

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

February 8, 2006

<b>Location:</b>	<b>Oak Street to Ninth Avenue</b> Approximately 64.2 acres bounded by Embarcadero Road, the Oakland Estuary, Fallon Street, and Tenth Avenue Assessor Parcel Numbers: various
<b>Proposal:</b>	<b>Public Hearing</b> on a proposal to develop a new mixed use development on 64.2 acres which includes up to 3,100 residential units, 200,000 square feet of ground-floor commercial space, a minimum of 3,950 parking spaces, 29.9 acres of parks and public open space, two renovated marinas (total 170 boat slips), and a wetlands restoration area. The existing buildings on the site will be demolished with the exception of a portion of the Ninth Avenue Terminal shed building and the Jack London Aquatic Center. The project does not include approximately six acres of privately-held property along and east of 5 <sup>th</sup> Avenue that contain a mix of commercial and industrial uses, as well as a small community of work/live facilities.
<b>Applicant:</b>	Oakland Harbor Partners (Signature Properties & Reynolds and Brown)
<b>Contact Person/Phone Number:</b>	Michael Ghielmetti, Signature Properties (925) 463-1122 Dana Parry, Reynolds and Brown (925) 674-8400
<b>Owner:</b>	Port of Oakland
<b>Case File Numbers:</b>	<b>ER 04-0009, GP 06-009, RZ 04-384, PUD 06-010, TTM 7621, CP 06-051, T 06-0001, DA 06-011</b>
<b>Planning Permits Required:</b>	General Plan Amendment (Estuary Policy Plan text and land use map); Central City East Redevelopment Plan Amendment; Central District Urban Renewal Plan Amendment; New Waterfront Planned Development Zoning District and Zoning Map Designation; Vesting Tentative Subdivision Map; Preliminary Development Plan; Design Review; Creek Protection Permit; and Tree Removal Permit. OHP is also requesting a Development Agreement.
<b>General Plan:</b>	Estuary Policy Plan Designations: Planned Waterfront Development-1 and Park, Open Space, and Promenades
<b>Zoning:</b>	M-40, Heavy Industrial and S-2/S-4 Civic Center/Design Review Combining Zone
<b>Environmental Determination:</b>	Final Environmental Impact Report Published on February 1, 2006
<b>Historic Status:</b>	Ninth Avenue Terminal – Oakland Cultural Heritage Survey (OCHS) Rating A; City of Oakland Landmark Status Pending.
<b>Service Delivery District:</b>	Downtown Metro and San Antonio 3
<b>City Council District:</b>	2 – Pat Kernighan, 3 - Nancy Nadel
<b>Action to be Taken:</b>	Recommendation to the Planning Commission on the proposed project.
<b>For Further Information:</b>	Contact <b>Margaret Stanzione</b> , Project Planner, Major Projects (510) 238-4932 or <a href="mailto:mstanzione@oaklandnet.com">mstanzione@oaklandnet.com</a>

**SUMMARY**

The purpose of this public hearing is to review the merits of the Oak to Ninth Mixed Use development project and provide a recommendation to the Planning Commission about the proposed project. Specifically, the Parks and Recreation Advisory Commission (PRAC) should address the park and open space configuration, the proposed Shoreline Park and the Ninth Avenue Terminal, the Open Space zoning designation proposed for the parks and open spaces, the operation of these spaces, how the constraints presented by the Tidelands Trust may affect

future uses and activities allowed, and the proposal for the Preliminary Development Plan to serve as the “Special Conditional Use Permit” for the park program.

The Final Environmental Impact Report (FEIR) was released on February 1, 2006. This document is one of the sources of information to be used when making a decision about a proposed project. The PRAC should consider the information in the Environmental Impact Report (both the DEIR and the FEIR), the information in the staff reports, and public testimony and provide a recommendation to the Planning Commission on the merits of the proposed project.

The Planning Commission will take under advisement the recommendations of the PRAC and forward its recommendation to the City Council. The next public hearing with the Planning Commission is tentatively scheduled for March 8, 2006.

### **PARKS AND RECREATION ADVISORY COMMISSION AUTHORIZATION**

Open Space regulations and the special use permit requirements for parks and open space are found in two chapters of the Planning Code. Chapter 17.11, “OS-Open Space Zoning Regulations” set forth the permitted and conditionally permitted land uses and development standards for the City’s permanent open space. Section 17.11.110, “Use Permit Criteria,” states that a conditional use permit is required for specified activities in public open space areas and that a “special use permit” must be approved for these activities.

