

CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development
DATE: June 20, 2006

RE: OAK TO NINTH MIXED USE DEVELOPMENT PROJECT

Joint City Council and Redevelopment Agency Action on the proposed Oak to Ninth Mixed Use Development Project:

- (1) A Resolution Denying the Appeal of Arthur D. Levy, Sustaining the March 15, 2006 Planning Commission Actions on the Oak to Ninth Mixed Use Development Project and Certifying the Final Environmental Impact Report for the Oak to Ninth Project;**
- (2) A Resolution Amending the General Plan Estuary Policy Plan to Create a New Land Use Designation, Planned Waterfront Development-4, and to Adopt Land Use Map and Text Changes in Connection with the Oak to Ninth Avenue Mixed Use Development Project;**
- (3) An Agency Resolution Approving and Recommending Adoption of the Second Amendment to the Central City East Redevelopment Plan to Revise Land Use Designations for the Oak to Ninth Project Site;**
- (4) An Ordinance Adopting the Second Amendment to the Central City East Redevelopment Plan to Revise Land Use Designations for the Oak to Ninth Project Site;**
- (5) An Agency Resolution Approving and Recommending Adoption of an Amendment to the Central District Urban Renewal Plan to Revise Land Use Designations for the Oak to Ninth Project Site;**
- (6) An Ordinance Adopting an Amendment to the Central District Urban Renewal Plan to Revise Land use Designations for the Oak to Ninth Project Site;**
- (7) An Ordinance of the City of Oakland Adopting the Planned Waterfront Zoning District-4 (PWD-4) Oak to Ninth Mixed Use Development Project;**

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- (8) An Ordinance of the City of Oakland Rezoning Property in the Oak to Ninth Avenue Mixed Use Development Project Site from Heavy Industrial (M-40) to the Planned Waterfront Zoning District-4 (PWD-4) and Open Space-Regional Serving Park (OS-RSP), and from Civic Center/Design Review Combining Zone (S-2/S-4) to the Planned Waterfront Zoning District-4 (PWD-4) and Open Space-Regional Serving Park (OS-RSP);**
- (9) A Resolution Approving Vesting Tentative Tract Map No. 7621, dated 3/8/06, within the Oak to Ninth Planned Waterfront Zoning District-4 (PWD-4);**
- (10) A Resolution Approving Preliminary Development Plan, dated February 2006, and Design Guidelines, for the Oak to Ninth Project Site;**
- (11) An Ordinance of the City of Oakland Approving a Development Agreement Between the City of Oakland, the Redevelopment Agency of the City of Oakland, and Oakland Harbor Partners, LLC, and Authorizing the City Administrator to Execute the Development Agreement on Behalf of the City;**
- (12) An Agency Resolution Authorizing a Development Agreement with the City of Oakland and Oakland Harbor Partners, LLC**

The following Exhibits are to be attached to each of the Documents (1 through 12) above:

- Exhibit A – CEQA Findings and Statement of Overriding Considerations**
Exhibit B – Mitigation Monitoring and Reporting Program
Exhibit C – Conditions of Approval
Exhibit D – General Findings Related to the Approval of the Oak to Ninth Project

SUMMARY

The proposed Oak to Ninth Mixed Use Development Project consists of a mix of residential, retail/commercial, civic, and parks and open space uses approved by the Planning Commission on March 15, 2006. The project sponsors are proposing to construct 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 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 proposed project requires the approval of (1) a General Plan *Estuary Policy Plan* Amendment to the text and the creation of a new land use designation “Planned Waterfront Development-4”; (2) a new Planned Waterfront Zoning District-4 (PWD-4); (3) an amendment to the zoning map changing the zoning from industrial to mixed use; (4) amendments to the Central City East Redevelopment Area Plan and the Central District Urban Renewal Redevelopment Plan land use maps; (5) a vesting tentative subdivision map including conditions of approval; and (6) a preliminary development plan and design guidelines. The project sponsors are also requesting approval of a Development Agreement. Additionally, approval is required from the Port of Oakland, Bay Conservation Development Commission, State Lands Commission, Department of Toxic Substance Control, Regional Water Quality Control Board, and the Army Corps of Engineers.

On March 15, 2006 the Planning Commission took the following actions: (1) certified the Environmental Impact Report, adopted the CEQA Findings regarding certification of the EIR, and adopted the Mitigation Monitoring Reporting Program; (2) approved the Preliminary Development Plan and Design Guidelines; and (3) approved Vesting Tentative Tract Map No. 7621 and the Conditions of Approval (with one amendment to COA #40). These approvals were made contingent upon City Council approval of the General Plan Amendment and Rezoning, and any changes that the City Council may make when considering the merits of the project.

The Planning Commission recommended to the City Council approval of the General Plan *Estuary Policy Plan* text and land use amendment, the new Planned Waterfront Zoning District-4 and zoning map amendment, and the Development Agreement. The Planning Commission also adopted a report recommending to the Redevelopment Agency and the City Council adoption of the land use map amendments to the Central City East Redevelopment Area Plan and the Central District Urban Renewal Plan.

On March 24, 2006 an appeal of the Planning Commission’s decision was filed within the ten day appeal period by Arthur D. Levy representing the following groups or individuals: Oakland Heritage Alliance, John Sutter, Rajiv Bhatia MD MPH, East Bay Bicycle Coalition, League of Women Voters of Oakland, Waterfront Action, Coalition of Advocates for Lake Merritt, and the Sierra Club-Northern Alameda County Regional Group. The appeal challenges the decisions and recommendations made by the Planning Commission at the public hearing held March 15-16, 2006 (see **Attachment B**).

On March 28, 2006 the City Council and Redevelopment Agency held a joint informational meeting to discuss the proposed project. City Councilmembers discussed the proposed project and asked several questions of staff and the project sponsors. Staff has summarized the Council’s comments and prepared responses to the questions. The primary issues raised by City Councilmembers include the proposed land uses, public trust lands, soil remediation, affordable housing, parks and open space, the Ninth Avenue terminal, the project design, the design review process, project phasing, the project labor and job training agreement, and the financial feasibility of the project (see **Attachment A**).

This staff report:

- Supplements the information, including all attachments, presented in the March 15, 2006 Planning Commission staff report (**Attachment J-1**) and the City Council/Redevelopment Agency staff report for the informational meeting held on March 28, 2006 (**Attachment J-2**).
- Responds to the issues raised in the appeal and to the correspondence received since the March 28, 2006 public hearing; summarizes the overall benefits and impacts of the project; outlines the major conditions and requirements imposed on the project; and responds to the issues and questions raised by the public and City Councilmembers at the information meeting on March 28, 2006.
- Includes an Addendum to the Final Environmental Impact Report to address CEQA-related issues that were raised after publication of the FEIR on February 1, 2006.
- Includes new fiscal and financial reports for the project
- Provides revisions and refinements to the Planning Commission's actions as well as options and recommendations to address the comments and concerns raised throughout the public hearing process.

Based on the analysis and information contained in the administrative record for the project, staff recommends that the City Council deny the appeal and uphold the Planning Commission's action.

However, prior to taking final action, the City Council needs to address several unresolved issues which are listed below and discussed in more detail under the "Key Issues" section of this report:

- Ninth Avenue Terminal - the amount of building to retain;
- Parks, Open Space, and the Bay Trail - the City's process for acceptance of title to the parks and open space, the proposed development of Parcel N adjacent to existing Estuary Park, the funding source to clean up and develop the Estuary Park "Peninsula" if Parcel N is not developed; the long-term maintenance of the Estuary Park "Peninsula" if Parcel N is not developed; and the long-term funding for the maintenance of the parks and open space;
- Affordable Housing Program - the number, location and timing of affordable units for the project as well as the type and amount of the applicant's contribution; and
- Potential Modifications to the Site Plan regarding the elimination of development on Parcel N
- Potential Modifications to the Site Plan regarding reconfiguring the access and circulation for Parcel M

Given the outstanding issues, the complexity of the approval structure for this project, and the required consistency among the findings, staff recommends the following course of action for this meeting:

- 1) Open the public hearing and take testimony concerning the appeal that has been filed, the merits of the project, including the proposed General Plan Amendments to the *Estuary Policy Plan* text and land use map; amendments to the Central City East Redevelopment Plan, and the Central District Urban Renewal Plan; adoption of a new Planned Waterfront Zoning District-4, the proposed Development Agreement, and the Planning Commission recommendations and staff recommendations contained in this staff report;
- 2) Review, discuss and resolve the remaining issues; and
- 3) Close the public hearing and approve the proposed project.

To approve the project, the City Council and Redevelopment Agency would need to take the following actions:

- Adopt the Resolution denying the appeal, approve the General Findings for project approval, and sustain the Planning Commission actions taken on March 15, 2006;
- Certify the Environmental Impact Report for the Project, adopt the CEQA Findings, and approve the Mitigation Monitoring Reporting Program;
- Adopt the Resolution approving the *Estuary Policy Plan* text and land use map amendments;
- Approve the Resolutions and Ordinances approving amendments to the Central City East Redevelopment Plan and the Central District Urban Renewal Plan land use maps;
- Adopt the Ordinances adopting the Planned Waterfront Zoning District-4 and amending the zoning map for the Oak to Ninth Avenue Mixed Use Development Project Site;
- Adopt the Resolution approving the Vesting Tentative Tract Map and Conditions of Approval;
- Adopt the Resolution approving the Preliminary Development Plan, including a conditional use approval for certain uses in the open space areas, and the Oak to Ninth Design Guidelines;
- Adopt the Resolution and Ordinance approving the Development Agreement.

