

**CITY OF OAKLAND**  
**AGENDA REPORT**

TO: Office of the City Administrator  
ATTN: Deborah Edgerly  
FROM: Community and Economic Development Agency – Planning and Zoning  
DATE: March 28, 2006

RE: **Informational Report for a Special Concurrent Meeting of the Oakland  
Redevelopment Agency/City Council for an Informational Workshop on the  
Proposed Oak to Ninth Redevelopment Project**

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**SUMMARY**

The City Council/Redevelopment Agency has requested an informational meeting on the proposed Oak to Ninth Mixed Use Development Project. The purpose of the meeting is to discuss the proposed project, the policy issues related to the project, review the environmental documentation and application materials, accept public testimony, and ask questions of the project sponsors, staff, and members of the public. This meeting is a prelude to the anticipated public hearings that will be held to formally consider the project later in the Spring. No action or direction from the Council is requested at this meeting.

The Landmarks Preservation Advisory Board (LPAB) and the Parks and Recreation Advisory Commission (PRAC) have met and made recommendations to the Planning Commission about the proposed project. The Planning Commission held a public hearing on March 15, 2006 to discuss the recommendations of the LPAB and PRAC, to consider certifying the Environmental Impact Report, approving the Vesting Tentative Map and Conditions of Approval, and approving the Preliminary Development Plan and the Oak to Ninth Design Guidelines. Staff will orally report the outcome of this meeting at the Redevelopment Agency/City Council workshop.

In addition, the Planning Commission was requested to recommend that the City Council/Redevelopment Agency approve amendments to the *Estuary Policy Plan* text and land use map; adopt the Planned Waterfront Zoning District-4; amend the zoning maps; approve the Development Agreement; and adopt a report and recommendations to the Redevelopment Agency and the City Council to adopt the proposed amendments to the Central City East Redevelopment Plan and the Central District Urban Renewal Plan.

The March 15, 2006 Planning Commission staff report and all attachments being considered for action are enclosed with this packet. This material contains comprehensive information about the proposed project and provides specific recommendations for project conditions and requirements. Staff has appended the report as background information for this meeting and will highlight major aspects of the project as a framework for discussion with the City Council and Redevelopment Agency.

## **FISCAL IMPACT**

This report is informational only, no fiscal impacts are included.

## **BACKGROUND**

### Project Description

Oakland Harbor Partners (OHP) is proposing to redevelop 64 acres of waterfront property by converting an underutilized, maritime and industrial area into a mixed-use neighborhood with residential, retail/commercial, open space, and marina uses. The majority of existing uses and structures on the project site would be demolished. Approximately 29.9 acres (or 46%) of the site would be developed with parks and open spaces, including the existing Estuary Park and Jack London Aquatic Center.

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

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

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

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

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

Requested Approvals

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

Entitlements	Review and Approval Required		
	Planning Commission Approval	Planning Commission Recommendation	City Council* Redevelopment Agency Approval
General Plan Amendment		X	X*
Redevelopment Plan Amendments		X	X
Rezoning and Zoning Code PWD – 4 District		X	X*
Preliminary Development Plan (PDP)	X		
Final Development Plan (s) (FDP)	X		
Oak to Ninth Design Guidelines	X		
Vesting Tentative Subdivision Map	X		
Final Subdivision Map(s) - future			X*
Development Agreement		X	X*
Conditional Use Permit – Park activities	X		

\* City Council approval only

Upon release of the Final Environmental Impact Report, staff scheduled public hearings with the Boards and Commissions that are required to make recommendations to the Planning Commission and City Council on the proposed project.

**KEY ISSUES AND IMPACTS**

The following section presents a summary of what staff believes to be the major remaining issues. These issues are also presented in more detail in the Planning Commission’s March 15, 2006 staff report. It should be noted that during the Planning Commission’s consideration of the draft conditions of approval, the draft Development Agreement and other information, other issues may arise.

Vision of the Waterfront

**Issue #1:** *The proposal before the City identifies an alternative vision to fulfill the goals, policies and objectives in the Estuary Policy Plan.* The approval of this project would modify

the land uses, development intensity, building height and form but not contradict the underlying original vision of the *Estuary Policy Plan* (environmental clean-up, increased access, new system of parks and open spaces, etc.). The key issue for the City is whether the original vision is feasible given the current costs of development, and whether the original vision was actually sustainable given the amount of development, parks and open spaces vs. ongoing costs for adequate operation and maintenance.

