

Case File Numbers: ER 04-0009, GP 06-009, RZ 04-384, PUD 06-010,
TTM 7621, CP 06-051, T 06-0001, DA 06-011, CU 06-088

March 15, 2006

# 2.	Location:	Oak Street to Ninth Avenue Approximately 64 acres bounded by Embarcadero Road, the Oakland Estuary, Fallon Street, and Tenth Avenue Assessor Parcel Numbers: various
Proposal:		Public Hearing on a proposal to develop a new mixed use development on 64 acres which includes up to 3,100 residential units, 200,000 square feet of ground-floor commercial space, a minimum of 3,950 parking spaces, 29.9 acres of parks and public open space, two renovated marinas (total 170 boat slips), and an existing wetlands restoration area. The existing buildings on the site will be demolished with the exception of a portion of the Ninth Avenue Terminal shed building and the Jack London Aquatic Center. The project also proposes to demolish a portion of the Ninth Avenue Terminal wharf structure. All trees on the site are proposed for removal. The project does not include approximately six acres of privately-held property along and east of Fifth Avenue that contain a mix of commercial and industrial uses, as well as a small community of work/live facilities.
Applicant:		Oakland Harbor Partners (Signature Properties & Reynolds and Brown)
Contact Person/Phone Number:		Michael Ghielmetti, Signature Properties (925) 463-1122 Dana Parry, Reynolds and Brown (925) 674-8400
Owner:		Port of Oakland
Case File Numbers:		ER 04-0009, GP 06-009, RZ 04-384, PUD 06-010, TTM 7621, CP 06-051, T 06-0001, DA 06-011, CU 06-088
Planning Permits Required:		General Plan Amendment (Estuary Policy Plan text and land use map); Central City East Redevelopment Plan Amendment; Central District Urban Renewal Plan Amendment; New Planned Waterfront Zoning District (PWD-4); Zoning Map Amendments; Vesting Tentative Subdivision Map; Preliminary Development Plan; Design Review; Creek Protection Permit; Tree Removal Permit; and a Conditional Use Permit for activities proposed in the Open Space-Regional Serving Park zone. OHP is also requesting a Development Agreement.
General Plan:		Estuary Policy Plan Designations: Planned Waterfront Development-1 and Park, Open Space, and Promenades
Zoning:		M-40, Heavy Industrial S-2/S-4 Civic Center/Design Review Combining Zone
Environmental Determination:		The Final Environmental Impact Report was published on February 1, 2006.
Historic Status:		Ninth Avenue Terminal – Oakland Cultural Heritage Survey (OCHS) Rating A; City of Oakland Landmark Status Pending.
Service Delivery District:		Downtown Metro and San Antonio 3
City Council District:		2 – Pat Kernighan, 3 - Nancy Nadel
Action to be Taken:		(1) Certify the Environmental Impact Report (SCH #2004062013); (2) Approve Vesting Tentative Subdivision Map No. 7621; the Preliminary Development Plan, Oak to Ninth Design Guidelines, and the Conditional Use Permit for activities proposed in the OS-RSP zone (contingent upon final adoption of General Plan Amendment and Rezoning); (3) Recommend to the City Council approval of amendments to the Estuary Policy Plan text and map; adoption of the Planned Waterfront Zoning District-4; amendments to the zoning maps; and approval of the Development Agreement; (4) Adopt a report and recommendations to the Redevelopment Agency and the City Council on adoption of the proposed amendments to the Central City East Redevelopment Plan and the Central District Urban Renewal Plan.
For Further Information:		Contact Margaret Stanzone , Project Planner, Major Projects (510) 238-4932 or mstanzone@oaklandnet.com

SUMMARY

Purpose of This Meeting. An application for the Oak to Ninth Mixed Use Development Project, consisting of a mix of residential, commercial, civic, and parks and open space uses, was submitted to the City in December 2005. City staff, based on public comments, the results of numerous public meetings with the community, the Park and Recreation Advisory Commission, the Landmark Preservation Advisory Board, the Design Review Committee and the Planning Commission, has now prepared recommended actions for the Planning Commission to review and consider. These actions are listed below:

- (1) Certification of the Final Environmental Report including the adoption of required findings under the California Environmental Quality Act and the approval of the Mitigation Monitoring and Reporting Program.
- (2) Amendments to the Estuary Policy Plan (EPP). Changes are proposed to the Oak to Ninth District Chapter of the text and to the land use classifications. Changes to the text allow residential uses in the proposed location at a density higher than specified in the EPP. A new land use classification, Planned Waterfront Development-4, is proposed for the 34 acres of private development. The remaining 30 acres of public parks and open space will be designated Parks.
- (3) Amendments to the Central City East Redevelopment Plan to change the Estuary Policy Plan land use designation from Planned Waterfront Development-1 to Planned Waterfront Development-4 and Parks.
- (4) Amendments to the Central District Urban Renewal Plan to change the Estuary Policy Plan land use designation from Parks and Planned Waterfront Development-1 to Planned Waterfront Development-4 and to Parks.
- (5) Adoption of a new zoning district, Planned Waterfront Zoning District-4 and incorporate the zoning district into Chapter 17 of the Municipal Code.
- (6) Rezoning of the project site from Heavy Industrial (M-40) to Planned Waterfront Zoning District-4 (PWD-4) and Open Space-Regional Serving Park (OS-RSP), and maintain the Civic Center/Design Review Combining Zone (S-2/S-4) on the Jack London Aquatic Center site.
- (7) Approval of Vesting Tentative Tract Map. No. 7621 dated ____ and the proposed Conditions of Approval.
- (8) Approval of the Preliminary Development Plan dated ____ and the Oak to Ninth Design Guidelines.
- (9) Approval of a Development Agreement (DA) that would provide for a vested entitlement period (20 years), specify requirements for phasing of project development, stipulate what City regulations will apply throughout the term of the DA with respect to the project, and establish other commitments.

Next Steps in the Review Process. Except for the Vesting Tentative Map, the Commission's approval of these applications is considered to be recommendations to the City Council. The City Council has scheduled a special workshop meeting to review and consider this project and the Planning Commission's recommendations on Tuesday, March 28, 2006 at 6:30 pm. No action will be taken at this meeting. Rather, it is an opportunity for the City Council to review the administrative record and major issues associated with the project in more depth prior to considering formal action. It is expected that the City Council will hold public hearings to consider final action in May – June, 2006.

Background and Review Process to Date. Oakland Harbor Partners submitted a preliminary application for environmental review for the Oak to Ninth development project in May 2004. The Development Director determined that an Environmental Impact Report (EIR) would be required for the project. The Draft EIR was published for a 54-day review period from September 1, 2005 to October 24, 2005. Responses to comments were prepared and the Final EIR was published on February 1, 2006.

Previous meetings were held before the Planning Commission (6/16/04, 9/28/05, 1/25/06), the Design Review Committee (12/14/05, 1/25/06), the Landmarks Preservation Advisory Board (6/14/04, 10/17/05, 1/9/06, 2/27/06), and the Parks and Recreation Advisory Commission (10/12/05, 2/8/06). The City also held a community meeting on (6/9/04) and retained CirclePoint to conduct a public outreach process from December 2004 to April 2005. Three additional general public meetings and numerous focus group meetings were conducted by CirclePoint during this period, resulting in a report of community concerns and issues entitled, "*Summary Report – Small Group Interviews & Public Meetings*" dated May 2005.

Staff recommends that the Planning Commission take the following steps in their deliberations at this meeting:

- 1) Open the public hearing and take public testimony on the proposed plan, recommended actions and other submitted information and reports;
- 2) Close the public hearing and review and consider the remaining issues, the major recommendations and the various actions before the Commission including the proposed General Plan and Zoning amendments, the Development Agreement, the Design Guidelines, the Vesting Tentative Map, and the proposed Conditions of Approval.

STAFF REPORT MATERIALS

Because the processing of the project application request requires the review and consideration of a great amount of information, this staff report has been prepared to be read in conjunction with the Planning Commission staff report prepared for the January 25, 2006 meeting (see **Attachment A**). The January 25th report addresses each of the application requests, project phasing, main points of the development agreement, analyzes the proposed project with General Plan, *Estuary Policy Plan*, and zoning requirements, discusses the amendments that are proposed to the *Estuary Policy Plan*, the creation of a new mixed-use waterfront zone and design guidelines, summarizes the Redevelopment Plan requirements, summarizes the previous

meetings held before the Planning Commission, Landmarks Preservation Advisory Board (LPAB) and the Parks and Recreation Advisory Commission (PRAC), and discusses Key Issues regarding the project.

Meetings and public hearings held after January 25, 2006 will be discussed in this report, along with any new or revised information.

PROJECT SITE

The 64 acre project site adjoins the Oakland Estuary to the south, the Embarcadero and I-880 to the north, 10th Avenue to the east, and Fallon Street to the west. The project area does not include approximately six acres of privately-held property along and east of 5th Avenue that contain a mix of commercial and industrial uses, as well as a small community of work/live facilities. The eastern part of the project site contains commercial and industrial uses (the Ninth Avenue Terminal, a retail furniture store, a metal recycling facility, and outdoor storage of shipping containers). The central portion of the project site contains commercial and industrial uses, a concrete batch operation, and a mix of manufacturing and outdoor storage uses. The western part of the site contains public open space and industry (Estuary Park and Jack London Aquatic Center, and an East Bay Municipal Utility District dechlorination facility).

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

PROJECT DESCRIPTION

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

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

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

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

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

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

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

Between the original submittal of the preliminary application and the plans and information now before the Planning Commission, the following revisions have been made in response to Commission, Board, public and staff comments:

- Revised the intersection of 8th Avenue at the Embarcadero
- Changed the configuration of Estuary Park Drive
- Reduced the building footprint on Parcel M
- Redesignated and extended Gateway Park
- Changed the layout of Shoreline Park
- Added a dog play area to Channel Park

REQUESTED APPROVALS

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

Entitlements	Review and Approval Required			
	Administrative Review and Approval	Planning Commission Approval	Planning Commission Recommendation	City Council* Redevelopment Agency Approval
General Plan Amendment			X	X*
Redevelopment Plan Amendments			X	X
Rezoning and Zoning Code PWD – 4 District			X	X*
Preliminary Development Plan (PDP) Final Development Plan (FDP)		X		
Vesting Tentative Subdivision Map		X		
Final Subdivision Map(s) - future				X*
Development Agreement			X	X
Tree Removal Permit	X			
Creek Protection Permit	X			
Conditional Use Permit – Park activities		X		
Encroachment, Demolition Permits, and other Building Permits	X			

* City Council approval only

General Plan (Estuary Policy Plan) Amendments

The project application includes a request to amend the *Estuary Policy Plan* (EPP) to allow residential uses in this location at a higher density than allowed in the EPP. Text changes are proposed and a new land use classification, Planned Waterfront Development-4, has been created for the proposed project. The Planned Waterfront Development-4 designation will be assigned to the approximately 34 acres of private mixed-use development; the Parks designation will be assigned to the remaining 30 acres (approx.) of public parks and open space including the marinas. The amendment to the EPP is discussed further in this report under the section “Consistency with Land Use Plans and Regulations.” Please refer to **Exhibit G** for amendments to the EPP text and land use map.

Zoning Code Amendments

Three zoning districts will be assigned to the 64 acre site. The 34 acres of private mixed-use development will be designated Planned Waterfront Zoning District-4, a new zoning district created for this mixed use development. The PWD-4 zoning district establishes specific regulations for the residential and commercial uses proposed in the developable portions of the site. The approximately 30 acres designated for public parks and open space will be assigned an existing open space zoning district, Open Space-Region Serving Park (OS-RSP). The Jack London Aquatic Center will remain S-2/S-4, Civic Center/Design Review Combining Zone.

Regulations for both the OS-RSP and S-2/S-4 zones already exist in Chapter 17 of the Municipal Code.

The PWD-4 zoning district and zoning map changes will be discussed in more detail later in the report. In general, the district describes the approval process, sets forth the land uses permitted and conditionally permitted, and includes the development standards for the developable portions of the site. The zoning approval process is based on the submittal of a Preliminary Development Plan for the entire 64 acre site; the submittal of Final Development Plans for each of the five phases of development; and architectural design review for individual projects within the Final Development Plans if the buildings are not included in the FDP submittal. The project sponsors are requesting approval of a Preliminary Development Plan consistent with the requirements proposed in the new Planned Waterfront Zoning District-4. Please refer to **Exhibits E and F**.

