co. did not see the building as particularly significant and gave a rating of FP. It is not significant example of a warehouse or light industrial building and, architecturally, with respect to style and type, it is of no particular interest. *Suggested Rating: 0 to 2.*

Under Context, planning staff rated the property from FP to G. Carey & Co.’s rating was FP. For Continuity, this rating was reached because of our opinion that the property is not compatible with an area of primary importance and also is not located in an area of primary or secondary importance. For Familiarity, Carey & Co.’s rating of FP is based on our opinion that 603 Embarcadero is not a symbol, and not a conspicuous or familiar feature in the region, city or neighborhood. *Suggested Rating for both Continuity and Familiarity: 0.*

The Integrity of the structure is important to all evaluations, as these points are a deduction. For Exterior Alterations, the staff circled 0% (“No changes or very minor alterations which do not change the overall character.”) and 25% (“Minor changes to overall character.”). In our view, the starting point for this evaluation is what constitutes the historic resource. If we assume that the original structure were to be the resource, and subsequent alterations and additions as not contributing to its overall architectural significance, the selection of a rating would have to be between G, Minor changes to overall character and F, Major changes to overall character. *Suggested Rating: 25% to 50%.*

Based on the above discussion and the Suggested Ratings, the high and low Adjusted Totals range from 12.15 to 13.68 (See attached matrix). The resulting average is 12.92 placing it in “C”. Note that the average for the staff’s tally is 23.14. Twenty-three is the low threshold for B. However, if the same Integrity deductions used in the Suggested Ratings are applied to the staff ratings, the Adjusted Total for the high rating would fall to 16.65, a “C”.

OCHS Evaluation Tally Sheet

Planning staff’s rating of 25 confers a C status to the property. In this evaluation, staff notes that this is an “Ad hoc conversion of LM rating to OCHS rating=C.” As with the LPAB Evaluation, ranges are assigned, but there are fewer of them.

In Visual Quality/Design, Supportive Elements is unique to the OCHS evaluation sheet and not found on the LPAB Preliminary Evaluation Sheet. Therefore an ad hoc transfer of ratings is not possible. The staff gives Supportive Elements a 4, which corresponds to VG, or “One or several especially fine or unusual supportive elements.” The guideline states that “A supportive element should generally be considered ‘especially fine or unusual’ if the element is notable enough to warrant a separate evaluation.” Assuming that the Supportive Elements at 603 Embarcadero are the associated fences, walls and outbuildings, a rating of FP or G could be supported, but not VG. *Suggested Rating: 0 to 2.*

For the other categories, we converted our suggested ratings for the LPAB Evaluation into those shown on the attached matrix under OCHS Evaluation Tally Sheet. We used ranges when they corresponded to the suggested ratings for the LPAB Evaluation.

The Preliminary Total prepared by staff does not include Integrity Deductions. In completing the LPAB Preliminary Evaluation Sheet, staff's evaluation included Integrity Deductions for both Condition and Exterior Alterations. Similar deductions should be made on the OCHS Evaluation Tally Sheet. Assuming similar deductions as used in the LPAB Evaluation, the attached ratings matrix uses a range of 3% to 5% for Condition and 0% to 20% and 0% to 10% for Exterior Alterations. The results place the property in either C (staff rating with deductions) and D (Suggested Ratings). However, if the same Integrity deductions used in the Suggested Ratings are applied to the staff ratings, the Adjusted Total for the high rating would fall to 16.85, a "D".

LPAB Preliminary Evaluation Sheet

	Staff Ratings		Suggested Ratings	
	High	Low	High	Low
Architecture				
Exterior	3	0	0	0
Interior	0	0	0	0
Construction	3	0	2	0
Designer/Builder	0	0	0	0
Style/Type	3	2	2	0
Total	9	2	4	0
History				
Person	8	8	8	8
Event	0	0	0	0
Patterns	9	5	9	5
Age	2	2	2	2
Site	4	4	4	4
Total	23	19	23	19
Context				
Continuity	1	0	0	0
Familiarity	4	0	0	0
Total	5	0	0	0

Preliminary Total	37	21	27	19
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Integrity				
Condition (3-5%)	1.85	0.63	1.35	0.57
Exterior Alterations*	9.25	0	13.5	4.75
Total Combined	11.1	0.63	14.85	5.32

Adjusted Total	25.9	20.37	12.15	13.68
----------------	------	-------	-------	-------

Average	23.14		12.92	
Status/Rating	B		C	

*0%-25% for staff rating. 25%-50% for Suggested Rating

Apply 50% to Staff Ratings	
Condition (5%)	1.85
Exterior Alterations (50%)	18.5
Total Combined	20.35
Adjusted Total	16.65

OCHS Evaluation Tally Sheet

	Staff Ratings		S
	High	Low	
Architecture			
Exterior	0	0	
Interior	0	0	
Construction	3	3	
Designer/Builder	0	0	
Style/Type	3	3	
Supportive Elements	4	4	
Total	10	10	
History			
Person	5	5	
Event	0	0	
Patterns	3	3	
Age	2	1	
Total	10	9	
Context			
Continuity	2	0	
Familiarity	5	5	
Total	7	5	

Preliminary Total	27	24	
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Integrity			
Condition	1.35	0.72	
A. Exterior Alterations*	3.4	0	
B. Exterior Alterations**	1	0	
Total Combined	5.75	0.72	

Adjusted Total	21.25	23.28	
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Average	22.27	
Status/Rating	C	

*0%-20% for staff rating. 20%-40% for Suggested Rating

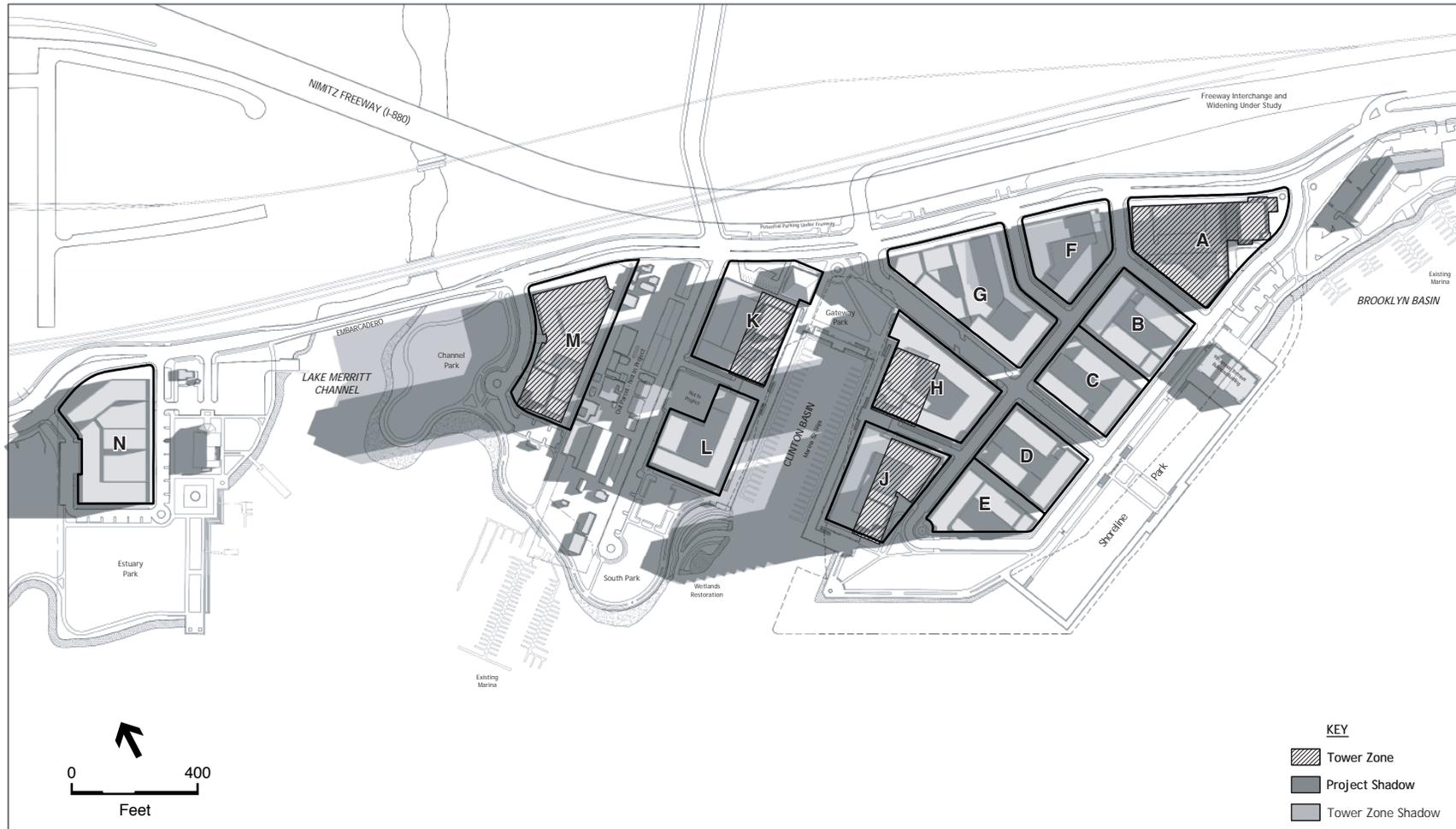
**0%-10% for staff rating. 10%-20% for Suggested Rating

Apply 40% and 20% to Staff Ratings	
Condition (5%)	1.35
A. Exterior Alterations (40%)	6.8
B. Exterior Alterations (20%)	2
Total Combined	10.15
Adjusted Total	16.85

APPENDIX C

Project Shadow Diagrams from Draft EIR

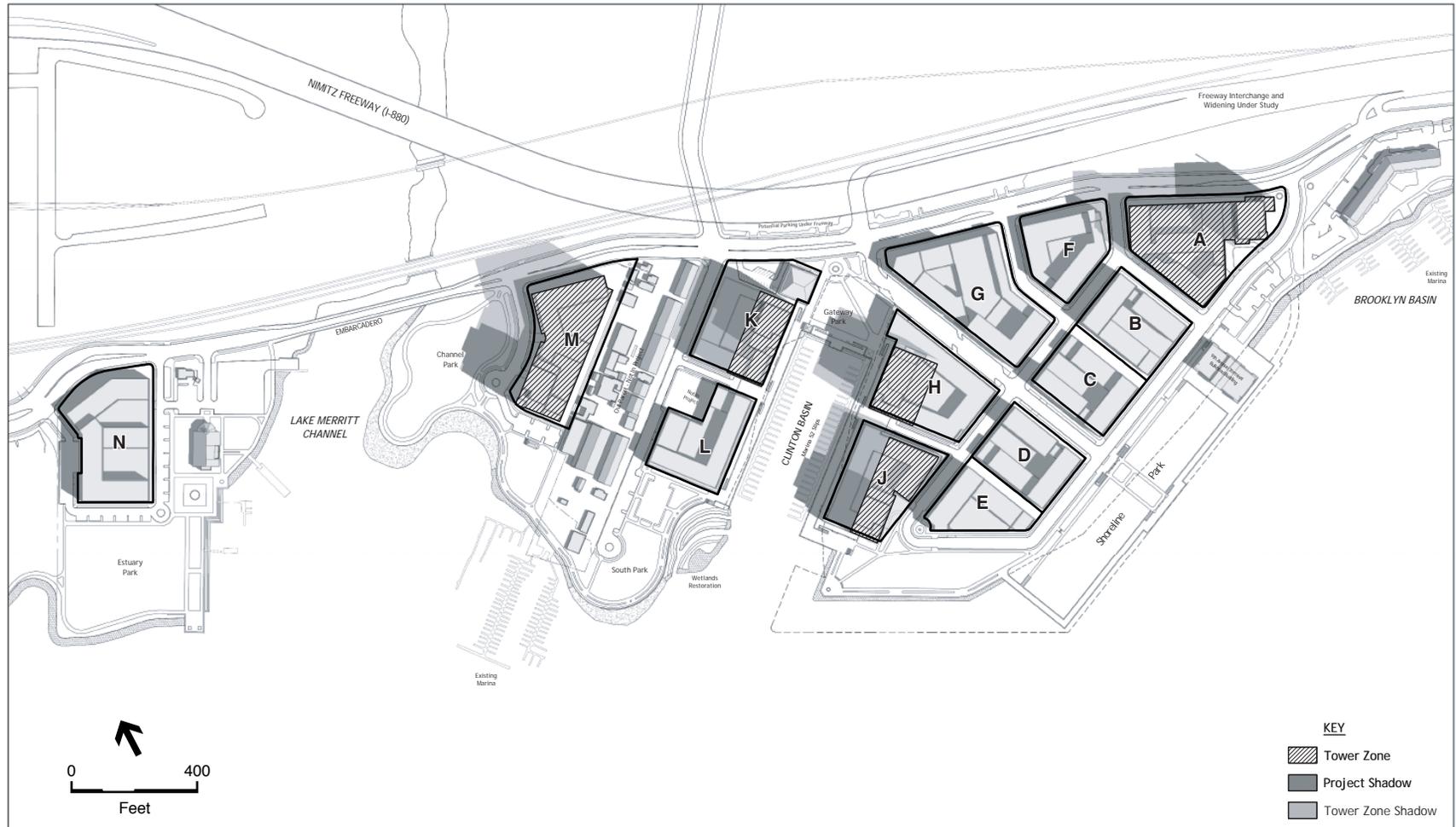
IV.K-44



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622
Figure IV.K-20
March Shadow Patterns: 9 am

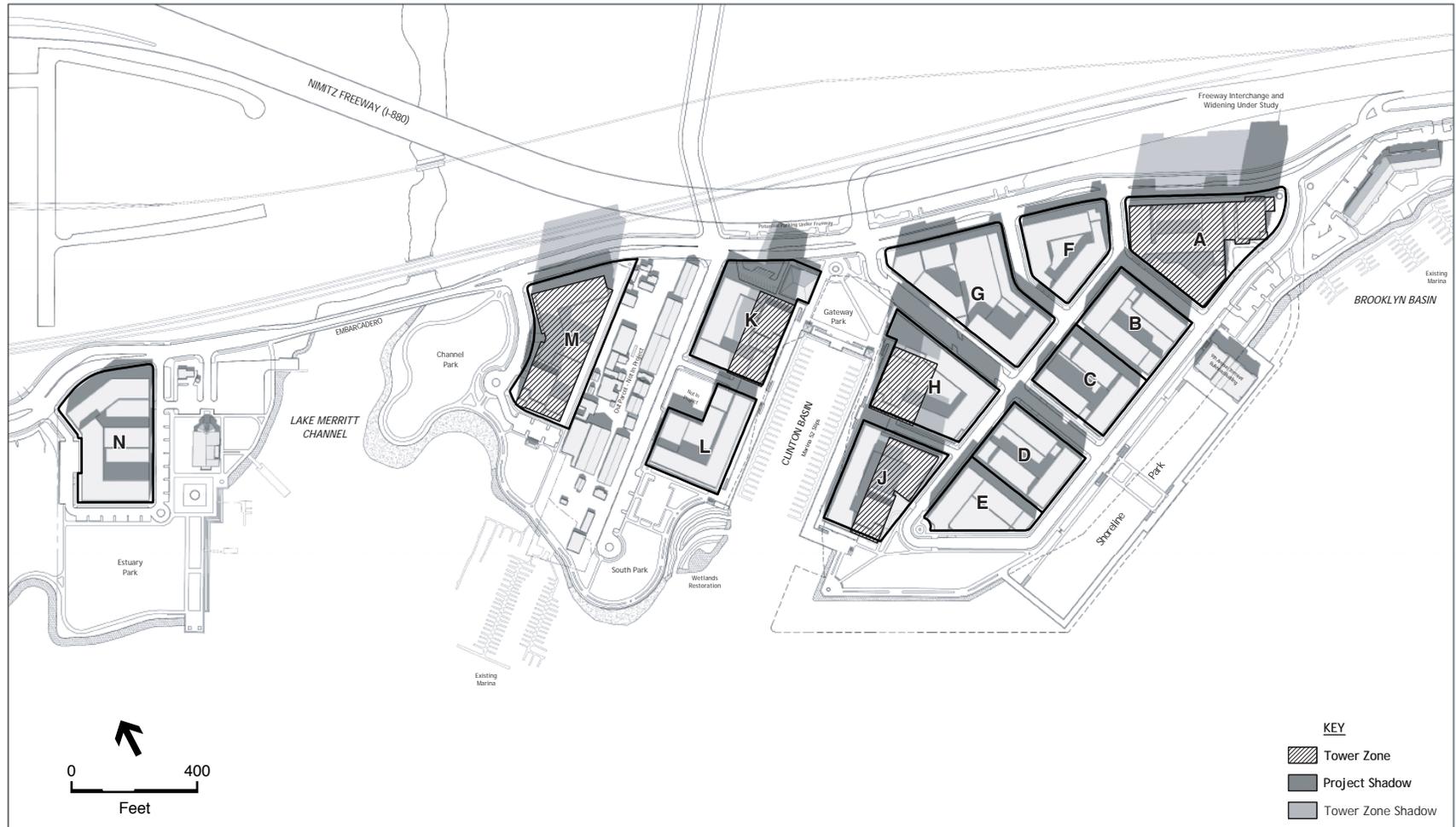
IV.K-45



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622
Figure IV.K-21
March Shadow Patterns: 12 noon

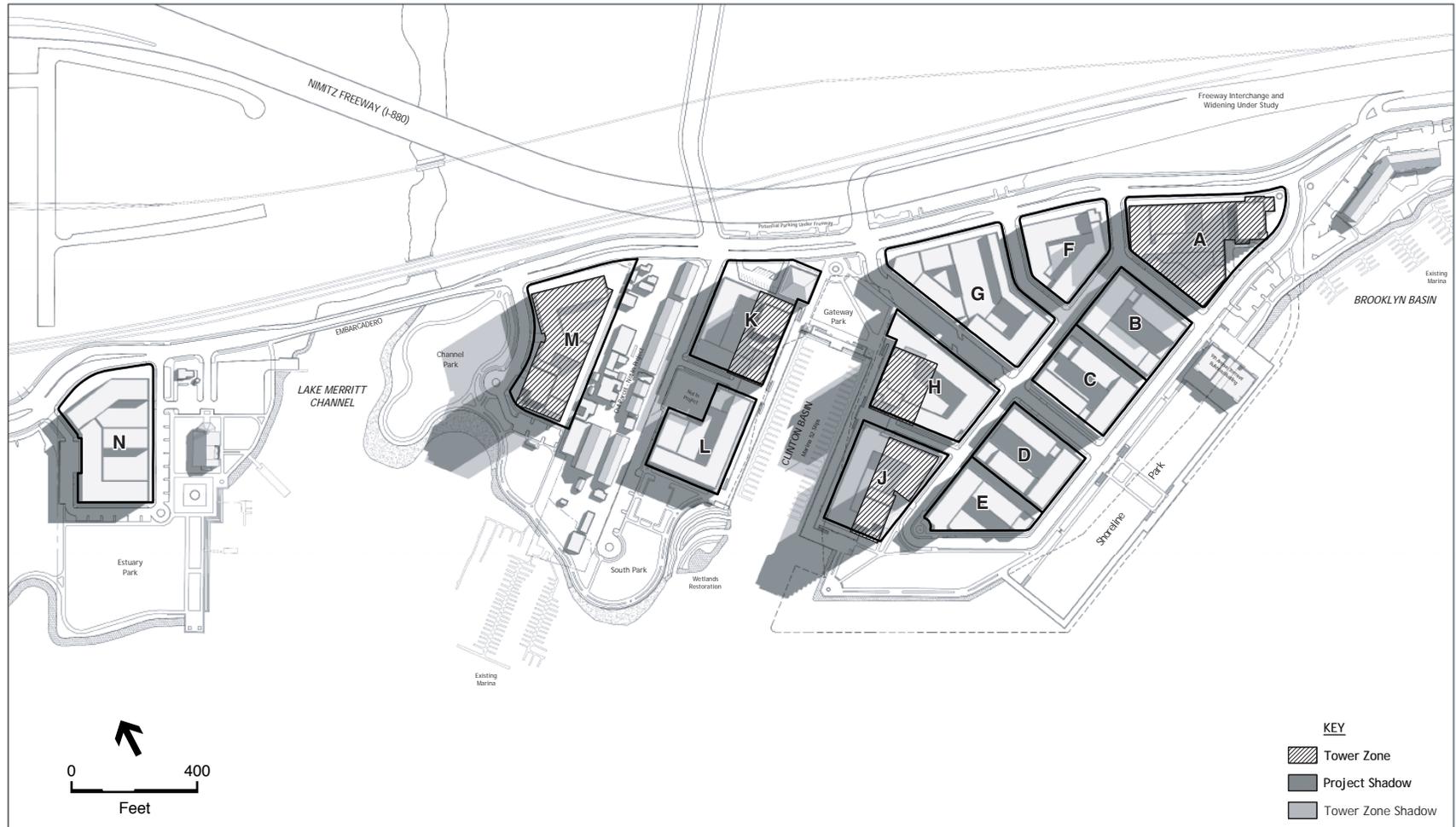
IV.K-46



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622
Figure IV.K-22
March Shadow Patterns: 3 pm