An extensive analysis of the project's compatibility and consistency with the adopted Estuary Policy Plan (EPP) and the General Plan are presented in the March 15, 2006 Planning Commission staff report (pages 11-16), as well as in the Draft EIR (Section IV.A. 1- 43). At issue is how these goals, policies and objectives are met, not whether they will be met. Specifically, the EPP assigns two land use designations to the project site. Estuary Park and Jack London Aquatic Center (except within approximately 200 feet of the Embarcadero) are designated as Parks, Open Space and Promenades (P). The remaining portion of the project is designated as Planned Waterfront Development (PWD-1).

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

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

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

### Parks, Open Space, and Bay Trail

**Issue #2:** *The Estuary Policy Plan envisioned an integrated system of parks and open space for the Oak to Ninth Area.* The parks were generally described and no specific acreages were adopted as part of the plan. The question now is whether the proposed system of parks, open space and shoreline trail are consistent with the original *Estuary Policy Plan*.

When the EPP was prepared, there was consensus in the community that future improvements along the Oakland waterfront contain a considerable amount of public parks and open space. The locations for the open spaces and parks were specified in illustrative diagrams for the Oak to Ninth project and included in the EPP EIR for purposes of study. There are three essential differences between the EPP vision and the project sponsor's proposal : 1) a portion of the "Open Meadow" in the EPP has been converted to a development area and a smaller "Channel Park" has been included; 2) a development area has been included in the area of Estuary Park and 3) although conceptual, the EPP diagrams indicate a total of approximately 43 acres of parks and open space for the Oak to Ninth area (see DEIR, p. IV.L-17) vs. the applicant's proposal of approximately 30 acres. Both concepts call for the development of parks to fulfill the overall open space policy of a necklace of parks along the waterfront.

Both the EPP and the applicant's proposal show the Bay Trail incorporated within these open space areas and connected to adjacent segments. In both the EPP concept and the project applicant's, the parks are proposed for fairly passive activities; the project applicant has specified a children's playground, a bocce ball court, and a dog play area. The Bay Trail will provide opportunities for bicycle riders and pedestrians.

#### On-going Maintenance and Operation of the Parks and Open Space by Project Sponsor

**Issue #3:** *The construction, maintenance and operation of the parks, open space and trails are proposed to be implemented through the formation of a Community Facilities District (CFD).*

The project sponsor is proposing to form a Community Facilities District (CFD) under the Mello-Roos Act so that funding would be available for the long-term, on-going maintenance of the parks. Through the Development Agreement (Section 4.4) and the Conditions of Approval (38-39), the City and project sponsor would cooperate to form such a District. Thereafter, a Community Services District (CSD) could be formed to implement the park maintenance standards set forth in the Development Agreement (Exhibit F). The CFD would be funded through property assessments on the residential developments on the property.

#### Historic and Cultural Resources

**Issue #4:** *Most of the existing Ninth Avenue Terminal Building is proposed to be demolished as the result of the new development, to accommodate a new Shoreline Park.* The Ninth Avenue Terminal Shed is 180,000 square feet in size, consisting of a portion built in the 1920s and an addition constructed in the 1950s. The project proposes to retain 15,000 square feet of the bulkhead of the Terminal shed, and demolish the remaining 165,000 square feet. Public comments received throughout the public outreach and review process have ranged from support for retaining the bulkhead, as proposed in the project, retaining the 1920s portion of the building, and retaining the entire structure.

The City's policy documents do not provide clear guidance on this issue and the objectives of historic preservation and the provision of a large, waterfront open space area are competing in this instance. From all the discussions to date, there seems to be general consensus that saving the entire building is infeasible and would directly compete with the value of providing shoreline access and open space along this portion of the Estuary. The key issue appears to be what portion of the building to save. Presented below are three options, along with the consequences:

Option 1: Approve the project sponsor's proposal of saving 15,000 square feet, and require the set of mitigation measures set forth in Conditions of Approval 25 and 26, calling for submittal of a landmark application, integration of the historic qualities and character of the building into the reuse plan and adjacent park and payment of a \$500,000 in-lieu fee for historic preservation activities in the City.