Vesting Tentative Subdivision Map No. 7621

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

The five existing parcels constituting the 64 acre site will be aggregated and re-subdivided into 13 developable parcels and 13 parcels for open space. The subdivision map covers approximately 34 acres of developable land with 9.18 acres set aside for public roadways and the remaining 24.65 acres for development. The remaining land designated for future parks and open space (29.9 acres) will remain under the ownership of the City of Oakland or the Port of Oakland.

Please refer to **Attachment A** Planning Commission staff report dated January 25, 2006 for a description of the subdivision and the proposed development expected to occur on each parcel.

Preliminary Development Plan (PDP)

OHP is requesting approval of a Preliminary Development Plan (PDP) as the “comprehensive plan” for the entire site (see PDP dated February 2006). The PDP is a visual representation of the project description and includes drawings that show the Master Development Plan, Shoreline treatments, Parks and Open Space layouts, Streets and cross sections, Buildings and setbacks, and Civil Engineering requirements. Please refer to **Attachment A** Planning Commission staff report dated January 25, 2006 for a description of the PDP and the six major sections describing the proposed project. The PDP process is established within the new PWD-4 Zoning District and the approval of the PDP by the Planning Commission is contingent upon the final passage of the new zoning district.

Each subsequent phase of development will require approval of a Final Development Plan (FDP) which will need to be substantially in compliance with the approved PDP. Individual projects within each phase will be reviewed for compliance with the Planned Waterfront Zoning District-4, Oak to Ninth Design Guidelines, Subdivision Map, Conditions of Approval, Mitigation

Monitoring Reporting Program, and the Development Agreement. Once approved as part of the Development Agreement, the PDP will serve as the master framework for the project throughout the proposed Development Agreement 20-year timeframe. A similar process was approved for the Jack London District project in 2004.

Oak to Ninth Design Guidelines

The Preliminary Development Plan includes detailed plans and specifications for the public improvements proposed for the site. Street plans, public park and open space plans, shoreline improvements, Bay Trail details, and building footprints are all included. Schematic massing and height diagrams are also included. Future submittal requirements for the PWD-4 zone will require detailed architectural and design drawings for each development area. Given this context, staff believed that the best approach to assure high design quality that complemented the public improvements would be the development of a master design guideline document. Ken Kay Associates was retained by the City to work with ROMA, the project applicant's urban design and landscape firm. The draft Oak to Ninth Design Guidelines are included for the Commission's consideration. The Design Review Committee reviewed and considered these guidelines at their January and February, 2006 meetings.

Project Phasing

OHP has proposed that the project be constructed in five phases over a period of approximately 17 years: 2008 to 2025. (Refer to Phasing Plan, PDP, Sheet 1.5 and **Attachment B**. A detailed description of the phasing plan is included as Exhibit C to the Development Agreement. The discussion below is a summary of the proposed phasing for the project:

Phase I, Parcels A, B, C, F, G (*completed sometime between 2008 to 2013 – proposed trigger for completion of the public improvements associated with this phase: not later than 5 years from the issuance of the first building permit for Phase I or not later than the issuance of the occupancy permit for the 550th unit*). This phase will involve, at a minimum, demolition of on-site structures, a portion of the Ninth Avenue Terminal and the timber supported pier structure; soil remediation, on-site improvements; off-site improvements on the Embarcadero; construction of approximately 1,125 multifamily dwelling units; construction of retail and commercial uses, installation of the portion of Shoreline Park facing Brooklyn Basin including shoreline improvements; and the renovation of the remaining portion of the Ninth Avenue Terminal Shed building.

Phase II, Parcels D, E, H, J (*completed by or before 2016 – proposed trigger for completion of the public improvements associated with this phase: not later than 8 years from the issuance of the first building permit for Phase I or not later than the issuance of the occupancy permit for the 1,650th unit*). This phase will involve soil remediation; on-site improvements; off-site improvements on the Embarcadero from 5th Avenue to the existing Embarcadero Bridge; construction of approximately 905 multifamily units and approximately 79,000 square feet of retail/commercial uses, improvements to Clinton Basin Marina; development of the Clinton Basin Quay; and construction of project streets (Harbor Lane East and the remaining portions of 8th Avenue and 9th Avenue). The remaining portion of Shoreline Park would be developed along

with Gateway Park and the Bay Trail connection to east of Clinton Basin and all shoreline improvements adjacent to these areas.

Phase III, Parcels K, L (*completed by or before 2019 – proposed trigger for completion of the public improvements associated with this phase: not later than 11 years from the date of the first building permit for Phase I or not later than the issuance of an occupancy permit for the 2,340th unit*). This phase will involve soil remediation; demolition of approximately 46,000 square feet of marine, storage, service, manufacturing, and industrial uses; and construction of approximately 460 units and 25,000 square feet of retail and project street rights-of-way (5th Avenue). South Park would be developed by 2015 as would the Bay Trail segment west of Clinton Basin. Shoreline improvements will be made concurrent with adjacent development. It is anticipated that improvements to the Fifth Avenue Marina will be constructed within this Phase.

Phase IV, Parcel M (*completed by or before 2022) – proposed trigger for the completion of the public improvements associated with this phase: not later than 14 years from the date of the first building permit for Phase I or not later than the issuance of an occupancy permit for the 2,800th unit*). This phase will involve demolition of on-site structures and soil remediation and construction of approximately 310 units and 15,000 square feet of retail uses. All project streets, including 4th Avenue, will be constructed within this phase. Channel Park would be developed by 2017, as would the Bay Trail segment east of Clinton Basin. Shoreline improvements and the adjacent Bay Trail segment will be made along the east side of Lake Merritt Channel and Channel Park.

Phase V, Parcel N (*completed by 2025 – proposed trigger for the completion of the public improvements associated with this phase: not later than 18 years from the date of the first building permit for Phase I or not later than the issuance of an occupancy permit for the 3,100th unit*). This phase includes soil remediation; demolition of 78,400 square feet of a wholesale grocery store; and construction of approximately 300 units and 15,000 square feet of commercial development. The Embarcadero will be improved from the Embarcadero Bridge to the project boundary and the remaining projects streets will be constructed. Improvements (re-vegetation) of Estuary Park and the adjacent Bay trail segment would occur by 2018. Shoreline improvements will be made along the west side of Lake Merritt Channel and Estuary Park to the project boundary.

Development Agreement

The project sponsor has requested that the City enter into a Development Agreement (DA) that will 1) provide for a 20-year vested entitlement period, 2) specify requirements for phasing of project development, 3) stipulate what City regulations and fees will apply throughout the term of the DA with respect to the project, and 4) establish developer commitments pertaining to funding and completion of public improvements, maintenance requirements for those improvements in perpetuity, phasing of project, labor, local hiring and public art requirements and affordable housing commitments. The City Planning Commission must review the DA and forward its recommendations to the City Council/Redevelopment Agency for final action. The major deal points of the proposed DA are presented later in this report.

Tree Removal Permit

A Tree Removal Permit to remove trees on the site is required consistent with Oakland Municipal; Code Section 12.36.020 and as presented in the *Tree Report for the Oak to 9th Project* prepared by HortScience, Inc., dated February, 2006. The tree survey was reviewed by the City's Public Works Agency, Tree Services Division.

Special Use/Conditional Use Permit

A Minor Use Permit is required for certain programmed activities in the Open Space-Region Serving Park zoning district. Through the Preliminary Development Plan process, the project sponsors are requesting administrative approval of this permit. The project will include four major parks. Most of the new parks and open space areas will not be programmed, except that a bocce ball court is proposed for Channel Park, a children's play area is proposed in South Park, a dog play area in Channel Park, and a waterfront trail is proposed throughout the parks and open space, all of which require a minor conditional use permit.

Creek Protection Permit

Creek Protection Permit is necessary for work proposed adjacent to the Oakland Estuary and/or along the Lake Merritt Channel. All creek protection permits would require approval by the Environmental Services Division of the Oakland Public Works Agency. No permit will be approved with this request.

Other City Permits

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

PUBLIC OUTREACH AND PARTICIPATION

Public notification and participation has been extensive. As mentioned previously, the proposed project has been discussed with the Planning Commission, the Landmarks Preservation Advisory Board (LPAB), and the Parks and Recreation Commission (PRAC) at least twice. There was a community meeting sponsored by the City to collect comments on the Notice of Preparation for the EIR. The Central City East Project Area Committee has discussed the project at least twice and recently held a meeting to make a recommendation to the Redevelopment Agency. The City retained CirclePoint to conduct a public outreach process in early 2005. Additionally, the project sponsors held a number of meetings with community groups, business organizations, private individuals, and others to explain the project and respond to questions. On March 2, 2006, the League of Women Voters held on forum on the proposed project with a panel composed of organizations representing various points of view about the project. The City also retains a 600 person/organization mailing list for the project.

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.

CONSISTENCY WITH LAND USE PLANS AND REGULATIONS

GENERAL PLAN ANALYSIS

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

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

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

The *LUTE* shows the project area within the Mixed Use Waterfront/Estuary Plan Area land use classification, which is intended to “encourage, support and enhance the transformation of the land adjacent to the shoreline into a vibrant use of mixed use waterfront.” The *LUTE* includes a number of Waterfront Policies, Transportation and Transit-Oriented Development Policies, and Neighborhood Policies that relate to the proposed project. Please see DEIR pages IV.A-8 through IV.A-10 for a discussion about how the proposed project, which will transform an underutilized industrial site into a mixed-use neighborhood, is consistent with these key policies.

Estuary Policy Plan Text and Land Use Map (*EPP*)

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

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

The EPP provides a set of overall objectives to address Land Use, Shoreline Access and Public Space, and Regional Circulation and Local Street Network. These objectives apply to the entire

Oakland Estuary. The EPP identifies specific policies and implementation measures to guide development within each of the three districts that define the Oakland Estuary.

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

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

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

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

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

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

The project sponsor is requesting an amendment to the EPP which will allow residential land uses at a density of 50 units per gross acre (128 units per net acre). The proposed Planned Waterfront Development-4 is described later in this staff report.

EPP Policies and Implementation Measures

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

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

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

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

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

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

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

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

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

OAK-2.3: Enhance Clinton Basin

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

OAK-2.5: Provide for mooring of the ARTSHIP

Staff Comment: The project is creating approximately 21 acres of new, publicly-accessible open space in the series of new parks and open spaces along the shoreline, including a large park where the Ninth Avenue Terminal and wharf structure currently exist. The Fifth Avenue Marina and Clinton Basin will be renovated with 170 boat slips. A portion of the Ninth Avenue Terminal is proposed to remain and could be used for civic uses. The project is not providing mooring for the ARTSHIP.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Staff Comment: A specific plan has not been prepared for the entire Oak-to-Ninth District. Staff believes that the project application (with the modifications proposed in the EIR), the analysis provided in the EIR, and the public review process required pursuant to CEQA and the City of Oakland, fulfill, and may in certain cases exceed, the objectives of detailed planning and analysis envisioned in the EPP. The project application, environmental analysis, and public review process are considered functionally equivalent to the preparation and review of a specific plan. Further, the proposed regulatory framework (PDP, FDP, Design Guidelines), coupled with the obligations under the development agreement and other financial commitments, fulfill the statutory requirements in Government Code §65450 including development standards and criteria and financing and implementation mechanisms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Illustrative Diagrams

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

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

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

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

Figure III-12: Clinton Basin Illustrative Cross Section

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

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

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

Proposed Planned Waterfront Development-4

EPP Text Amendment - Staff is proposing a new EPP land use classification be created for the project site. The 34 developable acres of the site will be designated PWD-4; the public parks and open space areas will be designated Parks. This new land use category will allow a mix of land uses including residential, commercial, civic, and public parks and open space. The proposed density is 50 dwelling units/gross acre. Other text changes are proposed to bring the district chapter up-to-date with other activities that have occurred since its adoption in 1999. With adoption of the amended text language and the new land use classification, the proposed project will be consistent with the *Estuary Policy Plan*.

EPP Map Amendment – The EPP land use map needs to be amended to show a larger area designation for Park, Open Space and Promenades and the new designation, Planned Waterfront Development-4, applied to the residential and commercial portions of the project site. Also, the land use designation behind Estuary Park will be changed from Park, Open Space and Promenades to Planned Waterfront District-4 to accommodate residential development in this location. With adoption of the amended land use map, the proposed project will be consistent with the *Estuary Policy Plan* land use map.

