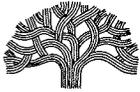


OAK TO NINTH AVENUE PROJECT

Responses to Comments on the Revisions
State Clearinghouse No. 2004062013

Prepared for
City of Oakland, CEDA

December 2008



CITY OF OAKLAND

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

NOTICE OF AVAILABILITY OF THE RESPONSES TO COMMENTS ON THE REVISIONS TO THE ANALYSIS FOR THE OAK TO NINTH PROJECT EIR

TO: All Interested Parties

SUBJECT: Notice of Availability of the Responses to Comments on the Revisions to the Analysis for the Oak to Ninth Project Environmental Impact Report

CASE NUMBER: ER04-0009

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

PROJECT LOCATION: Approximately 64.2 acres bound by Embarcadero Road, the Oakland Estuary, Fallon Street, and 10th Avenue

PROJECT DESCRIPTION: The 64.2 acre site would be redeveloped with up to 3,100 residential units, 200,000 square feet of ground-floor commercial space, a minimum of 3,950 parking spaces, 31.89 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 20,000 square feet of the Ninth Avenue Terminal building and wharf and the Jack London Aquatic Center. All trees on the site are proposed for removal. The project does not include approximately six acres of privately-held property along and east of 5th Avenue that contain a mix of commercial and industrial uses, as well as a small community of work/live facilities.

ENVIRONMENTAL REVIEW: The EIR for the Oak to Ninth Project was certified by the City Council on June 20, 2006 (Resolution No. 79981) and the Project approved per various resolutions and ordinances adopted on June 20 and July 18, 2006. However, in Case Numbers RG06-280345 and RG06-280471, the Alameda Superior Court determined that the EIR was deficient in certain respects. The Court ordered that the EIR certification be set aside and project approval suspended. The Revisions to the Analysis for the EIR provides the environmental review required by the Court, and the Council will consider whether to re-certify the EIR, as revised.

On September 30, 2008, the Revisions to the Analysis for the EIR was published for this project, and the public review period ran until November 17, 2008. All comments that were received have been compiled and responded to in the Responses to Comments. The preparation of the Revisions to the EIR and the Responses to Comments have been overseen by the Environmental Review Officer or his/her representative, and the conclusions and recommendations in the document represent the independent conclusions and recommendations of the City. Copies of the documents are available for distribution to interested parties at no charge at the Community Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, CA 94612, Monday through Friday, 8:30 a.m. to 5:00 p.m. The documents are also available on the City of Oakland website at www.oaklandnet.com under "Oak to Ninth Project" on the front page.

please turn over

PUBLIC HEARING: The Oakland City Council will hold a public hearing on **Tuesday, January 6, 2009 in the City Council Chambers, One Frank Ogawa Plaza, 7:00 p.m.** to consider adoption of a Resolution Rescinding Certification of the Oak to Ninth Project Environmental Impact Report per Resolution No. 79981 C.M.S., Approving the Revisions to the Analysis in the Oak to Ninth Project EIR, Re-Certifying the Oak to Ninth Project EIR as Revised, and Readopting the CEQA Findings and Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program as Revised.

For further information, please contact **Margaret Stanzione**, Project Planner, at (510) 238-4932 or by email at mstanzione@oaklandnet.com

December 19, 2008



ERIC ANGSTADT
Interim Deputy Director of CEDA
Planning and Zoning Division
Environmental Review Officer

OAK TO NINTH AVENUE PROJECT

Responses to Comments on the Revisions
State Clearinghouse No. 2004062013

Prepared for
City of Oakland, CEDA

December 2008

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CHAPTER I

Introduction

A. Purpose of this Document

The City of Oakland (Lead Agency) has prepared this document to present its responses to comments received on its *Revisions to the Analysis in the Oak to Ninth Project EIR (SCH. No. 2004062013) Prepared to Comply with the Alameda County Superior Court Order in Case No. RG06-280345 and Case No. RG06- 280471 (Revisions)*. Overall, this document and the *Revisions* have been prepared to comply with 1) the February 27, 2008 Alameda County Superior Court Judgment issuing a Peremptory Writ of Mandate in Case No. RG06-280345, *Oakland Heritage Alliance v. City of Oakland, et al.*, and 2) the Court's Order Granting In Part And Denying In Part Writs Of Mandate (the Court Order) in *Oakland Heritage Alliance v. City of Oakland, et al.* and in Case No. RG06-280471, *Coalition of Advocates for Lake Merritt, Joyce Roy v. City of Oakland, et al.* (As of this date, no judgment has been issued in Case No. RG06-280471 because the causes of action unrelated to CEQA have not been resolved.)