Consequences:

- The historic building would be irreparably damaged;
- Activities in the building could be supported with the income from rental and other activities;
- The City would gain a new shoreline park and open space area consistent with the EPP.
- The \$500,000 could be used to support other historic preservation efforts in the City.

Option 2: Approve retaining a larger portion of the building (between 30,000 and 60,000) square feet, and require the set of mitigation measures set forth in the Conditions of Approval 25 and 26 except for the payment of the in-lieu fee.

Consequences:

- The historic building would be irreparably damaged;
- Activities in the building could not be supported with the income from rental and other activities thereby requiring an on-going subsidy from the project sponsor and/or the City;
- A larger funding commitment would be required for the rehabilitation of the building by the project sponsor and/or the City;
- The City would gain a smaller shoreline park (between .75 and 1.25 acres smaller depending on the portion of the building retained).
- There would not be any direct funding provided for historic preservation elsewhere in the City.

Option 3: Approve retaining the entire 1920's portion of the building (approximately 90,000 square feet), and require the set of mitigation measures set forth in the Conditions of Approval 25 and 26 except for the payment of the in-lieu fee.

Consequences:

- The historic building would be irreparably damaged;

- Activities in the building could not be supported with the income from rental and other activities thereby requiring an even larger on-going subsidy from the project sponsor and/or the City;
- A larger funding commitment would be required for the rehabilitation of the building by the project sponsor and/or the City;
- The City would not gain a shoreline park
- There would not be any direct funding provided for historic preservation elsewhere in the City.

There have been many comments about the structural integrity of the building and its potential for adaptive reuse. Attached to this staff report are a number of related reports concerning the financial feasibility of saving various portions of the building and the subsequent financial impact. These are included as Attachment D.

#### Terms and Length of Development Agreement

**Issue #5:** *The proposed 20-year Development Agreement presents a series of obligations and benefits for the City and the Redevelopment Agency.* A Development Agreement (DA) has been drafted to vest or “lock in” the development approvals for a 20 year period. This type of agreement was approved for the Jack London Square Development Project in 2004. The following list summarizes the major deal points; the draft DA is attached as Exhibit L.

#### City Commitments: Oakland Harbor Partners (OHP) requests of the City:

- 20 years of vested rights enabling the project to be developed in discreet phases, consistent with the proposed Preliminary Development Plan and Oak to Ninth Design Guidelines.
- Guarantee that City will not impose any new development fees other than those stipulated in the DA and subject to adopted fee increases over time.
- No new project requirements other than through the DA and those listed in the project approvals and mitigation measures.
- Implementation of each mitigation measure concurrent with the need for the mitigation as the project is sequenced, as set forth in the Conditions of Approval.
- The right to assign certain of its rights and/or obligations under the DA without the City’s consent to a qualified lender, affiliate, the builder of a building on a “finished” lot or a pre-qualified transferee. All other assignments would require the consent of the City.

Developer Commitments: In exchange for the City commitments set forth above, OHP proposes to:

- Provide for the dedication, improvement and maintenance (in perpetuity) of approximately 30 acres of public parks, all at Project Sponsor's cost.
- Maintain certain public rights-of-way improvements (street trees, landscaping, street lights, street furniture, storm drains and sidewalks) through a CSD/CFD, or other type of agreement, rather than as an obligation of the City's General Fund, in perpetuity.
- Use RDA and Developer funds to allow units equal to 20% of the units located within the Central City East Redevelopment Plan Area to be developed or sold as affordable housing units.
- Ensure that qualified Oakland residents are employed to work 6% of the construction (subject to a maximum of 300,000 job hours).
- Provide \$1,650,000 in financial assistance to local job training programs to serve local residents in the Eastlake/Chinatown, Fruitvale and Lower San Antonio neighborhoods.
- Abide by the Port's non-discrimination and small local business utilization and prevailing wage policy.
- Comply with a specific phasing schedule, which will require the Developer to complete specified public improvements prior to certain milestones of development, as set forth in Exhibit C - Phasing Schedule, to the draft Development Agreement.
- Install open space and Bay Trail improvements with each phase of development as per the Exhibit C - Phasing Schedule.
- Restore a portion of the bulkhead of the Ninth Avenue Terminal shed building. OHP shall have the right of first offer to lease the building during the term of the DA.
- Underground utilities from 5<sup>th</sup> Avenue to 10<sup>th</sup> Avenue on both sides of the Embarcadero and along the south side of the project's Embarcadero frontage from 5<sup>th</sup> Avenue to the Cash and Carry site.
- Widen and install a median and landscaping along the Embarcadero.
- Fund private shuttle service and other transportation demand reduction measures pursuant to an approved Transportation Demand Management Plan.
- Comply with the Port's Art in Public Places Ordinance.