The 12 Resolutions and Ordinances for approval of the project are attached and immediately follow this staff report. If the City Council/Redevelopment Agency approves amendments to the proposed project, staff should be directed to conform all documents to be consistent with the approved changes to the project.

FISCAL IMPACT

The proposed changes to the *Estuary Policy Plan* text and land use map, zoning regulations, zoning map, and redevelopment plans will result in direct and indirect fiscal impacts for the City

of Oakland. Staff costs related to the General Plan Amendment, Zoning Amendments, and monitoring of the Development Agreement, as well as future planning entitlements for the project, are completely cost covered. All other permit costs associated with construction are subject to the applicable fees established in the Master Fee Schedule. If approved, the project will result in a net fiscal benefit to the City in the form of increased property taxes, utility user taxes, property transfer taxes, etc., as compared to the costs of providing services to the project. **Attachment H** presents a detailed fiscal analysis of the project. Staff also notes that the Development Agreement and the Conditions of Approval set forth an independent, long-term funding mechanism for the maintenance of the new park areas through the use of a Community Facilities District and Community Services District (CFD/CSD).

Part of the project involves the Redevelopment Agency entering into a Development Agreement that will commit it to purchasing land with a value of approximately \$29 million in FY 2007-08. This would be derived from tax increment funds and a new housing bond to be issued in 2008. One new housing bond will be needed approximately each year, from FY 2007-08 through FY 2014-15, to meet the following three needs:

- cash flow for construction of affordable housing at Oak to Ninth and the current commitments to already approved projects
- anticipated projects sponsored by the Redevelopment Agency and currently underway
- the annual Notice of Funding Availability.

Tax increment projections indicate that one-third of the affordable housing at Oak to Ninth could be financed and construction commenced during the years 2010 through 2012. Construction of the remaining two-thirds of the affordable housing units is projected to be within the financing capabilities of the Agency during years 2014 through 2016. This estimated construction timing could be accelerated if the City elects to pay for some of the remediation of Estuary Park because of a provision in the Development Agreement that requires the developer to provide additional affordable housing funding equal to any assistance for remediation received from the City.

The total subsidy necessary for all affordable housing phases within the Oak to Ninth Project, adjusted for construction cost increases over time, is estimated to be approximately \$85 million in current dollars. While the Oak to Ninth project is projected to generate \$89 million in affordable housing funds over the remaining 40 year life of the redevelopment plan area, it is anticipated that use of some city-wide and Central City East Redevelopment Area housing resources will be necessary to produce housing within the shorter time frame required by redevelopment law. These projections are contingent upon the timing of development build out, sale prices in the future, financing costs for bond issuance, construction cost increases, the ability to leverage State affordable housing funds, and changes in household income for the affordable housing population being served.

Changes in assumptions can create considerable changes to the timing of when sufficient financing is available for the affordable housing component. Conservative estimates of construction cost increases and tax increment increases have been included in the projections in

order to create a margin of safety. Known projects have been factored in and historical trends considered in estimating tax increment increases. However, even with these conservative assumptions, it can be reasonably predicted that the Agency will have the financial capacity to produce the affordable housing subsidy when needed to comply with State Law.

The projected tax increment and Agency affordable housing funding ability when augmented with the developer's contribution toward affordable housing, will allow the affordable housing to be built about two years earlier than without the developer's contribution. The developer will be contributing \$4 million toward affordable housing plus a discount of about \$3.5 million toward the affordable housing land if purchased before the site is ready for construction.

The project is not contemplated to use any regular, non-housing, tax increment and none is requested by the developer. Accordingly, it is projected that over the life of the project approximately \$144,800,000 in non-housing funds will be generated to fund other projects and programs in the Central City East Redevelopment Plan Area.

BACKGROUND

Project Description

Oakland Harbor Partners (OHP) is proposing to redevelop 63.82 acres of waterfront property by converting an underutilized, maritime and industrial area into a mixed-use neighborhood with residential, retail/commercial, open space, park, civic and marina uses. The project does not include approximately six acres of privately-held property along and east of 5th Avenue that contains a mix of commercial and industrial uses, as well as a small community of work/live facilities. The majority of existing structures on the project site would be demolished with the exception of approximately 15,000 square feet of the Ninth Avenue Terminal and the Jack London Aquatic Center. As now proposed, including development parcel N, approximately 29.9 acres (or 47%) 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 18 separate development parcels. Approximately 200,000 square feet of ground-floor retail/commercial space would be distributed throughout the 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.

Approximately 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 length of the project's waterfront would also be created as a segment of the Bay Trail.

Building heights would range from 86 feet (approximately 6 to 8 stories) with high rise tower elements of up to 240 feet (approximately 24 stories) on select parcels. A variant to the project allows building heights up to 120 feet on development parcels B, C, D and H if density is transferred to these parcels within the project site (refer to 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, 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.

Public Review Process

The proposed project has been discussed at a number of public meetings and hearings as summarized below. Additionally, CirclePoint, a consulting firm, was retained to conduct a public outreach process between December 2004 and May 2005. This additional community outreach included nine small group interviews with 40 individuals representing 35 different local community organizations (invitations were extended to 47 organizations) and two community-wide public meetings attended by 140 different community members (notification was sent to 523 elected officials, government agencies, community organizations, and residents who expressed an interest in the project). OHP also conducted its own meetings with community groups and individuals. Below is a list of City-sponsored meetings held for the Oak to Ninth project:

Community Meeting	6/9/04
Landmarks Preservation Advisory Board	6/14/04; 10/17/05; 1/9/05; 2/27/06
Parks and Recreation Advisory Commission	10/12/05; 2/8/06
Planning Commission	6/16/04; 9/28/05; 1/25/06; 3/15/06
Design Review Committee	12/14/05; 1/25/06
Central City East PAC	3/6/06
City Council/Redevelopment Agency	3/28/06

Review under the California Environmental Quality Act

General Background of the CEQA Process for the Oak to Ninth Project

As the principal public agency responsible for approving the Oak to Ninth Project, the City of Oakland is the Lead Agency in the preparation of the Environmental Impact Report (EIR).

Given the size, scale and potential impacts resulting from the Oak to Ninth project, the City determined that an EIR should be prepared for the project. The City distributed an initial Notice of Preparation on May 28, 2004 announcing its intent to prepare and distribute an EIR on the Project. The City conducted several public scoping meetings before the Planning Commission, Landmarks Preservation Advisory Board, and the Parks and Recreation Advisory Board to solicit preliminary comments about the Project and to identify issues that should be discussed in the EIR.

On September 1, 2005, the DEIR for the project was published and circulated for public review and comment. The public review and comment period ended on October 24, 2005 for a total period of 54 days. Responses to the written and oral comments that were received during the public review period were compiled, and are contained in the FEIR, along with changes and clarifications to the DEIR. The FEIR was published on February 1, 2006. The City Council has previously received the DEIR and FEIR under separate cover.

An Addendum to the FEIR was published on June 9, 2006 together with this staff report to address all CEQA-related issues that were raised after the February 1, 2006 publication date. None of the issues raised identified new impacts (refer to **Attachment E**, FEIR Addendum).

The EIR identified numerous feasible mitigation measures that are contained in the Mitigation Monitoring and Reporting Program (**EXHIBIT B** to all approval documents) and imposed on the project in order to lessen or eliminate many of the potentially significant impacts of the project. Twenty-four impacts are significant avoidable impacts, and 50 are significant impacts that could be mitigated to a less than significant level through the imposition of the proposed project conditions, requirements, and mitigation measures. Seven of the significant unavoidable traffic impacts could be mitigated if the mitigation measures are also approved by other governmental agencies (i.e., Caltrans and the City of Alameda). All feasible mitigation measures have been incorporated into the proposed Conditions of Approval (**EXHIBIT C** for all approval documents) for the project.

Refer to **Attachment J-1**, Planning Commission staff report dated March 15, 2006 for a more detailed discussion about the environmental review process, comments on the draft EIR, responses to comments, significant environmental impacts and mitigation measures, and the findings that need to be made to certify the environmental impact report.

Appeal Based in Part on the Adequacy of the Environmental Impact Report

The appeal filed in opposition to the Planning Commission's actions takes issue with the overall adequacy of the Oak to Ninth Project EIR. The appellants also challenge the Planning Commission findings pertaining to the EIR, including rejection of alternatives and over-riding significant and unavoidable impacts, particularly for the demolition of most of the Ninth Avenue Terminal. The basis of these appeals, along with staff's responses, is contained in **Attachment C**, "Response to Appeals of the Planning Commission Certification of the Final Environmental Impact Report for the Oak to Ninth Project." See **Exhibit (1)** for the Resolution denying the

appeal and sustaining the Planning Commission's action and certification of the Environmental Impact Report.

General Plan Amendment

Exhibit (2) is the proposed Resolution for approval of the amendments to the text and land use map of the *Estuary Policy Plan*. These amendments include updates to the Oak to Ninth District chapter of the *EPP* text, the creation of the new Planned Waterfront Development-4 land use category, and changes to the EPP land use map with the new land use designation. The proposed changes reflect the text recommendations received from the LPAB board. A detailed General Plan analysis for the project is contained in the March 15, 2006 Planning Commission Staff Report as well as in the DEIR, pages IV.A-11 to IV.A-17.

Redevelopment Plan Amendments

Land Use Map Changes

Attached are the proposed Resolution (**Exhibit (3)**) and the proposed Ordinance (**Exhibit (4)**) approving amendments to the land use map for the Central City East Redevelopment Plan. The land use changes are the same as those proposed to the *Estuary Policy Plan*.