Chapter 17.135, “Special Use Permit Procedure for the OS Zone” prescribes the procedure for reviewing projects which are proposed in the OS zone, including provisions for public participation. A brief description of this process is as follows:

- A. Pre-Development Neighborhood Meeting be convened in the vicinity of the park or open space land affected by the proposed change in use,
- B. Administrative Project Review which includes an application for the proposed use, CEQA documents, public comments, and any other considerations regarding the proposal,
- C. Public Hearing by the Parks and Recreation Advisory Board and the Planning Commission.

This is the formal public hearing for the PRAC to take action on the proposed project and make a recommendation to the Planning Commission. The Planning Commission will need to determine whether the proposal conforms to the use permit criteria set forth in Sections 17.11.110, Section 17.134.050, and 17.135.060.

Section 17.11.110, Use Permit Criteria.

“A conditional use permit for any use under Sections 17.11.060 or 17.11.090 (Special provisions for permitted and conditionally permitted activities and facilities in the OS zone) may be granted only upon determination that the

proposal conforms to the general use permit criteria set forth in the conditional use permit procedure at Chapter 17.134 and the no net loss provisions of Section 17.135.060.”

Section 17.134.050, General Use Permit Criteria.

A conditional use permit shall be granted only if the proposal conforms to all of the following general use permit criteria, as well as to any and all other applicable use permit criteria:

- A. That the location, size, design, and operating characteristics of the proposed development (in this case, open space) is compatible with abutting properties and surrounding neighborhoods,
- B. That the location, design, and site planning of the proposed open space will be as attractive as the nature of the use and its location and setting warrant;
- C. That the proposed open space will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the community or region;
- D. That the proposal conforms to all applicable design review criteria; and
- E. That the proposal conforms in all significant respects with the Oakland Comprehensive Plan and with any other applicable plan or development control map which has been adopted by the City Council.

Section 17.135.060, No net loss tracking.

All acquisition of parkland or creation of new useable public open space shall be tracked and recorded as “additions” to the city’s park system. Only land which is improved or intended for improvement to urban parks standards may be counted as “additions.”

The Preliminary Development Plan under consideration by the PRAC will essentially serve as the “Special Use Permit” proposal. The PRAC should consider the proposed park and open space, and the activities proposed in these areas, and make a decision as if it were considering a separate Special Use Permit for the project. The PRAC would still need to determine that the proposed project conforms to the use permit criteria in Chapter 17.134 and the no net loss provisions of Section 17.135.060 as described above. If the PRAC determines that the proposed project conforms to these requirements, then a recommendation is made to the Planning Commission regarding the proposed locations and activities for the parks and open space areas of the proposed project contingent upon project approval by the City Council and other State and Federal agencies with authorization over the project.

The project will be constructed in phases as described later in this report. Future development projects will need to submit an application for a Final Development Plan (FDP) which must be in substantial compliance with the approved Preliminary Development Plan. In most cases, the adjacent public improvements will be constructed in the same phase as the residential development proposed in any given FDP. Staff will use the PDP as the basis for determining that the proposed project is in substantial compliance with the PDP.

## **STAFF REPORT MATERIALS**

Because the processing of the project application request requires the review and consideration of a great amount of information, this staff report has been prepared to focus on the information that is generally considered by the PRAC to make a decision about the public parks and open spaces of the project. For other information about the proposed project, staff has attached the January 25, 2006 staff report that was prepared for the Planning Commission (see **Attachment A**).

The January 25, 2006 Planning Commission report addresses each of the application requests, project phasing, main points of the development agreement, analyzes the proposed project with General Plan, *Estuary Policy Plan*, and zoning requirements, discusses the amendments that are proposed to the *Estuary Policy Plan*, the creation of a new mixed-use waterfront zone and design guidelines, summarizes the Redevelopment Plan requirements, discusses the environmental review process to date (prior to release of the FEIR), summarizes previous meetings held before the Planning Commission, Landmarks Preservation Advisory Board (LPAB) and the PRAC, and discusses Key Issues regarding the project. Rather than repeat that same information in the PRAC staff report, staff suggests that the two reports be considered simultaneously when making a recommendation on the proposed project.