Open Space, Conservation and Recreation Element (OSCAR)

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

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

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

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

Historic Preservation Element (HPE)

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

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

Policy 3.5 states that, “for any project involving complete demolition of Heritage Properties or Potential Designated Historic Properties requiring discretionary permits, the City will need to make a finding that: (1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; or (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or (3) the existing design is undistinguished and does not warrant retention and the proposed design is compatible with the character of the neighborhood.” Staff notes that the Landmarks Preservation Advisory Board recommended that they were unable to make this finding. Staff has included alternative findings in the recommended Planning Commission actions for review and consideration (**Exhibit D** – General Findings).

Staff Recommendation

Staff believes that the proposed project is consistent with the goals, objectives and policies of the General Plan, and the Estuary Policy Plan, as amended, and does not cause any internal inconsistencies. It is recognized that the General Plan elements contain competing policies as discussed above. In evaluating a project, however, the City decision makers must determine whether, on balance, a project is consistent with the General Plan. In reaching its decision on the project, the City must consider all applicable General Plan policies, the extent to which competing policies apply to the Project, and make determinations in connection with the Project that balance these competing policies.

Staff believes that the balance achieved by the Project among competing General Plan policies is acceptable and that the project complies with all performance standards in the General Plan. The project represents a reasonable accommodation of applicable competing policies in the General Plan. The implementation of the Project will result in the fulfillment of several important General Plan policies, including investment in an economically distressed area, the encouragement of infill development, meeting regional fair share of housing needs, and the creation of significant new and enhanced public open space on the Oakland Estuary.

Staff recommends that the Planning Commission move ahead and forward its endorsement of amending the *Estuary Policy Plan* text and land use map as proposed. The changes proposed to the EPP, including the creation of the new Planned Waterfront Development-4 land use classification, will permit the development of a new mixed use neighborhood project. Allowing residential development in this location along with a series of waterfront parks is similar in character and form to the development pattern proposed in the EPP. The proposed residential and commercial development, while more intense than that conceived in the EPP, is located in the general areas set forth in the EPP. Similarly, the parks and open space areas are designated in essentially the same locations as shown in the EPP illustrative diagrams.

The residential density approved in the EPP is 30 dwelling units per gross acre; the project is proposing 50 dwelling units per gross acre. This density increase will provide a stronger opportunity to build a new community and support the services and commercial activity required to make the development successful. The clustered concept will provide expansive waterfront revitalization with the parks and open space lining the shoreline. New residential development will include a variety of housing types affordable to a range of income levels thereby creating an inclusive neighborhood. Increased activity in the area will make the future parks safe and will

provide ample opportunities for a variety of recreational spaces and programs. The shoreline, which has severely restricted access due to contamination and previous industrial activities in this location, will be improved with a variety of treatments allowing people to get close to water's edge. This development also provides continuous shoreline access as part of the City's portion of the Bay Trail.

On the whole, staff believes that the project meets the General Plan HPE policies and objectives. The partial demolition and alteration of the Ninth Avenue Terminal building and other historic preservation requirements and conditions will sufficiently acknowledge the importance of the building and site in Oakland's history while fulfilling the revitalization and park and open space goals outlined in the EPP. The HPE policies call for avoiding or minimizing adverse impacts to historic properties including Policy 3.1. Such policies have been fulfilled to the greatest feasible extent, given the significant costs associated with reconstruction and structural modification of the building and pier, thereby affecting the total feasibility of the project. These costs and consequences have been detailed in reports entitled *Oak to 9th Avenue Development, Feasibility Analysis for Shoreline Improvements and Pier Retrofit (Attachment D2)* and *Ninth Avenue Pier Renovation, Structural Feasibility Study (Attachment D1)* attached to this staff report.

The City also acknowledges that the HPE policies recognize that the preservation concerns must be "reasonably balanced with other concerns." The HPE states that for proposals adversely affecting historic properties, the City should "weigh the public benefit in preserving the property with such factors as the public benefit in approving the proposal, the proposal's design quality and any hardship of difficulties preservation may impose on owners or users." The HPE does not mandate the preservation of PDHPs; rather, it states that PDHPs "warrant consideration for possible preservation." With these considerations in mind, the proposed plan to demolish a portion of the building, restore a portion and use it in part as a maritime museum and design the park and open space around the site to honor and reflect the historic importance of the building and site provide an appropriate balance of interests. The conditions and requirements concerning historic preservation are included in **Exhibit C**, Conditions of Approval Nos. 25 and 26. Among the recommended conditions is the requirement to submit a landmark application for the building for the City's consideration prior to initiating demolition activities.

In summary, staff recommends that the Planning Commission forward recommendations to the City Council that the proposed project effectively meets the goals, objectives and policies of the General Plan, and the *Estuary Policy Plan*, as amended, and further balances the needs of competing policies in these plans. **Exhibit D**, General Findings related to the approval of the project, and **Exhibit G**, Resolution Amending the *Estuary Policy Plan* text and land use map, contain the specific findings to support this recommendation.

As previously noted, the project will install the segment of the Bay Trail along the shoreline of the site (where the project has access control) and will connect to existing segments both east and west of the project site consistent with the overall policies and design guidelines in the Bay Trail Plan and the City of Oakland waterfront trail design standards. The details of the trail alignment will be worked out with City staff during submittal of the improvement plans.

Staff Recommendation Staff believes that the project is consistent with the Bay Trail Plan in that the trail will be installed in the locations specified in the Guidelines. While the shoreline improvements proposed by the project are not consistent with all the recommended locations proposed in the City's guidelines, (rip-rap vs. other shoreline treatments) the intent is met to improve the shoreline, restore wetland areas, preserve the existing wetland area, and provides continuous public access close to the waterfront. The project will also install all trail improvements and maintain them in perpetuity.

REDEVELOPMENT PLAN ANALYSIS

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

Central City East (CCE) Redevelopment Plan

Land Use Map Amendment – The CCE Redevelopment Plan includes a land use map setting forth allowable land uses within the CCE Project Area. The Redevelopment Plan does not mandate a specific development program for the Oak to Ninth project site; instead, it defers to the range of land use activities that are allowed by the Oakland General Plan and, subsequently, the *Estuary Policy Plan*, and zoning requirements. The General Plan/Estuary Policy Plan land use designation assigned to the project site is “Planned Waterfront Development 1.” Because amendments are being made to the EPP to allow residential uses in this location at a higher density than approved in the EPP, staff is proposing a new EPP land use category for the Oak to Ninth project – Planned Waterfront Development-4. Therefore, it is necessary to amend the Redevelopment Plan land use map to make it consistent with the EPP. The City Council is the final approving authority for these changes.

On March 6, 2006 the Central City East Project Area Committee (PAC) reviewed the proposed land use amendment to the CCE Redevelopment Plan. The PAC recommended approval of the land use amendment.

Affordable Housing – The affordable housing project area production section of the CCE Redevelopment Plan requires that “at least 15 percent of all new or rehabilitated dwelling units developed by public or private entities or persons other than the Agency in the Project Area shall be available at affordable housing cost to persons and families of low or moderate income, with not less than 40 percent of these units made available at affordable housing cost to very low income households” as required by the Community Redevelopment Law. This requirement applies to all projects “in the aggregate,” over a 10-year period, not necessarily to individual

projects, although the Agency is free to impose inclusionary requirements on individual projects as a way to meet the Agency's project area production requirements.

Given the approximately 2,800 units that the project would develop within the CCE Project Area (east of the Lake Merritt Channel), the Redevelopment Agency would be required to assure that at least 420 low- to moderate-income units (i.e., units affordable to households at or below 120% of area median income) within the Redevelopment Project area be constructed over the 10-year compliance period. At least 168 of these units would need to be affordable to very-low income households (i.e., households at or below 50% of area median income).

CEDA staff and OHP have discussed several options for meeting the affordable housing production requirement. Staff and the developer have agreed to a plan that would accommodate all of the 420 affordable housing units on site. Details of how this housing would be provided, the developer's specific contribution and the phasing of how the units would be included in the project are still being worked out in negotiations that will be incorporated into the Development Agreement. The sites presently under consideration for dedicated affordable housing are identified as lots "F" and "G" on the vesting tentative map. These sites are large enough to accommodate all of the units required by redevelopment law.

The City has retained a financial consultant to prepare an analysis of the affordable housing option with regard to the financial commitments of OHP, the value of the land, and the degrees of affordability that could be achieved. This information will be available before the City Council/Oakland Redevelopment Agency takes action on the project.

On March 6, 2006, the Central City East PAC discussed the affordable housing options. The PAC recommended providing 15% affordable housing on-site, and up to 20% if funding permits, and encouraged the exploration of providing both rental and for-sale housing. The PAC also recommended that the Agency use the 25% of tax increment revenues generated by the project that will be set aside into the Low and Moderate Income Housing Fund, plus an additional developer contribution, to pay for the affordable housing units.

Central District Urban Renewal Plan (CDURP)

Land Use Map Amendment – The General Plan/Estuary Policy Plan land use designation assigned to the project site is "Parks, Open Space and Promenades" with a small portion of the site along the Embarcadero designated "Planned Waterfront Development 1." Because amendments are being made to the EPP to allow residential uses where the Cash and Carry Wholesale grocer is currently located, which is also designated "Parks, Open Space and Promenades," the land use map included in the CDURP will need to be amended to assign the proposed Planned Waterfront Development-4 land use designation to the area where residential uses are proposed and reduce the boundaries of the Parks, Open Space and Promenade designation in this location. The City Council is the approving authority for these changes.

Affordable Housing - Unlike the CCE Redevelopment Plan discussed above, there is no general area production requirement for affordable housing under the CDURP since the Central District Project Area was adopted in 1969 and the affordable housing production requirements apply

only to project areas adopted after January 1, 1976. (A small portion of the Central District added to the Project Area in 2001, which does not include any part of the project site, is subject to the area production requirements.)

Staff Recommendation

(1) Recommend adoption of the map amendments to the Central City East and Central District Redevelopment Plans consistent with the amendments proposed for the *Estuary Policy Plan* text and land use map, and (2) give policy guidance on how to fulfill the 15% affordable housing area production obligations created by the project, and any other affordable housing issues.

Exhibits H and I, the Resolution and Ordinance amending the Central City East Redevelopment Plan, and **Exhibits J and K**, the Resolution and Ordinance amending the Central District Urban Renewal Plan, contain the findings to support the recommendations on the plan amendments.

ZONING ANALYSIS

Oakland Zoning Code (Chapter 17, Zoning)

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

To address this issue, a new zoning district has been prepared for the 64.2 acre site (similar to the process that was adopted for the Wood Street Mixed Use project). If adopted, the land uses and development standards would be applied exclusively to the 64.2 acre site within the Oak-to-Ninth District identified in the EPP. (Another zoning designation will likely be applied to the remaining 56 acres in the District north of the Embarcadero, but not at this time.) This proposed Planned Waterfront Zoning District-4 is described in the next section of this report.

Proposed Planned Waterfront Zoning District (PWD-4)

The proposed PWD-4 zone is intended to establish specific regulations to facilitate the development of an integrated mixed-use, residential, public and private open space, and commercial community on the project site. The proposed zoning district is based on land use classifications from the existing zoning code, and development standards specifically created for the proposed project, as shown in the Preliminary Development Plan and the Design Guidelines, which allow variations to the City's standards to accommodate a large, comprehensive, mixed-use development. Because there are a variety of housing types proposed within the development, the standards may vary from one development project to another. However, the

proposed Design Guidelines are intended to provide overall consistency while encouraging unique, high-quality architectural design.

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

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

Development standards are specified for residential densities, building heights, yards, setbacks, buffers, private open space for residential uses, landscaping and paving, parking requirements, and signs. These provide the building envelopes, relationships between buildings; opens space and parks, street standards and landscaping that will act as the key unifying elements for the project. The remaining pieces of the project – the actual building designs – will be submitted for review and approval in future phases.

The Final Development Plans will be approved by the Planning Commission, which must find that the plans are in substantial compliance with the Preliminary Development Plans and the Oak to Ninth Design Guidelines. If individual buildings are not included with the FDP, architectural review is approved by the Planning Director and may be referred to the Planning Commission. Design review of all towers over 86 feet shall be approved by the City Planning Commission.

Minor modifications to the PDP and FDP may be approved by the Planning Director. Revisions involving roadway realignments affecting views and access to the waterfront, building height, massing or relocation, or the overall density of the project would be reviewed by the Planning Commission.