Also attached are the proposed Resolution (**Exhibit (5)**) and the proposed Ordinance (**Exhibit (6)**) approving amendments to the land use map for the Central District Urban Renewal Plan. The land use changes are the same as those proposed to the *Estuary Policy Plan*.

Affordable Housing Obligations

Under California Redevelopment Law, redevelopment project areas adopted after 1976 are subject to a requirement to include affordable housing in the project areas. These requirements mandate that 15 percent of all housing units newly constructed or substantially rehabilitated in the project area must be affordable and targeted to low to moderate income households, with at least 6 percent of units targeted to very low income households and 9% targeted to moderate or low income households. The law requires that affordable units be built within the redevelopment project area, but not necessarily within the market rate projects.

The Central Urban District Renewal Plan was adopted prior to 1976 and is, therefore, not subject to the affordable housing requirements. The Central City East Redevelopment Area Plan, adopted in 2003, is subject to the requirements. With a buildout of 2,800 dwelling units proposed in the CCE portion of the project site, 420 affordable housing units are required to meet the 15% obligation. If the proposed development on parcel N were to be eliminated, and the units transferred to the other development parcels within the project area, the number of affordable housing units would increase to 465.

The following provisions for affordable housing have been negotiated by staff and Oakland Harbor Partners (“developer”) with input from the Oak to Ninth Affordable Housing Coalition. All parties are in agreement with the amount of housing, unit type, and affordability levels. The developer’s and Agency’s responsibilities will be incorporated into the Conditions of Approval for the project and the Development Agreement, Exhibit L.

This agreement is based on a possible modification to the proposed site plan that would remove housing from Parcel N. The 300 units for Parcel N would be transferred to the remaining portion of the project site which is in the Central City East Redevelopment Area. Therefore, 15% of the 300 units (45 units) would need to be affordable and would be added to the current 420 affordable housing unit total (based on 2,800 units in the CCE Redevelopment Area) resulting in a total affordable housing obligation of 465 units.

The 465 affordable housing units would be located on Parcels F and G. These units are expected to be built in the following four phases:

Phase	Parcel	Units	Construction Type
I	F	150	Type V;
II	G (portion)	132	Type I (over retail);
III	G (portion)	77	Type I (over retail); and
IV	G (portion)	106	Type III (over retail).

a. Purchase of Lots

Developer will provide Lots F and G for sale to the Agency for the purpose of constructing affordable housing. The lots will be in remediated condition with all necessary utilities stubbed out at the lot line and access roads completed along the lot frontage to back of curb prior to construction (“Finished Lot”). The Agency shall close escrow on Lots F and G no later than the date that is 90 days after such lots are completed as Finished Lots (completion currently estimated at fourth quarter of 2009 to first quarter of 2010; therefore, closing is estimated to occur in first quarter of 2010 to second quarter of 2010).

b. Determination of Discounted Purchase Price

Value of the lots will be determined by an appraisal in consideration of the number of market rate residential units allowed to be built at the time the purchase transaction takes place (notwithstanding the affordability restriction contained in the Development Agreement), minus \$1 million for each lot; subject to a minimum purchase price described below. The initial purchase price for Parcel G will be based upon that portion of the land allocated to the residential component, which shall be determined by dividing the sum of the square footage of all residential units and residential parking by the total building and parking square footage for the entire Parcel G development.

c. Minimum Purchase Price

The purchase price for Parcels F and G would be subject to a possible adjustment based on the developer's actual cost of providing the Finished Lot since the project has very slim margins of profit it cannot sustain losses which might occur if a parcel is sold significantly below the developers cost. Accordingly, a minimum purchase price is established that allows the purchase price to be adjusted upward if the developer's cost of the finished, ready-to-build lot is more than the appraised value. The discounted purchase price may be adjusted up to the higher of the developer's cost (not including profit) or the fair market value at the time of completion of remediation and installation of utilities and access. However, in no event would the purchase price of the lot be adjusted higher than fair market value.

d. Early Purchase

The Agency would have the right to purchase Lots F and G prior to their completion as Finished Lots (with the Developer remaining obligated to remediate the property and install the applicable improvements) in return for a discount on the Purchase Price equal to a percentage discount rate multiplied by the number of years each lot is purchased prior to being completed as a Finished Lot. This discount would apply regardless of any adjustments made under the minimum purchase price provisions described above. The discount would be determined by taking a discount rate per year and multiplying it by the number of years the Agency purchases the lot before construction commences. The discount rate for the lots will be a blend of the developer's preferred return and the developer's cost of financing reflecting the proportions of each in Phase I. For example, if the cost of financing is 8% and the preferred return on equity is 10% and the proportions of financing and equity are 75% financing and 25% equity, then the blended rate would be 8.5%. If the lots are then purchased two years early the discount would be 17%.

e. Additional Contribution

The Developer will make an additional contribution toward affordable housing equal to \$2,000,000, with \$1,000,000 payable at the time of building permit issuance on Parcel F and \$1,000,000 payable at the time of building permit issuance on Parcel G.

f. Commercial Shell and Parking Purchase Provision

Upon completion of the commercial shell and parking for Parcel G, the Developer will purchase the commercial shell and parking at the cost of construction to the Agency or affordable housing developer, including financing and equity costs and developer overhead.

g. Development Rights Transfer

The developer may propose to purchase the right to build market rate units from the pool of affordable units allocated to Parcel G, along with the land value then associated with the units to be sold. Such a purchase would not affect any other contribution toward affordable housing to

which the developer would still be bound. The developer may transfer the development rights to any other area within the development and use the rights for development of market rate units.

h. Construction of Affordable Housing

The Agency will warrant that it will cause to be constructed affordable housing units when it is economically feasible for the Agency to do so, subject to bonding constraints, Oak to Ninth project build out schedule, anticipated State funding to cover part of the needed subsidy as such program exists in 2006, and anticipated growth in tax increment from the Central City East Redevelopment Area and other areas contributing to the city-wide housing tax increment pool. It is anticipated that the Agency will fund the construction of units based on the following schedule:

(1) Parcel F (Phase I): No later than July 1, 2013 and when 1000 market rate units have been completed and are on the tax roll.

(2) Parcel G (Phase II): No later than July 1, 2016 and when 1800 market rate units have been completed and are on the tax roll.

(3) Parcel G (Phase III): No later than July 1, 2017 and when 2100 market rate units have been completed and are on the tax roll.

(4) Parcel G (Phase IV): No later than July 1, 2018 and when 2300 market rate units have been completed and are on the tax roll.

The Agency may elect to construct sooner provided sufficient funding is available. Further, the Agency shall covenant to limit the use of the Oak to Ninth project set aside funds to the acquisition and development of Lots F and G until the completion thereof.

i. Affordability Level

Units will be affordable to households at between 30% and 60% of Adjusted Median Income

j. Unit Types

Up to 25 percent of all units may be configured for seniors. At least 30 percent of all non-senior units will be three bedroom units and at least 20 percent of all non-senior units will be two bedroom units.

k. Environmental Remediation of Estuary Park

To the extent that the City Council may decide to provide funds for environmental remediation of Estuary Park, the developer has agreed to provide additional subsidy for affordable housing equal to the amount of any remediation the Council funds. This will cause the park to be built

earlier than would otherwise be feasible. Additionally, this will cause two of the four phases of affordable housing to be funded one year earlier than would otherwise be feasible and would result in citywide affordable housing funds being available for use elsewhere in the City. The developer proposes to pay interest on any funding provided by the City for environmental remediation equal to the rate the Redevelopment Agency would otherwise get, until such time as the first phase of Oak to Ninth affordable housing is built, at which time the developer would provide funding equal to the environmental remediation contribution plus interest to the Agency for use in funding affordable housing within the Oak to Ninth Mixed Use Development Project.

This is a brief summary of the key points of the affordable housing program. Refer to Exhibit L of the Development Agreement for a detailed description of the agreement. The affordable housing program is further discussed in the “Key Issues” section of this report.

Zoning Code Amendments and Adoption of the Planned Waterfront Zoning District-4 (PWD-4)

A new zoning district was prepared for the 63.82 acre site, Planned Waterfront Zoning District-4. The intent is that all future projects within the project area be consistent with the PWD-4 zoning district, the Preliminary Development Plan, and the Oak to Ninth Design Guidelines, as discussed below.

In general, the PWD-4 zoning district establishes specific regulations for the residential and commercial uses proposed on the developable portions of the site. 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 for the entire phase.

The PWD-4 zone will be assigned to 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-Regional Serving Park (OS-RSP). 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 Oakland Municipal Code (OMC).

The PWD-4 zone does modify one aspect of the OS-RSP zone. Those uses that would otherwise require a Conditional Use Permit pursuant to Section 17.11 of the Planning Code shall instead be approved as part of the Preliminary Development Plan or Final Development Plan.

Development applications for proposals within the Planned Waterfront Zoning District will be processed similar to the City’s current Planned Unit Development (PUD) permit requirements using the Planned Waterfront Zoning District-4 as the underlying zone. Preliminary

Development Plans and Final Development Plans will be submitted for each development proposal and will be processed according to the requirements specified in the zoning district.

Exhibit (7) is the Ordinance adopting the new Planned Waterfront Zoning District-4 (PWD-4) and **Exhibit (8)** rezones the developable portions of the project site to PWD-4, and the parks and open space areas to Open Space-Regional Serving Park (OS-RSP).