## **BACKGROUND**

Oakland Harbor Partners (OHP) submitted a preliminary application for environmental review for the Oak to Ninth development project, consisting of a mix of residential, commercial, public open space, parks, and civic uses, in May 2004. The Development Director determined that an Environmental Impact Report (EIR) would be required for the project. A Draft Environmental Impact Report (DEIR) was circulated for review from September 1, 2005 to October 24, 2005. The Final EIR was published on February 1, 2006 and is included with the packet materials for this staff report.

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

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

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

\* City Council approval only

Note: The Landmarks Preservation Advisory Board and the Parks and Recreation Advisory Commission make recommendations to the Planning Commission. The Planning Commission takes the recommendations under advisement and makes a recommendation to the City Council.

**PROJECT SITE**

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

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

## **PROJECT DESCRIPTION**

A detailed description of the project is contained in Chapter 3, Project Description, pages III-1 to III-29 in the Draft Environmental Impact Report (DEIR). Following is a summary of the project description.

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

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

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

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

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

The project proposes four major parks along the waterfront: an expansion of Estuary Park for a total of 8.27 acres; new Channel Park, 5.97 acres; new South Park, 2.30 acres; and new Shoreline Park, 9.74 acres for a total of 29.48 acres of parks and open space. Most of the new parks and open space areas will remain "unprogrammed" except for the introduction of a bocce ball court in Channel Park, and a children's play area in South Park.

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.

**Preliminary Development Plan**

A complete description of the PDP is included in the January 25, 2006 Planning Commission staff report attached to this report. The section of the PDP describing the Parks and Open Spaces is repeated below.

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

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

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

**Parks and Proposed Activities**

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

**Project Phasing**

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

Phase I, Parcels A, B, C, F, G (2008 to 2013). This phase will involve soil remediation; demolition of approximately 88,000 square foot of manufacturing, storage, retail, and service uses; demolition of 165,000 square feet of the Ninth Avenue Terminal; pier demolition and pile stabilization; construction of approximately 1,139 units and 69,000 square feet of retail/commercial uses; and the installation of the portion of Shoreline Park that is south of parcels A, B, C and D. The segment of the Bay Trail will be installed within this portion of Shoreline Park. (OHP has also expressed willingness to construct the gap in the Bay Trail missing to the south of the project.) Shoreline improvements will be installed concurrent with adjacent development; that is, the portion of Shoreline Park to the east of the site as shown on Attachment A. Street improvements include improvements to the Embarcadero from 10<sup>th</sup> to 5<sup>th</sup> Streets and construction of surrounding streets (Main Street, 7<sup>th</sup> Avenue, a portion of 8<sup>th</sup> Avenue and a portion of 9<sup>th</sup> Avenue).

Phase II, Parcels D, E, H, J (completed by 2016). This phase will involve soil remediation; construction of approximately 1,473 units and 79,000 square feet of retail/commercial uses, improvements to Clinton Basin marina; development of the Clinton Basin Quay; and construction of project streets (Harbor Lane East and the remaining portions of 8<sup>th</sup> Avenue and 9<sup>th</sup> Avenue). The remaining portion of Shoreline Park would be developed along with Gateway Park and the Bay Trail connection to east of Clinton Basin. Shoreline improvements adjacent to the new construction will take place within this phase as shown on Attachment A.

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

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

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

### **Development Agreement**

As part of the negotiations for the development agreement, in exchange for 20-years of vested rights of entitlements (and other things), the project sponsor is offering to (this is a partial list):

- Provide security and maintenance for the parks through a master association, Community Service District (CSD), or other type of agreement (estimated to be approximately \$950,000 per year)
- Make off-site waterfront trail improvements up to Homewood Suites, provided the City delivers clean land, plans and specifications. Alternatively, OHP will provide an in lieu payment, at its election.
- Pay for trail signs and markers on the project site.
- Underground utilities from 5<sup>th</sup> Avenue to 10<sup>th</sup> Avenue on both sides of the Embarcadero and along the south side of the project's Embarcadero frontage from 5<sup>th</sup> Avenue to the Cash and Carry site (estimated to save Measure DD funds in the amount of \$22 million)
- Restore the 15,000 s.f. portion of the bulkhead of the Ninth Avenue Terminal shed building. OHP suggests that it have the right to lease for 3 years.
- Maintain street trees and landscaping in the project's internal streets through a master association, CSD, or other type of agreement.
- Install median and landscaping along the Embarcadero.
- Install open space and Bay Trail improvements with each phase of development as per the phasing plan.
- Comply with a specific phasing schedule

### **Park Operation and Maintenance**

The project sponsor is offering to upgrade Estuary Park, install four new parks, provide landscaping and street trees along all project streets, provide landscaping and a landscaped median along the Embarcadero, maintain the wetlands restoration area, and maintain all shoreline improvements as specified in the PDP. The maintenance agreement would be concurrent with the terms of the 20-year Development Agreement. Various funding mechanisms are being discussed to pay for the maintenance; the final recommendations and decision about this aspect of the project will be made by the City Council. After 20 years when all phases of the project are complete, the City would take over maintenance of these areas.