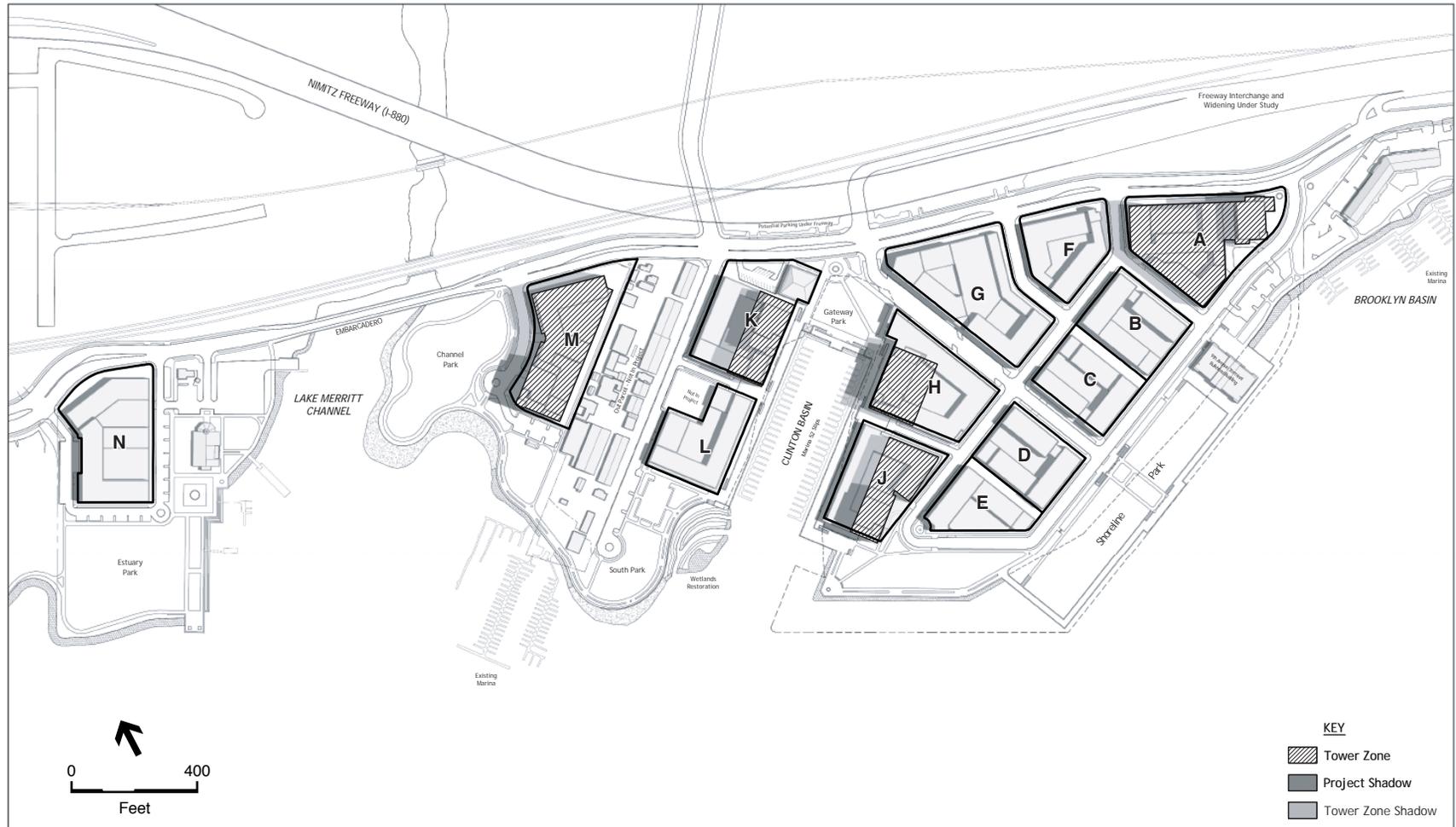
IV.K-48



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622
Figure IV.K-23
June Shadow Patterns: 9 am

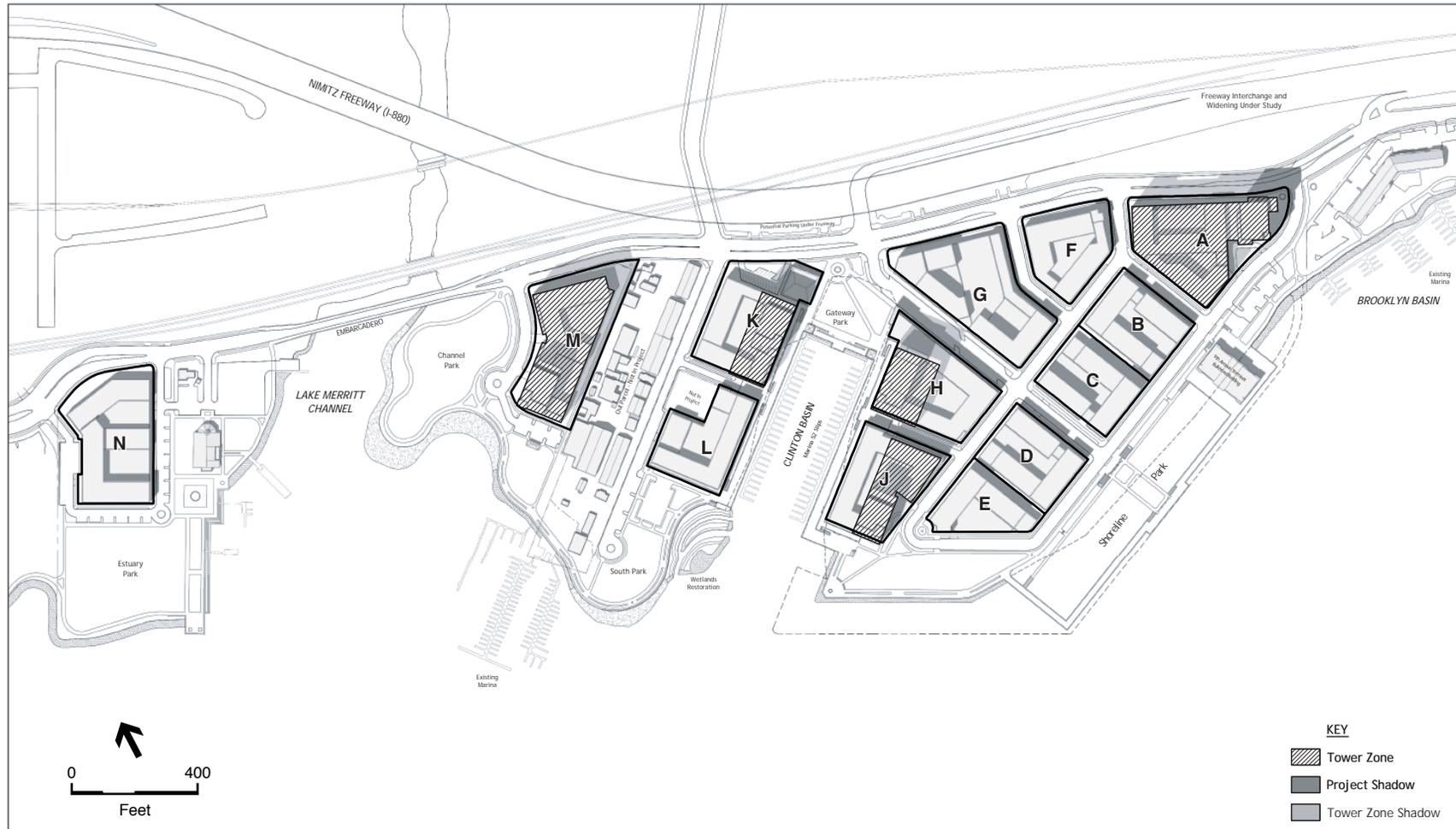
IV.K-49



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622
Figure IV.K-24
June Shadow Patterns: 12 noon

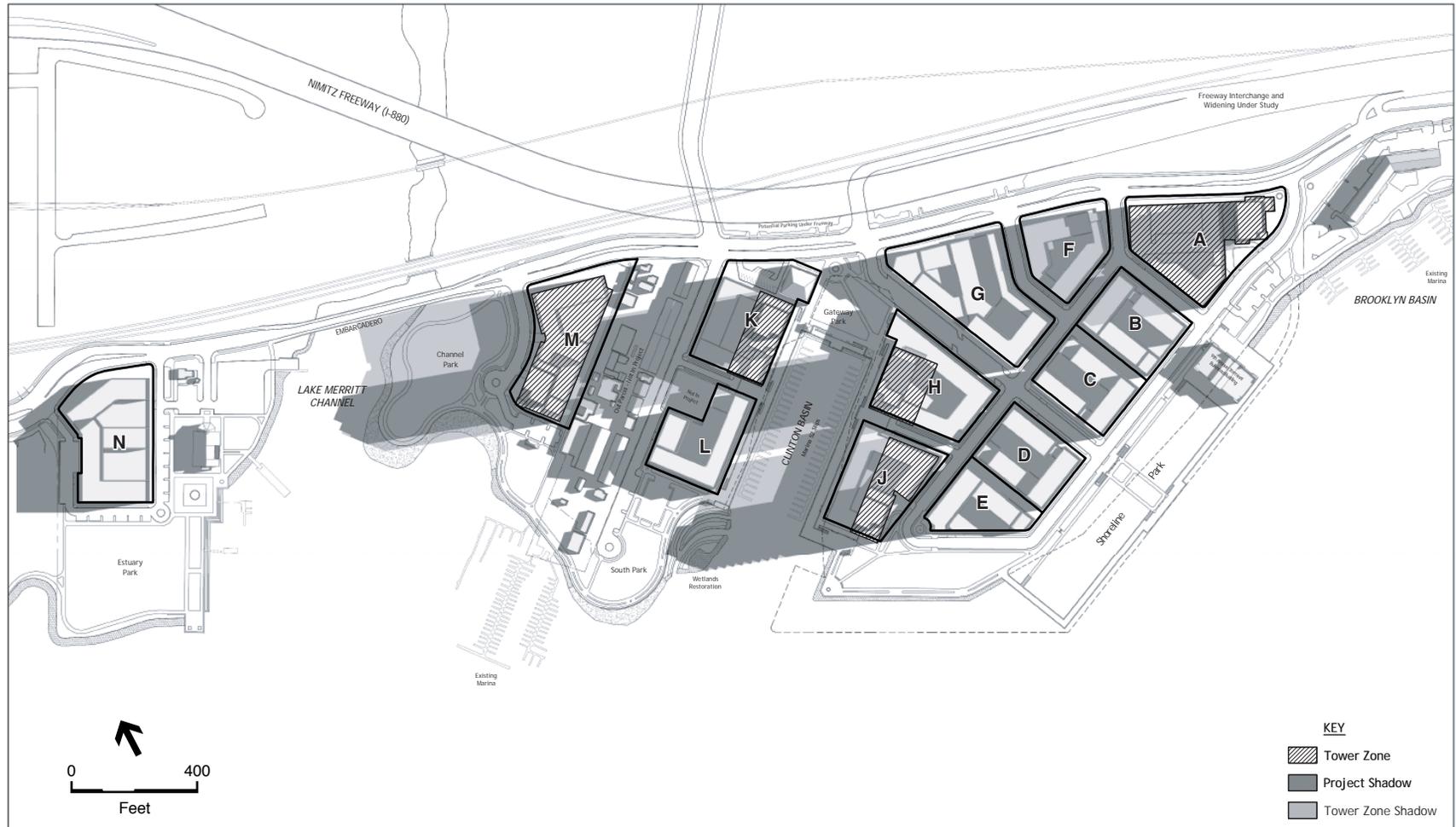
IV.K-50



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622
Figure IV.K-25
June Shadow Patterns: 3 pm

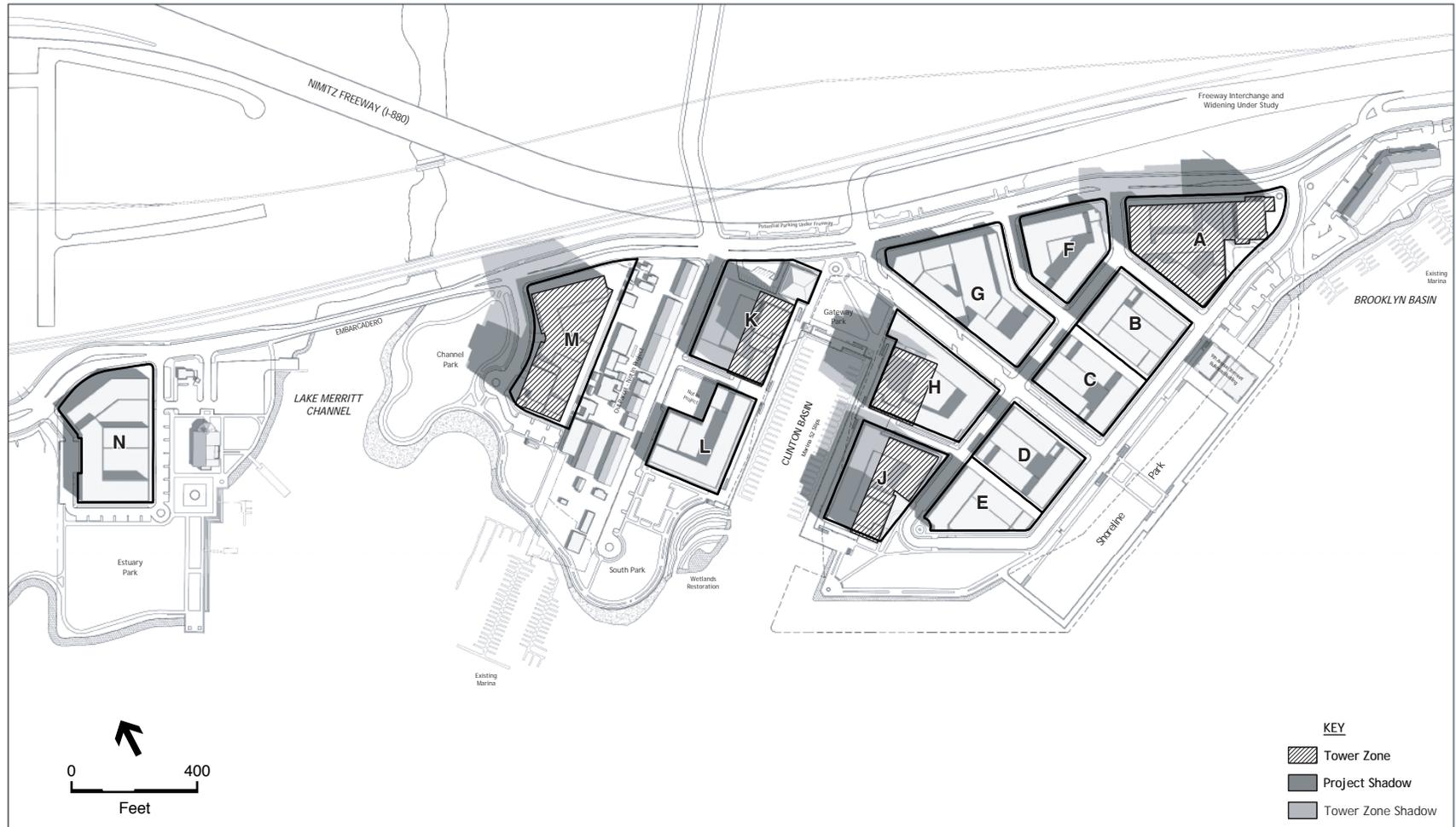
IV.K-52



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622
Figure IV.K-26
September Shadow Patterns: 9 am