Vesting Tentative Subdivision Map No. 7621

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

OHP is proposing to aggregate five existing parcels and re-subdivide the 63.82 acre site into twenty-nine (29) parcels: eighteen (18) developable parcels to accommodate future residential and commercial development; two (2) parcels for the marinas; five (5) parcels for the public streets; three (3) parcels for the public parks; and one (1) parcel for the Estuary and Lake Merritt Channel waters (the City boundary extends into the water). The subdivision map shows approximately 34 acres of developable land, with 9.18 acres set aside for public roadways and 24.65 acres for residential and commercial development. The remaining 29.9 acres are designated for parks and open space and will remain under the ownership of the City of Oakland or the Port of Oakland.

Future projects on the developable parcels will need to comply with the Conditions of Approval for the subdivision map, the Preliminary Development Plan, Design Guidelines, Planned Waterfront Zoning District-4, and the Development Agreement.

On March 15, 2006 the Planning Commission made the Tentative Map Findings (Section 16.08.030 O.M.C. & California Government Code Section 66474) and approved Vesting Tentative Tract Map No. 7621 and the Conditions of Approval accompanying the subdivision map with an addition to Condition No. 40. The approval was contingent upon the City Council approving the General Plan Amendment to the *Estuary Policy Plan* and the proposed Planned Waterfront Zoning District-4. Please refer to **Exhibit (9)**, the Resolution Approving Vesting Tentative Tract Map No. 7621, and **EXHIBIT C**, Conditions of Approval, as revised by the Planning Commission. Staff notes that **EXHIBIT C** has been revised since the Planning Commission meeting, making further refinements in the project in response to City Council comments at the March 28, 2006 meeting and further negotiations and revisions at the staff level. These changes are reflected in redline using the March 15, 2006 Planning Commission approval. Unless otherwise noted, the changes are staff initiated.

Preliminary Development Plan (PDP)

OHP is requesting approval of a Preliminary Development Plan (PDP) as the “comprehensive plan” for the entire site. The PDP is a visual representative of the project description. The PDP contains six major sections: Overview of the Master Development Plan, Shoreline Improvements, Parks and Open Spaces, Streets and Pedestrian Ways, Ground Level Building Plan and Building Sections, and Civil Engineering Plans.

Each subsequent individual project will require approval of a Final Development Plan (FDP) which will need to be found substantially in compliance with the approved PDP, Vesting Subdivision Map, Planned Waterfront Zoning District-4, 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 20-year construction schedule. The Planning Commission approved the PDP at its March 15, 2006 public hearing (refer to **Exhibit (10)**).

Oak to Ninth Design Guidelines

OHP has prepared the Oak to Ninth (Brooklyn Basin) design guidelines to accommodate the PDP. Because the actual buildings have not yet been designed, staff recommended that design principles and guidelines be prepared to define expectations for future development. After a lengthy discussion, the Planning Commission believed that future architectural review should be based on encouraging good design though assuring high quality materials and following the principals and objectives set forth in the guidelines. This approach contrasts with a more prescriptive set of standards.

The design guidelines were prepared by ROMA Design Group, OHP’s master plan architect, with urban design consultation from Ken Kay and Associates retained by the City. The major components of the Design Guidelines include the vision for the area, urban design principles, urban design concepts, and the design guidelines. The chapter on “Design Guidelines,” which is accompanied by photographs and illustrative diagrams, shows how “the massing of buildings should contribute to the overall form and structure of the community, to the spatial definition of public spaces and streets, and to the visual diversity and interest of the public realm.” These are described in two main sections of the report:

- a) Building Height, Massing and Treatment (design intent, tower location and massing, variation in overall building height, variation in street wall building volume and plane, parking garage façades, windows, rooftop treatment, exterior wall materials, roofing materials for sloped roofs, exterior color, mechanical penetrations at façades)
- b) Building Orientation and the Public Realm (design intent, retail frontages, commercial work/live frontages, mixed use street frontages, mews frontage, waterfront/park edge, Embarcadero frontage, blank walls, awnings and canopies, service areas, equipment screening, waste handling areas)

The Design Guidelines are not proposed to be codified as part of the zoning district, but are referenced in the proposed 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, Oak to Ninth Design Guidelines, and the Planned Waterfront Zoning District-4. The Planning Commission approved the Design Guidelines along with the Preliminary Development Plan as part of its March 15, 2006 actions (see **Exhibit (10)**).

Development Agreement

Oakland Harbor Partners 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 approved the DA and has forwarded its recommendations to the City Council/Redevelopment Agency for final action (refer to **Exhibit (11)** and **Exhibit (12)** for approval of the Development Agreement). A summary of the major “deal points” of the proposed DA are presented below:

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

- 20 years of vested rights enabling the project to be developed in phases consistent with the proposed Preliminary Development Plan and Oak to Ninth Design Guidelines over a 20-year period.
- Guarantee that the 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.

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

- Provide for the dedication, improvement and maintenance (in perpetuity) of approximately 30 acres of public parks, all at the cost of the Developer or a Community Service District/Community Facility District (CSD/CFD).
- Maintain, in perpetuity, 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.

- Offer development Parcels F and G at a discounted price for affordable housing. In addition, make a further \$2.0 million contribution to affordable housing.
- Contribute \$400,000 for a combination of studies or physical improvement to the Chinatown area for the purposes of improving pedestrian safety and traffic circulation.
- Ensure that Oakland residents are employed to work 6% of the construction job hours on each parcel (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 that will require the Developer to complete specified public improvements prior to certain milestones of development.
- Install park, open space, and Bay Trail improvements with each phase of development as specified in the phasing plan.
- Restore the bulkhead and a portion 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 Jetro Cash and Carry site at 105 Embarcadero.
- Widen, landscape, and install a median at the Embarcadero along the project's frontage.
- Fund private shuttle service and other transportation demand reduction measures pursuant to an approved Transportation Demand Management Plan.
- Comply with the Port of Oakland's Art in Public Places Ordinance.

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. While there were no concerns with the overall tree removal plan, it was determined that a tree removal permit will need to be obtained during each phase of construction as the permits are only in effect for up to two years.

Creek Protection Permit

A 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 the Preliminary Development Plan.

Other City Permits

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

Other Agency Approvals

In addition to obtaining project approval from the City and the Redevelopment Agency, OHP will also need approvals from the Port of Oakland, California State Lands Commission (Tidelands Trust), San Francisco Bay Conservation and Development Commission, California Department of Toxic Substances Control, California State Water Resources Control Board-San Francisco Region, Alameda County Environmental Health Department, the U. S. Army Corp of Engineers, the U. S. Fish and Wildlife Service, California Department of Fish and Game, Bay Area Air Quality Management District, East Bay Municipal Utility District, Alameda County Airport Land Use Commission and Federal Aviation Administration, and the California Department of Transportation.

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). A detailed description of the phasing plan is included as Exhibit C to the Development Agreement. Below is a summary of the proposed phasing for the project. There have been several edits to the phasing plan, shown in “redline” below, since the last version was published on March 28, 2006. New language is underlined; deleted language is shown as ~~strikethrough~~.

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 certificate of occupancy permit for the 550th unit*). This phase will involve, at a minimum, demolition of on-site structures including a portion of the Ninth Avenue Terminal and the timber supported pier structure; soil remediation; on-site improvements; ~~off-site improvements on~~ reconstructing the Embarcadero fronting the project between 9th Avenue and 5th Avenue; construction of building pads for seven mixed use buildings containing 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 certificate of occupancy permit for the 1,650th unit*). This phase will involve soil remediation; on-site improvements; off-site improvements along the Embarcadero from 5th Avenue to the existing Embarcadero Bridge; construction of building pads for four mixed use buildings containing 905 multifamily units and approximately 79,000 square feet of retail and 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 the 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 a certificate of 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 two mixed use buildings containing 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.~~ (Note: Improvements to the Marina have been moved to Phase IV.)

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 a certificate of occupancy permit for the 2,800th unit*). This phase will involve demolition of on-site structures; soil remediation; and construction of two buildings containing 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. It is anticipated that improvements to the Fifth Avenue Marina will be constructed within this Phase. 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 a certificate of 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 two buildings containing 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 project 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.

Planning Commission Recommendations

The Planning Commission met on March 15, 2006 to take action on the project and to make recommendations to the City Council. Prior to taking action, the Commission asked questions and discussed the following:

- Willingness of the project sponsor to work with the community
- Status of the feasibility and financial reports
- Cost of land and cost of remediating the site
- Affordable housing program framework and amount of affordable housing

- Park maintenance by the project sponsor
- Measure DD funds and parks
- Positive health impacts from the proposed project
- How the proposed project will revitalize the Jack London area
- Public trust lands and what activities can take place on those lands (i.e., sports fields)
- The density and height of the proposed buildings
- Re-use of the Ninth Avenue Terminal and how much of the terminal should be preserved
- Phasing Plan
- Adequacy of the of off-street parking capacity for the project and surrounding park areas
- Developer's profit and benefits
- Not a significant change to the *Estuary Policy Plan*
- Job training proposal
- Pedestrian safety

The Planning Commission then certified the Environmental Impact Report and the Mitigation Monitoring Reporting Program; approved the Preliminary Development Plan and the Design Guidelines; and approved the Vesting Tentative Tract Map and the proposed Conditions of Approval (with an amendment to COA# 40), contingent upon the City Council approving the amendments to the *Estuary Policy Plan* text and land use map; approval of the amendments to the Central City East Redevelopment Plan and the Central District Urban Renewal Plan land use maps; the proposed Planned Waterfront Zoning District (PWD-4); and the Development Agreement.