### **CONSISTENCY WITH LAND USE PLANS AND REGULATIONS**

Please refer to the January 25, 2006 Planning Commission staff report attached, including the section on the proposed amendments to the *Estuary Policy Plan* text and the draft text amendment included as Attachment B to that report.

### **Oakland Zoning Code (Chapter 17, Zoning)**

A new zoning district, Planned Waterfront Zoning District-1, is being prepared for the developable portions of the proposed project. It is proposed that the remaining public park and open space areas proposed by the project be designated an existing City of Oakland zone, OS (RSP), Open Space – Region Serving Park. The specified uses that are permitted or conditionally permitted within this zone are listed in Section 17.11.06 (see **Attachment C**). The project is proposing a bocce ball court, children’s play area, and large grassy areas for more passive activities.

Not all land uses permitted or conditionally permitted in the OS-RSP zoning district, however, will be allowed in this location. The parks and open spaces along the waterfront are usually encumbered by the Tidelands Trust. Land uses permitted in these areas must be Trust compliant (see FEIR, Master Response B.) The State Lands Commission has oversight of all Tidelands Trust property in California, including the proposed parks and open space lands. While the State Lands Commission does not have an inventory of specific uses, it does provide interpretations of the law regarding allowable uses.

The activities proposed in the PDP are conditionally permitted uses within the Open Space-Region Serving Park zone. The proposed park programs can be approved along with the PDP approval. Any future uses or activities other than those proposed in the PDP would need the approval of the PRAC through the Special Conditional Use Permit process.

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

## **ENVIRONMENTAL REVIEW**

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

Written responses to the comments received have been prepared and are included in the FEIR. The FEIR and the certification of the FEIR will be discussed at a future Planning Commission meeting. This report includes an overview of the comments received during the public review period.

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

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

Revised Table II-1, “Summary of Impacts and Mitigation Measures for the Oak to Ninth Redevelopment Project” (FEIR pages III-18 to III-61) summarizes the impacts and mitigation measures identified in the EIR. The table describes the potential impacts with a level of significance prior to mitigation; recommended mitigation measures; and the resulting level of significance with implementation of the required mitigations.

### **Significant, Unavoidable Impacts**

The impacts identified as significant and unavoidable are related to traffic, noise, and cultural resources and are discussed in the January 25, 2006 staff report.

### **Response to DEIR Comments**

A number of commentors raised issues regarding the same topics. ESA, the environmental consultant, has prepared a “Master Response” for the specific topics rather than repeat the response in each individual letter. Master Responses are being prepared for the following issues (see Chapter V of the FEIR):

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

One issue that was raised frequently during the review of the DEIR was the phasing of the open space and trail improvements. A number of respondents mistakenly thought that the Bay Trail

would not be completed until year 2018, toward the end of buildout of the project. A master response was prepared to address this issue (see FEIR, Master Response G).

The project will be installing the parks, open space and trail improvements along with the development of each phase of the project, as discussed in this staff report, and as shown in Table V-2 of the FEIR. The phasing of improvements is needed because of the extensive remediation of soils and groundwater contamination on the project. The site also needs to be regraded and raised approximately five feet above existing grade in order to underground utilities at elevations above the groundwater table. Thus, the site remediation and related site grade changes must be completed before new open spaces, particularly those on the contaminated sites east of Lake Merritt Channel, can be created and accepted for public use. This, as well as the extent of right-of-way, in-water, and shoreline construction work that would occur during each phase, precludes the implementation of certain open spaces and trail segments sooner than proposed.

The phasing schedule has been changed since the DEIR was published as part of the negotiations of the Development Agreement. The phasing plan included in this staff report is the most recent schedule negotiated by staff and the project sponsor.