It is intended that development applications for proposals within the Planned Waterfront Zoning District be processed as Preliminary Development Plans and Final Development Plans as explained in the proposed Planned Waterfront Zoning District-4. Final Development Plans (FDP) will be submitted for each phase of development and will be processed according to the requirements specified in PWD-4. All Final Development Plans will need to be in "substantial conformance" with the PWD-4 zoning district, the Preliminary Development Plan, Oak to Ninth Design Guidelines, Vesting Tentative Tract Map. No. 7621, Conditions of Approval, the Mitigation Monitoring Reporting Program, and the Development Agreement, similar to the process established for the Jack London District (JLD) project.

Zoning Map

The Zoning Map will need to be amended to reflect the new zoning district and the increased amount of permanent public parks and open space. It is proposed that the developable portions

of the site be designated PWD-4, Planned Waterfront Zoning District, and that the park and open space areas be designated OS (RSP), Open Space (Regional Serving Park). These zones will replace the M-40, Heavy Industrial zone currently on the property. The S-2/S-4 Civic Center/Design Review Combining Zone currently designated for Estuary Park, the Cash and Carry site, and the Jack London Aquatic Center will be assigned to the Jack London Aquatic Center only. Estuary Park will be zoned OS (RSP) and the proposed residential development will be designated PWD-4.

Staff Recommendation

Staff recommends adoption of the Planned Waterfront Zoning District-4 and amending the zoning maps for the proposed mixed-use residential, commercial, civic, parks and open space project. **Exhibits E and F**, the Ordinances approving the Planned Waterfront Zoning District-4, and amending the zoning map to include the Planned Waterfront Zoning District-4, contain the findings to support this recommendation.

VESTING TENTATIVE TRACT MAP NO. 7621

The 64 acre site is being divided into two major areas: public parks and open space and private developable areas. The approximately 34 acre area designated for residential and commercial development will be privately owned and subdivided into 13 parcels. All development in this area will need to comply with the Conditions of Approval for the subdivision map, the Preliminary Development Plan, the Oak to Ninth Design Guidelines, the Mitigation Monitoring Reporting Program, the Planned Waterfront Zoning District-4 regulations, and the Development Agreement. The remaining 30 acres will be owned by the City or the Port of Oakland and will remain in public use. All activities programmed for the public parks and open space areas will need to be consistent with the Open Space-Regional Serving Park (OS-RSP) zoning regulations and Tidelands Trust uses. The two marinas are proposed to be owned by the Port of Oakland but leased and operated by the project sponsors.

The vesting tentative tract map and the preliminary development plan were reviewed by the City's Planning and Zoning Division, Building Division, Parks and Recreation Department, and the Public Works Agency. A number of comments were received and most related to street dimensions, parking locations and standards, public pedestrian and bicycle trails, shoreline treatments, and utilities. Utility requirements will need to be further refined as final development plans are reviewed for each parcel.

An Engineer's Report was prepared that indicates that the maps, for the most part, comply with City of Oakland Subdivision Ordinance Chapter 16.08.010 (Contents), Chapter 16.16 (Design Standards), and Chapter 16.20 (Improvements). Several modifications were made to the subdivision map based on the review comments. The revised subdivision map meets most of the City's design standards for streets, sidewalks, parking and landscaping. However, the project sponsors are requesting modifications to some of the City's guidelines and standards based on specific conditions of the proposed development. Some exceptions have been made to these standards, including decreasing the street widths to provide for a more pedestrian friendly environment. Other exceptions have not been recommended and therefore a series of revisions

have been required in the Conditions of Approval concerning the Vesting Tentative map as set forth in **Exhibit C**, Conditions of Approval No. 32.

The Planning Commission is requested to approve Vesting Tentative Tract Map No. 7621, as amended by the Conditions of Approval. In order to approve the VTM, the Planning Commission will need to make the following Tentative Map Findings (Section 16.08.030 O.M.C. & California Government Code Section 66474):

A. That the proposed map is consistent with applicable general and specific plans

The Vesting Tentative Map, and the design and improvement of the proposed subdivision, is consistent with the goals and policies of the General Plan and the General Plan Amendments proposed as part of the Project as set forth above. The Project's illustrative site plan is similar to the illustrative diagram adopted in the *Estuary Policy Plan* for the Oak to Ninth district.

B. That the design or improvements of the proposed subdivision is consistent with applicable general and specific plans

The design and improvements of the proposed subdivision are consistent with the goals and policies of the General Plan and the proposed amendments to the *Estuary Policy Plan*. The land uses proposed are consistent with those described in the proposed Planned Waterfront Development-4 Estuary Policy Plan land use category.

C. That the site is physically suitable for the type of development

As demonstrated in the EIR prepared for the project, and in the staff reports related to the project, the project site is physically suitable for development. The project site is located in a developed area, is currently used for industrial uses, and is served by roads and other infrastructure. No unusual physical conditions would prevent the development of the site. A thorough technical analysis has been provided in the form of an Engineer's Report (dated 3/6/06) that demonstrates that the site, as modified, will accommodate and is physically suitable for the residential and mixed used project proposed.

D. That the site is physically suitable for the proposed density of development

The Project site is approximately 64 acres, which is suitable to accommodate the project's proposed density, meet all development standards set forth in the City's planning and design standards and meet the parks and open space goals of the EPP and the General Plan. There are no physical conditions on the site that would render the site unsuitable for the proposed density.

E. That the design of the subdivision or the proposed improvements will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat

The project's design and proposed improvements will not cause substantial environmental damage or injure fish, wildlife, or their habitat given the imposition of the mitigation measures contained in the Mitigation Monitoring and Reporting Program. The project includes substantial

soil remediation to reduce contamination due to past industrial activities; this work will result in a substantial environmental benefit to the site and to the Estuary.

F. That the design of the subdivision or the type of improvements is not likely to cause serious public health or safety problems.

The project's design and type of improvements will provide residential, commercial, and open space uses with new roads and other appropriate infrastructure by redeveloping an underused industrial site, remediating environmental hazards on the site, and protecting the shoreline and the existing wetlands restoration on the site. In this way, the project will improve the public health and safety. Implementation of the mitigation measures contained in the Mitigation Monitoring and Reporting Program will ensure that no serious public health or safety problems will occur from implementation of the Project.

G. That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

Approval of the subdivision will not conflict with any easements acquired by the public at large for access through or use of the property within the proposed subdivision. The Vesting Tentative Map includes substantial clarifications and clean up of irrelevant easements and other restrictions, thereby reducing potential confusion in the future.

H. That the design of the subdivision does not provide, to the extent feasible, for future passive or natural heating or cooling opportunities in the subdivision.

The design of the subdivision does not prevent feasible future passive or natural heating or cooling opportunities in the subdivision.

I. That the design of the subdivision, if located in a designated water reuse area pursuant to Section 13550 of the Water Code does not provide for the use of recycled water pursuant to Government Code Sections 65601-65607, water reuse notwithstanding that recycled water has been determined to be available pursuant to Section 13550 of the Water Code and no finding has been made that there is an alternative higher or better use for the recycled water, its use is not economically justified for the project, and its use is not financially and technically feasible for the project.

The project will be served by the East Bay Municipal Utility District (EBMUD) East Bayshore Recycled Water Project and recycled water is expected to be delivered to the Project area by 2009. If the recycled water becomes available to the Project site, the Project will comply with the City's recycled water ordinance for that portion of the project not yet constructed. The project will install 8 inch mains in the streets to carry recycled water to the park and major landscape areas of the project as part of the utility work.

Pursuant to Water Code section 10911(c), the City finds, based on the water supply assessment provided by EBMUD, including the EBMUD's Urban Water Management Plan and information

in the entire record, that projected water supplies (including the supplemental water supply and drought management described by EBMUD in its water supply assessment) will be sufficient to satisfy the demand of the project. The water supply assessment prepared for the project meets the requirements of Government Code section 66473.7.

The Vesting Tentative Map meets all applicable requirements of Oakland Municipal Code Chapter 16.16 and 16.20 in a manner determined appropriate by the City.

Staff Recommendation

Staff recommends that the Planning Commission approve Vesting Tentative Tract Map No. 7621 dated 3.8.06 based on the findings discussed above and the Conditions of Approval for the subdivision (see **Exhibits C and D**).

PRELIMINARY DEVELOPMENT PLAN

The PDP was submitted in accordance with the proposed Planned Waterfront Zoning District (PWD-4) discussed above. The PDP was reviewed by the City Engineering and City staff along with the Vesting Tentative Subdivision Map as discussed above. Similar to the review process discussed previously, the project sponsor made revisions in response to the comments, but is requesting modifications to some of the City's guidelines and standards. As mentioned previously, Conditions of Approval have been recommended in order to meet these remaining standards and provide a process to address any remaining modifications when final design of the public improvements are submitted prior to construction.

Oak to Ninth (Brooklyn Basin) Design Guidelines

As mentioned previously, because the Preliminary Development Plan does not include any architectural plans or elevations for future buildings, the project sponsor was advised to prepare design guidelines to accompany the PDP. The City retained the urban design consultation services of Ken Kay Associates (KKA) to assist with an urban design analysis and recommendations of the site plan, and to assist with drafting the Design Guidelines.

The Design Guidelines are not proposed to be codified as part of the zoning district, but are referenced in the Planned Waterfront Zoning District-4 as a design review requirement for future approvals. Findings will need to be made during design review of future projects that the Final Development Plans are consistent with the approved Preliminary Development Plan, Planned Waterfront Zoning District-4, and the Oak to Ninth (Brooklyn Basin) Design Guidelines.

The Design Guidelines are divided into four sections: the vision for the project, urban design principles, urban design concepts, and design guidelines. The discussion is supported by illustrations, photo examples, and street cross sections depicting the intended outcome. Specific guidelines and examples are provided for the following:

1. **Building Height, Massing and Treatment** – Design Intent, Tower Location and Massing, Variation in Overall Building Height, Variation in Street Wall Building Volume and Plan,

Parking Garage Façades, Windows, Rooftop Treatment, Exterior Wall Materials, Roofing Materials for Slope Roofs, Exterior Color, Mechanical Penetrations at Façades.

2. Building Orientation and the Public Realm – Design Intent, Retail Edges, Commercial and Work/Live Frontages, Streets with a Mixture of Conditions, Mews Edges, Waterfront/Park Edges, Embarcadero Frontage, Blank Walls, Awnings and Canopies, Service Areas, Equipment Screening, Waste Handling Areas.

The Design Review Committee (DRC) reviewed an earlier draft of the Design Guidelines at its January 25, 2006 meeting. DRC comments related to a desire for varied heights of buildings, interesting roof tops, careful attention to street entrances to high rise buildings, the pedestrian-friendly circulation patterns that make the neighborhoods “friendly,” and the tiered design review process for buildings of different heights. A comment was received about the placement of the tower buildings at the southern end of Clinton Basin. The PDP has been revised to slightly shift the placement of the tower on the same parcel, and to make the floorplate smaller so that the tower is more slender addressing the view issues that were expressed with the previous site plan. The design guidelines included as an attachment to this report have been revised to reflect the comments expressed by the Commissioners.

Tree Removal Permit and Special Use/Conditional Use Permit

The tree removal permit and the minor conditional use permit for the activities proposed in the Open Space – Region Serving Park areas are part of the Preliminary Development Plan approval. The findings can be made to adopt the proposed tree removal permit and the special use/conditional use permit, both of which will be approved as part of the implementation of the project, consistent with OMC requirements. Please refer to **Exhibit D**.

Preliminary Development Plan Findings

In order to approve the Preliminary Development Plan, the Planning Commission will need to find that the Preliminary Development Plan is in substantial conformance with the Planned Waterfront Zoning District-4, the Open Space-Region Serving Park (OS-RSP) zoning district, the Civic Center/Design Review Combining Zone (S-2/S-4), the Oak to Ninth Design Guidelines, the Conditions of Approval, and the Mitigation Monitoring and Reporting Program. The proposed uses, the location of the uses, the densities and square footages, building heights, setbacks, open space, landscaping, parking, and other components of the preliminary development plan comply with the applicable regulations in a manner determined appropriate by the City.

Staff Recommendation

Staff recommends adoption of the Preliminary Development Plan and the Oak to Ninth Design Guidelines for the proposed mixed-use residential, commercial, civic, parks and open space project. The Preliminary Development Plan is the comprehensive plan for the entire 64 acre site and is a visual representation of what is to be expected at buildout. The Design Guidelines are intended to ensure that key design elements get incorporated into future development that build on the overall design vision and intention of the project. This approach, endorsed by the DRC,

will assure design quality, provide active street edges, produce an interesting skyline that preserves major view corridors, and assures appropriate scale and massing transitions adjacent to public spaces (streets, mews, parks, plazas, promenades).