Joint City Council/Redevelopment Agency Information Meeting Comments

On March 28, 2006, the City Council/Redevelopment Agency held an informational meeting on the proposed project. Members of the City Council listened to public testimony, briefly discussed their views on the project, and posed a number of questions to staff. No recommendations were made at the meeting. Please refer to **Attachment A** for a summary of the questions raised by the City Council and the staff responses.

BASIS OF THE PLANNING COMMISSION APPEAL AND STAFF RESPONSE

Basis for Appeal

The appeal of the Planning Commission decisions was filed by Arthur D. Levy on March 24, 2006. Mr. Levy, who is representing eight community groups or individuals¹, set forth grounds opposing or otherwise disagreeing with the Planning Commission certification of the EIR, approval of the Vesting Tentative Subdivision Map, and approval of the Preliminary Development Plan and Design Guidelines and all other actions and recommendations of the

¹ Oakland Heritage Alliance, John Sutter, Rajiv Bhatia MD MPH, East Bay Bicycle Coalition, League of Women Voters of Oakland, Waterfront Action, Coalition of Advocates for Lake Merritt, Sierra Club-Northern Alameda County Regional Group

Commission. (The appeal letter and attachments are included as **Attachment B**. The issues raised in the appeal are listed below. **Attachment C**, “Response to Appeal Filed by Arthur Levy” presents detailed responses to each of the issues raised in the appeal letter.

The appeal is based on the following 11 issues (listed as Attachment D in the appeal letter):

“1. All issues raised in the letters attached as Attachment E (to the appeal letter) previously submitted by appellants, which are incorporated here by reference as though set forth in full.

2. All issues raised by or on behalf of appellants at the Planning Commission hearing on March 15-16, 2006.

3. The Planning Commission otherwise failed to analyze the issues, address inadequacies in the project, and consider alternatives.

4. The actions and recommendations of the Planning Commission at the hearing on March 15-16, 2006 were premature and violated CEQA and the Oakland City Code because the record before the Planning Commission remained incomplete, including but not limited to as follows: (a) the proposed Development Agreement contained blanks and remained incomplete as to various material terms; and (b) the Planning Department had not completed its analysis of feasibility and mitigation issues under CEQA and had not yet received all evidence relating to those issues.

5. The CEQA Findings and Statement of Overriding Considerations adopted by the Planning Commission at the hearing on March 15-16, 2006 were not adequately supported by the evidence before the Planning Commission as to the infeasibility of project alternatives and mitigation measures.

6. The notice and agenda for the Planning Commission hearing on March 15-16, 2006 were deficient and violated Government Code sections 54950 et seq., CEQA, and the Oakland City Code.

7. All issues raised by letters and speakers relating to the Planning Commission hearing on March 15-16, 2006.

8. All issues raised by written comments on the Draft Environmental Impact Report.

9. All issues raised by written comments on the Final Environmental Impact Report.

10. The City’s appeal procedures are illegal under CEQA and other state laws to the extent the City interprets or applies them to interfere with the administrative integrity of the Planning Commission’s full and fair public determination of CEQA issues by allowing the

project proponent and/or City to supplement the record with post-hearing evidence that was not before the public or the commission at the time of the Planning Commission hearing.

11. The City's appeal procedures violate the statutory right of appeal to the elected body under Public Resources Code section 21151(c) by imposing unreasonable and onerous filing fees and by imposing unreasonable and onerous documentation requirements."

Response to Appeal

On the basis of the entire administrative record for this project, staff believes that the issues raised in the appeal have been completely addressed. Specifically, there is extensive analysis and information in the record that adequately addresses the potentially significant impacts associated with this project and that set forth practical measures that can be incorporated into the project to reduce these impacts in most cases. The City followed both local and State requirements to circulate all the environmental documents and to address all comments received, as contained in the FEIR. Contrary to some of the assertions made in the appeals, the City went beyond minimum analysis in order to review and consider the key environmental and policy issues related to this project, including the feasibility of various options to retain the Ninth Avenue Terminal, affordable housing options, health impacts, pedestrian impacts, and open space concerns. Additionally, the City's notice and agenda for the Planning Commission hearing and other procedures are adequate under state and local law. For these reasons, staff recommends that the City Council deny the appeal and uphold the Planning Commission's March 15, 2006 actions and recommendations, subject to the clarification and revisions that may be made to address the remaining key issues discussed in the next section of this report. As previously noted, the points of appeal are all addressed in a separate document entitled "Response to Appeal Filed by Arthur Levy" (**Attachment C**).

KEY ISSUES AND IMPACTS

As noted previously, there are four remaining issues which must be resolved prior to approving the project. Since the March 15, 2006 Planning Commission meeting, and the March 28, 2006 Joint City Council/Redevelopment Agency meeting, staff and OHP have been working to address these issues. The results of these discussions are presented in the next section, organized as follows: the issue is identified, a discussion of comments from the Planning Commission and City Council is outlined as necessary, and then a staff response and recommendation is presented. Options have been included where appropriate and feasible. The draft approval documents have been prepared based on the staff recommendations, unless otherwise noted.

1. Historic and Cultural Resources - Ninth Avenue Terminal

Issue: The project is proposing to demolish all but 15,000 square feet of the Ninth Avenue Terminal building to accommodate the proposed Shoreline Park. The Ninth Avenue Terminal building is 180,000 square feet in size, consisting of a portion built in the 1920s and an addition constructed in the 1950s. The project proposes to retain 15,000 square feet of the bulkhead of

the terminal shed and demolish the remaining 165,000 square feet of building. Public comments received throughout the public outreach and review process have ranged from support to remove the entire structure; to retain the bulkhead portion of the building, as currently proposed by the project sponsor; to retain the 1920s portion of the building (90,000 s.f.); and to retain the entire structure.

The Ninth Avenue Terminal is considered eligible for landmark status by the City of Oakland. The Landmarks Preservation Advisory Board has recommended to the Planning Commission that the structure be designated a City landmark. This requirement has been incorporated as part of COA No. 25 b.7.c.

The project sponsor has indicated that it would be financially infeasible to renovate the entire structure and find tenants for more than 15,000 square feet of the building as indicated in several of the consultant reports that have been submitted for the project (see **Attachment K-3** “Oak to 9th Mixed Use Project, Ninth Avenue Terminal Reuse Feasibility” prepared by EPS, February 21, 2006), **Attachment I** “Oak to 9th Mixed Use Project, Pier Renovation (Tax Credit Analysis)” prepared by Novogradac & Company, May 17, 2006, and **Attachment D**, Memo prepared by The PFM Group). If more of the building were to be retained, it would be necessary to provide a public subsidy, something that the project sponsors do not want to do (see **Attachment A**, Responses to City Council Questions).

The financial infeasibility of retaining more of the 9th Avenue Terminal structure has been assessed by the City’s independent financial consultant, The PFM Group (please refer to **Attachment D**). After review and comparison of the four alternatives that were studied by EPS, PFM concluded that the greater the amount of the terminal saved, the higher the amount of subsidy required and therefore the greater degree of financial risk for both the project applicant and the City. The key issue is that regardless of the development plan or re-use, there are substantial costs associated with the pier retrofit, financing and project cost that must be factored against a limited amount of net operating income. Even if the net cash flow could be brought to zero with an additional capital contribution by the developer, this increased funding in turn must be weighed against the overall feasibility and the other community benefits that have already been exacted. In short, a high capital contribution, coupled with the recent agreement on the affordable housing contribution, would likely reduce the project to an unacceptable (infeasible) level of return.

The following four major options are presented, along with the likely financial liability and staff’s recommendations:

a. Approve the project sponsor’s proposal of saving 15,000 square feet of the bulkhead building 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. This option still entails financial risks but is deemed acceptable from the project applicant’s standpoint and from an overall project feasibility

standpoint. *Option: Use the \$ 500,000 designated for general City-wide historic preservation (Condition of Approval No. 26) to save and restore an additional amount of building (i.e., 5,000 to 6,000 square feet).*

b. Approve retaining the entire 1920s portion of the building (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. This approach would result in an additional \$13.09 million of project costs and an estimated net annual operating deficit of \$ 693,000. This annual deficit has not been accounted for in the present proposal now before the City Council.

c. Approve a plan based on the Fort Mason Center in San Francisco whereby the entire building is preserved and would be composed of a mixture of retail, commercial and non-profit uses. This approach would result in an additional \$27.35 million of project costs and an estimated net annual operating deficit of \$1.9 million. This annual deficit has not been accounted for in the present proposal now before the City Council.

d. Approve a plan based on a conference center model, whereby the entire building is preserved and would be remodeled for conference facilities. This approach would result in an additional \$ 29.05 million of project costs and an estimated net annual operating deficit of \$2.1 million. This annual deficit has not been accounted for in the present proposal now before the City Council.

In addition to the options outlined above, financial analysis has also been completed on other preservation ideas, including an artist's studio/workspace project and a boat storage and chandlery. Neither of these options was demonstrated to be financially feasible. The overall equation is that the greater the portion of the building that is retained, the higher the project and annual costs. The use of rehabilitation tax credits and new markets tax credits were also analyzed in the "Ninth Avenue Pier Renovation, Impact of Rehabilitation Tax Credits and New Markets Tax Credits on Project Feasibility" (see **Attachment I**). The report concluded that "maintaining the Shed as is or reducing it down to the 1927 size of the building is not economically feasible with use of the federal Rehabilitation Tax Credits and New Markets Tax Credits."