B. Review and Content of this Document

The City of Oakland released and publically noticed the *Revisions* for availability and public review on October 1, 2008. A 47-day public review and comment period ended on November 17, 2008. The comments received during that period are presented in this document, which specifically consists of:

- (a) A list of public agencies, organizations, and persons commenting on the *Revisions* (Chapter II);
- (b) Copies of written comments received on the *Revisions* (Chapter IV);
- (c) Lead Agency responses to all comments, in particular, significant environmental comments on topics within the purview of the Court Order (Chapters III and IV); and
- (d) Other information added, and corrections initiated by, the Lead Agency (Chapter IV).

This document does not modify the text of the *Revisions*, except for typographical corrections identified at the end of Chapter IV.

CHAPTER II

Commenters

A. Agencies, Organizations and Individuals

The following lists correspondence received from public agencies, organizations, and individuals, respectively, generally listed in alphabetical order.

PUBLIC AGENCIES

Designator	Agency / Signatory Name	Correspondence Received by City	Correspondence Dated
A	Governor's Office of Planning and Research	11/20/08 / 11/24/08	11/17/08 / 11/25/08
B	Department of California Highway Patrol	11/20/08	10/24/08
C	California Department of Transportation (Caltrans) / Lisa Carboni	11/17/08	11/14/08
D	California Public Utilities Commission / Kevin Schumacher	11/17/08	11/17/08
E	California State Lands Commission / Grace Kato	11/17/08	11/17/08

ORGANIZATIONS

Designator	Agency / Signatory Name(s)	Correspondence Received by City	Correspondence Dated
F	Coalition of Advocates for Lake Merritt (CALM) and Joyce Roy / Brian Gaffney	11/17/08	11/17/08
G	East Bay Bicycle Coalition / Robert Raburn, Ph.D.	11/17/08	11/17/08
H	The League of Women Voters of Oakland / Helen Hutchison	11/14/08	11/14/08
I	Ninth Avenue Terminal Partners LLC / Stuart Rickard	11/17/08	11/17/08
J	Oakland Green Party / Akio and Kate Tanaka	11/17/08	11/17/08
K	Oakland Heritage Alliance / Naomi Schiff	11/17/08	11/17/08
L	South of the Nimitz Improvement Council (SONIC) / Gary Knecht	11/17/08	11/17/08
M	Waterfront Action / Sandra Threlfall	11/17/08	11/17/08

INDIVIDUALS

Designator	Agency / Signatory Name(s)	Correspondence Received by City	Correspondence Dated
N	Marina Carlson	10/27/08	10/22/08
O	Kathleen Jensen	10/7/08	10/6/08
P	Dr. Arthur Lipow and Gretchen Lipow	11/17/08	11/17/08
Q	Joyce Roy	11/17/08	11/17/08
R	John Sutter	11/17/08	11/17/08
S	James E. Vann	11/17/08	11/16/08

CHAPTER III

Master Responses to Recurring Comments

Many comments received on the *Revisions to the Analysis in the Oak to Ninth Project EIR (Revisions)* focus on certain common topics. The Master Responses have been prepared to address these common topics in order to reduce repetition in the responses provided to the individual comment letters in Chapter IV, Responses to Individual Comments.