IV.K-53

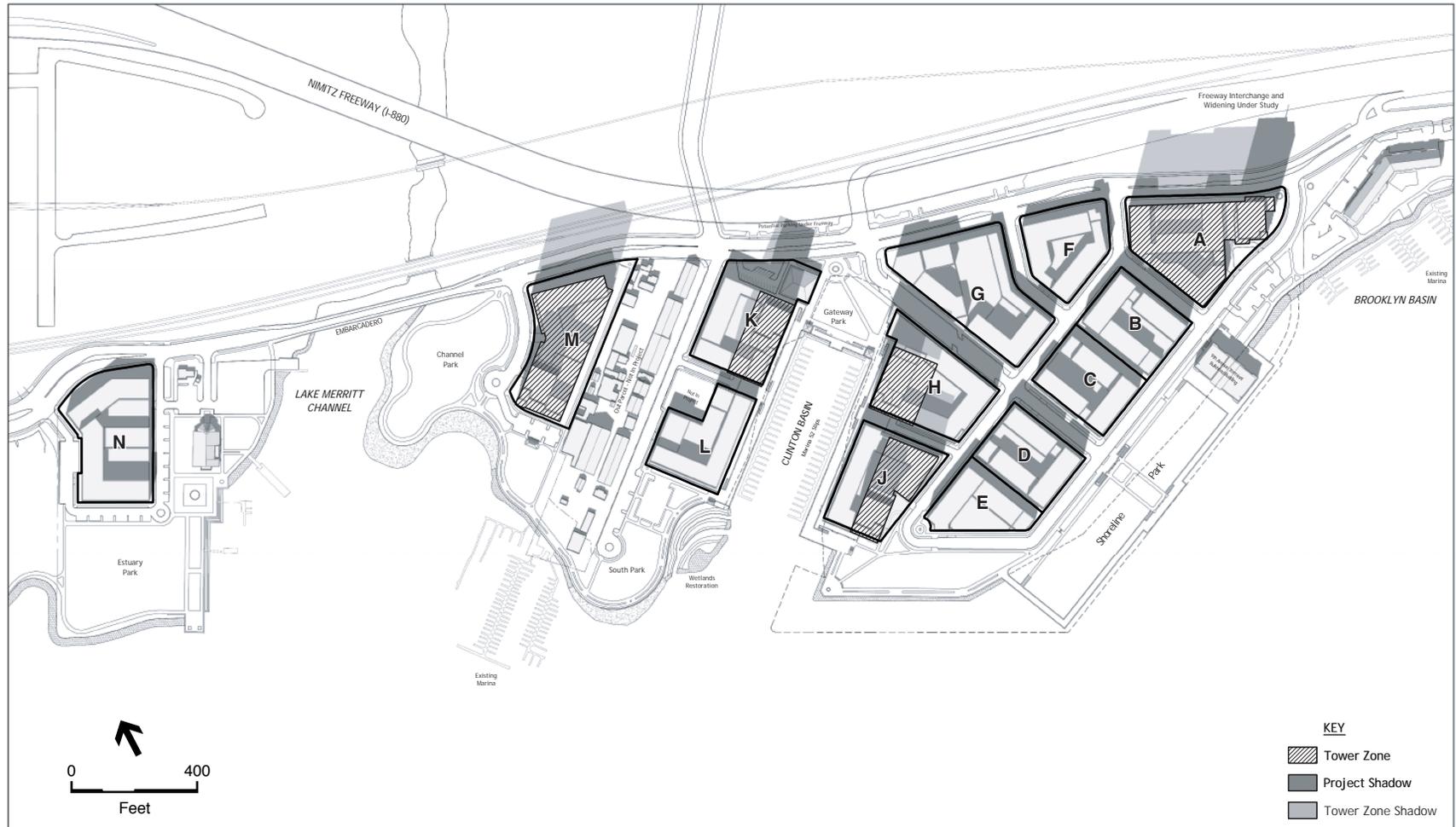


SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622

Figure IV.K-27
September Shadow Patterns: 12 noon

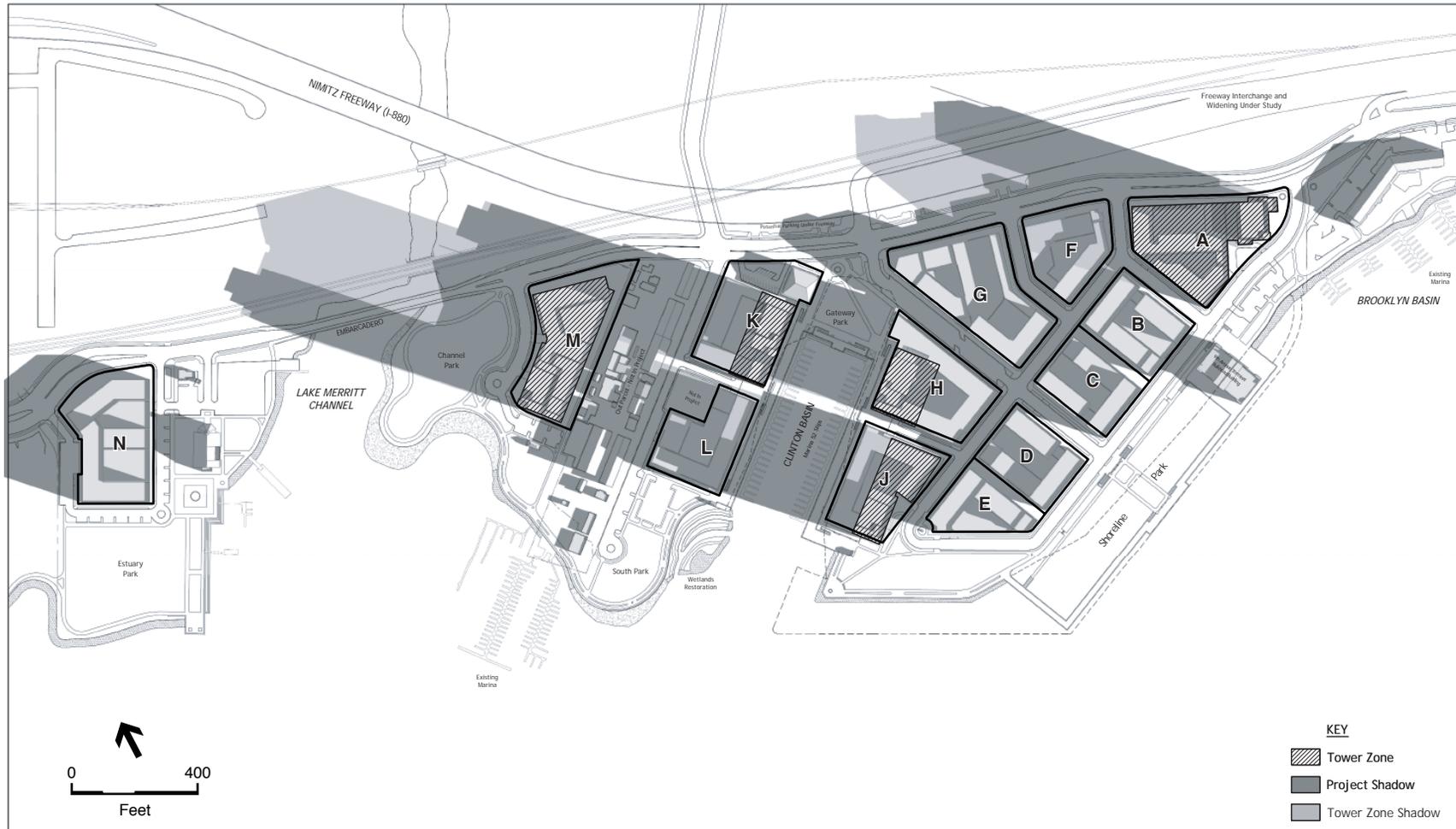
IV.K-54



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622
Figure IV.K-28
September Shadow Patterns: 3 pm

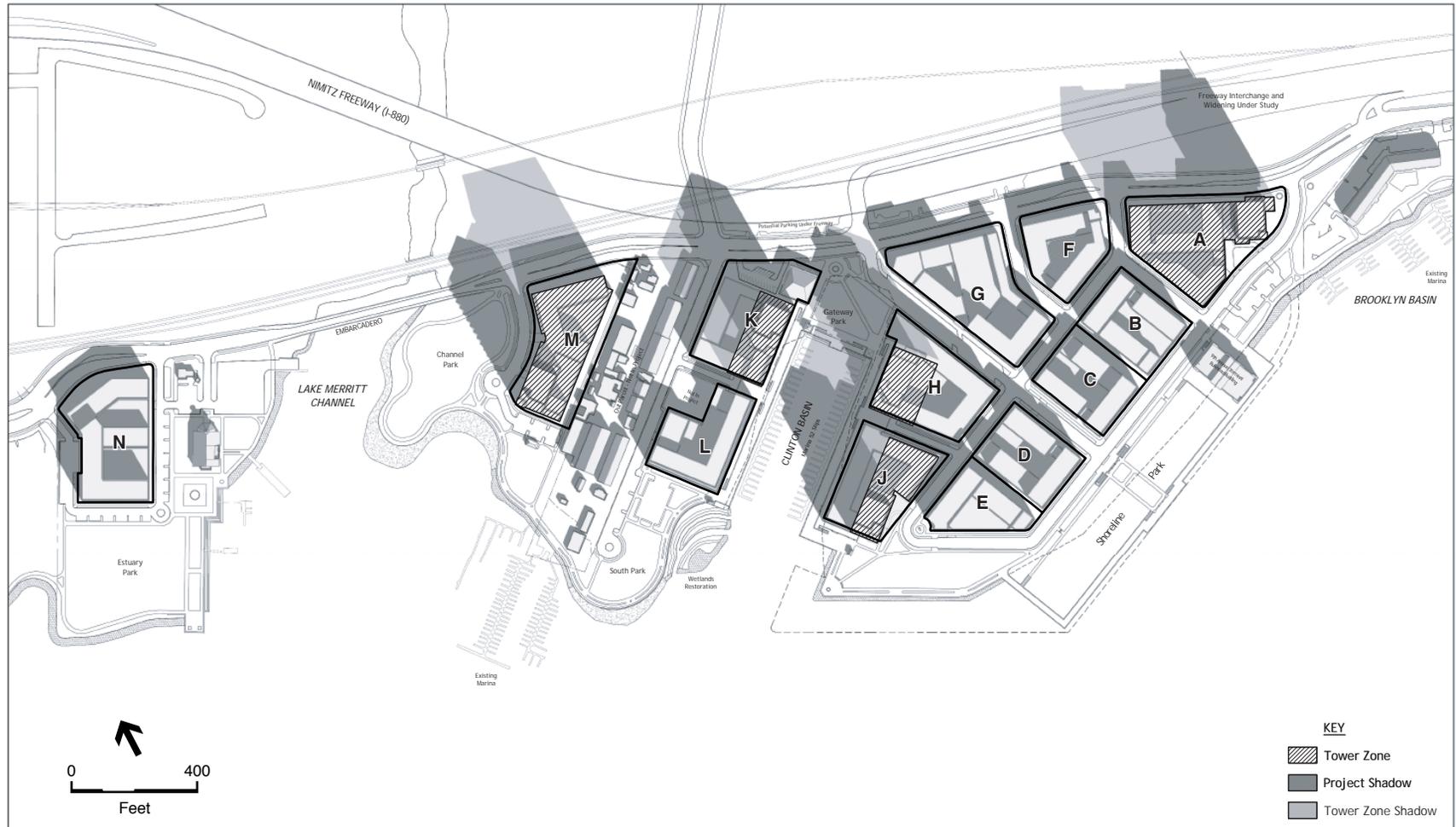
IV.K-56



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622
Figure IV.K-29
December Shadow Patterns: 9 am

IV.K-57

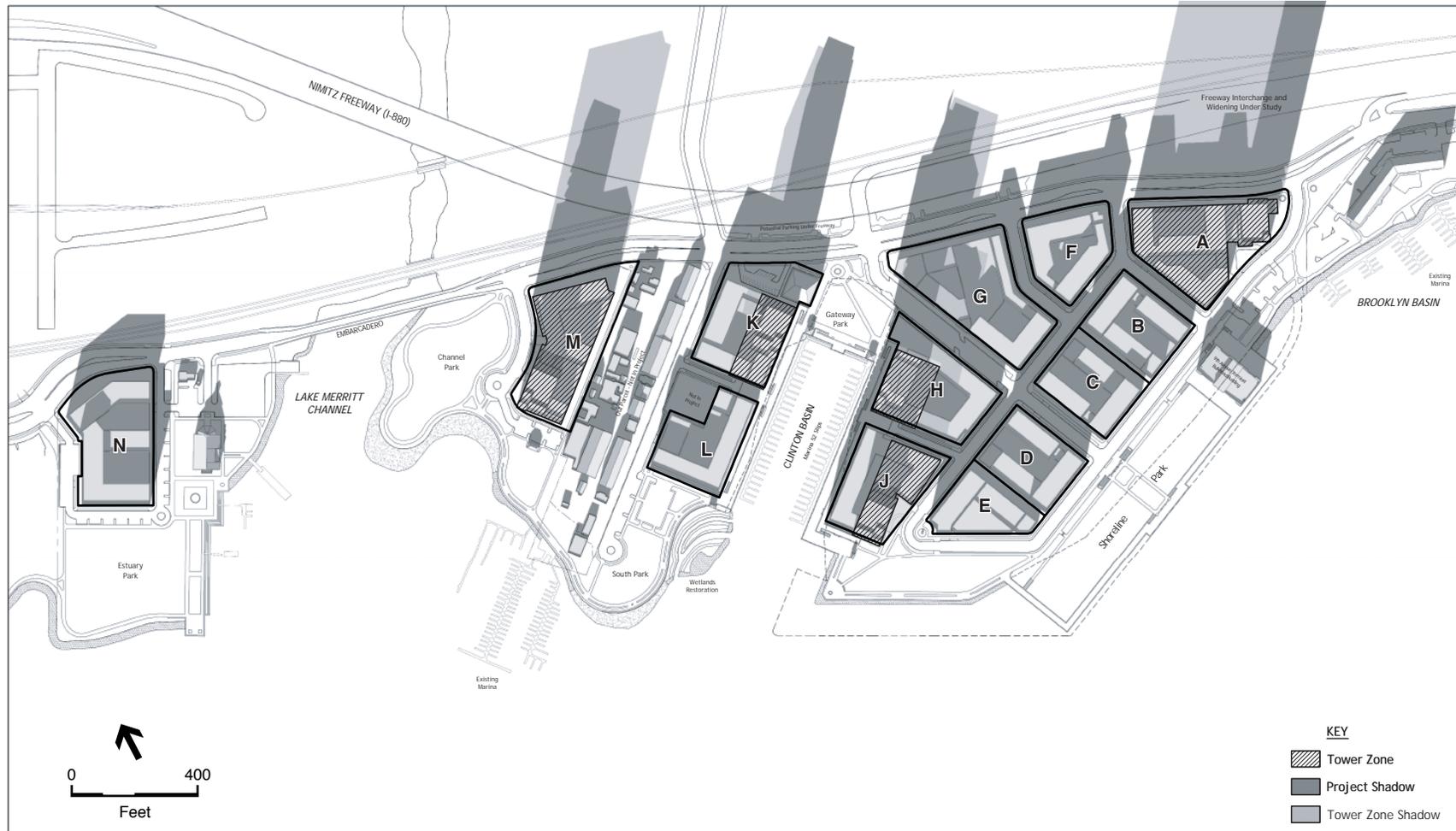


SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622

Figure IV.K-30
December Shadow Patterns: 12 noon

IV.K-58



SOURCE: Environmental Vision

Oak to Ninth Avenue . 202622
Figure IV.K-31
December Shadow Patterns: 3 pm

APPENDIX D

Enclosures to December 22, 2005 Comment Letter from Public Utilities Commission (Letter M)

Decision 05-06-056 June 30, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation for the purpose of establishing a list for the fiscal years 2004-2005 and 2005-2006 of existing and proposed crossings at grade of city streets, county roads or state highways in need of separation, or projects affecting the elimination of grade crossings by removal or relocation of streets or railroad tracks, or existing separations in need of alterations or reconstruction in accordance with Section 2452 of the Streets and Highways Code.

Investigation 03-07-009
(Filed July 10, 2003)

**FINAL OPINION ESTABLISHING PRIORITY LIST
FOR 2005 – 2006 FISCAL YEAR**

Summary

This Final Order adopts the California Grade Separation Priority List for fiscal year 2005-2006, as required by Streets and Highways Code Section 2452. The 2004-2005 Priority List, established by Decision (D.) 04-06-020, dated June 9, 2004, requires no revision. This Order also closes Investigation 03-07-009.

Background and Procedural History

By D.04-06-020, dated June 9, 2004, we adopted the State Grade Separation Program Priority List for fiscal years 2004-2005 and 2005-2006. The Priority List established the relative priorities for funding qualified projects to eliminate or alter hazardous highway-rail crossings. Projects for construction of new grade separations, alteration of existing grade separations, and elimination of highway-

rail at-grade crossings by removal or relocation of streets or railroad tracks are included in the Priority List.

Section 190 of the Streets and Highways Code requires the State annual budget to include \$15 million for funding of these projects. Section 2450 *et seq.* of the Code sets out the procedure for administering these funds, and Section 2453 gives the California Transportation Commission (CTC) responsibility for allocating (distributing) the funds to qualified projects. Section 2452 requires that the Commission, by July 1 of each year, establish the Priority List for qualified projects for use by CTC for the new fiscal year.

The Fiscal Year 2004–2005 Priority List

By D.04-06-020, we established a two-year Grade Separation Priority List. Caltrans has notified the Commission staff that no funds were allocated to the projects on the list during 2004-2005. Staff has prepared the 2005-2006 Priority List which is the same as the 2004-2005 list.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Kenneth K. Henderson is the assigned Administrative Law Judge in this proceeding

Comments on the Draft Decision

Pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived. There were no contested issues in this phase of the proceeding.

Findings of Fact

1. Caltrans informed the Commission staff that no projects received allocations from the fiscal year 2004–2005 Priority List.
2. Staff has prepared the list for the second year which is the same list as adopted for the first year in the two year period.
3. CTC will use the Priority List to allocate funds to qualified projects in fiscal year 2005-2006.

Conclusion of Law

Appendix A should be adopted by our Final Order as the Fiscal Year 2005-2006 Grade Separation Priority List in this proceeding

FINAL ORDER

IT IS ORDERED that:

1. Pursuant to California Streets and Highways Code Section 2452, the Grade Separation Priority List attached as Appendix A is established for fiscal year 2005–2006, in order of priority, of projects which the Commission determines to be most urgently in need of separation or alteration.
2. The Executive Director shall furnish a certified copy of this decision to the California Department of Transportation and the California Transportation Commission.

3. The Executive Director shall furnish a certified copy of this decision to the California Department of Transportation and the California Transportation Commission.

4. Investigation 03-07-009 is closed.

This order is effective today.

Dated June 30, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

Commissioner John A. Bohn, being necessarily absent, did not participate.

**APPENDIX A: Priority List for Fiscal Year 2005-2006 Rank
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Rank	Agency	Crossing Location	PUC ID	DOT ID	Railroad	VEH	TRN	LTRN	Cost Share	AH/WC	BD/HC	VS/SR	RS/AS	CG/P OF	PT/AP	OF/DE	SCF/SF	Priority Index
1	City of Santa Fe Springs	Rosecrans Ave/ Marquardt Ave	2-157.8	027656A	BNSF	34211	133	0	5000	22	5	3	4	10.8	9	8	39.8	20970.1
2	City of Santa Fe Springs	Norwalk Blvd/ Los Nietos Rd	BBJ-497.28 & 2-153.1	027649P&02 7650J	BNSF	32754	165	0	10000	6	2	3	4	23.8	9	9	50.8	3833.9
3	City of Santa Fe Springs	Valley View Ave.	2-158.4	027657G	BNSF	33926	133	0	5000	3	2	3	4	11.4	9	12	41.4	3651.1
4	City of Riverside	Chicago Ave.	2B-8.1	026476Y	BNSF	11549	102	0	5000	8	3	3	4	11.2	3	3	27.2	2147.6
5	Los Angeles County DPW	Fairway Dr.	3-23.4	810883N	UPRR	32062	50	0	5000	5	1	2	5	9.5	4	10.5	32.0	1955.7
6	San Mateo County Transportation Authority	San Bruno Ave. (City of San Bruno)	105E-11.0 105E-11.1 105E-11.4	754869P 754870J 754871R	PCJPB	25365	88	0	5000	3	1	0	4	31.2	10	8	54.2	1839.9
7	City of Los Angeles	Valley Blvd..	B-485.8	746859N	UPRR	24566	57	0	5000	3	3	2	1	12.2	0	11	29.2	1149.4
8	City of Riverside	Mary St.	2B-13	026499F	BNSF	13248	81	0	5000	4	2	2	4	9.3	5	4	26.3	1099.3
9	San Mateo County Transportation Authority	South Linden Ave. (City of South San Francisco)	105E-10.2 105E-10.6	754866U 754867B	PCJPB	11594	88	0	5000	4	1	0	4	21.2	10	6	42.2	1062.5

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10	San Bernardino Associated Governments	University Parkway	2-76.6	026106V	BNSF	16095	94	0	5000	2	4	3	4	11	1	8	31.0	938.8
11	Los Angeles County DPW	Nogales St.	3-22.4	811479J	UPRR	43678	50	0	5000	1	1	1	5	10.3	4	14	35.3	908.9
12	San Joaquin County	West Lane	D-92.8	752897L	UPRR	24715	28	0	5000	5	1	1	2	8.8	1	9.5	23.3	853.7
13	City of Irvine	Sand Canyon Ave	101OR-182.9	026765A	SCRRA	20480	63	0	5000	2	1	4	7	8	8	10	38.0	812.1
14	Los Angeles County DPW	El Segundo Blvd.	BBH-492.6 84L-10.4	747868R	UPRR/ LACMTA	16875	8	252	5000	5	2	1	2	12	10	12	39.0	711.3
15	City of Riverside	Iowa Ave.	2B-7.3	026472W	BNSF	15715	102	0	5000	1	4	3	4	10.2	3	4	28.2	669.4
16	City of Riverside	Columbia Ave.	2B-7.9	026475S	BNSF	10118	102	0	5000	2	3	3	4	7.4	3	4	24.4	643.6
17	City of Ontario	Miliken Ave.	B-525.4	746964P	UPRR	23333	33	0	5000	3	1	3	4	6	1	8	23.0	639.0
18	City of Camarillo	Las Posas-Upland Road	E-419.0	912013V	UPRR	17046	41	0	5000	3	1	3	4	7	4	6.5	25.5	584.6

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19	Greater Bakersfield Separation of Grade District	Morning Drive	B-317.50	757413M	UPRR	13000	43	0	5000	4	1	3	4	9.68	0	4	21.7	580.7
20	City of Riverside	3rd Street	2B-9.5/3-57.9	026480N	BNSF/ UPRR	13340	102	0	5000	1	3	0	4	9.32	3	4	23.3	567.6
21	San Diego Association of Governments	Leucadia Blvd..	106-236.5	026827V	SDNR/ NCTD	13163	50	0	5000	3	1	2	6	7.1	7	4	27.1	553.6
22	San Mateo County Transportation Authority	Poplar Avenue (City of San Mateo)*	105E-17.2B 105E-17.3B 105E-17.4B 105E-17.5B	754896L 754897T 754898A 754899G	PCJPB	21394	88	0	5000	24	38	2	3.1	30	29	32	164.1	540.6
23	City of Riverside	Streeter Ave.	3-53.8	811008U	UPRR	12658	44	0	5000	3	3	1	4	12	4	8	32	477.6
24	City of Lathrop	Lathrop Rd.	D-82.1	752781K	UPRR	10497	24	0	5000	7	3	1	4	11	2	6	27.0	430.1
25	City of Riverside	Brockton Ave.	3-55.0	811010V	UPRR	14043	44	0	5000	2	2	2	4	9	4	5	26.0	396.7
26	Alameda Corridor-East Construction Authority	Brea Canyon Rd.	3-24.9	810886J	UPRR	17200	50	0	5000	1	1	2	5	9	3	5	25	369.0