Planning Commission Comments: Several Planning Commissioners expressed their support for retaining the 15,000 s.f. bulkhead portion of the building and did not recommend that a larger section of the terminal shed be retained. With the certification of the EIR, the Planning Commission made the findings for the Statement of Overriding Consideration for demolition of 165,000 square feet of the Ninth Avenue Terminal and approved Conditions of Approval 25 and 26 relating to the remaining portion of the Ninth Avenue Terminal.

City Council/ORAs Comments: Several Councilmembers commented on the proposed demolition of the Terminal shed and inquired about the project sponsor's plans for the facility, the reuse possibilities, and the economic feasibility analysis (see **Attachment A** - Responses to City Council Questions.)

In addition, the City Council and others requested further information about how other large historic reuse projects have been accomplished. Examples cited included the Chelsea Piers in New York, the Torpedo Factory in Virginia, and the former Ford Assembly Plant in Richmond, California. All of these projects involved substantial public subsidies or other outside funding sources (refer to **Attachments A and G**).

Since the Planning Commission and City Council meetings in March 2006, a provision has been added to the draft Development Agreement (Section 4.3.2) regarding the long-term leasing of the remaining portion of the Ninth Avenue Terminal building. Since the City will become the Trustee/Owner of the parks and open space lands (including the Terminal building), and the project sponsor will be required to renovate and operate the facility, this lease arrangement makes sense. It gives the City a long-term contractual agreement with rights and oversight and it gives the project sponsor long-term assurance for investment, maintenance and operational purposes.

Finally, there has also been an idea to simply leave the building in place, without any modifications or demolition taking place. Staff believes that this option would be infeasible in the long run due to on-going maintenance and operating costs as well as the fact that substantial work needs to be completed to protect life safety, i.e., the rebuilding of the old piers and other elements.

Staff Recommendation: As presently conceived, the project sponsor has incorporated the retention and renovation of 15,000 s.f. of the terminal bulkhead without a public subsidy. The present proposal for reuse includes a maritime museum, recreational retail uses related to the nearby parks and waterfront, limited retail, and perhaps, space for community meetings. As mentioned in previous staff reports, the City's policy documents do not provide consistent guidance on this issue. The *Estuary Policy Plan* shows a larger Shoreline Park and no Ninth Avenue Terminal in the illustrative diagram for this site.

Staff recommends that the City Council/ORC reaffirm the Planning Commission's CEQA Statement of Overriding Consideration regarding partial demolition of the Ninth Avenue Terminal and approve Option A discussed above. Staff believes that retaining the most architecturally distinct portion of the building, and slightly reducing the area specified for Shoreline Park in the *Estuary Policy Plan*, is a workable and effective balance between historic preservation goals and park and open space goals as set forth in the City's General Plan. As an option, the \$500,000 contribution for general City-wide historic preservation efforts could be dedicated to preserving approximately 5,000 square feet more of the building.

2. Parks, Open Space, and the Bay Trail

Issue: The Project proposes a total of approximately 30 acres of parks and open space, including Estuary Park and the Jack London Aquatic Center. This amount equals approximately 47 % of the entire project site. Figure III-10, "Open Space Key Map" of the *Estuary Policy Plan*, shows parks and open space areas in approximately the same locations as those proposed by the project

sponsors with the exception of the area behind Estuary Park (300 units of housing is proposed in this area). The project sponsors will also be constructing a segment of the San Francisco Bay Trail which will connect from Estuary Park to the Homewood Suites. The outstanding issues surrounding parks and open space are summarized as follows:

Timing of park construction and the City's ability to expend funds under Measure DD

Several public comments received mentioned that the parks should be installed in the earlier phases of development. The project sponsor is proposing to install the parks along with each phase of construction and maintains that the parks cannot be installed sooner because of the phasing of soil remediation and the current leases that are held by some of the existing businesses (i.e., Cash and Carry, Berkeley Ready-Mix). As proposed in Exhibit C of the draft Development Agreement, the schedule for major park construction is as follows:

Shoreline Park (in the area of the Ninth Avenue Terminal): Majority of park will be completed by **2013**, or within 5 years of the issuance of the first building permit or the issuance of an occupancy permit for the 550th unit, whichever occurs first. A small portion is to be completed by **2016**, or within 8 years of the issuance of the first building permit.

South Park (portion of Meadow Park as identified in the EPP): To be completed by **2016** or within 8 years of the issuance of the first building permit or the issuance of an occupancy permit for the 1,650th unit, whichever occurs first.

Channel Park (portion of Meadow Park as identified in the EPP): To be completed before **2019**, not later than 11 years from the issuance of the first building permit or not later than the issuance of an occupancy permit for the 2,340th unit.

Estuary Park Expansion and Improvements: To be completed by **2025**, not later than 18 years from the date of the first building permit or not later than the issuance of the occupancy permit for the 3,100th unit.

There are two key issues: First, the timing of the park improvements must be factored in with environmental cleanup schedules and the required infrastructure to serve the site for the proposed development. Second, and more complex, given that the project applicant has committed to building a significant portion of the parks identified in Measure DD, it is bond counsel's opinion that the City cannot re-commit the Measure DD funding to another project prior to the completion of the required parks approved under the project. This finding is based on the schedule for issuing the bonds. As it stands, the City would be under the deadline of issuing the remaining Measure DD bonds by 2016 at the latest, with those projects being substantially completed within the following 3 years, or by 2019. When this schedule is overlaid on the proposed Oak to Ninth park construction schedule, there is a problem with the City's ability to commit approximately \$18 million in funding because all the Oak to Ninth parks would not be completed by 2019.

Staff Recommendation: Staff believes that the timing of park construction must be adjusted to allow the City sufficient discretion to redirect the remaining Measure DD funds to other identified projects. There are several options to accomplish this objective, including accelerating the applicant's schedule for construction, or committing Measure DD funds to cleanup and remediation efforts during an earlier phase. These are not referenced in the current draft of the Development Agreement and may have implications for the timing of affordable housing contributions as set forth in **Attachment I-1**. Staff is continuing to work on more specific options to leave the City in the most advantageous position to redirect the Measure DD funds allocated for Estuary Park land acquisition and development.

Park Ownership and Maintenance.

It is proposed that the City owns the parks and open spaces because only public agencies can be designated Trustees under State Public Trust law. The project sponsors are proposing to work with the City to create a Community Facilities District (CFD) and a Community Services District (CSD) to maintain the parks, open space, landscaping, and the segment of Bay Trail in perpetuity. The CFD is a financing mechanism to fund maintenance, while the CSD is a district that would perform the maintenance activities. This proposal and the recommended standards and requirements are incorporated into the draft Development Agreement under Section 4.4 and within Condition of Approval 38. The maintenance standards set forth in Exhibit F of the Development Agreement have been coordinated with the City's Public Works Agency.

There are two key outstanding issues: First, the project sponsor proposes to establish the CFD to provide for long-term financing of open space maintenance *only* if the City forms the CSA. However, all details and issues of CSD formation have not yet been presented or considered by the City Council. Accordingly, staff believes that funds for maintenance should be provided through the CFD regardless of whether the CSD ultimately is formed, and the amounts authorized under the CFD should be sufficient to cover long-term maintenance regardless of whether those activities are performed by a CSD or the City. The City needs to fund the maintenance of the proposed parks regardless of whether the CFD/CSD is established. The draft Development Agreement includes such a fall-back provision.

Second, if the City Council agrees to remove Parcel N (now within Estuary Park) for development purposes, the project sponsor has indicated that they would want it removed from the land area included under the CFD/CSD. This proposal is unacceptable. Given that the option to remove Parcel N also transfers the density (300 units) to other portions of the site so that no units are eliminated from the overall project, the maintenance of Estuary Park should also be included under the CFD/CSD.

City Council/ORR Comments: Councilmembers had mixed views on the amount of parks and open space proposed in the site plan. Some believed there was enough and in the appropriate locations; others wanted to increase the amount of parks and open space. It was suggested that one way to increase the amount of park space was to relocate the proposed housing behind Estuary Park and expand Estuary Park to the Embarcadero. This would increase the size of

Estuary Park by 2.41 acres. (This proposed site plan modification is discussed later in this report.)

Staff Recommendation: To provide for a CFD/CSD or an alternative funding mechanism for the future maintenance of the parks and open space, and to include the Estuary Park within the area to be funded for maintenance, regardless of whether Parcel N is included for residential development.

Procedure and Conditions under Which the City Accepts Ownership of the Parks and Open Space for the Project

There is significant contamination within the land area designated for parks and open space. The project sponsor has proposed to clean up these areas, construct the parks and open spaces and offer them for dedication to the City. The issue of concern is the City's ability to perform its own due diligence process prior to accepting the land for dedication and to be a direct part of the clean up process. In addition, there are also issues concerning acceptance of long-term risk and securing the costs of clean up in the event of default. Language regarding the conditions and requirements for this process has been a subject of continual negotiations. The proposal is still being discussed and there are a few issues still being finalized. Staff's recommendation is that agreement is reached, the provisions be incorporated into the Development Agreement.

Staff Recommendation: Staff recommends that the City incorporate a due diligence process, sufficient security to fund the cleanup, and future liability provisions into the DA, as described in **Attachment I-1** to this staff report.

Modification of Site Plan to Eliminate Parcel N for Development Purposes

The City Council requested staff to review the impacts of removing Parcel N from development, thereby creating an additional 2.4 acres of park within the Estuary Park area of the Oak to Ninth District. This discussion is included in the "Modifications to the Site Plan" section of this report.