A. Response to Comments on the Public Policy Merits of the Project Approval

A number of comment letters raise issues regarding the merits of the project, including policy considerations related to approval of the project. These comments do not pertain to the limited environmental analysis required by the Alameda Superior Court's decisions in *Oakland Heritage Alliance v. City of Oakland et al.* and *Coalition of Advocates for Lake Merritt v. City of Oakland et al.* (Case Nos. RG06-280345 and RG06- 280471, respectively) per its Order. The scope of the *Revisions* is limited to the specific analysis ordered by the Court. The City considered the merits of the project and weighed policy considerations with respect to the project during the public hearings on the project as reflected in the City's 2006 project approval decisions. A list of the City's actions approving the project is provided on pp. I-3 and I-4 of the *Revisions*.

The Superior Court did not overturn the project approvals. The Court entered a Judgment and Writ in Case No. RG06-280345 setting aside the certification of the EIR and suspending the project approvals until the City addressed the inadequacies in the EIR identified by the Court in the Court Order. The *Revisions* addresses those aspects of the environmental analysis that the Court Order found to be inadequate, and the City Council will consider whether to re-certify the Oak to Ninth EIR at the hearing on the *Revisions*. The Court did not invalidate or rescind the approvals. If the City exercises its discretion whether to re-certify the Oak to Ninth EIR and the Court determines that the City has satisfied its Order, the City expects the Court will lift the suspension of the project approvals.

B. Response to Comments on Environmental Issues Outside the Scope of the Court Order

Some of the comment letters request analysis of, or raise issues related to, environmental topics outside the scope of the specific revisions by the Court. The Court required the City to prepare the following specific revisions to the analysis in the Oak to Ninth EIR: (1) provide an analysis of the

cumulative impacts related to land use and population and housing; (2) consider the cumulative effects of past and present projects in the cumulative impact analysis for geology and seismicity, noise from traffic, hazardous materials, biological resources, visual quality, public services, and utilities; (3) revise the cumulative intersection traffic analysis so that it does not utilize a significance criteria that represents a "ratio theory" approach (i.e., the 5% contribution significance criterion); and (4) provide adequate analysis and evidence to support seismic risk mitigation measures and findings. No other aspect of the EIR is required to be revised.

The Court Order does not require the City to revise the entire EIR, and the EIR thoroughly and sufficiently analyzes environmental impacts except to the extent revisions have been required per the Court. For example, many comments raise issues not in the scope above and that already have been analyzed in the EIR, primarily including issues pertaining to traffic and transportation, access, safety and pedestrian and bicycle facilities (previously addressed primarily in Section IV.B in the EIR); seismic and soils issues (previously addressed primarily in Section IV.F in the EIR); noise (previously addressed primarily in Section IV.G in the EIR); visual quality and views (previously addressed primarily in Section IV.K in the EIR); historic resources impacts (previously addressed in Section IV.E in the EIR); land use and policies (previously addressed primarily in Section IV.A in the EIR); police, fire and school impacts (previously addressed primarily in Section IV.L in the EIR); and water and sewer services (previously addressed primarily in Section IV.M in the EIR). The responses to comments that raise issues not within the scope of the Court Order include reference to where the previous analysis is provided. Generally, comments raising issues not required by the Court Order and covered in the *Revisions* are beyond the scope of this document and do not require further response.

C. Public Review Process of the Revisions

Some of the comment letters raise concern that the public review process for the *Revisions* does not include a Planning Commission hearing. It is procedurally proper for the *Revisions* to be considered by the City Council without another meeting before the Planning Commission on this project. The Superior Court ordered the vacation and rescission of the City Council's 2006 certification of the 2005 Oak to Ninth EIR, and also ordered that the approvals for the project be suspended. The City has prepared the *Revisions* and may exercise its discretion whether to re-certify the EIR pursuant to the Court's decision. Per Oakland Municipal Code section 17.158.220(F), the City Council retains jurisdiction regarding whether the EIR, as revised, should be re-certified. Further, there is no decision for the Planning Commission to consider. The approvals were suspended, not rescinded, and there is no requirement that the Planning Commission revisit the prior approvals.

CHAPTER IV

Responses to Comments

This chapter includes copies of the written comments received by hand-delivered mail or electronic mail during the public review period on the *Revisions to the Analysis in the Oak to Ninth Project EIR (Revisions)* and a set of responses to the individual comments in each correspondence. Consistent with the roster presented in Chapter II, Commenters, correspondence received from public agencies is presented first, followed by correspondence received from organizations, and then individuals.