Rather, adopting design principals, assuring the highest quality public improvements, and providing key regulatory design and development standards are found to be a superior approach. The Design Guidelines emphasize architectural variability, allow degrees of flexibility regarding placement of structures within the parcels, address street walls, garage façades, windows and rooftop treatments, support a variety of building heights in the project, and specify the use of high quality materials. Future architects will be able to take advantage of the site's characteristics, apply different building technology and materials and provide for a wide variety of architectural treatments within the 20 year development time frame. It is important to note that this approach will not result in the application of a prescriptive set of standards. Staff, with the support of the DRC, believes that the guideline approach is superior because applying design principals rather than legislating design techniques will encourage well designed buildings and give the opportunity for more variation.

The proposed project is consistent with the PDP and the Design Guidelines and is in substantial conformance with the proposed Planned Waterfront Zoning District-4. **Exhibit D** contains the findings to support this recommendation.

DEVELOPMENT AGREEMENT

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

I. 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 over a 20-year period.
- Guarantee that City will not impose any new development fees other than those stipulated in the DA and subject to adopted fee increases over time.
- No new project requirements other than through the DA and those listed in the project approvals and mitigation measures.
- Implementation of each mitigation measure concurrent with the need for the mitigation as the project is sequenced.
- The right to 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.

II. 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 Developer's cost.
- Maintain certain public right-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 schedule will require the Developer to complete specified public improvement prior to certain milestones of development
- Install open space and Bay Trail improvements with each phase of development as per the phasing plan.
- 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 5th Avenue to 10th Avenue on both sides of the Embarcadero and along the south side of the project's Embarcadero frontage from 5th Avenue to the Cash and Carry site.
- 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.

Staff Recommendation

Staff believes that a Development Agreement is a good tool to regulate large-scale development projects over a longer term development period. The Agreement provides both the City and the project sponsor with assurances that the project can be successfully built out during the specified period and that contractual commitments will be followed. Further, it mandates that certain milestones will be reached within certain time periods. While the Development Agreement contains all the information required by State Law and the Oakland Municipal Code, there still may be items that the Planning Commission may want to include for the project. Staff recommends that the Planning Commission review the Development Agreement and determine whether the proposed agreement provides for sufficient public benefits in exchange for locking in a 20 year development time frame where no significant development standards or requirements could be changed. **Exhibits D and L** contain the general findings for approval of the Development Agreement.

ENVIRONMENTAL REVIEW

As mentioned previously, the 54-day public review period for the Draft Environmental Impact Report (DEIR) began on September 1, 2005 and closed on October 24, 2005. Forty-seven comment letters were received during the comment period. Twelve were from governmental agencies, 19 were from organizations, and 16 were from individuals. Oral and written comments were received at the and at the Planning Commission public hearing on September 28, 2005, the Parks and Recreation Advisory Commission on October 12, 2005, and the Landmarks Preservation Advisory Board public hearing on October 17, 2005.

The Final Environmental Impact Report was published on February 1, 2006. The report includes an overview of the comments received during the public review period and a brief discussion on how they were addressed. These are discussed in the FEIR.

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

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

Table II-1, "Summary Table of Revised Impacts and Mitigation Measures for the Oak to Ninth Redevelopment Project" (FEIR pages III-18 to III-61 summarizes the impacts and mitigation measures identified in the EIR. The table describes the potential impacts with a level of significance prior to mitigation; recommended mitigation measures; and the resulting level of significance with implementation of the required mitigations. A complete discussion of each impact and associated mitigation measure is provided in DEIR Chapter IV, Environmental Setting, Impacts, and Mitigation Measures and FEIR Chapter III, Changes to the Draft EIR.

SUMMARY OF SIGNIFICANT ENVIRONMENTAL IMPACTS AND MITIGATION

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

Significant, Unavoidable Impacts

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

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

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

Transportation, Circulation, and Parking

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

Noise

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

Cultural Resources

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

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

Transportation, Circulation, and Parking

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

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

Transportation, Circulation, and Parking

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

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

Air Quality and Meteorological Conditions

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

Cultural Resources

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

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

Transportation, Circulation, and Parking

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

5. The DEIR states that the following *cumulative impact* will remain Significant and Unavoidable because the mitigation measures cannot be implemented by the City of

Oakland. Even when mitigation measures are implemented, the impact would still be Significant and Unavoidable.

Transportation, Circulation, and Parking

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

Significant Impacts Reduced to Less than Significant with Mitigation

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

Alternatives Considered in the Draft EIR

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

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

Comparison of Impacts: Table V-5, "Summary of Impacts: Project and Alternatives" (DEIR, pages V-42 to V-67) summarizes the impacts between the various alternatives. In general, all alternatives would result in fewer traffic impacts to the local and regional roadway circulation in year 2025 and Alternative 3 would result in Less than Significant impacts for local intersections for traffic generated by Phase I construction. Cumulative regional air pollution would result in Less than Significant impacts with Alternatives 1B and 3. Population growth would be lower with Alternatives 1B and 3. The Sub-alternative would preserve the Ninth Avenue Terminal, thereby reducing any impacts associated with its full or partial removal. All other impacts shown in the summary table are similar to those identified for the project.

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

Response to DEIR Comments

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

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

Certification of the EIR

The Planning Commission is asked to certify the EIR for the Oak to Ninth Mixed Use Development Project. Certification does not imply endorsement of the proposed project, nor that the permit application(s) for the project will be approved. Rather, in certifying the EIR, the Commission must generally find that:

- The discussion in the EIR represents a good faith effort to disclose all the City reasonably can regarding the physical impacts which may result from the Project;

- There is an adequate consideration and evaluation of measures and changes to the Project that would eliminate or lessen the potentially significant physical impacts associated with the Project;
- The process for considering the EIR complied with all applicable provisions of CEQA and the Municipal Code; and
- The significant environmental issues raised in the comments received about the DEIR were adequately responded to in the FEIR.

Specific findings required by CEQA to certify the EIR and to apply it to approval of the project are found in **Exhibit A**. Included in these findings are specific statements pertaining to the completeness of analysis and procedure under CEQA Guideline Section 15090, a rejection of alternatives to the project due to infeasibility and statements of overriding consideration in compliance with CEQA Guideline Section 15093 for those significant impacts that were found to be unavoidable and could not be mitigated to a less than significant level. In reviewing these findings, the Planning Commission must determine that the alternatives to the project were deemed infeasible and that all significant impacts have been substantially decreased to a less than significant level through mitigation measures or changes to the project. For those impacts that cannot be mitigated to a less than significant level (particularly traffic and the partial demolition of the Ninth Avenue Terminal), the Commission must find that other legal, social, technological and other benefits of the project outweigh these impacts.

Staff believes that the findings that have been proposed in **Exhibit A** can be made and supported by substantial evidence in the record of the project. The studies summarized in the following section and attached to this staff report represent a part of the evidence relied upon to make the findings.

CONSULTANT STUDIES

- D1 Ninth Avenue Pier Renovation, Structural Feasibility Study
Prepared by Rutherford & Chekene Consulting Engineers (February 6, 2006)
 - D2 Oak to Ninth Avenue Development, Feasibility Analysis for Shoreline Improvements and Pier Retrofit, Prepared by Moffatt & Nichol (February 5, 2004)
 - D3 Oak to 9th Mixed Use Project, Ninth Avenue Terminal Reuse Feasibility
Prepared by Economic & Planning Systems, Inc., (February 21, 2006)
 - D4 Oak to 9th Mixed-Use Project, Feasibility Analysis of Alternatives 1B, 2, and 3
Prepared by Economic & Planning Systems, Inc., (January 31, 2006)
 - D5 Oak to 9th Mixed-Use Project, Fiscal Impact Analysis
Prepared by Economic & Planning Systems, Inc., (July 2005)
- D1. Ninth Avenue Pier Renovation, Structural Feasibility Study
Prepared by Rutherford & Chekene Consulting Engineers (February 6, 2006)**

The purpose of the report is to provide schematic seismic rehabilitation details for the Ninth Avenue Terminal buildings. The report finds that the existing structural system is in generally good condition. However, there is some deterioration in the exterior longitudinal concrete walls. Although the report cites cracks spalled concrete, and exposed and corroding reinforcing steel, it states that the longitudinal concrete walls have adequate strength to resist the in-place seismic forces, but not out-of-plane seismic forces.

It further states that the existing steel truss frames are in excellent condition. However, they are a potential seismic collapse hazard because the frames, deficiency in the anchorage to the pier deck, and the existing roof diaphragm do not have adequate capacity to resist the in-plane seismic forces. The report suggests two upgrades to address the deficiencies: (1) Mezzanine Alternative, and (2) Trussed Column Alternative. The report does not provide cost estimates for the upgrade work.

D2. Oak to Ninth Avenue Development, Feasibility Analysis for Shoreline Improvements and Pier Retrofit, Prepared by Moffatt & Nichol (February 5, 2004)

The report provides preliminary engineering for the development of alternatives related to shoreline repair/improvement and seismic retrofit of the Ninth Avenue pier. It includes an assessment of existing conditions and development of shoreline improvement methods.

The report examines five segments of the shoreline. Segment 4, Clinton Basin to Ninth Avenue Pier Apron, and Segment 5, Ninth Avenue Terminal Pier relate to the historic resource area of the project.

The Segment 4 area involves only a small area of the 1950s portion of the Ninth Avenue Terminal. It is a timber wharf constructed in the 1940s for heavy vertical loads. The majority of the vertical piles were PVC wrapped in the last 20 years, and have not been unwrapped for inspection. Based on hammer soundings some appear capable of supporting light traffic loads and a pathway. Other pile types (not vertical piles) were unwrapped and have lost most of their cross sectional area. Some corner piles are cracked. The deck is asphalt and in poor condition. Although wharf repairs for the timber structure are possible, the number of piles requiring replacement may be significant and costly. If this area is needed, the report recommends demolishing and rebuilding a concrete wharf.

An earlier attached report consisting of a brief and qualitative assessment of existing conditions states that the wharf was originally designed for heavy load, and without performing further testing and analyses it is safe to say that the condition of the vertical load carrying system is good and capable of supporting light traffic loads and a pathway. The asphalt pilecaps, stringers and decking may require replacement.

D3. Oak to 9th Mixed Use Project, Ninth Avenue Terminal Reuse Feasibility Prepared by Economic & Planning Systems, Inc., (February 21, 2006)

This report analyzes retention of the proposed 15,000 square foot portion of the building, a 90,000 square foot portion of the building and retaining the entire Ninth Avenue Terminal,

180,000 square feet. Uses analyzed include those uses proposed by the applicant for the 15,000 s.f. portion, uses similar to those proposed by the LPAB sub-committee for the 90,000 s.f. portion, and uses proposed by a class project from the University of California, Berkeley.

The report finds the project sponsor's proposal as having the greatest likelihood of being fully occupied. The proposed project would rehabilitate 15,000 square foot of the 1920s structure for use as a visitors' cultural/community center, including a maritime history center, café and/or gift shop, and would also include over three acres of public parks.

Alternative 2 recommends retention of 90,000 s.f. of the 1920s portion of the building. The report proposes visitors' cultural/community space, warehouse space for a boat builder, other marine-related space, food concessions, boat rental, bike rental, and other commercial uses. This alternative contains approximately 11,000 s.f. of unused space within the Terminal, thereby reducing the revenue potential.

Shortfalls would occur for all of the alternatives as shown in Table 4 of the report, with the \$16.5 million shortfall under the proposed project being the lowest and would involve the least amount of risk. The shortfalls shown include revenues and value to an operator, and are not intended to represent contributions by the project sponsor.

**D4. Oak to 9th Mixed-Use Project, Feasibility Analysis of Alternatives 1B, 2, and 3
Prepared by Economic & Planning Systems, Inc., (January 31, 2006)**

This report is a feasibility analysis of Project Alternatives 1B, 2, and 3 that were studied in the Environmental Impact Report:

- (1) Alternative 1B – No Project/Estuary Policy Plan
- (2) Alternative 2 – Enhanced Open Space/Partial Ninth Avenue Terminal Preservation and Adaptive Reuse
- (3) Alternative 3 – Reduced Development/Ninth Avenue Terminal Preservation

The analysis compares the projected revenues to projected costs to determine if financial shortfalls are likely to occur. This analysis also discusses the annual maintenance costs and the fiscal impacts (e.g., the City's annual operating costs and revenues) of the project alternatives on the City's General Fund based on EPS's Fiscal Impact Analysis (see **D5**).