3. Affordable Housing Program

Issue: California Community Redevelopment Law requires redevelopment agencies to incorporate affordable housing as part of any new housing located within a redevelopment project area. Redevelopment agencies have several options, or a combination thereof, to fulfill this requirement. A major portion of the housing in the proposed project (2,800 units) is proposed in the Central City East Redevelopment Area. As a result, 420 affordable housing units (15%) are obligated to be produced by the Agency (based on the project proposed by the project sponsor).

- OHP will sell Parcels F and G, which have been remediated, and include utilities and infrastructure, to the Redevelopment Agency at fair market value less \$1 million per parcel

- OHP will contribute an additional \$2,000,000
- A total of 420 (if housing removed from Parcel N then 465) affordable housing units will be provided to the following income levels:
 - 168 very low income
 - 252 low, moderate, and above moderate income
- The rental units will be constructed and managed by a non-profit housing agency and will remain affordable for a minimum of 55 years

With this proposal, all very low and low income unit requirements are satisfied.

Joint City Council/Redevelopment Agency Comments. The City Council considered the affordable housing framework and asked about providing more than 15% or 420 affordable housing units and whether more of the affordable housing could be provided to families with lower incomes than required by Redevelopment Law. One Councilmember asked if Parcels F and G were large enough to accommodate all the affordable housing if 20% were to be required.

Staff Comments. The City's Redevelopment Agency and Housing and Community Development Division have been analyzing the various options that were discussed. Staff looked at the Oak to Ninth affordable housing proposal in relation to the Wood Street Development project, which is also assisting the Redevelopment Agency in meeting its obligation, and the amount of tax increment being generated in several other redevelopment areas. The "Oak to Ninth Affordable Housing Analysis," included as an attachment to the March 28, 2006 City Council Agenda report, had reached the following four conclusions:

1. Any affordable housing project that requires subsidies in an amount in excess of that generated by the project will require drawing funds from the portion of the Central City East Redevelopment Area which lies outside of the Oak to Ninth project area.

2. The non-housing funds generated by Oak to Ninth will be spent outside of the Oak to Ninth area and will leverage other developments, which will generate additional tax increment funds, 25% of which will go to the housing fund.

3. Due to the large subsidies necessary, it will be necessary to pool resources from other redevelopment areas, i.e., the Citywide Notice of Funding Availability (NOFA), in future years to cover the up-front subsidy requirements of affordable housing for this project.

4. The Wood Street Development Project will likely require large subsidies for affordable housing within a few years of the time the Oak to Ninth project requires subsidies. Since the Army Base Redevelopment Area will not have sufficient affordable housing increment generation at the time the subsidies are needed, this project will also require utilizing funds from

the Citywide NOFA. *The Council should consider this cash flow issue when deciding on requiring more affordable units or units which are more deeply affordable.*

Staff Recommendation: Staff recommends the affordable housing program proposed by the project sponsor to assist the Redevelopment Agency with meeting its obligation of affordable housing in the Central City East Redevelopment Area (CCE). The program makes available 15%, or 420 units, of affordable housing for the 2,800 units within the CCE Redevelopment Area. If, however, the number of housing units increases in the portion of the development within the CCE Redevelopment Area, then 15% of the additional number of housing units shall also be made available to meet the Agency's production requirements.

4. Modifications to the Site Plan

Removal of Parcel N for Development. As proposed, the Project includes the construction of 300 residential units behind Estuary Park and a slight expansion of the existing size of Estuary Park. In addition to building the housing units, the project would remediate the soils, install infrastructure and utilities, upgrade Estuary Park Drive, improve and stabilize the shoreline, and install improvements along the Embarcadero frontage. Estuary Park would also be upgraded and re-vegetated. As presently recommended, the project sponsor would maintain the park along with other parks and open space areas in the development.

Joint City Council/Redevelopment Agency Comments: At the March 28th meeting, several Councilmembers commented about the proposed housing behind Estuary Park and suggested that consideration be given to removing the housing from this portion of the site plan and extending Estuary Park to the Embarcadero. The 300 units could be transferred to other developable areas within the project site thereby providing additional open space within the project.

Staff Comments: The project sponsor prefers the plan with the 300 unit development on Parcel N because this plan will ensure that the Estuary Park area is remediated and enhanced as part of the project, along with providing regular activity to keep the park safer. If the City Council decides to transfer these units to other areas of the project site, the project sponsor may accommodate these units on other parcels within the development, including, but not limited to, Parcels B, C, D and H where increased heights (from 86' to 120') were analyzed in the EIR to allow structures up to 120 feet in height to accommodate transfer of units within the site. Staff has reviewed the increased density on these parcels and believes that additional units can be accommodated without a significant increase in mass or visual impacts.

A modification of the site plan by the City Council to remove housing from Parcel N and convert the lands to park will result in the following:

1. Estuary Park will increase to 10.68 acres (a 2.41 acre increase over the proposed project).

2. The total amount of parks and open space within the project site will be 32.3 acres; 50% of the total project site.
3. The 300 housing units proposed for Parcel N may be transferred to other parcels within the development without a consequent impact and within the impact analysis completed for the EIR.
4. The Redevelopment Agency's affordable housing obligation will increase by 45 units, as the units will be transferred to the Central City East Redevelopment Plan Area.
5. The net density of the proposed project will increase from 128 dwelling units/net acre to 139 dwelling units/net acre. The overall density of 50 dwelling units/gross acre will not change.
6. Amendments will need to be made to the Vesting Tentative Subdivision Map, grading plan, utility plan, and street plan. Changes could be made to the parcel configuration if the City did not want Parcel N to be subdivided into a separate parcel.
7. Amendments would need to be made to the Preliminary Development Plan to reflect the above changes.
8. Phase V would be eliminated from the development schedule. Phases I and II would need to be amended to accurately describe the number of units being constructed in each phase with the transfer of the 300 units from Parcel N. If agreed upon, the remediation and cleanup of Estuary Park could move to Phase I or II.
9. All approval documents would need to be revised to reflect the modifications to the site plan. These documents include:
 - Development Agreement (remove any agreed to improvements west of the Lake Merritt Channel; revise Phasing Plan; increase affordable housing obligation)
 - Planned Waterfront Zoning District-4 zoning ordinance
 - Preliminary Development Plan
 - Vesting Tentative Tract Map
 - Conditions of Approval
 - Mitigation Monitoring and Reporting Program
 - General Plan Land Use Maps
 - Zoning Maps

Staff Recommendation: If the Council chooses this option, the City will have more financial obligations to develop the park. Measure DD funds are available for this purpose. However, as discussed previously, the timing of cleanup, the amount of the affordable housing contribution, and the actual timing of completion of the park must be made specific so that the City does not lose the ability to redirect Measure DD funds for other Estuary Park projects.

5. Modifications to the Site Plan Proposed by Oakland Harbor Partners

Changes to Parcel M

Throughout the public hearing process comments were raised by some of the Fifth Avenue Point residents about being “walled in” by tall buildings in close proximity to their western property line. They indicated that they wanted a larger distance between the western boundary and future development. They also commented that the proposed project should be designed to integrate with the Fifth Avenue Point community in the future.

The project sponsors are suggesting a modification to the site plan which can address this issue. OHP is proposing to relocate the proposed roadway from the western boundary of Parcel M and move it along the western boundary of the Fifth Avenue Point parcel thereby increasing the distance between the existing and proposed structures. Parcel M would also be split into two smaller parcels with an accessway between the parcels which would connect to the Fifth Avenue Point community, allowing for direct access to Channel Park.

Changes to the Grading Plan

The Landmarks Preservation Advisory Board raised the issue of visible access to the waterfront. A comment was made that the elevation level of 9th Avenue was 5 ½ feet below the top elevation of Shoreline Park thereby obstructing views of the Estuary.

The project sponsors are proposing to revise the grading plan by increasing the elevation level of 9th Avenue by making the street two feet higher, and reducing the highest point of Shoreline Park by 6 inches (this is the area on the pile supported pier so the only way to change the level of the park is through the thickness of the soil). These changes will contribute to increased visibility from 9th Avenue

Staff Recommendation: Staff has no objections to the changes to the site plan proposed by the project sponsor and believes they are reasonable responses to address the issues raised. Staff recommends that the City Council adopt the modifications proposed by the project sponsor.

CORRESPONDENCE

Please see **Attachment F** for new correspondence received since the March 28, 2006 meeting. Several other letters were received as well and have been included in the response to the appeal and/or the Addendum to the FEIR.

RECOMMENDATION(S) AND RATIONALE

Staff recommends that the appeal of Arthur Levy be denied and that the City Council take the actions necessary to approve the Oak to Ninth Mixed Use Development Project for the reasons discussed throughout this report and summarized below:

Major Project Benefits:

1. Better use of a blighted and underutilized industrial area.
2. Opportunities for the contaminated soil to be cleaned and the land to be used for both public and private purposes.
3. Project provides physical access to the waterfront which as been restricted for decades.
4. Provides 30 acres and parks and open space (47% of the total site area).
5. 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.
6. Two essential unusable marinas will be improved and will provide additional boat slips.
7. New market rate housing consistent with “smart growth” principles will be provided.
8. New affordable housing units for people with a variety of income levels will be constructed.
9. New commercial/retail development in an area that is under-served by retail facilities.
10. The area surrounding Clinton Basin will be activated with retail and commercial development.
11. The Embarcadero will be improved as a multimodal landscaped parkway.
12. Revenues will accrue to the City (property taxes, sales taxes, utility user taxes).
13. Revenues accrued to the Redevelopment Agency (tax increment funds) may be used to improve infrastructure, clean up blighted and contaminated properties.
14. Job training for Oakland residents.