Each correspondence is identified by an alpha designator (e.g., “Letter A”). Specific comments within each correspondence are identified by alphanumeric designators that reflect the alphabetic correspondence designator and the numeric sequence of the specific comment within the correspondence (e.g., “A-1” for the first comment in Letter A). The set of responses immediately follows the correspondence.

Responses to several comments presented in this chapter are addressed within the Master Responses presented in Chapter III, Master Responses to Recurring Comments. Where appropriate, the individual response refers the reader to the applicable Master Response but may also contain additional information specific to the comment.

Responses specifically focus on comments that address topics addressed by the Court Order. Comments that address topics beyond the purview of the Court Order or CEQA are noted for the public record and may be taken into consideration by the City.

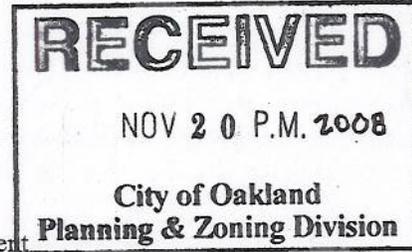
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STATE OF CALIFORNIA
GOVERNOR'S OFFICE of PLANNING AND RESEARCH
STATE CLEARINGHOUSE AND PLANNING UNIT

ARNOLD SCHWARZENEGGER
GOVERNOR

CYNTHIA BRYANT
DIRECTOR



November 17, 2008

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

Subject: Revisions to the Analysis in the Oak to Ninth Mixed Use Development EIR Prepared to Comply with the Alameda County Superior Court Order In Case No. RG06-280345
SCH#: 2004062013

Dear Margaret Stanzione:

The State Clearinghouse submitted the above named Other Document to selected state agencies for review. On the enclosed Document Details Report please note that the Clearinghouse has listed the state agencies that reviewed your document. The review period closed on November 14, 2008, and the comments from the responding agency (ies) is (are) enclosed. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

A-1

These comments are forwarded for use in preparing your final environmental document. Should you need more information or clarification of the enclosed comments, we recommend that you contact the commenting agency directly.

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Sincerely,

Terry Roberts
Director, State Clearinghouse

Enclosures
cc: Resources Agency

SCH# 2004062013
Project Title Revisions to the Analysis in the Oak to Ninth Mixed Use Development EIR Prepared to Comply with
Lead Agency the Alameda County Superior Court Order In Case No. RG06-280345
 Oakland, City of

Type Oth Other Document
Description The project would construct approx. 3,100 residential dwelling units (a mix of flats, townhomes and lofts) on 13 development parcels. Approx. 200,000sf. 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. Approx. 31.89 acres (or 50%) of the site would be developed with parks and open spaces, including an existing 7.7 acre park (Estuary Park). The project would demolish a maximum of 160,000 sf. of the existing 180,000sf. Ninth Avenue Terminal building (an historic resource) to create the largest (9.7 acre) of a series of interconnected parks and water front space. The project would retain a minimum of 20,000sf. 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. The majority of the existing uses and structures on the project site would be removed.

Lead Agency Contact

Name Margaret Stanzione
Agency City of Oakland Community & Economic Development Department
Phone (510) 238-4932 **Fax**
email
Address 250 Frank H. Ogawa Plaza, Suite 3315
City Oakland **State** CA **Zip** 94612

Project Location

County Alameda
City Oakland
Region
Lat / Long
Cross Streets Embarcadero Road / Fallon Street / 10th Avenue
Parcel No. 0000-0430-001-02; 0000-0430-001-04; 0000-0460-003; 0000-0460-004; 0000-0465-002;
Township 0000-0470-002

<i>Range</i>	<i>Section</i>	<i>Base</i>
--------------	----------------	-------------

Proximity to:

Highways I-880
Airports
Railways Yes
Waterways Oakland Estuary, SF Bay
Schools Yes
Land Use Industrial Land Uses: M-40 Heavy Industrial Zone and S-2 Civic Center Zone / S-4 Design Review Combining Zone; Planned Waterfront Development (PWD) General Plan Designation.