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27	City of Bakersfield	Baker-Truxtun-Beale	Consolidation 2-885.6 2- 885.75 2-885.77 2-885.95 2- 886.2 2-886.4	028281T 028283G 028284N 028285V 028288R 028289X	BNSF	24620	31	0	15448	5	2	3	0	57.9	0	6.5	69.4	365.8
28	City of Los Angeles	North Spring St.*	101VY-1.36A & 101EB- 481.48A	027606W&8 11042B	SCRRA	16863	89	0	5000	10	0	5	0.2	4	5	7	31.2	331.4
29	Los Angeles County DPW	Turnbull Cyn Rd.	3-17.2	810867E	UPRR/ SCRRA	14924	50	0	5000	1	3	1	5	10.6	10.6	5	28.6	327.0
30	City of Camarillo	Adolfo Rd.	E-417.9	753765E	UPRR	17019	41	0	5000	1	1	2	4	7	4	4	22.0	301.1
31	San Mateo County Transportation Authority	25th Ave. (City of San Mateo)	105E-19.7	754910E	PCJPB	13412	88	0	5000	0	1	1	5	11.2	10	5	33.2	269.3
32	City of Riverside	Riverside Ave.	3-55.6	811012J	UPRR	13680	44	0	5000	1	2	0	4	11.1	4	5	26.1	266.8
33	City of Los Angeles	North Main St.	101VY-1.17 & 101RI-481.7	027607D & 811040M	SCRRA	12628	89	0	5000	0	2	1	0	21.5	8	9	41.5	266.3
34	City of Riverside	Magnolia Ave.	3-55.2	811011C	UPRR	23418	44	0	5000	0	2	1	4	9.1	4	7	27.1	233.2
35	Los Angeles County DPW	Sierra Hwy/Barrel Springs Rd	101VY-65.58 101VY-65.77	750600W & 750644W	SCRRA	8507	23	0	5000	3	1	3	5	7.8	4	5	25.8	182.3

APPENDIX A: Priority List for Fiscal Year 2005-2006 Rank
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36	City of Pico Rivera	Passons Blvd & Serapis Ave.	2-151.45 & 2-151.3	027643Y & 027644F	BNSF	2604	125	0	10000	3	2	0	6	23.2	9	7	47.2	177.4
37	San Bernardino Associated Governments	Hunts Lane	B-541.0	747168J	UPRR	15766	48	0	5000	0	5	3	4	8	1	5	26.0	177.4
38	City of Fremont	Warren Ave.	DA-36.2 & 4G-6.7	750073E&833885S	UPRR/ VTA	9527	26	0	5000	2	2	1	1	13	0	6.5	23.5	172.1
39	City of Fremont	Paseo Padre Pkwy, High St, Main St, Washington Blvd	Consolidation DA-32.1&4G-2.6,SA-32.65,DA-32.7,DA-32.8&4G-3.2	750056N&833878G,750057V,750058C,750059J&833879N,	UPRR/ VTA	51959	12	0	5000	0	2	1	1	30.1	0	7.5	41.6	166.3
40	City of Bakersfield	El Toro Viejo	2-892.0	Proposed	BNSF	7575	49	0	2760	0	1	3	6	4	4	2	20.0	154.5
41	San Bernardino County	Lenwood Road	2-5.7	026062X	UPRR & BNSF	4490	99	0	10304	2	5	5	2	7.2	1	3	23.2	152.6
42	City of Encinitas	D & E Street	106-237.95 & 106-237.9	026830D & 026829J	NCTD	10940	50	0	20000	2	1	0	6	19	7	6	39.0	121.1
43	City of Riverside	Palm Ave.	3-54.8	811009B	UPRR	10754	44	0	5000	0	2	1	4	9	4	3	23	117.6
44	Kern County	Hageman Rd (2-895.2)	2-895.2	028376B	BNSF	9000	49	0	5000	0	1	5	6	8.7	4	4.5	29.2	117.4
45	Kern County	Olive Drive	B-308.9	756945M	UPRR	18700	22	0	5000	0	1	3	4	8.8	0	7	23.8	106.1

APPENDIX A: Priority List for Fiscal Year 2005-2006 Rank
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46	Los Angeles County DPW	Slauson Ave./Long Beach Ave-West	BBH-487.42&2H-2.83	747839F & 027952L	UPRR/ BNSF/ LACMTA	38286	8	0	5000	0	1	1	0	15	0	12	29	90.3
47	San Bernardino County	National Trails Hwy @Oro Grande*	2-30.6B	reconstruction	BNSF	6391	86	0	10268	6	8	0	5.2	3	8	6	36.2	89.7
48	San Bernardino County	Vista Road	2-22.0	026068N	UPRR & BNSF	2280	99	0	9760	1	2	5	2	7	1	2	19.0	65.3
49	Kern County	Snow Road	B-307.4	756948H	UPRR	7600	21	0	5000	0	1	5	4	8.0	0	7	25.0	56.9
50	San Bernardino County	Glen Helen Pkwy	BB-480.1 & 2-71.0	747017U & 026103A	UPRR & BNSF	2280	99	0	11905	0	5	5	2	11.7	1	0	24.7	43.7
51	King City	First St./ Bitterwater Rd.	E-163.4	752123M	UPRR	5702	9	0	5000	0	1	0	5	12.2	1	6.5	25.7	36.0
52	City of Bakersfield	Hageman Rd. (2-111.6)	2-116.6	Proposed	BNSF	15080	2	0	1530	0	1	5	0	2.2	0	5	13.2	32.9
53	City of Vista	Vista Village Dr. Main Street	106E-9.15 & 9.2	917847T,027566B	SDNR/ NCTD	40531	1	0	20000	2	2	2	0	14.3	2	8	28.3	34.4
54	City of Vista	Escondido Ave.	106E-10.1	027569W	SDNR/ NCTD	42526	1	0	5000	0	1	1	0	8.6	0	8	18.6	27.1
55	King City	Pearl Street	E-163.8	752121Y	UPRR	1023	9	0	5000	0	1	0	5	13	1	5	25.0	26.8

**APPENDIX A: Priority List for Fiscal Year 2005-2006 Rank
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56	City of Vista	N. Melrose Dr.	106E-7.5	026993M	SDNR/ NCTD	27434	1	0	5000	0	1	3	0	9.0	0	7	20.0	25.4
57	Los Angeles County DPW	Flores Street	3A-9.7	Proposed	UPRR	11000	4	0	5000	0	1	1	0	5.08	0	3	10.08	18.9
58	City of Vista	Mar Vista Dr.	106E-11.2	027570R	SDNR/ NCTD	10120	1	0	5000	0	1	1	0	7.9	0	5	14.9	16.9

Note: VEH- Vehicle, TRN – Train, LRT – Light Rail Trains, COST Share – Project Cost Share (a cost of more than \$5 million is permitted for qualified projects per S&H Code Section 2454 (h) for multi-year funding)

Formula For Crossing Nominated For Separation Or Elimination:

AH – Accident History

BD – Crossing Blocking Delay

VS – Vehicular Speed Limit

RS – Rail Speed Limit

CG – Crossing Geometrics

PT – Passenger trains

SCF- Special Conditions Factor

OF-Other Factors (Passenger Buses, School Buses, Hazmat Trains/Trucks, Community Impact)

**Formula For Existing Separations Nominated For Alteration or Reconstruction:*

WC – Width Clearance

HC-Height Clearance

SR – Speed Reduction

AS – Accidents Near Structure

POF – Probability of Failure

AP – Accident Potential

DE – Delay Effects

SF - Separation Factor

(END OF APPENDIX A)

Decision 05-06-056 June 30, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation for the purpose of establishing a list for the fiscal years 2004-2005 and 2005-2006 of existing and proposed crossings at grade of city streets, county roads or state highways in need of separation, or projects affecting the elimination of grade crossings by removal or relocation of streets or railroad tracks, or existing separations in need of alterations or reconstruction in accordance with Section 2452 of the Streets and Highways Code.

Investigation 03-07-009
(Filed July 10, 2003)

**FINAL OPINION ESTABLISHING PRIORITY LIST
FOR 2005 – 2006 FISCAL YEAR**

Summary

This Final Order adopts the California Grade Separation Priority List for fiscal year 2005-2006, as required by Streets and Highways Code Section 2452. The 2004-2005 Priority List, established by Decision (D.) 04-06-020, dated June 9, 2004, requires no revision. This Order also closes Investigation 03-07-009.

Background and Procedural History

By D.04-06-020, dated June 9, 2004, we adopted the State Grade Separation Program Priority List for fiscal years 2004-2005 and 2005-2006. The Priority List established the relative priorities for funding qualified projects to eliminate or alter hazardous highway-rail crossings. Projects for construction of new grade separations, alteration of existing grade separations, and elimination of highway-

rail at-grade crossings by removal or relocation of streets or railroad tracks are included in the Priority List.

Section 190 of the Streets and Highways Code requires the State annual budget to include \$15 million for funding of these projects. Section 2450 *et seq.* of the Code sets out the procedure for administering these funds, and Section 2453 gives the California Transportation Commission (CTC) responsibility for allocating (distributing) the funds to qualified projects. Section 2452 requires that the Commission, by July 1 of each year, establish the Priority List for qualified projects for use by CTC for the new fiscal year.

The Fiscal Year 2004–2005 Priority List

By D.04-06-020, we established a two-year Grade Separation Priority List. Caltrans has notified the Commission staff that no funds were allocated to the projects on the list during 2004-2005. Staff has prepared the 2005-2006 Priority List which is the same as the 2004-2005 list.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Kenneth K. Henderson is the assigned Administrative Law Judge in this proceeding

Comments on the Draft Decision

Pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived. There were no contested issues in this phase of the proceeding.

Findings of Fact

1. Caltrans informed the Commission staff that no projects received allocations from the fiscal year 2004–2005 Priority List.
2. Staff has prepared the list for the second year which is the same list as adopted for the first year in the two year period.
3. CTC will use the Priority List to allocate funds to qualified projects in fiscal year 2005-2006.

Conclusion of Law

Appendix A should be adopted by our Final Order as the Fiscal Year 2005-2006 Grade Separation Priority List in this proceeding

FINAL ORDER

IT IS ORDERED that:

1. Pursuant to California Streets and Highways Code Section 2452, the Grade Separation Priority List attached as Appendix A is established for fiscal year 2005–2006, in order of priority, of projects which the Commission determines to be most urgently in need of separation or alteration.
2. The Executive Director shall furnish a certified copy of this decision to the California Department of Transportation and the California Transportation Commission.

3. Investigation 03-07-009 is closed.

This order is effective today.

Dated June 30, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners

Commissioner John A. Bohn, being necessarily
absent, did not participate.

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1	City of Santa Fe Springs	Rosecrans Ave/ Marquardt Ave	2-157.8	027656A	BNSF	34211	133	0	5000	22	5	3	4	10.8	9	8	39.8	20970.1
2	City of Santa Fe Springs	Norwalk Blvd/ Los Nietos Rd	BBJ-497.28 & 2-153.1	027649P&02 7650J	BNSF	32754	165	0	10000	6	2	3	4	23.8	9	9	50.8	3833.9
3	City of Santa Fe Springs	Valley View Ave.	2-158.4	027657G	BNSF	33926	133	0	5000	3	2	3	4	11.4	9	12	41.4	3651.1
4	City of Riverside	Chicago Ave.	2B-8.1	026476Y	BNSF	11549	102	0	5000	8	3	3	4	11.2	3	3	27.2	2147.6
5	Los Angeles County DPW	Fairway Dr.	3-23.4	810883N	UPRR	32062	50	0	5000	5	1	2	5	9.5	4	10.5	32.0	1955.7
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7	City of Los Angeles	Valley Blvd..	B-485.8	746859N	UPRR	24566	57	0	5000	3	3	2	1	12.2	0	11	29.2	1149.4
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11	Los Angeles County DPW	Nogales St.	3-22.4	811479J	UPRR	43678	50	0	5000	1	1	1	5	10.3	4	14	35.3	908.9
12	San Joaquin County	West Lane	D-92.8	752897L	UPRR	24715	28	0	5000	5	1	1	2	8.8	1	9.5	23.3	853.7
13	City of Irvine	Sand Canyon Ave	101OR-182.9	026765A	SCRRA	20480	63	0	5000	2	1	4	7	8	8	10	38.0	812.1
14	Los Angeles County DPW	El Segundo Blvd.	BBH-492.6 84L-10.4	747868R	UPRR/ LACMTA	16875	8	252	5000	5	2	1	2	12	10	12	39.0	711.3
15	City of Riverside	Iowa Ave.	2B-7.3	026472W	BNSF	15715	102	0	5000	1	4	3	4	10.2	3	4	28.2	669.4
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20	City of Riverside	3rd Street	2B-9.5/3-57.9	026480N	BNSF/ UPRR	13340	102	0	5000	1	3	0	4	9.32	3	4	23.3	567.6
21	San Diego Association of Governments	Leucadia Blvd..	106-236.5	026827V	SDNR/ NCTD	13163	50	0	5000	3	1	2	6	7.1	7	4	27.1	553.6
22	San Mateo County Transportation Authority	Poplar Avenue (City of San Mateo)*	105E-17.2B 105E-17.3B 105E-17.4B 105E-17.5B	754896L 754897T 754898A 754899G	PCJPB	21394	88	0	5000	24	38	2	3.1	30	29	32	164.1	540.6
23	City of Riverside	Streeter Ave.	3-53.8	811008U	UPRR	12658	44	0	5000	3	3	1	4	12	4	8	32	477.6
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Rank	Agency	Crossing Location	PUC ID	DOT ID	Railroad	VEH	TRN	LTRN	Cost Share	AH/WC	BD/HC	VS/SR	RS/AS	CG/P OF	PT/AP	OF/DE	SCF/SF	Priority Index
27	City of Bakersfield	Baker-Truxtun-Beale	Consolidation 2-885.6 2- 885.75 2-885.77 2-885.95 2- 886.2 2-886.4	028281T 028283G 028284N 028285V 028288R 028289X	BNSF	24620	31	0	15448	5	2	3	0	57.9	0	6.5	69.4	365.8
28	City of Los Angeles	North Spring St.*	101VY-1.36A & 101EB- 481.48A	027606W&8 11042B	SCRRA	16863	89	0	5000	10	0	5	0.2	4	5	7	31.2	331.4
29	Los Angeles County DPW	Turnbull Cyn Rd.	3-17.2	810867E	UPRR/ SCRRA	14924	50	0	5000	1	3	1	5	10.6	10.6	5	28.6	327.0
30	City of Camarillo	Adolfo Rd.	E-417.9	753765E	UPRR	17019	41	0	5000	1	1	2	4	7	4	4	22.0	301.1
31	San Mateo County Transportation Authority	25th Ave. (City of San Mateo)	105E-19.7	754910E	PCJPB	13412	88	0	5000	0	1	1	5	11.2	10	5	33.2	269.3
32	City of Riverside	Riverside Ave.	3-55.6	811012J	UPRR	13680	44	0	5000	1	2	0	4	11.1	4	5	26.1	266.8
33	City of Los Angeles	North Main St.	101VY-1.17 & 101RI-481.7	027607D & 811040M	SCRRA	12628	89	0	5000	0	2	1	0	21.5	8	9	41.5	266.3
34	City of Riverside	Magnolia Ave.	3-55.2	811011C	UPRR	23418	44	0	5000	0	2	1	4	9.1	4	7	27.1	233.2
35	Los Angeles County DPW	Sierra Hwy/Barrel Springs Rd	101VY-65.58 101VY-65.77	750600W & 750644W	SCRRA	8507	23	0	5000	3	1	3	5	7.8	4	5	25.8	182.3

**APPENDIX A: Priority List for Fiscal Year 2005-2006 Rank
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Rank	Agency	Crossing Location	PUC ID	DOT ID	Railroad	VEH	TRN	LTRN	Cost Share	AH/WC	BD/HC	VS/SR	RS/AS	CG/P OF	PT/AP	OF/DE	SCF/SF	Priority Index
36	City of Pico Rivera	Passons Blvd & Serapis Ave.	2-151.45 & 2-151.3	027643Y & 027644F	BNSF	2604	125	0	10000	3	2	0	6	23.2	9	7	47.2	177.4
37	San Bernardino Associated Governments	Hunts Lane	B-541.0	747168J	UPRR	15766	48	0	5000	0	5	3	4	8	1	5	26.0	177.4
38	City of Fremont	Warren Ave.	DA-36.2 & 4G-6.7	750073E&833885S	UPRR/ VTA	9527	26	0	5000	2	2	1	1	13	0	6.5	23.5	172.1
39	City of Fremont	Paseo Padre Pkwy, High St, Main St, Washington Blvd	Consolidation DA-32.1&4G-2.6,SA-32.65,DA-32.7,DA-32.8&4G-3.2	750056N&833878G,750057V,750058C,750059J&833879N,	UPRR/ VTA	51959	12	0	5000	0	2	1	1	30.1	0	7.5	41.6	166.3
40	City of Bakersfield	El Toro Viejo	2-892.0	Proposed	BNSF	7575	49	0	2760	0	1	3	6	4	4	2	20.0	154.5
41	San Bernardino County	Lenwood Road	2-5.7	026062X	UPRR & BNSF	4490	99	0	10304	2	5	5	2	7.2	1	3	23.2	152.6
42	City of Encinitas	D & E Street	106-237.95 & 106-237.9	026830D & 026829J	NCTD	10940	50	0	20000	2	1	0	6	19	7	6	39.0	121.1
43	City of Riverside	Palm Ave.	3-54.8	811009B	UPRR	10754	44	0	5000	0	2	1	4	9	4	3	23	117.6
44	Kern County	Hageman Rd (2-895.2)	2-895.2	028376B	BNSF	9000	49	0	5000	0	1	5	6	8.7	4	4.5	29.2	117.4
45	Kern County	Olive Drive	B-308.9	756945M	UPRR	18700	22	0	5000	0	1	3	4	8.8	0	7	23.8	106.1

**APPENDIX A: Priority List for Fiscal Year 2005-2006 Rank
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Rank	Agency	Crossing Location	PUC ID	DOT ID	Railroad	VEH	TRN	LTRN	Cost Share	AH/WC	BD/HC	VS/SR	RS/AS	CG/P OF	PT/AP	OF/DE	SCF/SF	Priority Index
46	Los Angeles County DPW	Slauson Ave./Long Beach Ave-West	BBH-487.42&2H-2.83	747839F & 027952L	UPRR/ BNSF/ LACMTA	38286	8	0	5000	0	1	1	0	15	0	12	29	90.3
47	San Bernardino County	National Trails Hwy @Oro Grande*	2-30.6B	reconstruction	BNSF	6391	86	0	10268	6	8	0	5.2	3	8	6	36.2	89.7
48	San Bernardino County	Vista Road	2-22.0	026068N	UPRR & BNSF	2280	99	0	9760	1	2	5	2	7	1	2	19.0	65.3
49	Kern County	Snow Road	B-307.4	756948H	UPRR	7600	21	0	5000	0	1	5	4	8.0	0	7	25.0	56.9
50	San Bernardino County	Glen Helen Pkwy	BB-480.1 & 2-71.0	747017U & 026103A	UPRR & BNSF	2280	99	0	11905	0	5	5	2	11.7	1	0	24.7	43.7
51	King City	First St./ Bitterwater Rd.	E-163.4	752123M	UPRR	5702	9	0	5000	0	1	0	5	12.2	1	6.5	25.7	36.0
52	City of Bakersfield	Hageman Rd. (2-111.6)	2-116.6	Proposed	BNSF	15080	2	0	1530	0	1	5	0	2.2	0	5	13.2	32.9
53	City of Vista	Vista Village Dr. Main Street	106E-9.15 & 9.2	917847T,027566B	SDNR/ NCTD	40531	1	0	20000	2	1	2	0	14.3	0	8	25.3	31.4
54	City of Vista	Escondido Ave.	106E-10.1	027569W	SDNR/ NCTD	42526	1	0	5000	0	1	1	0	8.6	0	8	18.6	27.1
55	King City	Pearl Street	E-163.8	752121Y	UPRR	1023	9	0	5000	0	1	0	5	13	1	5	25.0	26.8

**APPENDIX A: Priority List for Fiscal Year 2005-2006 Rank
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Rank	Agency	Crossing Location	PUC ID	DOT ID	Railroad	VEH	TRN	LTRN	Cost Share	AH/WC	BD/ HC	VS/ SR	RS/ AS	CG/P OF	PT/ AP	OF/ DE	SCF/SF	Priority Index
56	City of Vista	N. Melrose Dr.	106E-7.5	026993M	SDNR/ NCTD	27434	1	0	5000	0	1	3	0	9.0	0	7	20.0	25.4
57	Los Angeles County DPW	Flores Street	3A-9.7	Proposed	UPRR	11000	4	0	5000	0	1	1	0	5.08	0	3	10.08	18.9
58	City of Vista	Mar Vista Dr.	106E-11.2	027570R	SDNR/ NCTD	10120	1	0	5000	0	1	1	0	7.9	0	5	14.9	16.9

Note: VEH- Vehicle, TRN – Train, LRT – Light Rail Trains, COST Share – Project Cost Share (a cost of more than \$5 million is permitted for qualified projects per S&H Code Section 2454 (h) for multi-year funding)

Formula For Crossing Nominated For Separation Or Elimination:

AH – Accident History

BD – Crossing Blocking Delay

VS – Vehicular Speed Limit

RS – Rail Speed Limit

CG – Crossing Geometrics

PT – Passenger trains

SCF- Special Conditions Factor

OF-Other Factors (Passenger Buses, School Buses, Hazmat Trains/Trucks, Community Impact)

**Formula For Existing Separations Nominated For Alteration or Reconstruction:*

WC – Width Clearance

HC-Height Clearance

SR – Speed Reduction

AS – Accidents Near Structure

POF – Probability of Failure

AP – Accident Potential

DE – Delay Effects

SF - Separation Factor

(END OF APPENDIX A)

CHAPTER 19 GRADE SEPARATION**CONTENTS**

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EXHIBITS

EXHIBIT	Description	Page Number
19-A	PUC's Priority List Criteria	19-7

CHAPTER 19 GRADE SEPARATION PROGRAM

19.1 INTRODUCTIONS

The intent of the Grade Separation Program is to improve safety and expedite the movement of vehicles by eliminating highway-rail crossing at grade with a grade separation. Grade separation means a structure which actually separates the vehicle roadway from the railroad tracks.