## **KEY ISSUES AND ANALYSIS**

A number of key issues were presented to the Planning Commission for its consideration on January 25, 2006. While those issues may be of interest to the PRAC, they are not all repeated in this staff report. The key issues identified below are focused on issues that are more specific to the PRAC. The PRAC, of course, is not restricted to only addressing these issues, but may comment on any aspect of the proposed project.

### **Vision of the Waterfront**

**Issue #1: After review of the project's consistency with the *Estuary Policy Plan*, and the proposed amendments to the EPP (as presented in the January 25, 2006 staff report), does the PRAC have any remaining concerns about the project being able to fulfill the goals, policies and objectives as set forth in the *Estuary Policy Plan*?**

When the EPP was prepared, there was consensus in the community that future improvements along the Oakland waterfront contain a considerable amount of public parks and open space. The locations for the open spaces and parks were specified in illustrative diagrams for the Oak to Ninth district. Although conceptual, these diagrams indicate a total of approximately 43 acres of parks and open space for the Oak to Ninth area (see DEIR, p. IV.L-17). There were also allowances for some mixed use development along the Estuary which included land uses not specifically related to Port or marine-related uses.

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

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

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

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

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

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

**Park, Open Space and Trail Operation and Maintenance**

**Issue #2: Is the City willing to allow the project sponsor to operate and maintain the parks and open space areas, including the Bay Trail, all project landscaping on site and along the Embarcadero, and the shoreline improvements, for 20 years?**

The project sponsor has offered to maintain the parks, open space and landscaping areas for 20-years, until all phases of the project are completed. At the end of the 20-year construction period maintenance responsibilities will be assumed by the City. The maintenance standards will be equal to or better than those carried out by the City's Public Works Agency. As mentioned previously, these maintenance costs are estimated at approximately \$950,000 per year.

Although the funding mechanism for the maintenance has not yet been decided, the options that are being discussed include homeowner association dues, the establishment of a Community Facilities District, or other funding mechanisms.

**Shoreline Park and the Ninth Avenue Terminal**

**Issue #3: What is the preferred option for the Shoreline Park area considering it is situated in the same location as Ninth Avenue Terminal shed?**

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

At its public hearing on January 9, 2006, the Landmarks Preservation Advisory Board discussed the Ninth Avenue Terminal. Approximately two years ago, the LPAB approved a recommendation to designate the Ninth Avenue Terminal Shed as a City of Oakland Landmark. Staff determined that this recommendation should move simultaneously with the review and consideration of the Oak to Ninth Project.

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

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

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

- Required findings in Historic Preservation Element, Policy 3.5 cannot be made
- Direct staff to forward the nomination of Ninth Avenue Terminal to the Planning Commission for a public hearing on its landmark status
- Retain and rehabilitate the entire 1920s portion of the Ninth Avenue Terminal
- Pursue alternate uses of the historic terminal building with the California State Lands Commission (Tidelands Trust)
- Request additional information regarding additional feasible uses for the historic terminal building
- Update the "use feasibility study" prior to any demolition to reflect changes in market trends
- Submit a protection and maintenance plan for the Ninth Avenue Terminal building
- Do not allow demolition prior to submission for building permits, approval of a building permit plan for Shoreline Park, City review and approval of a funding structure for the rehabilitation and re-use of the portion of the terminal shed that will be preserved
- If approval is granted to demolish the 1920s portion of the Ninth Avenue Terminal, then the project shall (1) provide a minimum of two s.f. of park space for every one s.f. of building that is demolished over and above what is shown on the plan in the DEIR, and (2) \$200/s.f. to subsidize the rehabilitation of a landmark(s) and/or preservation district(s), and/or establish a Historic Preservation Fund, and (3) if any of the 18,000 s.f. proposed for retention (OHP is proposing 15,000 s.f.) is demolished, then the project shall compensate for the loss of the 18,000 s.f. historic resource at \$400/s.f.

The PRAC will need to make a recommendation about future activities in this portion of the site plan. Should the project include Shoreline Park and complete demolition of the terminal shed; Shoreline Park and a portion of the terminal shed (as proposed by the project); a smaller Shoreline Park and retention of more of the terminal shed; or some other option?