Summary of Findings

Alternatives 1B, 2, and 3 all result in financial shortfalls, but alternative 2 has the lowest shortfall. All of the three alternatives show costs exceeding revenues and produce negative rates of return. As a result, alternatives 1B, 2, and 3 are not financially feasible and would not be built without significant public subsidy. However, Alternative 2 would require the least subsidy of the three alternatives for the Oak to 9th Mixed-Use project site.

**D5. Oak to 9th Mixed-Use Project, Fiscal Impact Analysis
Prepared by Economic & Planning Systems, Inc., (July 2005)**

This report analyzes the fiscal impacts to the City of Oakland's General Fund in regards to the Developer's residential and retail development at the Oak to 9th Mixed-Use Project. The object of the proposed project is to redevelop this traditionally industrial site into a network of open space, recreational uses, local serving retail, and housing along the scenic shoreline. The site is within the Central City East District Redevelopment Area.

Summary of Findings

1. ***The Project will generate sufficient revenues to cover the cost of providing public services to the City.*** The fiscal impacts of the proposed on the City's General Fund will be positive and are estimated to be greater than the cost of providing additional public services. By buildout, the project is expected to generate net revenue of almost \$2.1 million each year to the City's General Fund as shown in Table 1.

2. ***General Fund revenues will come from a number of sources, with property tax and transfer taxes making up the majority of the City's revenues.*** Property transfer taxes are expected to generate almost \$2.4 million each year following project buildout. An additional \$22.3 million of transfer tax is estimated to accrue to the City prior to buildout, upon initial sale of both the residential and commercial components of the project. Property taxes, sales taxes, and utility user fees all also make significant contributions to the new stream of General Fund revenues. Motor vehicle in-lieu fees (VLF) are estimated based on recent legislation; actual amounts will depend on the manner in which the VLF changes are implemented.

3. ***The Project would not only generate revenue to the City, but would also generate revenue to the Redevelopment Agency, support construction jobs, and result in additional resident expenditures in the City.*** In addition to the revenues generated to the City, the Project would also generate \$5.7 million in revenue at buildout to the Redevelopment Agency after housing set-asides and pass-throughs. The number of temporary (e.g., annual) construction jobs is expected to be approximately 6,600. Total expenditures by new households are estimated at \$281.6 million, of which a portion will generate sales tax to the City of Oakland.

4. ***Public safety is expected to be the highest service cost items in the General Fund associated with the Project, followed by finance and management, parks and recreation, and library services.*** New public safety costs (e.g., police and fire services) will make up about 91 percent of the new General Fund costs, at almost \$3.0 million each year at buildout. Finance and management costs are estimated at \$85,400 each year at buildout. Parks and recreation costs are estimated at \$68,200 per year at buildout. Library services costs are estimated at \$63,600 per year.

RECOMMENDATIONS TO THE PLANNING COMMISSION

Parks and Recreation Advisory Commission (2/8/06)

The Parks and Recreation Advisory Commission met on February 8, 2006 to discuss the proposed project and to make recommendations to the Planning Commission regarding the proposed project, specifically the parks and open space. The PRAC was asked to review the

proposed park and open space areas, the activities programmed for these areas proposed by OHP, to comment on the proposed zoning district to apply to the new park and open space areas (the site is currently zoned Heavy Industrial, M-40) and to consider the amendments proposed to the *Estuary Policy Plan* to accommodate the proposed project. PRAC forwarded the following recommendations to the Planning Commission; staff comments are listed in *italics* as to whether this recommendation should be supported and if so, where in the project documents (Conditions of Approval, Development Agreement, etc.) this recommendation is contained.

1) Recommended approval of the location and amount of new park and open space land as proposed on Sheet 3.1, Parks and Open Space Plan, in the Preliminary Development Plan dated December 2005 (in essence, the Special Use Permit for the parks and activities), provided that the amount of open space is increased to more than 29.9 acres.

Staff comment: The PRAC did give a specific recommendation as to how much the open space and park should be increased over what is proposed. As discussed in greater detail in the Key Issues and Analysis section of this staff report, the current proposal represents a feasible, integrated system of parks that is consistent with the adopted EPP and will be a substantial addition to the park and open space network along the Estuary.

2) Recommended that the conditional use permit criteria can be met to support the addition of over 21 acres of new parks and open space to the City's park inventory.

*Staff comment: These findings are contained in **Exhibit D** of this staff report.*

3) Supported the proposed park programming activities (bocce ball, children's play area, dog play area) with the addition of active recreational areas as permitted by the Tidelands Trust so that all Oakland residents are served.

Staff comment: These programming activities are included in the project. Similar to what the Planning Commission has expressed, the PRAC had a similar concern regarding the lack of organized playing fields to meet ever increasing demands. To the extent feasible, the project applicant and staff will continue to work with the State Lands Commission to incorporate such facilities within the project site. This future effort has been documented under the Landscaping, Open Space, Park and Trail Requirements - Condition of Approval 40.

4) Recommended the rezoning of the park and open space areas as designated on Sheet 3.1 in the Preliminary Development Plan dated December 2005 from Heavy Industrial, M-40 to Open Space-Region Serving Park, OS-RSP adding over 21 acres of new parks to the City.

*Staff comment: This recommended action is contained in the proposed amendment to the zoning ordinance (**Exhibits E and F**).*

5) Recommended retaining the S-2/S-4 Civic Center/Design Review Combining Zone designation for the Jack London Aquatic Center and Estuary Park OS-RSP.

Staff comment: Same as No. 4.

6) Supported the project sponsor's proposal to create a legal entity to operate and maintain the parks, open space, and landscaping in perpetuity, concurrent with the terms of the Development Agreement, at least to the maintenance standards specified by the Public Works Agency.

Staff comment: This recommendation is contained in both the draft Development Agreement (Sections 4.4.2 through 4.4.4) and Conditions of Approval No. 38.

7) Recommended that the Planning Commission not amend the *Estuary Policy Plan* that would allow residential uses in this location at a higher density than specified in the adopted EPP.

Staff comment: As stated and documented previously in the staff report, staff believes that the amendments to the EPP are consistent with the overall goals and objectives and would not represent a significant departure of current policy. The density proposed would support and build a new community and complement the commercial and recreational components in the proposed development.

8) Other comments or recommendations:

- If more of the Terminal will be left then there may be less parkland.

Staff comment: Comment acknowledged

- Do not want to have the Oakland Heritage Alliance pitted against advocates for open space. The increase in the Terminal building should not come at the expense of open space.

Staff comment: Comment acknowledged – staff believes, as documented previously, that a workable and effective balance has been achieved between historic preservation goals and park and open space goals as set forth in the City's General Plan.

- Given the need for parks, the Estuary Park should be developed at an earlier phase, preferably Phase One.

Staff comment: This is a laudable goal but the Cash and Carry business has a lease on the property until 2013, making an earlier time frame more complicated and difficult, if not infeasible given the leasehold value.

Landmarks Preservation Advisory Board (2/27/06)

The Landmarks Preservation Advisory Board (LPAB) met on January 9, 2006 and on February 27, 2006 to discuss the proposed project, specifically the cultural and historic resources. The Board considered the request to nominate Philbrick Boatworks as a landmark and discussed various options for the Ninth Avenue Terminal. A sub-committee of the Board was formed to make specific recommendations to the entire LPAB. The Board considered the recommendations of the sub-committee at the February 27, 2006 meeting which included a number of options for the Ninth Avenue Terminal. Following are the Board's final recommendations to the Planning Commission after consideration of several options; staff comments on each recommendation is included in *italics* as to whether this recommendation should be supported and if so, where in the project documents (Conditions of Approval, Development Agreement, etc.) this recommendation is contained.

1) Forward the nomination of the Ninth Avenue Terminal as a City of Oakland Landmark, along with the Resolution to Landmark Ninth Avenue Terminal shed building and wharf, to the Planning Commission and City Council.

Staff comment: This recommendation has been incorporated as part of Condition of Approval 25.

2) Do not recommend Philbrick Boatworks as a landmark but recommend that the business be relocated to another place on the Oakland Estuary.

Staff comment: This recommendation has not been officially incorporated into the Conditions of Approval. The project applicant has stated that they would have no problem offering the business a place on the site, the negotiations would need to be finalized between the business and the project applicant.

3) The LPAB could not make the required findings in Historic Preservation Element Policy 3.5 regarding the demolition of the Ninth Avenue Terminal. The LPAB could not find that the proposed design of the new façade of the remaining portion of Ninth Avenue Terminal, and the design of the adjacent Shoreline Park is equal in quality to the existing design of the Ninth Avenue Terminal based on the following findings:

a) A ratio of one square foot of proposed park area to one square foot of building demolition of Ninth Avenue Terminal, a building that appears eligible for the National Register of Historic Places, deemed eligible for City of Oakland Landmark Status is not equal in quality to the existing Ninth Avenue Terminal's design and the history of Oakland it embodies. The following feature's of the building's architecture and history points out the significance of the Ninth Avenue Terminal.

1. a prominent visual element of Beaux-Arts derived architectural style to create monumental imagery to a utilitarian industrial building;
2. reflects the influence of the City Beautiful Movement in the early 20th Century promoting the idea of embellishing utilitarian buildings with historicist architectural treatments to convey the ideals of beauty, public benefit, and sound planning principles to enhance the appearance of the city;
3. a prominent visual element in the neighborhood and along the waterfront;
4. the last of Oakland's transit sheds that enabled the Port to achieve its mission and success;
5. strongly illustrative and intimately connected with important patterns of political, economic, and industrial history, the development of the city and the history of a distinct geographic region and well-defined era;

6. strongly linked to the establishment of the first Board of Port Commissioners, as a requirement of the 1925 harbor bond issue;
7. is significant to maritime history of the City of Oakland and the Bay Area with respect to architecture, maritime commerce, transportation, and port history;
8. is an early example of an inter-modal transportation complex consisting of water, rail and land transportation capability in one facility;
9. symbolizes the long fostered relationship and connection between the Port and the City.

Staff comment: Staff respectfully disagrees with the LPAB on this point. We believe that the historic characteristics and qualities that are identified can be incorporated and honored within the remaining portion of the building that is preserved and with key features in Shoreline Park. Given the documentation pertaining to the infeasibility of retaining the entire building, the balance of competing General Plan policies that must be achieved to move the project forward, and the recommended Conditions of Approval 25-26, including a requirement to submit a landmark nomination for the building, that a balance of interests has been achieved.

b) The park elevation is five feet above the adjacent street and other areas of the site. The proposed elevation of the park will block the public view of the water from the street and other areas of the site.

Staff comment: Condition of Approval 40.c. has been included to study feasible modifications to the grades and sightlines along the western edge of 9th Avenue and Shoreline Park to improve the views of the Estuary.

c) There are insufficient activities proposed for the site, so that there is not enough to draw the general public to this area of the waterfront for recreational activities or to support the retail proposed for the entire project.

*Staff comment: Comment noted; staff respectfully disagrees and believes that the open space and park system proposed for the site will be a major regional draw to the site, particularly given the concentration of clustered residential activity that will serve to support the commercial activities. The phasing schedule outlined in **Exhibit C** to the Development Agreement represents a thoughtful program of commercial space and recreational opportunities that will evolve over time.*

d) There is not any area for shelter from wind or sun.

Staff comment: The network of parks, trails and open spaces along the East Bay shoreline, as envisioned in the Estuary Policy Plan, the Bay Trail Plan and the East Shore State Park Plan, were all predicated on the fact that many people are willingly drawn to the beauty and expanse of the shoreline areas where there is no shelter from wind or sun. Within the

proposed development there will be many opportunities for shelter in a café, restaurant, or other building.

4) That if demolition of any part of the 1951 portion of the Ninth Avenue Terminal shed is considered, the LPAB recommends the following:

- For every square foot of the 1951 portion of the Ninth Avenue Terminal demolished, the project shall provide a minimum of one square foot of open space area (water or park) to Shoreline Park (i.e. facing Brooklyn Basin).

5) That if demolition of any part of the 1920s portion of the Ninth Avenue Terminal shed is considered, the LPAB recommends the following:

- For every square foot of demolition of the 1920s portion of the Terminal, the project shall provide a minimum of two square feet of public open space (water or park) to Shoreline Park (i.e. facing Brooklyn Basin); and
- Compensation of \$5 million for demolition of any portion of the 1920s portion of the Ninth Avenue Terminal up to the 15,000 square feet proposed for retention by the Developer (proportionate to the amount of square feet demolished) for the loss of the Historic Resource, to subsidize the rehabilitation of a landmark(s) and/or preservation district(s) (S-7 or S-20) and/or establish a Historic Preservation Fund. The landmark(s) or preservation district(s) shall be determined by the LPAB and shall be significant (e.g., Southern Pacific Railroad Station at 16th and Wood Streets, Moss House).