The grade separation project can include the grade separation and all approaches, ramps, connections, drainage, and other construction items required to make the grade separation operable and to effect the separation the vehicle roadway from the railway tracks. Grade separation projects may also include provisions for separations of non-motorized traffic from vehicular roadway and the railroad tracks. If a separation of non-motorized traffic is not to be included in the project, there shall be a finding that the separation of non-motorized traffic is not in the public interest. This finding shall be signed by the local agency Public Works Director, Chief Engineer or highest registered Civil Engineer in that agency.

On any project where there is only one railroad track in existence, the project shall be built so as to provide for expansion to two tracks when the Grade Separation Program Manager determines that the project is on an existing or potential major railroad passenger corridor. Such projects may consist of:

1. The alteration or reconstruction of existing grade separations.
2. The construction of new grade separation to eliminate existing or proposed grade crossings
3. The removal or relocation of highways or railroad tracks to eliminate existing grade crossings.

19.2 PROJECT INITIATION

PRIORITY LIST

Prior to July 1 of each year, the Public Utilities Commission will establish a list, in order of priority, of projects which the commission determines to be most urgently in need of separation or alteration. The priority list will be determined on the basis of criteria established by the Public Utilities Commission, see [Exhibit 19-A PUC's Priority List Criteria](#).

As to projects of otherwise equal priority, the commission will give greater priority to grade separation projects for which the amount contributed by a local agency is equal to or greater than 50 percent of the cost of the project.

19.3 PROJECT ALLOCATIONS

California Transportation Commission will make allocations for projects contained in the latest priority list for preliminary engineering and construction costs on the basis of the following:

(a) An allocation of 80 percent of the estimated cost of the project shall be made; except that whenever contributions from other sources exceed 20 percent of the estimated cost, the allocation shall be reduced by the amount of local contribution in excess of 20 percent of the estimated cost.

(b) An allocation of 50 percent of the estimated cost of the project shall be made for a proposed crossing.

(c) No allocation shall be made in excess of 50 percent of the estimated cost of the project unless the grade crossing to be eliminated has been in existence for at least 10 years prior to the date of allocation.

(d) On projects which eliminate an existing crossing, or alter or reconstruct an existing grade separation, no allocation shall be made unless the railroad agrees to contribute 10 percent of the cost of the project.

(e) Where a project does not include a grade separation, but eliminates existing grade crossing or crossings, the allocation shall not exceed the estimated allocation that would have been made for the grade separation which is no longer needed because of the elimination of the grade crossing by the project and which is indicated on the priority list to be urgently in need of grade separation.

(f) Where the project includes the separation of a highway and a railroad passenger service operated by a city or county, the operating agency shall contribute 20 percent of the cost of the project. The priority listing for such projects shall be in accordance with criteria established for such railroad passenger service by the Public Utilities Commission.

(g) Notwithstanding subdivisions (a) to (f), inclusive, the total of such allocations for a single project shall not exceed five million dollars (\$5,000,000) without specific legislative authorization, except that the amount for a single project may be increased to either (1) an amount that includes the Federal construction cost index increase each year since 1976, or (2) an amount which does not exceed one third of the total funds appropriated for grade separation projects for the year of allocation, whichever amount is less, as determined each year by the Public Utilities Commission.

(h) Notwithstanding subdivisions (a) to (g), inclusive, a single project in excess of five million dollars (\$5,000,000), but not exceeding twenty million dollars (\$20,000,000), shall be considered without specific legislative authority, if the project:

- (1) is included in the Public Utilities Commission's priority list of projects scheduled to be funded,
- (2) eliminates the need for future related grade separation projects,
- (3) provides projected cost savings of at least 50 percent to the State or local jurisdiction, or both of them, by eliminating the need for future projects, and
- (4) alleviates traffic and safety problems or provides improved rail service not otherwise possible.

Projects approved pursuant to this subdivision shall be funded over a multi year period, not to exceed five years, and the allocation for any one of those years shall not exceed the amount prescribed by subdivision (g) for a single project. An agency which has received an allocation for a project approved pursuant to this subdivision shall not be eligible for an allocation for another project under this subdivision for a period of 10 years from the date of approval of that project. Not more than one-half of the total allocation available in any one fiscal year for grade separation projects may be

used for the purposes of this subdivision.

(i) Notwithstanding any of the above provisions of this section or any other provision of law, when the State or local agency uses funds derived from Federal sources in financing its share of project costs, the railroad contribution, where required by Federal law or regulation, shall be computed pursuant to Federal law. However, the allocation made pursuant to this chapter shall be computed as though such matching contribution was derived from non-Federal sources and shall be computed as though the railroad had made its contribution pursuant to state law rather than pursuant to Federal law. Where the contribution of the railroad is computed according to Federal law or regulation because of the use of Federal funds in the allocation for a project, the allocation shall be increased by the amount the share of the railroad is reduced below 10 percent of the estimated cost of the project.

SPECIAL ALLOCATIONS

PITTSBURG TRACK REMOVAL AND GRADE CROSSING ELIMINATION PROJECT

The planned removal of trackage of the Sacramento Northern Railway, the construction of substitute tracks and track connections, the elimination of 10 existing grade crossings, the acquisition of necessary rights-of-way, and all necessary associated work and appurtenances, to enable Sacramento Northern Railway trains to operate via existing trackage of the Atchison, Topeka & Santa Fe Railway, in and adjacent to the City of Pittsburg, is eligible for Grade Separation funds. The Public Utilities Commission will determine to what extent, if any, the railroad shall contribute to the project. Such eligibility will not be contingent on whether the railroad agrees to contribute, and the California Highway Commission shall not deny an allocation on such grounds.

The Legislature determined it is necessary to enact special legislation regarding the Pittsburg track removal and grade crossing elimination project because of the existence of the following special facts and circumstances:

- The predominant traffic carried by the Sacramento Northern Railway consists of high explosives, bombs, shells, and ammunition destined for the United States Navy ammunition depot at Port Chicago.
- Such trains traverse residential areas, cross 10 streets at grade, and constitute a grave hazard to the life and safety of the residents of Pittsburg.
- Sacramento Northern Railway is willing to remove its tracks and operate its trains via the tracks of the Atchison, Topeka & Santa Fe Railway, which is already partially grade separated and which offers a safer route
- Sacramento Northern Railway will sacrifice certain of its own facilities, will receive no benefits, and therefore does not have to contribute any portion of the cost incidental to the removal of its trackage or for the construction of substitute track connections and appurtenances or for the acquisition of rights-of-way.

AMTRAK CONTRIBUTIONS

Whenever the National Railroad Passenger Corporation (AMTRAK) contributes an amount equal to one-third of the total cost to the State or local agencies for a grade separation project, or any lesser percentage, the California Transportation Commission may agree to reduce proportionately the cost to the participating parties.

Any such grade separation project may be assigned a priority by the Public Utilities

Commission that is higher than the priorities assigned to all other such projects for which the National Railroad Passenger Corporation (AMTRAK) has not made a contribution.

19.4 PROCEDURES FOR PAYMENT OF WORK

AGREEMENTS

After an allocation is made to a local agency by the commission, the local agency and Caltrans will enter into an agreement concerning the handling and accounting of funds, including procedures to permit prompt payment for the work accomplished. The procedures providing for payment of work accomplished shall be drawn in such a manner as to avoid the necessity for the local agency to utilize funds in an amount greater than the local agency's share of the project costs. Such agreement may establish procedures for the programming of the work of the project in order to assure optimum cash flow utilization of funds made available by the Legislature.

ALLOCATION FOR COSTS

PRELIMINARY ENGINEERING

Pre-construction costs (engineering, right-of-way, preparation of environmental impact reports, and utility relocation) expended by a local agency prior to any allocation shall be included in the total cost of the project even though the costs were expended prior to an allocation. Allocations shall be made for pre-construction costs to a local agency that submits evidence satisfactory to the Department that the local agency will be able to meet the requirements for an allocation for construction costs, and that pre-construction costs will exceed the local share of the cost of the project. A local agency may also proceed with the advertising for bids and the construction of a project without prejudice to its right to receive an allocation if an allocation is within the same fiscal year that the construction contract was awarded.

CONSTRUCTION

An allocation for construction costs, including pre-construction costs if not already allocated, shall be made to a local agency only if it furnishes evidence satisfactory to the Grade Separation Program Manager that all necessary orders of the Public Utilities Commission have been executed, that sufficient local funds will be made available as the work of the project progresses, that all necessary agreements with affected railroad or railroads have been executed that, if required, all environmental impact reports have been prepared and approvals obtained, and that all other matters prerequisite to the award of the construction contract can be accomplished within one year after the allocation.

COST INCREASE

Except as noted below, allocations shall remain available until expended. If a construction contract has not been awarded within one year after an allocation for construction costs, the CTC may order the allocation canceled and such funds returned to the program for allocation to other projects. All or any part of an allocation for pre-construction costs may be canceled upon a finding that insufficient progress is being made to complete the project. When an allocation is canceled, the local agency shall repay any funds received from the program. The Grade Separation Program

Manager shall determine, with input from the local agency, repayment schedule.

PRIORITY LIST

If the actual and necessary cost of the project exceeds the estimate, the allocations made for such project may be augmented proportionately by a supplemental allocation. A supplemental allocation will be made if the CTC is satisfied that funds would have been allocated for the project had the actual costs, instead of the original allocation, been used in determining the projects ranking on the priority list.

If more projects comply are eligible than can be financed from funds set aside for the Grade separation program, allocations shall be made to those projects highest on the priority list, [see Exhibit A](#). The CTC may make allocations for any project on the priority list when it determines, at the time of allocation, that sufficient funds are available for all projects which are higher on the priority list and which are, or are reasonably expected to go to construction during the fiscal year.

From funds remaining after allocations for projects higher on the priority list, the CTC will offer to allocate the remaining funds for the next eligible project on the priority list, even though the amount of the remaining funds is less than the amount the local agency is entitled to for that project. The CTC, in the next fiscal year, will allocate to the local agency an additional amount equal to the difference between the amount the local agency was eligible to receive and the amount of the reduced allocation.

ADVANCE CONSTRUCTION

A project that is on the priority list may be constructed by a local agency prior to the time that it reaches a high enough priority for funding under this chapter. The project shall retain its eligibility for listing on subsequent priority lists established by the PUC by applying the traffic, accident other conditions existing at the project location at the time immediately preceding the start of construction. If the project subsequently reaches a high enough priority, funds shall be allocated and paid to the local agency under the terms of the agreement and on the basis of the cost of construction of the project. To be eligible for subsequent funding both of the following requirements shall be met:

- The work on the project shall be performed under terms and conditions established in an agreement between Caltrans and the project sponsor executed prior to start of construction of the project.
- The project has received approval of the CTC prior to start of construction of the project.

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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation for the purpose of)
 establishing a list for the fiscal)
 years 1996-97 and 1997-98 of)
 existing and proposed crossings at)
 grade of city streets, county)
 roads, or state highways most)
 urgently in need of separation,)
 or projects effecting the)
 elimination of grade crossings by)
 removal or relocation of streets)
 or railroad tracks, or existing)
 separations in need of alteration)
 or reconstruction as contemplated)
 by Section 2452 of the Streets and)
 Highways Code.)
 _____)
 _____)

F I L E D
 PUBLIC UTILITIES COMMISSION
 JULY 19, 1995
 SAN FRANCISCO OFFICE
 I.95-07-003

ORDER INSTITUTING INVESTIGATION

By July 1 of each year, the California Public Utilities Commission (Commission) is required pursuant to Streets and Highways (S&H) Code Section 2452 to establish and furnish to the California Transportation Commission (CTC) a priority list of railroad grade separation projects most urgently in need of separation, including the elimination of existing or proposed grade crossings, the elimination of grade crossings by removal or relocation of streets or railroad tracks, and existing grade separations most urgently in need of alteration or reconstruction. The list, based on criteria established by the Commission, includes projects on city streets, county roads, and state highways which are not freeways as defined in S&H Code Section 257.

Funding for projects included on each annual priority list is provided by S&H Code Section 190, and the basis for allocation and state requirements are contained in S&H Code Sections 2450-2461. On projects which eliminate an existing crossing or alter or reconstruct an existing grade separation, an allocation of 80% of the estimated cost of the project is made, with the local agency and railroad each contributing 10%. An allocation of 50% of the estimated cost of the project is made for a proposed crossing project, with the remaining 50% contributed by the local agency.

Subsequent to the Commission's issuance of the Annual Grade Separation Priority List, applications to California Department of Transportation (CALTRANS) for an allocation of funds are accepted no later than April 1 of each fiscal year. Requirements of filing an application for an allocation of funds are more specifically set forth in the California Administrative Code, Title 21, Chapter 2, Subchapter 13, Grade Separation Projects- Applications for Allocations or Supplemental Allocations. A copy of Subchapter 13 is attached as Appendix 1.

Interim Decision (D.) 88-06-050, dated June 17, 1988, instituted a two-year program in which nominations are submitted and hearings are held every other year. In the alternate year, the Commission will submit a list to the CTC which has been revised to delete those projects actually funded for the fiscal year in which the hearings are held. Interim D. 94-06-026, dated June 22, 1994, established the 37th annual priority list of projects for the 1994-95 fiscal year. Final D. 95-06-020 dated June , 1995, established the 38th annual priority list for fiscal year 1995-96. This list will expire on June 30, 1996 necessitating the establishment of a new priority list for the 1996-97 and 1997-98 fiscal years.

ALL AGENCIES CONTEMPLATING THE POSSIBLE NOMINATION OF A PROJECT FOR FISCAL YEAR 1997-98 ARE HEREBY PLACED ON NOTICE THAT THERE WILL BE NO SEPARATE PROCEEDINGS FOR FISCAL YEAR 1997-98. THEREFORE, TO ASSURE ELIGIBILITY FOR FUNDING OF A PROJECT DURING FISCAL YEAR 1997-98, IT MUST BE NOMINATED FOR THIS INVESTIGATION.

The Commission will consider projects nominated by cities, counties, cities and counties, CALTRANS, and the various railroad companies operating within the state for inclusion on the 1996-97 and 1997-98 Grade Separation Priority Lists. In addition, the Commissions Railroad Safety Branch Special Projects staff may nominate projects which it deems urgently in need of separation but have not been nominated by other agencies or railroad companies.

The Commission is responsible for establishing criteria to be used in determining the priority of the projects nominated for separation or alteration. By Decision 90-06-058, we adopted a new formula as shown on Appendix 2. The Safety & Enforcement Division proposes to use the same formula in evaluating the 1996-97 and 1997-98 nominations.

S&H Code Section 2460.7 authorizes a local agency to construct a project on the priority list prior to the time that it reaches a high enough position for funding. The following conditions will be applied to prioritize grade separation projects on which construction has commenced:

1. The project must have been nominated for the fiscal year during which construction commenced.
2. The project must be renominated for the fiscal year during which funding consideration is desired.
3. The nomination must include the same data as included in the nomination for the fiscal year during which construction commenced with the exception of construction cost data.
4. Cost data included in the nomination shall be:
 - a. Final costs for completed projects.
 - b. Currently anticipated final costs for projects still under construction.
5. All projects nominated under the provisions of Section 2460.7 shall also comply with the filing requirements set forth in this order.

For Investigations prior to I93-07-032 for establishing the grade separation priority list, the Order Instituting Investigation (OII) was mailed to all cities and counties. However, usually less than 50 such agencies actually participated in the OII by filing nominations. To reduce reproduction, handling and mailing costs, the Safety & Enforcement Division mailed the notice appearing on Appendix 3 to cities, counties and other interested parties. Those agencies interested in this investigation were requested to return the bottom portion of the notice so that this OII would then be mailed to them. This OII will also appear on the Commission's Daily and Transportation Calendars. We believe this to be fair and sufficient notice of this investigation.

O R D E R

IT IS ORDERED that:

1. An investigation on the Commission's own motion is instituted for the purpose of establishing a new priority list for fiscal years 1996-97 and 1997-98 of existing or proposed railroad grade crossings of public streets, roads, or highways most urgently in need of separation, projects effecting the elimination of grade crossings by removal or relocation of streets or railroad tracks, and existing separation structures most urgently in need of alteration or reconstruction as required by Streets and Highways (S&H) Code Section 2452.

2. The Executive Director shall serve a copy of this order on the following:

Every city or county that returns the bottom portion of the OII notification (Appendix 3)

Every railroad corporation

California Department of Transportation

California Transportation Commission

League of California Cities

County Supervisors Association

3. Public agencies or railroad corporations desiring to have a particular crossing(s), separation(s) considered for inclusion in the 1996-97 and 1997-98 list, to be established under S&H Code Section 2452, shall file the original and four copies of their nomination(s) with the California Public Utilities Commission, Docket Office, 505 Van Ness Avenue, San Francisco, CA 94102. After filing, the Docket Office shall transmit four copies of each nomination to the Railroad Safety Branch. In D. 94-06-026 we stated that we will begin our investigation in July 1995 to allow staff the required time for its field investigation and analysis and to prepare for the Priority Lists proceedings. Therefore, we will also require all parties to send a copy of their nomination(s) to the Railroad Safety Branch at the time the nominations are tendered for filing with the Commission's Docket office. All nominations shall be received by the California Public Utilities Commission in San Francisco no later than 4:00 p.m. on September 1, 1995. Each nominating body is also required to provide two copies of its nomination(s) to CALTRANS, one copy to the appropriate railroads (see addresses contained in Appendix 4), one copy to each of the additional parties listed in Appendix 4, and any other affected party.

4. Each nomination shall include the following data:

a. A statement indicating the need for the project.

- b. A statement indicating that the nominating agency can or cannot complete the pre-allocation requirements, as set forth in S&H Code Section 2456, prior to April 1, 1995 for fiscal year 1996-97 and prior to April 1, 1996 for fiscal year 1997-98.
- c. A location map of the project, on paper 8-1/2 inches by 11 inches in size (scale 1" = 500'±), showing existing streets, highways, and railroads. The proposed alignment of the grade separation shall also be shown.
- d. Two current photographs (size, 8 inches by 10 inches) of the crossing, one from each direction of approach. At least one original set of these photographs shall be included in the nomination copy set sent to the Railroad Safety Branch.
- e. A statement indicating the type of project.
- f. For existing or proposed crossings nominated for separation or elimination, a completed Nomination Form GSN-1 (Appendix 5).
- g. For proposed crossing projects, a discussion of the physical practicability of constructing an at-grade crossing in the general area of the proposed separation. The discussion shall be supported by a plan and centerline profile of an at-grade crossing reproduced on paper 8-1/2 inches by 11 inches in size. No discussion of economic feasibility is required. Only a description of the physical features of the surrounding terrain which would allow the construction of an at-grade crossing is required. If sufficient evidence is not presented that construction of an at-grade crossing is practicable, the project will be excluded from the list.

- h. For existing grade separations nominated for alteration or reconstruction, a completed Nomination Form GSN-2 (Appendix 6).
- I. A description of the existing and proposed separation structures, including acute structural deficiencies, shall be included with the nomination.
- j. Data submitted in the nomination must be based on verifiable facts occurring on or before the nomination filing date. Speculative data involving events anticipated to occur at some time in the future will not be considered.
- k. Agencies nominating projects shall file, with their nomination, prepared testimony which fully supports the nomination. Nominating agencies shall promptly furnish a copy of their nomination and prepared testimony to any party making a written request to the nominating agency. The use of prepared testimony is required to reduce hearing time and expedite the proceeding for the benefit of all concerned.
- l. All nominations shall be verified by the nominating party. Verification may be made before a notary public or by certification or declaration under penalty of perjury.
- m. All information relating to the urgency of the project shall be filed with the nomination in affidavit form.
- n. Railroad Safety Branch Special Projects Staff nominations may be filed at any time prior to hearing and may exclude listed item to be added through the OII process.