**Issue # 6:** *Provide an affordable housing component for the project in conjunction with the RDA's obligation for the Central City East Redevelopment Plan and as an obligation of the project under the Development Agreement.* A description and analysis of the draft affordable housing proposal is presented in Attachment C to this staff report.

## **SUSTAINABLE OPPORTUNITIES**

Economic: The project will redevelop an underutilized industrial area with retail and commercial job opportunities and sale taxes, will add up to 3,100 new housing units to the City's housing stock, both rental and homeownership; will participate in job training and hiring programs, and will add tax increment funds to the Redevelopment Agency.

Environmental: The project will clean up contaminated soil; prevent contaminated surface runoff from entering the Estuary; provide opportunities for the public to enjoy 30 acres of waterfronts parks; and will use energy efficient construction techniques and materials in the project.

Social Equity: The project will provide a variety of housing types to people with a range of incomes; will provide public access, both physical and visual, to the waterfront; will work with AC Transit to extend public transportation to the site and the waterfront; will provide a shuttle for project residents that will take them to BART and downtown; and will provide 30 acres of parks and open space, including the Bay Trail.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

Senior citizens and disabled persons will have access to some of the affordable housing units and with the new recreational facilities proposed, will have convenient access to the public parks and the waterfront.

## **RECOMMENDATION(S) AND RATIONALE**

This is an informational meeting to provide an opportunity to discuss issues and opportunities presented by the proposed project. No recommendations are proposed at this time.

**ACTION REQUESTED OF THE CITY COUNCIL/REDEVELOPMENT AGENCY**

Staff recommends that the City Council/Redevelopment Agency take public testimony, consider the information presented in this report, and direct staff accordingly.

Respectfully submitted,

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Community and Economic Development Agency

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Planning and Zoning, Major Projects

APPROVED AND FORWARDED TO THE  
CITY COUNCIL/REDEVELOPMENT AGENCY

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OFFICE OF THE CITY ADMINISTRATOR

Item: \_\_\_\_\_  
City Council/Redevelopment Agency  
March 28, 2006

Attachments:

- A. March 15, 2006 Planning Commission Staff Report
- B. Oak to Ninth Affordable Housing Analysis – dated March 14, 2006
- C. Draft Development Agreement – dated March 8, 2006 – Planning Commission Draft
- D. Consultants Reports:
  - D.1: Ninth Avenue Pier Renovation, Structural Feasibility Study Prepared by Rutherford and Chekene Consulting Engineers (February 6, 2006)
  - D.2: Oak to Ninth Avenue Development Feasibility Analysis for Shoreline Improvements and Pier Retrofit, Prepared by Moffatt and Nichol (February 5, 2006)
  - D.3: Oak to 9<sup>th</sup> Mixed Use Project, Ninth Avenue Terminal Reuse Feasibility Prepared by Economic and Planning Systems, Inc. (February 21, 2006)
  - D.4: Oak to 9<sup>th</sup> Mixed Use Project Feasibility Analysis of Alternatives 1B, 2, 3 Prepared by Economic and Planning Systems, Inc. (January 31, 2006)
  - D.5: Oak to 9<sup>th</sup> Mixed Use Project, Fiscal Impact Analysis, Prepared by Economic and Planning Systems, Inc. (July, 2005)
- E. Proposed Conditions of Approval – March 15, 2006 Planning Commission version – identified as Exhibit C
- F. Proposed Mitigation Monitoring and Reporting Program – March 15, 2006 version – identified as Exhibit B
- G. Preliminary Development Plan, Design Guidelines and Vesting Tentative Map
- H. Proposed General Plan Amendments
- I. Proposed New Zoning District (PWD-4) – requirements and standards
- J. Proposed Zoning District Map