ALTERNATIVE RECOMMENDATION(S)

Deny the Project

The City Council/Redevelopment Agency may choose to deny the project sponsor’s request to develop a mixed-use use development, consisting of residential, commercial/retail, civic, parks and open space uses, in this location. The existing industrial and commercial land uses could remain and additional land uses permitted by the Port of Oakland could be established. Measure DD funds could be used to finance the creation of the three parks, although there is not likely to be enough funding to remediate the soil and provide all three parks within the next 10 to 15 years, including installation of a segment of the Bay Trail. No revenue would be generated from the site that could be used for other projects within the Redevelopment area (tax increment). Nor would the City receive the benefits of the additional housing, as well as the affordable housing, that would be created on the project site.

Approve Modifications to the Project Conditions, Requirements and Site Plan

The City Council/Redevelopment Agency may wish to approve the proposed project with modifications to the project, to the site plan and other requirements as set forth and discussed in the “Key Issues” section of this staff report.

SUSTAINABLE OPPORTUNITIES

Approval of the Oak to Ninth Mixed Use Development Project includes many economic, environmental and social equity benefits for the City of Oakland and the region.

Economic: There are many economic benefits of the proposed project to the local economy. The housing proposed in the project will be available to a range of income levels including very low, low, moderate, and above-moderate income families. The tax increment generated by the project can be used for projects within the Central City East Redevelopment Plan Area and the Central District Urban Renewal Plan Area. Jobs for residents may be available during construction, within the commercial businesses associated with the development, and with the maintenance of the parks, open space and landscaping areas within the project.

Environmental: The project area has been used for industrial purposes for many years. The soils reports indicate that much of the soil on the site is contaminated. The project sponsors are remediating the soil to the standards required by the California State Department of Toxic Substance Control and the Regional Water Quality Control Board. The project also provides public access to the waterfront which has been restricted for years by industrial businesses operating on the waterfront. Completion of a significant segment of the Bay Trail is a major environmental contribution to Oakland the all cities surrounding the San Francisco Bay.

Social Equity: The 3,100 residential units will include a variety of multifamily housing types affordable to people at a range of incomes. The proposed parks, open space areas, and the Bay Trail are considered regional facilities and accessible to any members of the public who want to use them. Retail and commercial opportunities will be available to both existing nearby residents and the new community population.

DISABILITY AND SENIOR CITIZEN ACCESS

The proposed Oak to Ninth Mixed Use Development Project includes approximately 30 acres of parks and open space with passive recreational opportunities appropriate for senior citizens and people with disabilities. The internal circulation system of the proposed development, as well as a significant portion of the San Francisco Bay Trail, is designed to focus on pedestrian and bicycle activities. The proposed public amenities within the project will be constructed to standards that can accommodate senior citizens and people with disabilities.

ACTIONS REQUESTED OF THE CITY COUNCIL

- Take public testimony concerning the appeals of the March 15, 2006 Planning Commission action; and
- Consider the comments from the March 28, 2006 Joint City Council/Redevelopment Agency Informational Meeting and the staff recommendations contained in this staff report; and

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- Close the public hearing; and
- Certify the Environmental Impact Report, adopt the CEQA findings regarding certification of the EIR, including the Addendum to the EIR, and adopt the Mitigation Monitoring and Reporting Program; and
- Adopt the following Exhibits (Resolutions and Ordinances) approving the project:

- (1) A Resolution Denying the Appeal of Arthur D. Levy, Sustaining the March 15, 2006 Planning Commission Actions on the Oak to Ninth Mixed Use Development Project and Certifying the Final Environmental Impact Report for the Oak to Ninth Project;
- (2) A Resolution Amending the General Plan *Estuary Policy Plan* to Create a New Land Use Designation, Planned Waterfront Development-4, and to Adopt Land Use Map and Text Changes in Connection with the Oak to Ninth Avenue Mixed Use Development Project;
- (3) An Agency Resolution Approving and Recommending Adoption of the Second Amendment to the Central City East Redevelopment Plan to Revise Land Use Designations for the Oak to Ninth Project Site;
- (4) An Ordinance Adopting the Second Amendment to the Central City East Redevelopment Plan to Revise Land Use Designations for the Oak to Ninth Project Site;
- (5) An Agency Resolution Approving and Recommending Adoption of an Amendment to the Central District Urban Renewal Plan to Revise Land Use Designations for the Oak to Ninth Project Site;
- (6) An Ordinance Adopting an Amendment to the Central District Urban Renewal Plan to Revise Land use Designations for the Oak to Ninth Project Site;
- (7) An Ordinance Adopting the Planned Waterfront Zoning District-4 (PWD-4) for the Oak to Ninth Mixed Use Development Project;
- (8) An Ordinance Rezoning Property in the Oak to Ninth Avenue Mixed Use Development Project Site from Heavy Industrial (M-40) to the Planned Waterfront Zoning District-4 (PWD-4) and Open Space-Regional Serving Park (OS-RSP), and from Civic Center/Design Review Combining Zone (S-2/S-4) to the Planned Waterfront Zoning District-4 (PWD-4) and Open Space-Regional Serving Park (OS-RSP);
- (9) A Resolution Approving Vesting Tentative Tract Map (No. 7621) for the Oak to Ninth Mixed Use Development Project;
- (10) A Resolution Approving Preliminary Development Plan and Design Guidelines for the Oak to Ninth Mixed Use Development Project;

(11) An Ordinance Approving a Development Agreement Between the City of Oakland, the Redevelopment Agency of the City of Oakland, and Oakland Harbor Partners, LLC, and Authorizing the City Administrator to Execute the Development Agreement on Behalf of the City; and

(12) An Agency Resolution Authorizing a Development Agreement with the City of Oakland and Oakland Harbor partners, LLC

The following Exhibits are attached to all Resolutions and Ordinances, (1) through (12), listed above:

Exhibit A – CEQA Findings and Statement of Overriding Considerations

Exhibit B – Mitigation Monitoring and Reporting Program

Exhibit C – Conditions of Approval

Exhibit D – General Findings Related to the Approval of the Oak to Ninth Project

Respectfully submitted,

CLAUDIA CAPPIO

Community and Economic Development
Director of Development, Building Services,
and the Oakland Army Base Reuse Authority

Prepared by:
Margaret Stanzione, Planner IV
Planning and Zoning, Major Projects

APPROVED AND FORWARDED TO THE
OAKLAND CITY COUNCIL:

**OFFICE OF THE CITY ADMINISTRATOR
ATTACHMENTS**

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- A. Responses to Questions Raised at the 3/28/06 Joint City Council/Redevelopment Agency Informational Meeting
- B. Appeal filed by Arthur D. Levy dated 3/24/06 and attached letters
- C. Responses to the Appeal of the Planning Commission decision
- D. Memo regarding the financial analysis of the proposed Oak to Ninth development prepared by The PRM Group dated June 1, 2006.
- E. Addendum to the Final Environmental Impact Report dated June 9, 2006
- F. Correspondence received since March 28, 2006 (that is not included as part of the appeal response or the FEIR Addendum)
- G. “Subsidization of the Chelsea Piers and the Torpedo Factory Adaptive Reuse Projects” prepared by Economic and Planning Systems, Inc. (May 2006)
- H. “Oak to 9th Mixed Use Project, Fiscal Impact Analysis (Revised)” prepared by Economic and Planning Systems, Inc. (May 2006)
- I. “Ninth Avenue Pier Renovation, Impact of Rehabilitation Tax Credits and New Markets Tax Credits on Project Feasibility” prepared by Novogradac & Company LLP (May 17, 2006)
- I-1 Draft Public Open Space/Hazardous Materials Terms for the Development Agreement

The following background documents have been distributed previously to the City Council:

J. Previous Staff Reports:

- J-1. Planning Commission Report 3/15/06
- J-2. Joint City Council/Redevelopment Agency Informational Meeting Report 3/28/06

K. Consultant Reports:

- K-1. Ninth Avenue Pier Renovation, Structural Feasibility Study Prepared by Rutherford and Chekene Consulting Engineers (February 6, 2006)
- K-2. Oak to Ninth Avenue Development Feasibility Analysis for Shoreline Improvements and Pier Retrofit, Prepared by Moffatt and Nichol (February 5, 2006)
- K-3. Oak to 9th Mixed Use Project, Ninth Avenue Terminal Reuse Feasibility Prepared by Economic and Planning Systems, Inc. (February 21, 2006)
- K-4. Oak to 9th Mixed Use Project Feasibility Analysis of Alternatives 1B, 2, 3 Prepared by Economic and Planning Systems, Inc. (January 31, 2006)
- K-5. Oak to 9th Mixed Use Project, Fiscal Impact Analysis, Prepared by Economic and Planning Systems, Inc. (July, 2005)

L. Plans and other Project Documents:

- L-1. Vesting Tentative Subdivision Map No. 7621 dated 3/8/06
- L-2. Preliminary Development Plan dated February 2006

- L-3. Oak to Ninth Design Guidelines dated February 2006
- L-4. Final Environmental Impact Report published February 1, 2006
- L-5. Addendum to the Environmental Impact Report dated June 9, 2006

These documents are also available on the Community and Economic Development, Planning and Zoning, Major Projects webpage for the Oak to Ninth project at

<http://www.oaklandnet.com/government/ceda/revised/planningzoning/MajorProjectsSection/oaktoninth.html>