5. Nominations shall not include multiple projects which are separate and distinct and clearly severable. The combining of severable projects precludes the Commission from effectively determining which projects are most urgently in need of separation or alteration as required by S&H Code Section 2452. Projects for the elimination of existing grade crossings and for the elimination of proposed grade crossings shall not be combined in a single nomination. (See D.86-06-073 at pp. 17-19.)

6. If a nomination is to be considered as a project for the elimination of existing grade crossings, and eligible for 80 percent funding, all data included in the nomination must be premised on all of the crossings proposed to be closed.

7. A nominating agency may elect to exclude preconstruction costs (engineering, right-of-way, preparation of environmental impact reports, and utility relocation), which are not sufficient to meet S&H Code Section 2454 requirements; that is, those preconstruction cost which are less than the local agency share of the total costs. In order for preconstruction costs to be eligible for exclusion, the funds must have been expended on or before February 28th of the year in which the hearings are being held. The involved agency may be required to submit evidence in support of the fact that the funds have been expended. To the extent that preconstruction costs are excluded from a project's cost for the purpose of a nomination, the costs will be considered as non-participating; that is, the railroad will not be required to contribute 10 percent of the excluded preconstruction costs.

8. In addition to submitting the Grade Separation Nomination Form, each party, or its representative, nominating a crossing for inclusion in the Grade Separation Priority List is required to appear in person at either the San Francisco or Los Angeles hearings to present evidence concerning its nomination. Supplemental data may be submitted at the hearings in support of a nomination. The data may include facts not known at the time of nomination filing date, such as crossing accidents occurring after the nomination filing date but on or before January 31st of the year during which the hearings are held. Verification of all supplemental data must be received by the staff no later than one week after the last scheduled day of hearing.

9. Appearance schedules will be published after all nominations have been received. Appearances will be limited to one witness per project.

10. Agencies anticipating the need for an allocation greater than \$5,000,000 should be prepared to present evidence at the Grade Separation Priority List hearings to justify the additional award.

S&H Code Section 2454 (g) states:

"(g) Notwithstanding the provisions of Subdivisions (a) to (f), inclusive, the total of such allocations for a single project shall not exceed five million dollars (\$5,000,000) without specific legislative authorization, except that the amount for a single project may be increased to either (1) an amount that includes the Federal construction cost index increase each year since 1976, or (2) an amount which does not exceed one-third of the total funds appropriated for grade separation projects for the year of allocation, whichever amount is less, as determined each year by the Public Utilities Commission."

11. Failure to supply all of the requested information or to appear before the Commission will constitute grounds for exclusion of a project from the 1996-97 and 1997-98 Grade Separation Priority List.

12. Public hearings in the investigation will be held before the assigned Administrative Law Judge at dates, times, and locations to be announced.

This order is effective today.
Dated July 19, 1995, at San Francisco, California.

DANIEL Wm. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
Commissioners

APPENDIX 1
Sheet 1 of 5GRADE SEPARATION

TITLE 21 Department of Transportation
(Register 82, No. 34--8-21-82)

SUBCHAPTER 13, GRADE SEPARATION PROJECTS -- APPLICATIONS FOR
ALLOCATIONS OR SUPPLEMENTAL ALLOCATION

Article 1. Applications

1552. Last Date to File.

April 1 of each fiscal year is the last date on which applications for allocation of grade separation funds in that fiscal year can be filed; provided, however, if April 1 is a Saturday, Sunday, or a State of California holiday, then the last date of filing shall be the next business day following April 1. Filing is accomplished by filing the application with the Department of Transportation in the manner hereafter stated.

1553. Place to File.

The complete application in triplicate must be received in the Office of the District Director of Transportation, State of California, in the transportation district in which the applicant is located, no later than 4:00 p.m. on the last day for filing.

1554. Contents of Application.

The complete application must include a written request for an allocation in a specified monetary amount along with copies of each of the following attached to it:

- (a) All necessary orders of the Public Utilities Commission of the State of California. Necessary orders of the Public Utilities Commission include:
 - (1) An order authorizing construction of the project;
 - (2) A statement of the applicant's position on the annual priority list established by the Public Utilities Commission pursuant to Streets and Highways Code Section 2452;

APPENDIX 1
Sheet 2 of 5

GRADE SEPARATION (Cont.)

- (3) In case the applicant and affected railroad or railroads cannot agree as to the apportionment of the cost of the project between them, an order apportioning such cost pursuant to Public Utilities Commission Code Section 1202.5, but in no case shall an allocation be made unless the railroad or railroads contribute no less than the amount required by Section 2454 of the Streets and Highways Code, except as may be otherwise provided by law.
- (b) All necessary agreements with the affected railroad or railroads fully executed by railroad or railroads and applicant. The necessary agreements with the railroad include:
- (1) Permission to enter upon railroad right of way for construction, or, in lieu thereof, an order of the Public Utilities Commission or of a court of competent jurisdiction authorizing such entry for construction purposes;
 - (2) A description of the project on a plan setting forth the area and items of the project and the particular area and items of the project to which the railroad or railroads agree to contribute;
 - (3) The percentage of railroad's or railroads' contribution to the cost of the area and items to which railroad or railroads agree to contribute;
 - (4) Identification and estimated cost of the area and items to which railroad or railroads do not contribute;
 - (5) Agreement that railroad or railroads shall contribute a minimum of 10 percent of the cost of the project without a maximum dollar limitation on the railroad's contribution, except that the contribution may be less than 10 percent of the cost of the project where expressly so provided by law.

APPENDIX 1
Sheet 3 of 5GRADE SEPARATION (Cont.)

- (6) When two or more railroads are affected by a project, their combined contribution must be a minimum of 10 percent of the cost of the project without a maximum dollar limitation on the combined contribution, except that such combined contribution may be less than 10 percent of the cost of the project when expressly so provided by law.
- (c) A certified resolution by the applicant's governing body authorizing the filing of an application.
- (d) Certified resolution by the applicant's governing body stating that all matters prerequisite to the awarding of the construction contract can be accomplished within one year after allocation of the funds for the project by the California Transportation Commission.
- (e) A certified resolution by applicant's governing body stating that sufficient local funds will be made available as the work of the project progresses.
- (f) Copies of all necessary Environmental Impact Reports or Negative Declarations, with a certified Notice of Determination and approval or acceptance of these documents by the Lead Agency. In cases where an Environmental Impact Statement or Negative Declaration has been prepared for the project pursuant to the requirements of the National Environmental Policy Act of 1969 and implementing regulations thereto, such documents may be submitted in lieu of an approved Environmental Impact Report or Negative Declaration and Notice of Determination, provided the Environmental Impact Statement or Negative Declaration fully develops the factors required in Title 14, Section 15143, of the State Administrative Code including Title 20, Section 17.1 (d) (2), of the State Administrative Code and such Environmental Impact Statement or Negative Declaration has received Federal approval.
- (g) General plan of the project, including profiles and typical sections.
- (h) Project cost estimate, which is to be broken down to construction, preliminary and construction engineering, work by railroad forces, right of way costs, and utility relocation.

APPENDIX 1
Sheet 4 of 5

GRADE SEPARATION (Cont.)

1555. Project Limitation.

Participation of the grade separation fund is limited to only that portion of the project which, in the determination of the California Transportation Commission, is necessary to make the grade separation operable and to effect the separation of grades between the highway and the railroad track or tracks, or necessary to effect the relocation of track or highway. Off-track maintenance roads shall be nonparticipating unless the existing access for maintenance purposes is severely impaired by the project. Participating items include, but are not limited to, approaches, ramps, connections, drainage, erosion control of slopes, such as ivy, iceplant, and rye grass, and preconstruction costs, such as right of way acquisition, preparation of environmental impact reports and utility relocation, necessary to make the grade separation operable. In any dispute as to scope of project or qualification of an item, the decision of the California Transportation Commission shall be conclusive.

1556. Allocation Limitation.

Initial allocation of grade separation funds by the California Transportation Commission shall be limited to that based upon applicant's estimate of cost of project specified by applicant and utilized by the Public Utilities Commission of the State of California in establishment of applicant's priority pursuant to Streets and Highways Code Section 2452 of the State of California, and in no case shall an original and supplemental allocation for a single project exceed a total of five million dollars (\$5,000,000) without specific legislative authorization in effect for the project at the final date and time for filing an application. A planned project must be a complete and operable project, and effect the separation of grades, relocation of the highways or railroad, in order to qualify for an allocation.

Article 2. Supplemental Allocation

1557. Last Date to File.

The last date on which an application for a supplemental allocation can be filed for the subsequent fiscal year is May 1 of the current calendar year. If May 1 is a Saturday, Sunday or a State of California holiday, then the last date of filing shall be the next business day following May 1. A formal application must be filed by the applicant, accompanied with the project final report.

APPENDIX 1
Sheet 5 of 5GRADE SEPARATION (Cont.)

1558. Place to File.

The complete application in triplicate must be received in the Office of the District Director of Transportation, State of California, in the transportation district in which the applicant is located, no later than 4:00 p.m. on the last day for filing.

1559. Contents of Application.

The application must include a written request for a supplemental allocation in a specified amount along with copies of each of the following attached thereto.

- (a) A certified resolution by the applicant's governing body certifying that:
 - (1) Applicant has authority to make request for supplemental allocation;
 - (2) The project has been completed and has been accepted by the governing body;
 - (3) The actual and final cost of the project has been determined and is set forth in the supplemental application;
 - (4) All costs set forth in the request for a supplemental allocation were necessary to make the grade separation operable and effect the separation of grades or the relocation of track or highway.
 - (5) That railroad or railroads have contributed 10 percent of the cost of the project unless a lesser contribution is expressly provided by law.
- (b) Evidence that funds would have been allocated for the project had the actual cost been used by the Public Utilities Commission of the State of California in determining the project's ranking on the priority list.
- (c) A final accounting of the cost of the project with a statement explaining in detail why the original allocation was not sufficient.

APPENDIX 2
Sheet 1 of 6

FORMULA FOR CROSSINGS NOMINATED
FOR SEPARATION OR ELIMINATION

$$P = \frac{V (T + 0.1 \times LRT)}{C \times F} (AH + BD) + SCF$$

Where:

- P = Priority Index Number
- V = Average 24-Hour Vehicular Volume
- C = Total Cost of Separation Project
(In Thousands of Dollars)
- T = Average 24-Hour Train Volume
- F = Cost Inflation Factor (Use F = 11 for
1992-93 & 1995-94 F.Y. Priority List
Based on the Current Construction Cost
Index)
- AH = Accident History
- BD = Blocking Delay at Crossing
- SCF = Special Conditions Factor

$$SCF = VS + RS + CG + AR + PT + OF$$

here:

	<u>Points Possible</u>
VS = Vehicular Speed Limit	0 - 5
RS = Railroad Prevailing Maximum Speed	0 - 7
CG = Crossing Geometrics	0 - 7
AR = Alternate Route Availability	0 - 5
PT = Passenger Trains	0 - 10
OF = Other Factors	<u>0 - 16</u>

Total Points 0 - 50

POINTS IN EACH CATEGORY ARE ASSIGNED ACCORDING TO THE FOLLOWING SCHEDULE:

- AH = Accident History (10 Years)
Each reportable train-involved accident

$$\text{Points} = (1 + 2 \times \text{No. Killed} + \text{No. Injured}) \times \text{PF}^*$$

*PF = Protection Factor for:

- Std. #9 = 1.0
- Std. #8 = 0.4
- Std. #3 = 0.2
- Std. #1 = 0.1

APPENDIX 2
Sheet 2 of 6

Note 1. No more than three points shall be allowed for each accident prior to modification by the protection factor.

Note 2. Each Accident shall be rated separately and modified by a factor appropriate to the protection in existence at the time of the accident.

BD = Crossing Blocking Delay Per Train
(Total Minutes per Day - T)

<u>Minutes</u>	<u>Points</u>
0 - .49	0
.5 - .99	.5
1.0 - 1.49	1.0
1.5 - 1.99	1.5
2.0 - 2.49	2.0
2.5 - 2.99	2.5
3.0 - 3.49	3.0
3.5 - 3.99	3.5
4.0 - 4.49	4.0
4.5 - 4.99	4.5
5.0 - 5.49	5.0
5.5 - 5.99	5.5
6.0 - 6.49	6.0
6.5 - 6.99	6.5
7.0 - 7.49	7.0
7.5 - 7.99	7.5
8.0 - 8.49	8.0
8.5 - 8.99	8.5
9.0 - 9.49	9.0
9.5 - 9.99	9.5
10 +	10.0

VS = Vehicular Speed Limit

<u>MPH</u>	<u>Points</u>
0 - 30	0
31 - 35	1
36 - 40	2
41 - 45	3
46 - 50	4
51 - 55	5

APPENDIX 2
Sheet 3 of 6

RS = Railroad Maximum Speed

<u>MPH</u>	<u>Points</u>
0 - 25	0
26 - 35	1
36 - 45	2
46 - 55	3
56 - 65	4
66 - 75	5
76 - 85	6
86 +	7

CG = Crossing Geometrics

0 - 7 points based on relative severity of physical conditions, i.e., grade, alignment, site distance, etc.

AR = Alternate Route Availability

<u>Distance (Feet)</u>	<u>Points</u>
0 - 1,000	0
1,001 - 2,000	1
2,001 - 3,000	2
3,001 - 4,000	3
4,001 - 5,000	4
5,001 +	5

PT = Passenger Trains

<u>No. of Trains Per Day</u>	<u>Points</u>
1 - 2	1
3 - 5	2
6 - 10	3
11 - 20	4
21 - 30	5
31 - 40	6
41 - 50	7
51 - 60	8
61 - 70	9
71 +	10

OF = Other Factors

0 - 16 points based on:
secondary accidents, emergency vehicle usage,
passenger buses, school buses, hazardous
materials trains and trucks, community impact.

APPENDIX 2
Sheet 4 of 6

FORMULA FOR EXISTING SEPARATIONS
NOMINATED FOR ALTERATION OR RECONSTRUCTION

$$P = \frac{V (T + 0.1 \times LRT)}{C \times F} + SCF$$

Where:

- P = Priority Index Number
- V = Average 24-Hour Vehicular Volume
- C = Total Cost of Separation Project
(In Thousands of Dollars)
- T = Average 24-Hour Train Volume
- F = Cost Inflation Factor (Use F = 11 for
1992-93 & 1995-94 F.Y. Priority List
Based on the Current Construction Cost
Index)
- SCF = Special Conditions Factor

$$SCF = WC + HC + SR + LL + AS + PF$$

Where:

	<u>Points Possible</u>
WC = Width Clearance	0 - 10
HC = Height Clearance	0 - 10
SR = Speed Reduction or Slow Order	0 - 5
LL = Load Limit	0 - 5
AS = Accidents At or Near Structure	0 - 10
PF = Probability of Failure and Other Factors	<u>0 - 30</u>
Total Possible	0 - 70

POINTS IN EACH CATEGORY ARE ASSIGNED ACCORDING TO THE FOLLOWING SCHEDULE:

WC = Width Clearance

<u>Width (feet)</u>	<u>Points</u>
16' + 12(N)	0
12' but less than 16' + 12(N)	2
8' but less than 12' + 12(N)	4
0" but less than 8' = 12(N)	6
11(N) but less than 12(N)	8
Less than 11(N)	10

N = Number of Traffic Lanes

APPENDIX 2
Sheet 5 of 6

HC = Separation Height Clearance

Underpass

<u>Height (feet)</u>	<u>Points</u>
15' and above	0
14' but less than 15'	4
13' but less than 14'	8
Less than 13'	10

Overpass

<u>Height (feet)</u>	<u>Points</u>
22 1/2' and above	0
20' but less than 22 1/2'	4
18' but less than 20'	8
Less than 18'	10

SR = Speed Reduction or Slow Order Points

None	0
Moderate	2
Severe	5

LL = Load Limit Points

None	0
Moderate	2
Severe	5

AS = Accidents at or Near Structure (10 years)

<u>Number</u>	<u>Points</u>
0 - 10	0
11 - 20	1
21 - 30	2
31 - 40	3
41 - 50	4
51 - 60	5
61 - 70	6
71 - 80	7
81 - 90	8
91 - 100	9
100 +	10

APPENDIX 2
Sheet 6 of 6

PF = Probability of Failure and other factors

0-30 points based on:

- (a) Probability of Failure
- (b) Accident Potential
- (c) Delay Effects

APPENDIX 3

IMPORTANT NOTICE

June 30, 1995

TO: CITIES, COUNTIES AND INTERESTED PARTIES-
Re: Establishment of the 1996-97 & 1997-98 Grade Separation Priority List under Streets and Highways Code Section 2452.

The Commission is anticipating the issuance of an Order Instituting Investigation (OII) for the purpose of establishing the 1996-97 and 1997-98 priority list of railroad/highway grade separation projects eligible for state funding. The Department of Transportation (Caltrans) uses this list to allocate \$15,000,000 (\$5 million maximum per project) each fiscal year to assist local governments in financing grade separation projects.

If you are interested in the grade separation priority list program and would like to receive the OII, please detach the bottom portion of this letter and return it no later than July 20, 1995. The OII includes an explanation of the grade separation priority list program, the application and the requirements for filing. The OII also includes the criteria and formula used to rank all nominations. **If your agency wishes to nominate grade separation project(s) for inclusion on the priority list, you must return this form and actively participate in the investigation in the manner set forth in the OII.** Unless we hear from you, the OII will not be mailed to your agency.

If you have any questions, please contact Tack Joe at (415) 557-9884, Rosa Munoz at (213) 897-5790 or Tom Enderle at (415) 557-9889.

Very Truly Yours,

Tom Enderle, Senior Transportation Engineer
Safety & Enforcement Division

Mail to: California Public Utilities Commission
Attn: Tack Joe, Railroad Safety Branch
505 Van Ness Avenue
San Francisco, CA 94102

Please place me/my agency on the mailing list for the Order Instituting Investigation to establish the 1996-97 and 1997-98 Railroad/Highway Grade Separation Priority List.

AGENCY NAME _____
ADDRESS _____
CITY _____ ZIP CODE _____
CONTACT PERSON NAME _____
TITLE _____ TELEPHONE NUMBER(_____) _____

APPENDIX 4
Sheet 1 of 2ADDRESS LIST
GRADE SEPARATION NOMINATION

This is a partial listing, only. Applicants are still responsible to serve copies of their nominations on the railroad(s) involved in their proposals.