6) That if complete demolition of the Ninth Avenue Terminal is considered, the LPAB recommends the following:

- For every square foot of demolition of the 1920s portion of the Terminal, the project shall provide a minimum of two square feet of public open space (water or park) to the Shoreline Park (i.e. facing Brooklyn Basin); and
- Compensation of \$10 million for demolition of the entire Ninth Avenue Terminal for the loss of the Historic Resource, to subsidize the rehabilitation of a landmark(s) and/or preservation district(s) (S-7 or S-20) and/or establish a Historic Preservation Fund. The landmark(s) or preservation district(s) shall be determined by the LPAB and shall be significant (e.g., Southern Pacific Railroad Station at 16th and Wood Streets, Moss House).

Staff comments for recommendations 4, 5 and 6: The requirement of in-lieu compensation for the loss of historic resources has been used in the recent past in the Waterfront Warehouse District (to compensate for the loss of contributor buildings) and in the Grand/Broadway Residential-Mixed Use Project (to compensate for the loss of historic building facades.) In each of these examples, the connection was made to a specific action that could in some way compensate for the actual loss, such as a monetary contribution to a building facade fund (figuring the average cost of City contributions to similar efforts) so that other historic buildings

could be renovated. In this case, the connection is not as clear, except for the square footage removed being tied to a cost/square foot of new construction. Nonetheless, acknowledging the value of an in-lieu contribution for other historic preservation efforts throughout the City, staff has recommended a contribution of \$500,000 in Condition of Approval 26.

7) Any remaining portion of the Ninth Avenue Terminal shed after any partial demolition shall include:

- Wharf/apron area on other waterfront side of Ninth Avenue Terminal building shall be a minimum of 26 feet and ramp to the water. (Per the pier report, this will require replacement.)
- Prior to design review approval, the LPAB shall review and make recommendations to the appropriate review body or administrator on the final design of the remaining portion of the building and its new proposed west façade.

Staff comment: These recommendations have been incorporated into Condition of Approval 25.

8) Any demolition (partial or full) of the Ninth Avenue Terminal shall not take place prior to:

- The submission for permits for the development phase that includes the land occupied by the terminal.
- Approval of building permit plans for Shoreline Park (i.e., facing the Brooklyn Basin).
- The City's review and approval of a funding structure for the rehabilitation and re-use of the portion of the Ninth Avenue Terminal that will be preserved.

Staff comment: These recommendations have been incorporated into Condition of Approval 25.

9) That appropriate modifications to the grading and overall elevations of the site be studied in order to provide and improve views of the Estuary from all public areas of the site, because currently the public view of the water is blocked by a proposed elevation of the park that is five feet above the adjacent road and other areas of the project site.

Staff comment: Condition of Approval 40.c. has been included to study feasible modifications to the grades and sightlines along the western edge of 9th Avenue and Shoreline Park to improve the views of the Estuary.

10) Within two months of City of Oakland entitlements the applicant and/or Port, whoever owns the property at the time, shall submit a protection and maintenance plan for the Ninth Avenue Terminal building. The Terminal shall continue to be used if possible, and the applicant and/or Port shall maintain access for trucks to the site through any new development. The maintenance and protection plan shall be reviewed for approval by the Development Director. The applicant and/or Port shall begin implementation of the plan within three months of the City of Oakland entitlements (following Development Director approval).

Staff comment: This recommendation has been modified to provide more time (90 days) and is incorporated into Condition of Approval 25.

11) The LPAB did not make a recommendation on the proposed amendments to the *Estuary Policy Plan*, except to modify some of the proposed language relating to the Ninth Avenue Terminal, as follows. New language is underlined.

Page 2 – “Finally, the prospect of consolidating maritime activities in the Outer Harbor provides a tremendous opportunity to ~~improve~~ remove a portion of the Ninth Avenue Terminal for greater public access and use.”

LPAB recommended that the word “incorporate” replace the word “remove” so that the sentence reads: ...provides a tremendous opportunity to incorporate a portion of the Ninth Avenue Terminal for greater public access and use.”

Page 6 – “The Port and City should investigate the feasibility of retaining ~~keeping~~ and reusing approximately 15,000 square foot bulkhead portion of the 9th Avenue Terminal.”

LPAB recommended that the word “approximately” be replaced with the words “at least.”

*Staff comment: The proposed LPAB language has been incorporated into the text amendments to the EPP, as set forth in **Exhibit G** to this staff report.*

KEY ISSUES AND ANALYSIS

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 a sustainable one given the amount of development, parks and open spaces vs. the continuing costs of adequate operation and maintenance.

Since the last meeting financial information has been received that analyzes the feasibility of three project alternatives discussed in the EIR (see consultant report “Oak to Ninth Mixed-Use Project, Feasibility Analysis of Alternatives 1B, 2, 3” dated 1/31/06 (**Attachment D4**)). One of the land use alternatives analyzed is the *Estuary Policy Plan* buildout alternative. The report concludes that the EPP land use alternative would not be financially feasible. The other alternatives analyzed in the EIR would not be economically feasible either. The report concludes that the costs of cleaning up the site and improving the shoreline make the lower intensity land uses infeasible to build without a significant public subsidy. It is for this reason that the project sponsor considered other alternatives to what was proposed in the EPP.

At a previous meeting, the Planning Commission discussed the proposed amendments to the EPP and had no objections to allowing residential land uses in this location at a higher density than

proposed in the EPP. Staff noted that there would be a variety of housing types, with housing ranging from 86 feet (6 to 8 stories) up to 240 foot towers (20 to 24 stories). It was acknowledged that the new housing will change the appearance of the site, and will be more visible against the Oakland skyline than what currently exists, but the height and massing is appropriate for the development of a new neighborhood in this location. Oakland already has multifamily housing along the waterfront, in the areas to the west at Jack London, and to the east with the new developments occurring in the Kennedy Tract by the same developer. The I-880 freeway is situated above the site, thereby reducing its visibility. With the higher density development, the site will be activated and the commercial areas will be available to many more people.

The Commission discussed the compatibility of residential development in close proximity to public open space and was shown examples of how these land uses co-exist in other parts of the State, in other states, and in Vancouver. Clustered residential development near significant areas of parks and open space was viewed as beneficial to activating the area and keeping “eyes on the park or streets” vs. the more suburban, low density approach where open space is more isolated and cut up into private rear yard areas. It was noted, however, that it is important to integrate the residential development and the public open space areas so that they are inviting to both residents and visitors and do not have the appearance of private open space. Staff believes that the Preliminary Development Plan and the Design Guidelines address these concerns.

The density is appropriate for the variety of housing types that are proposed for this new neighborhood. The density can also accommodate housing which can accommodate a variety of income levels making the new neighborhood an inclusive community. The residential density adopted in the EPP is 30 units per *gross* acre. The project is proposing to increase the density to 50 dwelling units per *gross* acre (128 acres per *net* acre). The net density proposed is less than that permitted in the Retail, Dining and Entertainment District and the Mixed Use District of the EPP, and the Urban Residential, Neighborhood Center Mixed Use, Community Commercial, Regional Commercial, and Institutional General Plan land use classifications (166.67 du/net acre). The proposed density is comparable to what is permitted in the Waterfront Warehouse District of the EPP (133.33 du/net ac) which is in close proximity to the project site. Staff believes that the density is appropriate for the site and is consistent with other urban housing in the Jack London district and downtown.

Staff believes that on the whole, the development of the park and open space system, the maintenance of that system in perpetuity with no additional burden to the City’s General Fund, the environmental remediation and the Bay Trail development, in fulfillment of the EPP, are substantial public benefits worth the potential impacts of the proposed residential development. Other beneficial aspects of residential development include the commercial activities that would be supported by such use and the development of a new waterfront community that would add to the diversity of Oakland.

Staff Recommendation: Staff recommends that the Planning Commission support the proposed project for the reasons discussed above and recommend to the City Council approval of the text amendments to the *Estuary Policy Plan*, the proposed Planned Waterfront Development-4 land

use classification, the Planned Waterfront Zoning District-4, and the zoning map amendments to accommodate the proposed project.

Staff also recommends that the Planning Commission approve Vesting Tentative Map No. 7621, the Preliminary Development Plan, and the Oak to Ninth Design Guidelines to implement the proposed project.

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. Is the proposed system of parks, open space and shoreline trail 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 in : 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 as well.

Measure DD – Measure DD (the Oakland Trust for Clean Water and Safe Parks - 2002) was mentioned during public testimony in relation to the project. It was mentioned that the voters agreed to tax themselves for up to \$198,250,000 to fund bonds in order to construct a list of projects throughout the City. In the EPP area, \$43,500,000 was identified for waterfront trail and parks acquisition and construction, including \$22 million for land acquisition for trail and park development of Estuary Park, Meadows Park, a new park in the area of the Ninth Avenue Terminal and Union Point Park. No specific acreages were identified in the language of Measure DD. Union Point Park has been constructed to date.

The issue was raised that by not providing the parks, as specified in the EPP, there was a violation of Measure DD and that there is \$18 million available to construct those parks. With the project sponsor’s commitment to construct Shoreline Park, Channel Park, South Park and Gateway Park (these two parks are new and not included in the adopted EPP), along with the Bay Trail along the shoreline of the property, the mandated parks and open space areas will be constructed. The remaining funds can be devoted to the portions of Channel Park on the other side of I-880.

The project sponsors are proposing to provide most of the park and open space designated in the EPP and pay for the maintenance and operation of the parks and open space in perpetuity. This package is significant in that maintenance responsibilities will be accounted for from the beginning, thereby relieving the Public Works Agency from the increased maintenance and operation burden.

Staff Recommendation: The proposed system of parks, open space and trails are consistent with the *Estuary Policy Plan*, as set forth in a previous section of this staff report and will result in major step in the implementation of the EPP. The system is substantially similar in character and form to the EPP concept. Staff believes that an obligation to provide 30 acres of new park and open space along the Estuary and to maintain that system in perpetuity presents a strong and sustainable opportunity for the City. Further, it presents a feasible way to implement the plan during the next 5-15 years rather than continuing to argue about how much park and open space the City will lose by approving this development. To the contrary, 30 acres of park, open space and trails will be added to the City's inventory, not lost.

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

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 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 development on the property.

Staff Recommendation: This approach represents a new tool for Oakland, although many cities have implemented similar funding mechanisms in order to support public improvements. Given the unique nature and scale of the park system, staff believes that a specific funding mechanism is warranted to assure adequate maintenance over time. Requirements have been recommended to assure appropriate review of the proposed assessments and budget. Minimum maintenance standards have also been included to assure that there are clear expectations for the maintenance of the parks, trail and open space.

Historic and Cultural Resources

Issue #4: What is the preferred option for the Ninth Avenue Terminal Shed?

The Ninth Avenue Terminal Shed is 180,000 square feet in size. The project proposes to retain 15,000 square of the bulkhead of the Terminal shed, and demolish the remaining 165,000 square feet. Public comments received throughout the public outreach and review process have ranged from support for retaining the bulkhead, as proposed in the project, retaining the 1920s portion of the building, and retaining the entire structure. There have also been many comments about the structural integrity of the building and its potential for adaptive reuse. Attached to this staff

report are a number of related reports concerning the financial feasibility of retaining various portions of the building and the financial consequences of each alternative. These reports have been described in a previous section.

As discussed in previous reports and in other sections of this report, the City's policy documents do not provide clear guidance on this issue and the objectives of historic preservation and the provision of a large, waterfront open space area are competing objectives for this site. At this point, there seems to be general consensus that saving the entire building is infeasible and would directly conflict with the value of providing shoreline access and open space along this portion of the Estuary. The key issue is 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 shoreline park
- There would not be any direct funding provided for historic preservation elsewhere in the City.