***Staff Comment:*** The issue of a large amount of public open space (9.74 acres) or shared public open space with a portion of an historic resource is a major issue. Maximizing the amount of public open space directly fulfills the goals of the EPP. However, an argument can be made for preserving a portion of a historic resource as well. The following points should be considered when reviewing this issue:

- a. The project sponsor has stated that the reuse and restoration of the 15,000 s.f. portion of the building proposed to be retained would cost approximately \$5 million. Obviously, saving a larger portion of the building will cost more.
- b. The project sponsor will be undertaking a major set of improvements and investing in long term maintenance of all the parks and shoreline improvements. In reviewing monetary contributions as a mitigation measure for the loss of the landmark, these other investments in the physical improvements and landscape should be considered.
- c. Feasibility reports will be forthcoming in early February, 2006, on the reuse and physical conditions of the Ninth Avenue Terminal Building. This financial and technical information will likely further inform decision-makers.

### **NEXT STEPS**

- Public Hearing with Landmarks Preservation Advisory Board – February 27, 2006  
Recommendation to the Planning Commission on recommendations for the 9<sup>th</sup> Avenue Terminal
- Public Hearing with Planning Commission – March (date to be determined)  
Recommendation to the City Council/Redevelopment Agency
- City Council Workshop (unscheduled – but proposed for early April)
- City Council/Redevelopment Agency Concurrent Public Hearing (unscheduled)

### **STAFF ANALYSIS**

Staff believes that the criteria in Section 17.134.050, General Use Permit Criteria, can be met to support the project as proposed. The location, size, design, and operating characteristics of the proposed parks and open space will be compatible with the existing Estuary Park and with the new residential and commercial development proposed in the project; will be much more attractive than the existing industrial uses currently on the site; will enhance the area and provide access to additional waterfront parks for use by Oakland residents and others in the region; that the proposal conforms to the City's adopted waterfront plans, and is in substantial compliance with the *Estuary Policy Plan*.

Staff believes that there are many reasons to support the project as proposed:

- The mixed use development is a better use of an underutilized industrial site
- New development will remove incompatible truck-related uses associated with the wholesale grocery store next to existing and proposed residential land uses
- Opportunities for the contaminated soil to be cleaned and the land to be used for both public and private purposes
- Development in this location provides opportunities to increase physical and visual access to the waterfront
- New development enhances and expands views of the Estuary and the City of Alameda waterfront

- A new neighborhood will be created with a mix of uses, including retail, commercial, civic, public open spaces, and housing affordable to various income levels
- There will be a significant increase in the amount of open space, particularly waterfront parks.
- A private developer will install and maintain (for 20 years) a large segment of the Bay Trail
- Two run-down marinas will be improved and will provide additional boat slips
- The area surrounding Clinton Basin will be activated with retail and commercial development
- The Embarcadero will be improved as a multimodal landscaped parkway

**STAFF RECOMMENDATION**

Staff recommends that the PRAC recommend to the Planning Commission:

- 1) Recommend approval of the location and amount of new park and open space land as proposed on Sheet 3.1, Parks and Open Space Plan, in the Preliminary Development Plan dated December 2005 (in essence, the Special Use Permit for the parks and activities);
- 2) That the conditional use permit criteria can be met to support the addition of over 20 acres of new parks and open space to the City's park inventory;
- 3) Support for the proposed park programming activities;
- 4) Rezone the park and open space areas as designated on Sheet 3.1 in the Preliminary Development Plan dated December 2005 from Heavy Industrial, M-40 to OS-RSP, Open Space-Region Serving Park adding over 20 acres of new parks to the City;
- 5) Retain the S-2/S-4 zoning designation for the Jack London Aquatic Center and zone Estuary Park OS-RSP.
- 6) Support the project sponsor's proposal to operate and maintain the parks, open space, and landscaping for 20 years, concurrent with the terms of the Development Agreement, at least to the maintenance standards specified by the Public Works Agency. After 20 years, the City will assume maintenance responsibilities for the parks and open space areas.
- 7) Support the amendments to the Estuary Policy Plan that allow residential uses in this location at a higher density than specified in the EPP;
- 8) Any other comments or recommendations that the PRAC agrees to forward to the Commission.

Prepared by:

Margaret Stanzione, Planner IV  
Planning & Zoning - Major Projects

Approved for forwarding to the  
Parks and Recreation Advisory Commission:

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CLAUDIA CAPPIO  
Director of Development

**ATTACHMENTS:**

- A. January 25, 2006 Planning Commission Staff Report
- B. Project Phasing Plan
- C. Chapter 17.11, OS – Open Space Zoning Regulations

Final Environmental Impact Report Published February 1, 2006  
Vesting Tentative Subdivision Map  
Preliminary Development Plans dated December 2005