RAILROADS

Dan A. Barringer, G.M. Amador Railroad Company 909 Terminal Sales Bldg. Portland, OR 97205	Jeff E. Forbis, Pres & CEO McCloud Railway P. O. Box 1500 McCloud, CA 96057
Annette L. Polte General Manager Amador Central Railroad Co. P.O. Box 66 Martell, CA 95654	James L. Beard, President Modesto & Empire Traction Co. P. O. Box 3106 Modesto, CA 95353
L.E. Mueller, General Manager Burlington Northern Railroad Co. 2000 First Interstate Center Seattle, WA 98104	Tom Schueler, Dir. of Engr Port of Sacramento Sacramento-Yolo Port District Belt Railroad P. O. Box 815 West Sacramento, CA 95691
G. J. Allen, General Manager California Western Railroad (DBA: Mendocino Coast Railway) P.O. Box 907 Fort Bragg, CA 95437	A.G. Beckman, Dir. of Oprns Port of Stockton Stockton Public Belt Railroad P. O. Box 2089 Stockton, CA 95201
Steve Crook, General Manager North Coast Railroad Co. P. O. Box 2014 Eureka, CA 95502	Thomas G. Matoff, Gen Manager Sacramento Regional Transit Dist. Light Rail Project P.O. Box 2110 Sacramento, CA 95812-2110
R. A. Igo, General Manager Harbor Belt Line Railroad Box A P.O. Wilmington, CA 90748	743 Dennis Kling, General Manager San Diego and Imperial Valley RR Imperial Avenue San Diego, CA 92101
Richard Levin, President Levin-Richmond Ter. Corp (Parr Terminal Railroad) 402 Wright Avenue Richmond, CA 94804	Peter Tereschuk, Vice President San Diego Trolley, Inc. 1255 Imperial Ave. Suite 900 San Diego, CA 92101
Neil Peterson, - Exec. Dir. Los Angeles County Transportation Commission - RCC 818 W. 7th Street, Suite 1100 Los Angeles, CA 90017	Lawrence Reuter, Dir. of Trans. Santa Clara Co Transportation Agency 101 West Younger Avenue San Jose, CA 95110

APPENDIX 4
Sheet 2 of 2

ADDRESS LIST
GRADE SEPARATION NOMINATION

Mrs. Sue J. Sword, President & Manager Santa Maria Valley Railroad Company P. O. Box 340 Santa Maria, CA 93456	L. T. Cecil, V.P. & G.M. Yreka Western Railroad Co. P. O. Box 660 Yreka, CA 96097
--	--

CALTRANS

(Send one copy to each addressee)

Jerry Gregg, Exec. V.P. Sierra Railroad Company 13645 Tuolumne road Sonora, CA 95370	J. E. Robert, Chief Division of Structures Department of Transportation State of California Attn: Jack Boda P.O. Box 942874 Sacramento, CA 94274-0001
---	---

Ken A. Moore, V.P. - Operations Southern Pacific Transportation Co. One Market Plaza San Francisco, CA 94105	E. C. Bonnstetter, Attorney Department of Transportation State of California P.O. Box 1438 Sacramento, CA 95812-1438
---	--

Greg N. Carney, V.P. & COO Stockton Terminal & Eastern Rr. 1330 North Broadway Avenue Stockton, CA 95205	P.O. Box 1438 Sacramento, CA 95812-1438
---	--

ADDITIONAL PARTIES

(Send one copy to each addressee)

Roy Ketring, Special Project Mgr. The Atchison, Topeka and Santa Fe Railway Company 740 E. Garnegie Drive San Bernardino, CA 92408-3571	Jeff S. Asay, Staff Attorney Union Pacific Railroad Company 5500 Ferguson Dr., Ste. J Los Angeles, CA 90022
---	--

Mark C. Demetree, Pres Trona Railway Company 13068 Main St. Trona, CA 93562	General Attorney Southern Pacific Transp. Co. Southern Pacific Building One Market Plaza San Francisco, CA 94105
--	--

E. C. May General Manager Union Pacific Railroad Co. 406 W. First South Salt Lake City, UT 84101	Curtis Ballantyne, Attorney Santa Fe Southern Pacific Corp. 35th Floor, Union Bank Square 445 S. Figueroa Street Los Angeles, CA 90071
---	--

Carmen Chappell, President
Ventura County Railway Co.
P.O. Box 432
Oxnard, CA 93032

(For Orange County appl. only)

Roger Hohnbaum, Manager
EMA/Transportation Programs
County of Orange
P. O. Box 4048
Santa Ana, CA 92702-4048

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation for the purpose of)
establishing a list for the fiscal)
years 1995-94 and 1996-97 of)
existing and proposed crossings at)
grade of city streets, county)
roads, or state highways most)
urgently in need of separation,)
or projects effecting the)
elimination of grade crossings by)
removal or relocation of streets)
or railroad tracks, or existing)
separations in need of alteration)
or reconstruction as contemplated)
by Section 2452 of the Streets and)
Highways Code.)
_____)

No. _____

Nomination for Separation or elimination of
existing or proposed railroad grade crossing

Nomination by City/County of _____
in compliance with I. _____

Location Name (street) _____

Railroad Company _____

NOMINATION REQUIREMENTS

The Order Instituting Investigation (OII) sets forth the requirements for all nominations. Please carefully review the OII and attach all of its required data and information as separate sheets to this nomination form. The following is a summary of the data required by Ordering Paragraph No. 4:

- a. A statement indicating the need for the project.
- b. A statement refunding ability to complete pre-allocation requirements.
- c. Location map of the project.
- d. Two photographs (8" X 10").
- e. A statement indicating the type of project.
- g. For proposed crossing projects, a discussion of the physical practicability of constructing an at-grade crossing.
- j. Data submitted in the nomination must be based on verifiable facts occurring on or before the nomination filing date.
- k. Prepared testimony fully supporting the nomination.
- l. All nominations shall be verified by the nominating party.
- m. All information relating to the urgency of the project shall be filed with the nomination in affidavit form.

In addition to the above, please provide the following information:

1. As part of the need statement, please describe the community impact of the existing at-grade crossing and the proposed separation.
2. Describe and discuss each of the following as it applies to your crossing: limited waiting area for the vehicles, traffic signals located near the tracks, parallel road to the track(s), visibility of upcoming crossing, noise impediment, frequently used entrances or exits near the crossing, curvature of roadway or tracks which might hinder the normal observance of possible approaching trains, and other hazard causing elements.
3. Describe the current status of the project, i.e., preliminary engineering, design, PUC grade separation application, right of way negotiations/purchase, notice of determination, an environmental impact document, any discussions, negotiations and/or agreements with the railroad, etc.
4. If your agency has received any governing body (city council/board of supervisors, etc.) approval, plans attach resolution or other documentation. Also, please discuss the availability and source of local matching funds.

Appendix 5

**NOMINATION FOR SEPARATION OR ELIMINATION OF
EXISTING OR PROPOSED RAILROAD GRADE CROSSING**

1. Nominating Agency:

Name _____
Address _____
City _____
County _____ ZIP Code _____

2. Contact Person: Primary Alternate

Name _____ / _____
Title _____ / _____
Telephone () _____ / () _____

Consultant Name _____
Title _____
Company Name _____
Telephone () _____

3. Crossing Number and Location:

EXPLANATION

PUC Crossing No. _____
Street Name _____
City _____
County _____
Railroad Co. Name _____

Public Utilities (PUC) crossing numbers are assigned to all crossings. The number may be obtained from the Commission staff.

4. Number of Each Type of Railroad Track:

Main _____
Branch _____
Passing _____
Siding/Spur _____
Other (specify) _____

If unknown, the type of track may be obtained from the railroad company.

EXPLANATION

5. TYPE OF CROSSING PROTECTION:

Stop Signs	_____	Gates	_____
Crossbucks	_____	Bells	_____
Wigwags	_____	Lights	_____
Flagman	_____	Stop sign	_____
Other	_____		

Check all protection that exist at the crossing presently. Specify **other** in the space provided.

6. Approach Roadway:

Width (feet)	_____
Number of lanes	_____

Within 200 feet on either side of the crossing.

7. Crossing Roadway:

Width (feet)	_____
Number of lanes	_____

On the roadway pavement at the crossing.

8. Crossing Skew Angle:

Degrees	_____
---------	-------

Describe the angle which the roadway crosses the perpendicular of the track(s)

9. Elevated Surface Profile of Roadway:

Direction	_____	
Change in Height	_____	(in)
Direction	_____	
Change in Height	_____	(in)

From each side of the approach at a point 30 ft from the closest rail, measure the difference in height from the top of the rail to the surface of the road.

10. Average Daily Motor Vehicle Volume:

Vehicle Count (ADT)	_____
Date of Count	_____

An average 24-hour day count is required. All counts must be done after January 1, 1995.

Description of data collection methods: _____

EXPLANATION

11. Average Daily Train (ADT) Volume:

Passenger _____
 Through freight _____
 Switching _____
 Light rail _____
 Other (specify _____
 below) _____
 TOTAL TRAINS _____

The ADT should be obtained by a written request from the railroad, otherwise, specify the source of information below. Staff recommends that the ADT be confirmed by direct observations.

Description of data collection methods: _____

12. Speed:

Motor Veh. (Posted MPH) _____
 Train (MPH) _____

The train speed should be the maximum speed attained at the crossing. This data may be obtained from the railroad company or by properly operated radar equipment.

Description of data collection methods: _____

13. Accidents:

Train-vehicle _____
 Vehicle-vehicle _____
 Vehicle-object _____

A 10-year accident history of each type of accident that may be attributed to the presence of the grade crossing.

Description of data collection methods: _____

EXPLANATION

14. Crossing Blocking Delay:

Date count was done _____
Number of delays _____
Total time delay _____

Count must be performed after January 1, 1995, Show the total time in minutes per day the warning devices are activated. The data may be obtained by installation of a signal activation monitoring device or an average delay per train based on direct observation.

Description of data collection methods: _____

15. Nearest alternative route ___(feet)

The nearest alternate route as measured along the centerline of the railroad track.

16. Average number of crossings per day:

School bus _____ Other bus _____
Haz Mat Trucks _____ Ambulance _____
Haz Mat Trains _____ Police _____
Other _____

Show the number of average crossing per day for each type of vehicle. Specify other below.

Description of data collection methods: _____

17. Type of Project Proposed: (check one)

Underpass _____
Overpass _____
Other (specify) _____

If **Other**, please describe below

EXPLANATION

18. For Proposed crossing:(check one)

At grade crossing is practical and feasible _____
At grade crossing is not practical and feasible _____

In the narrative section, show sufficient evidence that construction of an at-grade crossing is, or is not physically practical and feasible

19. Contribution:

Contribution by the city or county equal to or greater than 50% of the cost the project. (yes/no) _____

20. Estimated Project Cost (April 1, 1995)

Right-of-way allowance.....\$ _____
Preliminary Engineering.....\$ _____
Construction Engineering...\$ _____
Total Engineering.....\$ _____
Bridge Construction.....\$ _____
Railroad work.....\$ _____
Highway approaches and connections.....\$ _____
Utility relocation.....\$ _____
Contingencies.....\$ _____
Removing existing crossing (where applicable).....\$ _____
Total construction cost....\$ _____
Total Project cost.....\$ _____

The estimated project cost shall be as of April 1, 1995. The cost shall be itemize as shown and any item left blank shall be explained The estimated cost shall be limit to that portion of the project which is necessary to make the grade separation operable and to effect the separation of grades between the highway and the railroad tracks. The project cost shall be rounded to the nearest thousand dollars.

Note: For projects involving more than one crossing, complete the appropriate form for each individual crossing and also show a summary for the complete project.

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation for the purpose of)
establishing a list for the fiscal)
years 1996-97 and 1997-98 of)
existing and proposed crossings at)
grade of city streets, county)
roads, or state highways most)
urgently in need of separation,)
or projects effecting the)
elimination of grade crossings by)
removal or relocation of streets)
or railroad tracks, or existing)
separations in need of alteration)
or reconstruction as contemplated)
by Section 2452 of the Streets and)
Highways Code.)
_____)

No. _____

Nomination for alteration or reconstruction of
existing grade separation

Nomination by City/County of _____
in compliance with I. _____

Location Name (street) _____

Railroad Company _____

DUE DATE: September 1, 1995

APPENDIX 6

Sheet 2 of 6

NOMINATION REQUIREMENTS

The Order Instituting Investigation (OII) sets forth the requirements for all nominations. Please carefully review the OII and attach all of its required data and information as separate sheets to this nomination form. The following is a summary of the data required by Ordering Paragraph No.4:

- a. A statement indicating the need for the project.
- b. A statement regarding ability to complete pre-allocation requirements.
- c. Location map of the project.
- d. Two photographs.
- e. A statement indicating the type of project.
- i. A description of the existing and proposed separation structures, including acute structural deficiencies.
- j. Data submitted in the nomination must be based on verifiable facts occurring on or before the nomination filing date.
- k. Prepared testimony fully supporting the nomination.
- l. All nominations shall be verified by the nominating party.
- m. All information relating to the urgency of the project shall be filed with the nomination in affidavit form.

In addition to the above, please provide the following information:

1. Describe the current status of the project, i.e., preliminary engineering, designs right of way negotiations/purchase, notice of determination, any discussions negotiations and/or agreements with the railroad, etc.
2. If your agency has received any governing body (city council/board of supervisors, etc.) approval, please attach resolution or other documentation. Also, please discuss the availability and source of local matching funds.

EXPLANATION

6. Center Divider:

Yes _____ No _____

Self explanatory

7. Speed Reduction (quantitative):

Vehicle _____
Railroad Slow Order _____
Total time delay _____

Quantitatively identify any vehicular speed reduction which may be due to the presence of the structure. Information regarding a railroad slow order may be obtained from the railroad company.

Description of data collection methods: _____

8. Load Limit:

Vehicle _____
Railroad _____

Show any vehicular or railroad load limit restriction at the structure.

Description of data collection methods: _____

9. Railroad Track Type (indicate number):

Main _____
Branch _____
Passing _____
Siding/Spur _____
Other _____

If unknown, the type of track may be obtained from the railroad company. Please describe other types of tracks below

Description of data collection methods: _____

EXPLANATION

10. Average Daily Vehicle Volume:

Vehicle Count (ADT) _____
Date of Count _____

An average 24-hour day count is required. All counts must be done after January 1,1995.

Description of data collection methods: _____

11. Average Daily Train Volume:

Passenger _____
Through freight _____
Switching _____
Light rail _____

It is preferred that the data be obtained by a written request to the railroad, otherwise the source of information in the narrative.

TOTAL TRAINS _____

It is advised that the data be confirmed by direct observation.

Description of data collection methods: _____

12. Secondary Accidents:

Vehicle-vehicle _____
Vehicle-object _____

A 10-year accident history of the number of secondary accidents which may be attributed to the presence of the grade separation structure.

Explain the type of accidents occurring and the source of information: _____

EXPLANATION

13. Contribution:

Contribution by the city or county equal to or greater than 50% of the cost the project? Yes _____ No _____

14. Estimated Project Cost (April 1, 1995)

Right-of-way allowance.....\$ _____
 Preliminary Engineering....\$ _____
 Construction Engineering...\$ _____
 Total Engineering.....\$ _____
 Bridge Construction.....\$ _____
 Railroad work.....\$ _____
 Highway approaches and connections.....\$ _____
 Utility relocation.....\$ _____
 Contingencies.....\$ _____
 Removing existing crossing (where applicable).....\$ _____
 Total construction cost....\$ _____
 Total Project cost.....\$ _____

The estimated project cost shall be as of April 1, 1995. The cost shall be itemized as shown and any item left blank shall be explained. The estimated cost shall be limited to that portion of the project which is necessary to make the grade separation operable and to effect the separation of grades between the highway and the railroad tracks. The project cost shall be rounded to the nearest thousand dollars.

Note: For projects involving more than one crossing, complete the appropriate form for each individual crossing and also show a summary for the complete project.

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Grade Separation Program

Rail Crossings Engineering Section, CPUC

August 2005

Introduction



The Grade Separation Program is a state funding program to grade separate highway-rail crossings. A highway-rail crossing is the intersection of railroad track with any type of highway or pathway used by vehicles and/or pedestrians. Crossings are classified as either grade-separated or at-grade. Grade-separated crossings are where either the highway or the railroad track crosses over or under the other at different elevations, typically using a bridge structure. The elevation difference allows trains to travel through grade-separated crossings at the same time as highway users. At-grade crossings are where the highway and railroad tracks are at the same elevation, thereby creating a potential conflict between trains and highway users. At-grade highway-rail crossings pose significant public safety hazards to California's motorists and pedestrians.

The California Public Utilities Commission (hereinafter referred to as the Commission or CPUC) has jurisdiction over the safety of highway-rail crossings in California. The Rail Crossings Engineering Section (RCES) reviews projects for the safe design of crossings and recommends safety measures, such as automatic warning devices, to mitigate hazards for at-grade crossings users.

The optimal safety improvement for an at-grade highway-rail crossing is the complete separation of the railroad tracks from the roadway through construction of a grade-separation structure. Replacement of at-grade crossings with grade-separated crossings eliminates the fatalities and injuries that often result from collisions between train and highway users. It also eliminates blocking delays that cause traffic congestion, reduces the intrusive noise from train horns and automatic warning devices, and can improve emergency response times.

The Grade Separation Program helps local agencies finance the high costs of grade separating highway-rail crossings, thereby improving public safety and convenience throughout California.

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6. [Next Call for Projects](#)
7. [Commission and Caltrans Contacts](#)
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9. [Decision Tools for Grade Separations](#)
10. [Caltrans Guidelines for Grade Separation Allocations](#)
11. [Relevant Streets & Highways Code](#)

1. Background

The Commission establishes and furnishes to the California Transportation Commission (CTC) and the California Department of Transportation (Caltrans) a funding priority list of grade crossing projects most urgently in need of separation or alteration. Section 190 of the California Streets and Highways Code (referred to as S&H Code) requires the State's annual budget to include \$15 million for funding these projects. Section 2450 *et seq.* of the S&H Code sets out the procedure for administering these funds, and Section 2453 gives the CTC responsibility for allocating the funds to qualified projects.

S&H Code Section 2452 requires the Commission, by July 1 of each year, to establish the priority list for projects and furnish it to the CTC for use in the fiscal year beginning on that date. Our procedure is to promulgate the list for the first fiscal year by issuing an interim decision, and then to revise the list for the second year by deleting projects for which funds were actually allocated in the first. The Commission adopts the revised list by final decision in the second year of the proceeding, and begins the funding cycle again the following year by instituting a new proceeding.

In accordance with S&H Code Section 2452, the Commission is responsible for establishing criteria to be used in determining the priority of projects nominated for separation or alteration. The formula weighs vehicular and train volumes at crossings along with project costs, and considers a variety of special factors such as accident history, site visibility, the angle of the tracks to the road crossing geometry, blocking delays and other relevant factors. Staff conducts field inspections and performs safety evaluations.

Interested local agencies are responsible for submitting nominations with the required information. These agencies must be ready to share in the project's cost. The Commission requires applicants to attend the formal public hearings and provide testimony in support of their proposals.

2. Eligible Projects

The Commission will consider projects for the Grade Separation Priority List that are nominated by a city, a county, a separation-of-grade district, and any public entity providing rail passenger transportation services.

Eligible projects include: (1) projects for grade separation of existing or proposed crossings of city streets, county roads, or state highways, (2) grade crossings in need of elimination by removal or relocation of streets or railroad tracks, or (3) existing separations in need of alteration or reconstruction.

Section 2450(a) of the S&H Code states:

“Grade separation” means the structure which actually separates the vehicular roadway from the railroad tracks.

Although projects comprised of multiple grade separations are eligible, a project nomination shall not include multiple projects that are separate, distinct and clearly severable. The combination of severable projects into a single nomination would preclude the Commission from effectively determining which projects are most urgently in need of separation or alteration as required by S&H Code Section 2452. Furthermore, a single nomination cannot combine projects for both the elimination of existing grade crossings and the elimination of proposed grade crossings.

If a project qualifies as a multiple crossing or consolidation project, the overall priority is affected by a combined weighting of factors at each crossing. The factors include roadway traffic counts, number of accidents, and crossing geometrics. Multiple crossing or consolidation projects may qualify for more than the usual \$5 million maximum allocation.

3. Funding

Section 190 of the S&H Code requires the State’s annual budget to include \$15 million for funding qualified projects on the Grade Separation Priority List Program as ranked by the Commission.

For a project that eliminates an existing crossing or alters or reconstructs an existing grade separation, an allocation of 80% of the estimated cost of the project is made, with the local agency and railroad each contributing 10%. For a project that plans a grade separation of a proposed new crossing (currently no existing crossing), an allocation of 50% of the estimated project costs is made, with the remaining 50% contributed by the local agency.

Subsequent to the Commission's issuance of the Priority List, the California Department of Transportation (Caltrans) accepts applications for an allocation of funds on or before April 1 of each fiscal year. Guidelines on applying for Caltrans allocations are posted at the following website:

http://www.dot.ca.gov/hq/LocalPrograms/lam/prog_g/g19gdsep.pdf.

Caltrans distributes the available funding according to the priority ranking established annually by the CPUC. The project on the list with the highest priority, and which also meets the requirements detailed below, has first claim to the available funds to the extent of the yearly cap. The next project in the ranking which meets the requirements receives the next allocation, and so on, until the fiscal year's funds are exhausted. Two different formulas are used to make these computations, one for existing at-grade crossings nominated for separation or elimination and another for existing separations nominated for alteration or reconstruction.

Other critical requirements to secure an allocation from the Caltrans include:

1. Application for funding must be sent to Caltrans by April 1
2. Authority to construct the project must be obtained from the Commission
3. Environmental review documents must be complete
4. Construction, maintenance, and any other necessary agreements with the railroads must be signed
5. Final plans must be complete

Applicants should be aware of the following funding limits:

- Allocations are made on the basis of estimated cost.
- An allocation to a project may not exceed \$5 million from any one fiscal year.
- Caltrans may only allocate up to 80% of the estimated cost.
- Cumulative allocations may not exceed \$20 million to any one project.
- Allocations are to be reduced or augmented after the project is completed to reflect the actual cost to construct the grade separation.
- Parties anticipating the need for an allocation greater than \$5,000,000 shall be prepared to present evidence at the hearings to justify the additional award. See S&H Code 2454 (g) and (h) for more information.

The probability of projects being funded is dependent on a number of things. The first is the amount of available funding, which is \$15 million and which does not increase from year to year. In accordance with S&H Code 2454(g), funding for an individual project is limited to one-third of the total fund or \$5 million per year (whichever is less). A project may qualify for up to 80% of the total project cost or a maximum of \$20 million funded over a multiyear period, not to exceed five years, if it shows a saving to the state as indicated in S&H Code 2454(h).