Staff Recommendation: The EPP presents somewhat contradictory policies pertaining to the future of the 9th Avenue Terminal. Retention of a portion of the terminal shed, as proposed is consistent with a part of OAK-2.4. Any demolition of a portion of the building is considered to be a significant and unavoidable impact and would result in the loss of the characteristics and qualities that make it important. Many of the building's important historic features, as set forth in the LPAB's recommendations, can be successfully captured through saving only a portion of the building. For instance, saving a portion of the building would still provide a prominent visual feature, particularly from most parts of Oakland. Saving a portion of the building would still allow an honoring of the Beaux Arts building style, providing examples through interpretive exhibits and oral histories the building's importance to Oakland's history and the significant connections between the Port and the City. The issue essentially comes down to the amount of ongoing funding commitment, outside of the amount that has been determined to be feasible (in the project sponsor's 15,000 square foot proposal). No such commitment has been identified.

Staff recommendation: That the Planning Commission determine the amount of the Ninth Avenue Terminal building that should be retained, and find that the amount of the building proposed for demolition, preservation and reuse, a) appropriately balances the concern for preservation of PDHPs, b) would still require a substantial commitment of funds for both construction and ongoing operation, and c) that the feasibility of retaining more of the building cannot be warranted given the balance of other General Plan policies and objectives that are desired to be achieved.

CORRESPONDENCE

Please see **Attachment C** for new correspondence.

NEXT STEPS

- Special concurrent Meeting of the Oakland Redevelopment Agency/City Council Informational Workshop, March 28, 2006, 6:30 p.m., Council Chambers
- City Council/Oakland Redevelopment Agency Public Hearings (unscheduled)

STAFF RECOMMENDATION

Staff recommends that the Planning Commission:

- (1) ***Certify*** the Environmental Impact Report, adopt the CEQA Findings regarding certification of the EIR, and adopt the Mitigation Monitoring Reporting Program.
- (2) ***Approve*** Vesting Tentative Tract Map No. 7621 dated 3/8/06 and Conditions of Approval (contingent upon General Plan/Estuary Policy Plan Amendment and Rezoning Approvals and any changes that the City Council may make when it considers the proposed General Plan Amendment and Rezoning).
- (3) ***Approve*** Preliminary Development Plan dated February 2006 and the Oak to Ninth Design Guidelines dated February 2006 (contingent upon General Plan/Estuary Policy Plan Amendment and Rezoning Approvals and any changes that the City Council may make when it considers the proposed General Plan Amendment and Rezoning).
- (4) ***Recommend*** to the City Council approval of the proposed amendment to the *Estuary Policy Plan* text, the creation of a new land use classification, Planned Waterfront Development-4, and amend the EPP land use map.
- (5) ***Recommend*** to the City Council approval of the proposed Planned Waterfront Zoning District-4 and amend the zoning map.
- (6) ***Recommend*** to the City Council approval of the proposed Development Agreement dated 3/8/06.
- (9) ***Adopt*** a report to the Redevelopment Agency and the City Council recommending the adoption of the amendment to the land use maps for the Central City East Redevelopment Plan and the Central District Urban Renewal Plan.

In approving the Vesting Tentative Tract Map No. 7621, the Conditions of Approval, the Preliminary Development Plan, the Oak to Ninth Design Guidelines, and recommending approval of the Estuary Policy Plan amendments, the Planned Waterfront Zoning District-4, amendments to the Central City East Redevelopment Plan, the Central District Urban Renewal Plan, and the Development Agreement, the Planning Commission would be demonstrating its support for the project. The reasons to support the project are as follows:

- Better use of an underutilized industrial site
- New development will remove incompatible trucking-related uses associated with the wholesale grocery store next to residential land uses
- Opportunities for the contaminated soil to be cleaned and the land to be used for both public and private purposes
- Development in this location provides opportunities to increase physical access to the waterfront
- New development enhances and expands views of the Estuary
- A new neighborhood will be created with a mix of uses, including retail, commercial civic, public open spaces, and housing affordable to various income levels
- There will be a significant increase in the amount of open space, particularly waterfront parks

- A private developer will install, maintain and operate the public open space, including a large segment of the Bay Trail, through a Community Service District or a Community Facilities District
- Two run-down marinas will be improved and will provide additional boat slips
- The area surrounding Clinton Basin will be activated with retail and commercial development
- The Embarcadero will be improved as a multimodal landscaped parkway

Approval of the project entails adoption of many documents. Documents that encompass a range of issues relevant to each of the recommended project approvals have been prepared for consideration by the Planning Commission and are attached to this staff report as **Exhibits A through L**. This was done to avoid confusion, to reduce the number of separate documents to be reviewed and to enable staff to reproduce and attach the same exhibit to each approval document.

1. Certification of the EIR, Approval of Vesting Tentative Tract Map No. 7621, Conditions of Approval, Preliminary Development Plan, Oak to Ninth Design Guidelines.

Staff recommends that the Planning Commission certify the EIR and approve Vesting Tentative Tract Map. No. 7621, Conditions of Approval, Preliminary Development Plan, Oak to Ninth Design Guidelines, conditioned upon adoption of the proposed *Estuary Policy Plan* Amendments and the Planned Waterfront Development-4 zoning district. Documents included in **Exhibits A through D** attached to this staff report regarding approval of the Vesting Tentative Tract Map. 7621, the Preliminary Development Plan, the Conditional Use Permit are as follows:

Exhibit A – CEQA Findings. These contain the findings regarding certification of the EIR, impacts of the project, mitigation measures, and other CEQA issues.

Exhibit B – Mitigation Monitoring and Reporting Program (MMRP). This table indicates how mitigation measures would be monitored, cross-references mitigation measures to conditions of approval, and indicates the resulting level of significance.

Exhibit C – Conditions of Approval. These are the conditions of approval for the project. The table indicates when the conditions need to be carried out and who is responsible for them.

Exhibit D – General Findings. These contain findings under the Planning and Zoning Law and the Oakland Municipal Code regarding general plan consistency and other land use issues. Given the volume of documents associated with the project and for the convenience of the Planning Commission, staff has produced a single document that contains the findings relevant to all levels of approval required to implement the project. Staff proposes that the findings remain a single document, to be attached to each approval granted for the project by the Planning Commission and the City Council.

2. Recommendation to the City Council regarding *Estuary Policy Plan* text and land use map amendments, Planned Waterfront Zoning District-4, Zoning Maps, Redevelopment Plan Amendments, and the Development Agreement.

Staff recommends that the Planning Commission recommend to the City Council that it enacts the General Plan Amendment and rezoning for the project, the Development Agreement, and that the City Council and Redevelopment Agency enact the Redevelopment Plan Amendments for the project. Documents included in **Exhibits A through L** to this staff report relevant to these recommendations are as follows:

Exhibit A – CEQA Findings. Staff recommends that the Planning Commission recommend to the City Council and/or Redevelopment Agency adoption of the CEQA findings attached as Exhibit A, as the CEQA findings for the Estuary Policy Plan Amendment, Rezoning, and Redevelopment Plan Amendments, and the Development Agreement.

Exhibit B – Mitigation Monitoring and Reporting Program (MMRP). Staff recommends that the Planning Commission recommend to the City Council and/or Redevelopment Agency adoption of the MMRP attached as Exhibit B, as the MMRP for the Estuary Policy Plan Amendment, Rezoning, and Redevelopment Plan Amendments, and the Development Agreement.

Exhibit C – Conditions of Approval. The conditions of approval contained within Exhibit C are detailed, site-specific and pertain to a level of project design that is only relevant at the stage of a map or development plan approval. Therefore, staff recommends that these conditions not be attached to the General Plan Amendment, Rezoning, or Redevelopment Plan Amendments.

Exhibit D – General Findings. Staff recommends that the Planning Commission recommend to the City Council and/or Redevelopment Agency adoption of the General Findings attached as Exhibit D, as the findings for the Estuary Policy Plan Amendment, Rezoning, and Redevelopment Plan Amendments, and the Development Agreement.

Exhibit E – Proposed Zoning Ordinance and District Regulations. This is the language for adoption of the ordinance enacting the zoning regulations. Attached to this Ordinance is the language staff recommends to be incorporated into the Oakland Municipal Code. Staff recommends that the Planning Commission recommend to the City Council enactment of this ordinance and the language of the “Planned Waterfront Zoning District-4.”

Exhibit F – Proposed Zoning Ordinance Amending the Zoning Map. This is the ordinance that amends the zoning map from Heavy Industrial (M-40) to Planned Waterfront Development-4 (PWD-4) and Open Space-Regional Serving Park (OS-RSP); and from S-2/S-4 Civic Center Design Review Combining Zone (S-2/S-4) assigned to Estuary Park, the Cash and Carry Site, and Jack London Aquatic Center to Open Space-Region Serving Park (OS-RSP) for Estuary Park and PWD-4 for the Cash and Carry Site. The Jack London Aquatic Center would remain S-2/S-4.

Exhibit G – Proposed General Plan Resolution. This is the Resolution staff recommends for adoption of the proposed General Plan Amendment to the *Estuary Policy Plan* text and land use map.

Exhibit H – Proposed Resolution Amending the Central City East Redevelopment Plan. This is the Resolution staff recommends for adoption of the proposed amendment to the Central City East Redevelopment Plan land use map.

Exhibit I – Proposed Ordinance Amending the Central City East Redevelopment Plan. This is the Ordinance staff recommends for adoption of the proposed amendment to the Central City East Redevelopment Plan land use map.

Exhibit J – Proposed Resolution Amending the Central District Urban Renewal Plan. This is the Resolution staff recommends for adoption of the proposed amendment to the Central District Urban Renewal Plan land use map.

Exhibit K – Proposed Ordinance Amending the Central District Urban Renewal Plan. This is the Ordinance staff recommends for adoption of the proposed amendment to the Central District Urban Renewal Plan land use map.

Exhibit L – Proposed Ordinance Approving the Development Agreement. This is the Ordinance staff recommends for adoption of the proposed Development Agreement.

Prepared by:

Margaret Stanzione, Planner IV
Planning & Zoning - Major Projects

Approved for forwarding to the
City Planning Commission:

CLAUDIA CAPPIO
Director of Development

ATTACHMENTS:

- A. January 25, 2006 Planning Commission staff report
- B. Proposed Phasing Plan
- C. Correspondence:

1. Letter from DAWG, Oakland Animal Welfare Group dated 2/14/06
2. Email received from Frank Russo in response to DEIR (received 3/4/06)
3. Letter from Dr. Rajiv Bhatia, University of California, Center for Occupational & Environmental Health, dated March 3, 2006

D. Consultant Reports:

- D1** Ninth Avenue Pier Renovation, Structural Feasibility Study
Prepared by Rutherford & Chekene Consulting Engineers (February 6, 2006)
- D2** Oak to Ninth Avenue Development, Feasibility Analysis for Shoreline Improvements and Pier Retrofit, Prepared by Moffatt & Nichol (February 5, 2004)
- D3** Oak to 9th Mixed Use Project, Ninth Avenue Terminal Reuse Feasibility
Prepared by Economic & Planning Systems, Inc., (February 21, 2006)
- D4** Oak to 9th Mixed-Use Project, Feasibility Analysis of Alternatives 1B, 2, and 3
Prepared by Economic & Planning Systems, Inc., (January 31, 2006)
- D5** Oak to 9th Mixed-Use Project, Fiscal Impact Analysis
Prepared by Economic & Planning Systems, Inc., (July 2005)

Documents Certifying EIR and Approving VTM, PDP, Design Guidelines

- Exhibit A** CEQA Findings
- Exhibit B** Mitigation Monitoring and Reporting Program
- Exhibit C** Conditions of Approval for VTM No. 7621
- Exhibit D** General Findings

Documents recommending to the City Council and/or Oakland Redevelopment Agency approval of the *Estuary Policy Plan* text and land use map, the new PWD-4 zoning district and zoning map; approval of the amendments to the Central City East and Central District Redevelopment Plan, and approval of the Development Agreement

- Exhibit E** Proposed Zoning Ordinance and District Regulations (PWD-4)
- Exhibit F** Proposed Zoning Ordinance Amendment the Zoning Map
- Exhibit G** Proposed General Plan Resolution amending the *Estuary Policy Plan* text and land use map
- Exhibit H** Proposed Resolution Amending the Central City East Redevelopment Plan land use map
- Exhibit I** Proposed Ordinance Amending the Central City East Redevelopment Plan land use map
- Exhibit J** Proposed Resolution Amending the Central District Urban Renewal Plan land use map

Exhibit K Proposed Ordinance Amending the Central District Urban Renewal Plan land use map

Exhibit L Proposed Ordinance Approving the Development Agreement

PLANS:

Vesting Tentative Tract Map No. 7621 dated 3/8/06

Preliminary Development Plan dated February 2006

Draft Oak to Ninth Design Guidelines dated February 2006

Final Environmental Impact Report published February 1, 2006 (distributed previously)