The list is dynamic, responding to local demographic changes. Some projects may drop in ranking from one year to the next, as new nominations, where factors such as rising

vehicular traffic levels, increased train activity, or recent accident history indicate a greater public need for grade separation or improvement may rise on the list.

The system is not one where the first on the list is necessarily the first to be funded. For example, in fiscal year 2002-2003, Caltrans notified the Commission that projects ranking 14, 38 and 52 had received \$6 million, \$5 million, and \$5 million, respectively in allocated funds. For fiscal year 2003-2004, no new projects received an allocation, but previously funded projects received supplemental allocations. The same is projected for fiscal year 2004-2005; allocations are to be made to supplemental requests only.

Although the priority list ranking is an important factor in determining whether a project can be funded, securing an allocation requires a number of other requirements to be met. These requirements include completion of the design, establishment of a maintenance agreement with the affected railroad, completion of environmental review of the project, and procurement of the local funding share or remainder of the project cost. In recent years, these additional requirements have not been met by the vast majority of projects on the priority list, thereby allowing projects with what may appear to be a low ranking to be funded. If there is a possibility that a highway-rail grade separation project may be able to meet the requirements outlined above within two years of its nomination, RCES strongly recommends that the local agency apply for funding through the Grade Separation Program.

4. Formulas

There are two formulas used to rank projects: one for crossings nominated for separation or elimination and the other for existing grade separations in need of alteration or renovation.

Formula For Crossing Nominated For Separation Or Elimination

$$P = \frac{V * (T + 0.1 * LRT) * (AH + 1)}{C} + SCF$$

Formula For Existing Separations Nominated For Alteration Or Reconstruction

$$P = \frac{V * (T + 0.1 * LRT)}{C} + SF$$

Note: V- Average Daily Vehicle Traffic, T –Average Daily Freight/Commuter

Train Traffic, LRT – Average Daily Light Rail Train Traffic, C – Project Cost Share to be Allocated from Grade Separation Fund, AH – Accident History (number of accidents at crossing), SCF- Special Conditions Factor, SF - Separation Factor

Please see the current Order Instituting Investigation for more details on current Commission adopted formulas.

5. Current Priority List

Commission Decision (D.) 05-06-056, dated June 30, 2005 adopted the final order for the Section 190 Grade Separation Priority List for fiscal year 2005-2006, as required by S&H Code Section 2452. The Priority List for fiscal year 2004-2005, established by D.04-06-020, dated June 9, 2004 required no revision. D.05-06-056 also closes Investigation (I.) 03-07-009 (which established the list for 2004-2005 and revised it for 2005-2006). Decisions are published on the Commission's website: <http://www.cpuc.ca.gov>

6. Next Call for Projects

The Public Utilities Commission is responsible for ranking the nominated projects. The call for projects occurs every two years, therefore the nominated projects stand for two years, with those projects receiving an allocation during the first year being removed from the second year's list. The Commission is required to adopt a list by July 1 of each year. The list is then sent to the CTC and Caltrans. Caltrans allocates the funds.

The current call for projects opened July 21, 2005. The proceeding is online at the following site: <http://www.cpuc.ca.gov/proceedings/I0507016.htm> .

Click **COMMISSION INVESTIGATION** to download the Order Instituting Investigation and the Appendices which include the application forms and instructions. Applications are due October 21, 2005 to the Los Angeles office.

7. Commission and Caltrans Contacts

California Public Utilities Commission

Rosa Muñoz, PE
 Consumer Protection & Safety Division
 Rail Crossings Engineering Section
 320 West 4th Street, Suite 500
 Los Angeles, CA 90013-1105
 (213) 576-7078
rxm@cpuc.ca.gov

Caltrans

Lauren Clausen
 Rail Crossing Safety & Track Branch
 Caltrans - Division of Rail
 P.O. Box 942874
 Sacramento, CA 94274-0001
 (916) 653-0243
lauren_clauson@dot.ca.gov

8. Past Allocations

FY	Project	Proceeding	Rank	RR	Lead Agency	State Share
2001-02	Monte Vista Avenue	I.99-07-001	4	BNSF	City of Montclair	\$ 5,000,000.00
	Bailey Avenue & Others	I.99-07-001	16		City of San Jose	\$ 5,000,000.00
	Clovis Ave OH (1994-95)	I.93-07-032	8	UP	Fresno County	\$ 1,370,400.00
Remainder will be used up by supplemental & balance allocations						\$ 3,629,600.00
					Total Allocation	\$ 15,000,000.00
2002-03	Jurupa Road UP	I.01-07-008	14	UP	City of Riverside	\$ 6,000,000.00
	P & Q Streets UP	I.95-07-003	16	BNSF	City of Bakersfield	\$ 342,894.65
	7th Standard Road OH	I.01-07-008	38	BNSF	City of Shafter	\$ 5,000,000.00
	Mohawk Street UP	I.01-07-008	52	BNSF	Kern County/City of Bakersfield	\$ 5,000,000.00
					Total Allocation	\$ 16,342,894.65
2003-04	50th Ave OH	I.93-07-032	4	UP	City of Coachella	\$ 6,014,010.00
	Chestnut Avenue OH	I.97-07-014	18	UP	County of Fresno	\$ 778,748.00
	Kansas-Needham OH	I.95-07-003	1	UP	City of Modesto	\$ 3,418,631.00
	Calloway Drive UP	I.95-07-003	18	BNSF	Kern County	\$ 872,000.00
	Shaw-Marks UP	I.97-07-014	1	BNSF	City of Fresno	\$ 3,340,204.00
					Total Allocation	\$ 14,423,593.00
2004-05 (preliminary)	West Capitol Ave UP-Emergency Repair	I.99-07-001	26	UP	City of West Sacramento	\$ 19,045.42
Remainder will be used up by supplemental & balance allocations						
					Total Allocation	\$ 19,045.42

9. Decision Tools for Grade Separations

The topic of when to construct a grade separation is complex. The Commission does not have strict criteria that would require an existing at-grade highway-rail crossing to be grade-separated. However, resources are available which clearly specify when a grade separation should be considered, and when it may be well justified.

The Federal Highway Administration's (FHWA) Technical Working Group (TWG) published a document in November 2002 entitled 'Guidance on Traffic Control Devices at Highway-Rail Grade Crossings'. This document is available online. Page 27 and 33 of the published document discuss particular criteria that should be considered when assessing the need for grade separation.

When considering the need for grade separation of highway-rail crossings, it may be appropriate to use the Federal Railroad Administration's web-based tool "GradeDec.net". The software application, accessible at <http://GradeDec.net>, can be used to evaluate the benefits and costs of rail investment projects, specifically those involving highway-rail grade crossing improvements (including grade separation, closure, or warning device upgrades), within a risk analysis framework. GradeDec.net is particularly well-suited for analysis of rail corridors.

10. Caltrans Guidelines for Grade Separation Allocations

Please see Chapter 19 of the Local Assistance Program Guidelines published by Caltrans for further details regarding allocations from the Grade Separation Program. <http://www.dot.ca.gov/hq/LocalPrograms/lam/lapg.htm>

11. Relevant Streets & Highways Code

Funding for projects included on each annual priority list is provided by S&H Code Section 190, and the basis for allocation and state requirements are contained in S&H Code Sections 2450-2461.

CALIFORNIA CODES - STREETS AND HIGHWAYS CODE SECTION 190-191

190. Each annual proposed budget prepared pursuant to Section 165 shall include the sum of fifteen million dollars (\$15,000,000), which sum may include federal funds available for grade separation projects, for allocations to grade separation projects, in accordance with Chapter 10 (commencing with Section 2450) of Division 3. The funds included for such purposes pursuant to this section each fiscal year, or by any other provision of law, shall be available for allocation and expenditure without regard to fiscal years.

191. Prior to each July 15, the department shall prepare and forward to the Controller a report identifying the amounts to be deducted from the allocations under Sections 2104 and 2107 as provided in Sections 2104.1 and 2107.6. The amounts shall be a proration of five million dollars (\$5,000,000), less the federal subventions for grade separation projects included in allocations made pursuant to Chapter 10 commencing with Section 2450) of Division 3 in the preceding fiscal year in excess of three million dollars (\$3,000,000). The proration shall be based on the ratio that grade separation allocations to cities, and grade separation allocations to counties, bears to the total allocations in the preceding fiscal year.

CALIFORNIA CODES - STREETS AND HIGHWAYS CODE SECTION 2450-2461

2450. For purposes of this chapter:

(a) "Grade separation" means the structure which actually separates the vehicular roadway from the railroad tracks.

(b) "Project" means the grade separation and all approaches, ramps, connections, drainage, and other construction required to make the grade separation operable and to effect the separation of grades. Such grade separation project may include provision for separation of nonmotorized traffic from the vehicular roadway and the railroad tracks. If a separation of nonmotorized traffic is not to be included in a project, there shall be an affirmative finding that the separation of nonmotorized traffic is not in the public interest.

On any project where there is only one railroad track in existence, the project shall be built so as to provide for expansion to two tracks when the Director of Transportation determines that the project is on an existing or potential major railroad passenger corridor. Such project may consist of:

(1) The alteration or reconstruction of existing grade separations.

(2) The construction of new grade separations to eliminate existing or proposed grade crossings.

(3) The removal or relocation of highways or railroad tracks to eliminate existing grade crossings.

(c) "Highway" means city street, a county highway, or a state highway which is not a freeway as defined in Section 257.

(d) "Railroad" means a railroad corporation.

2451. (a) For the purposes of this chapter, "local agency" includes a city, a county, a separation-of-grade district, and any public entity that provides rail passenger transportation services.

(b) Before a separation-of-grade district may apply to the commission pursuant to this chapter for an allocation for a project, the district shall consult with and obtain the written consent of the city in which the project is located, or the county if the project is located in unincorporated territory.

2452. Prior to July 1 of each year, commencing with 1974, the Public Utilities Commission shall establish a list, in order of priority, of projects which the commission determines to be most urgently in need of separation or alteration. Such priority list shall be determined on the basis of criteria established by the Public Utilities Commission. Where a project involves the relocation of railroad tracks or highways and the closure of grade crossings, the Public Utilities Commission shall indicate on the priority list which of the grade crossings eliminated would have been considered urgently in need of a grade separation.

2453. From the funds set aside pursuant to Section 190, as well as from any other funds that may be set aside for purposes of this chapter, the California Transportation Commission shall make allocations for projects contained in the latest priority list established pursuant to Section 2452. Such allocations shall be made for preconstruction costs and construction costs. Where allocations are made to a local agency, the requirements of Sections 2456 and 2457 shall first be met.

2453.5. The department may submit its comments and recommendations to the commission on any project for which an allocation is to be made.

2454. Allocations made pursuant to Section 2453 shall be made on the basis of the following:

(a) An allocation of 80 percent of the estimated cost of the project shall be made; except that whenever contributions from other sources exceed 20 percent of the estimated cost, the allocation shall be reduced by the amount in excess of 20 percent of the estimated cost.

(b) An allocation of 50 percent of the estimated cost of the project shall be made for a proposed crossing.

(c) No allocation shall be made in excess of 50 percent of the estimated cost of the project unless the grade crossing to be eliminated has been in existence for at least 10 years prior to the date of allocation.

(d) On projects which eliminate an existing crossing, or alter or reconstruct an existing grade separation, no allocation shall be made unless the railroad agrees to contribute 10 percent of the cost of the project.

(e) Where a project does not include a grade separation, but eliminates existing grade crossing or crossings, the allocation shall not exceed the estimated allocation that would have been made for the grade separation which is no longer needed because of the elimination of the grade crossing by the project and which is indicated on the priority list to be urgently in need of grade separation.

(f) Where the project includes the separation of a highway and a railroad passenger service operated by a city or county, the operating agency shall contribute 20 percent of the cost of the project. The priority listing for such projects shall be in accordance with criteria established for such railroad passenger service by the Public Utilities Commission.

(g) Notwithstanding subdivisions (a) to (f), inclusive, the total of such allocations for a single project shall not exceed five million dollars (\$5,000,000) without specific legislative authorization, except that the amount for a single project may be increased to either (1) an amount that includes the federal construction cost index increase each year since 1976, or (2) an amount which does not exceed one-third of the total funds appropriated for grade separation projects for the year of allocation, whichever amount is less, as determined each year by the Public Utilities Commission.

(h) Notwithstanding subdivisions (a) to (g), inclusive, a single project in excess of five million dollars (\$5,000,000), but not exceeding twenty million dollars (\$20,000,000), shall be considered without specific legislative authority, if the project (1) is included in the Public Utilities Commission's priority list of projects scheduled to be funded, (2) eliminates the need for future related grade separation projects, (3) provides projected cost savings of at least 50 percent to the state or local jurisdiction, or both of them, by eliminating the need for future projects, and (4) alleviates traffic and safety problems or provides improved rail service not otherwise possible. Projects approved pursuant to this subdivision shall be funded over a multiyear period, not to exceed five years, and the allocation for any one of those years shall not exceed the amount prescribed by subdivision (g) for a single project.

An agency which has received an allocation for a project approved pursuant to this subdivision shall not be eligible for an allocation for another project under this subdivision for a period of 10 years from the date of approval of that project. Not more than one-half of the total allocation available in any one fiscal year for grade separation projects may be used for the purposes of this subdivision.

(i) Notwithstanding any of the above provisions of this section or any other provision of law, when the state or local agency uses funds derived from federal sources in financing its share of project costs, the railroad contribution, where required by federal law or regulation, shall be computed pursuant to federal law. However, the allocation made pursuant to this chapter shall be computed as though such matching contribution was derived from nonfederal sources and shall be computed as though the railroad had made its contribution pursuant to state law rather than pursuant to federal law. Where the contribution of the railroad is computed according to federal law or regulation because of the use of federal funds in the allocation for a project, the allocation shall be increased by the amount the share of the railroad is reduced below 10 percent of the estimated cost of the project.

2454.2. The planned removal of trackage of the Sacramento Northern Railway, the construction of substitute tracks and track connections, the elimination of 10 existing grade crossings, the acquisition of necessary rights-of-way, and all necessary associated work and appurtenances, to enable Sacramento Northern Railway trains to operate via existing trackage of the Atchison, Topeka & Santa Fe Railway, in and adjacent to the

City of Pittsburg, shall be eligible for an allocation under Section 2453. The Public Utilities Commission shall determine to what extent, if any, the railroad shall contribute to the project. Such eligibility shall not be contingent on whether the railroad agrees to contribute, and the California Highway Commission shall not deny an allocation on such grounds.

The Legislature hereby finds and declares that it is necessary to enact this special law regarding the Pittsburg track removal and grade crossing elimination project because of the existence of the following special facts and circumstances:

The predominant traffic carried by the Sacramento Northern Railway consists of high explosives, bombs, shells, and ammunition destined for the United States Navy ammunition depot at Port Chicago. Such trains traverse residential areas, cross 10 streets at grade, and constitute a grave hazard to the life and safety of the residents of Pittsburg. Sacramento Northern Railway is willing to remove its tracks and operate its trains via the tracks of the Atchison, Topeka & Santa Fe Railway, which is already partially grade separated and which offers a safer route. However, Sacramento Northern Railway will sacrifice certain of its own facilities, will receive no benefits, and therefore is unwilling to contribute any portion of the cost incidental to the removal of its trackage or for the construction of substitute track connections and appurtenances or for the acquisition of rights-of-way.

Based on the foregoing, the Legislature therefore finds and declares that it is necessary that the Sacramento Northern track removal and relocation project in and adjacent to the City of Pittsburg shall be eligible for a grade separation allocation, and that subdivision (d) of Section 2454, relating to a contribution by the railroad, shall not apply for purposes of qualifying for an allocation under Section 2453.

2454.5. (a) Whenever the National Railroad Passenger Corporation (AMTRAK) contributes an amount equal to one-third of the total cost to the state and local agencies of a grade separation project, or any lesser percentage as the National Railroad Passenger Corporation (AMTRAK) and the California Transportation Commission may agree upon, the cost to the participating parties under existing law shall be reduced proportionately.

(b) Any such grade separation project may be assigned a priority by the Public Utilities Commission that is higher than the priorities assigned to all other such projects for which the National Railroad Passenger Corporation (AMTRAK) has not made a contribution.

2455. After an allocation is made to a local agency by the commission, the local agency and the department shall enter into an agreement concerning the handling and accounting of funds, including procedures to permit prompt payment for the work accomplished, and relative to any other phase of the work. The procedures providing for prompt payment of work accomplished shall be drawn in such a manner as to avoid the necessity for the local agency to utilize funds in an amount greater than the local agency's share of the project costs. Such agreement may establish procedures for the programming of the work of the project in order to assure optimum cash flow utilization of funds made available by the Legislature for purposes of this chapter.

2456. An allocation for construction costs, including preconstruction costs if not already allocated, shall be made to a local agency only if it furnishes evidence satisfactory to the department that all necessary orders of the Public Utilities Commission have been executed, that sufficient local funds will be made available as the work of the project progresses, that all necessary agreements with affected railroad or railroads have been executed that, if required, all environmental impact reports have been prepared and approvals obtained, and that all other matters prerequisite to the award of the construction contract can be accomplished within one year after the allocation. Local funds shall be deemed available to the amount of any general obligation bonds authorized but unsold if it is determined that such bonds may be issued and sold by the local agency at any time.

2457. Preconstruction costs (engineering, right-of-way, preparation of environmental impact reports, and utility relocation) expended by a local agency prior to any allocation shall be included in the total cost of the project even though expended prior to an allocation. Allocations shall be made for preconstruction costs to a local agency that submits evidence satisfactory to the department that the local agency will be able to meet the requirements for an allocation for construction costs, and that preconstruction costs will exceed the local share of the cost of the project. A local agency may also proceed with the advertising for bids and the construction of a project without prejudice to its right to receive an allocation if an allocation is, in fact, made for such project within the same fiscal year that the construction contract was awarded.

2458. Except as provided in this section, allocations shall remain available until expended. If a construction contract has not been awarded within one year after an allocation for construction costs, the commission may order the allocation canceled and such funds shall revert to the fund set aside for purposes of this chapter. All or any part of an allocation for preconstruction costs may be canceled and such funds shall revert to the fund set aside for purposes of this chapter upon a finding that insufficient progress is being made to complete the project. Where an allocation is canceled pursuant to this section, the local agency shall reimburse the fund set aside for purposes of this chapter the portion of the allocation which is not reverted as set forth in this section. The department shall determine, with the local agency, as to the time of repayment.

2459. If the actual cost of the project is less than estimated, the allocations made for such project shall be reduced accordingly and the excess shall revert to the fund set aside for the purposes of this chapter. If the actual and necessary cost of the project exceeds the estimate, the allocations made for such project shall be augmented proportionately by a supplemental allocation. An allocation, however, need not be made for a supplemental allocation, unless the commission is satisfied that funds would have been allocated for the project had the actual costs been used in determining its ranking on the priority list.

2460. If more projects comply with the requirements of this chapter than can be financed from funds set aside for purposes of this chapter, allocations shall be made to those projects highest on the priority list established pursuant to Section 2452. The commission may make allocations for any project when it determines, at the time of

allocation, that sufficient funds are available for all projects which are higher on the priority list and which are, or are reasonably expected to become, eligible during the fiscal year.

2460.5. From funds remaining after allocations for projects higher on the priority list, the commission shall offer to allocate the remaining funds for the next eligible project on the priority list, even though the amount of the remaining funds is less than the amount the local agency is entitled to for that project.

The commission, in the next fiscal year, shall allocate to the local agency an additional amount equal to the difference between the amount the local agency was eligible to receive and the amount of the reduced allocation.

The total of the amount of allocations for a single project, including, but not limited to, any allocation pursuant to this section, shall not exceed the amount prescribed by subdivision (g) of Section 2454 without specific legislative authorization.

2460.7. A project that is on the priority list may be constructed by a local agency prior to the time that it reaches a high enough priority for funding under this chapter. The project shall retain its eligibility for listing on subsequent priority lists established by the Public Utilities Commission pursuant to Section 2452 by applying the traffic, accident, and other conditions existing at the project location at the time immediately preceding the start of construction.

If the project subsequently reaches a high enough priority for funding under this chapter, funds shall be allocated and paid to the local agency in the same manner, and under the same terms and conditions, as any other project funded under this chapter on the basis of the cost of construction of the project. To be eligible for subsequent funding under this section, both of the following requirements shall be met:

(a) The work on the project shall be performed under terms and conditions established by the department.

(b) The project has received the prior approval of the California Transportation Commission.

2461. Allocations for specific projects on the state highway system only shall be deemed expenditures within the county in which the project is situated for the purpose of compliance by the department and the commission with Sections 188 and 188.8.