Project Issues Geologic/Seismic; Landuse; Noise; Population/Housing Balance; Public Services; Recreation/Parks; Schools/Universities; Sewer Capacity; Soil Erosion/Compaction/Grading; Solid Waste; Toxic/Hazardous; Traffic/Circulation; Water Supply; Wetland/Riparian; Wildlife; Aesthetic/Visual; Cumulative Effects

Reviewing Agencies Resources Agency; Department of Conservation; Department of Fish and Game, Region 3; Department of Parks and Recreation; San Francisco Bay Conservation and Development Commission; Department of Water Resources; California Highway Patrol; Caltrans, District 4; Department of Housing and Community Development; Air Resources Board, Transportation Projects; Integrated

Waste Management Board; Regional Water Quality Control Board, Region 2; Native American
Heritage Commission; Public Utilities Commission

Date Received 10/01/2008 *Start of Review* 10/01/2008 *End of Review* 11/14/2008

Letter A Response – Governor’s Office of Planning and Research

- A-1. The comment letter acknowledges that the State Clearinghouse submitted the *Revisions* to selected state agencies for review. Comments were from the Department of Transportation (Caltrans) (see Letter C), and the California Public Utilities Commission (CPUC) (see Letter D).

(Note that the City received, separately, Letter C from Caltrans and Letter D from CPUC on November 17, 2008, prior to the copies forwarded as attachments to the Governor’s Office of Planning and Research correspondence dated November 17, 2008 and November 25, 2008 on the preceding pages. The received from the Department of California Highway Patrol (see Letter B), the copies of correspondence received directly from these agencies are published in this responses document and are identical to those subsequently forwarded to the City by the Governor’s Office of Planning and Research.)

Memorandum

Date: October 24, 2008

Clear
11.14.08
e



To: State Clearinghouse
1400 Tenth Street, Room 121
Sacramento, CA 95814

From: DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
Oakland Area

File No.: 370.011086.Oak_Ninth

Subject: OAK TO NINTH PROJECT SCH#2004062013

The Oakland Area office of the California Highway Patrol (CHP) received the "Notice of Completion" initial environmental study document from the State Clearinghouse regarding the Oak to Ninth Project, State Clearinghouse (SCH#2004062013), prepared by the city of Oakland. After review, we have concluded that the implementation of this project will have a moderate impact on traffic management and traffic safety within our jurisdiction. Specifically, the increased traffic added to the now stressed Interstate 880 and associated on and off ramps in the vicinity of the project.

B-1

If you have any questions, please contact Lieutenant M. Sherman at (510) 450-3821.

D. E. MORRELL, Captain
Commander

cc: Special Projects Section
Golden Gate Division

Letter B Responses – Department of California Highway Patrol

- B-1. Traffic impacts of the project are analyzed in the EIR *(see Section IV.B, Transportation, Circulation, and Parking in the Draft EIR. The Court required the City to prepare specific revisions to the analysis in the EIR that do not pertain to this topic, but that focus on use of a “ratio theory” approach to the cumulative traffic intersection analysis. Nonetheless, the comment is noted and does not require further response. See Master Response B, Responses to Comments on Environmental Issues Outside the Scope of the Court Order.

Comment Letter C

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY

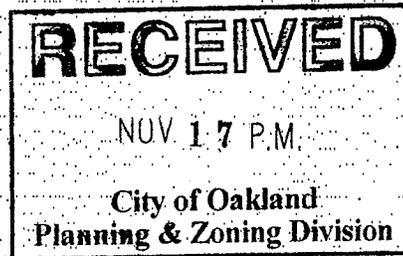
ARNOLD SCHWARZENEGGER, Governor

DEPARTMENT OF TRANSPORTATION

111 GRAND AVENUE
P. O. BOX 23660
OAKLAND, CA 94623-0660
PHONE (510) 622-5491
FAX (510) 286-5559
TTY 711



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November 14, 2008

ALA880618
ALA-880-30.37
SCH#2004062013

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

Dear Ms. Stanzione:

Oak to Ninth Avenue Project, Case No. ER04-0009 - Revisions to the Analysis in the Oak to Ninth Project EIR Prepared to Comply with the Alameda County Superior Court Order In Case No. RG06-280345 and Case No. RG06-280471

Thank you for continuing to include the California Department of Transportation (Department) in the review process for the proposed Oak to Ninth Avenue Mixed-Use project. The following comments are based on the Revisions to the Analysis in the Oak to Ninth Project EIR Prepared to Comply with the Alameda County Superior Court Order In Case No. RG06-280345 and Case No. RG06-280471.

Mitigation Measures B.3j, B.3k, and B.3l propose respectively, the widening of Embarcadero near Fifth Avenue and signalizing and/or improving the intersection configurations at the Embarcadero/Interstate 880 Northbound Off-ramp and Embarcadero/Interstate 880 Southbound On-ramp. The subject document states that the applicant will pay for these measures. It is unclear whether these measures will have an impact to Union Pacific Railroad tracks adjacent to the Embarcadero in this area or whether the costs of these measures will include potential railroad related costs to implement these measures.

C-1

Should you require further information or have any questions regarding this letter, please call Yatman Kwan of my staff at (510) 622-1670.

Sincerely,

LISA CARBONI
District Branch Chief
Local Development - Intergovernmental Review

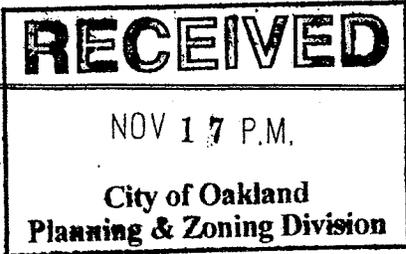
c: State Clearinghouse

Letter C Responses – California Department of Transportation

- C-1. The comment refers to mitigation measures that are identified and discussed in the EIR (see pages IV.B-40, IV.B-42, IV.B-50, and IV.B-51 of the Draft EIR) and that are not revised or within the scope of the Court Order. Nonetheless, the comment is noted. The mitigation measures identified by the commenter sufficiently address the relevant issues under CEQA. See Master Response B, Responses to Comments on Environmental Issues Outside the Scope of the Court Order.

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



November 17, 2008

Margaret Stanzione
Community & Economic Development Agency, Planning and Zoning Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

SUBJECT: Railroad Safety Issues related to the Oak to Ninth Project
SCH# 2004062013: Revisions to the Analysis in the Oak to Ninth Project EIR
Prepared to Comply with the Alameda County Superior Court Order No. RG06-280345 and Case No. RG06-280471

Dear Ms. Stanzione:

The California Public Utilities Commission – Consumer Protection and Safety Division – Rail Crossings Engineering Section (RCES) provided detailed comments to both the Draft and Final Environmental Impact Report (EIR) for the Oak to Ninth Project. As the State Agency with regulatory oversight of rail safety within California, we have major concerns related to the proposed Oak to Ninth Mixed Use Development. We offer the following comments as a responsible agency according to CEQA Section 15381.

Existing conditions along Embarcadero include Union Pacific Railroad (UPRR) mainline track, also used by Amtrak, west from the 5th Avenue crossing. The Hanlen Lead track exists east from the 5th Avenue crossing. The railroad crossings are an integral part of all intersections along Embarcadero.

D-1

The cumulative traffic impacts and proposed mitigation measures discussed in the Revisions will significantly impact safety at railroad crossings in the immediate vicinity. The Final EIR and recent Revisions have not adequately reviewed the pedestrian and vehicular traffic impacts related to the railroad crossings and associated intersections.

D-2

For the record, the traffic analysis is fatally flawed since it did not include the railroad crossings or corridor in the traffic analysis. This is critical in the determination of significant impacts and proposed mitigation to lessen those impacts to a level of less than significant.

D-3

A. Railroad Crossing Accidents Subsequent to Final EIR

A.1. Railroad crossings present an ongoing and serious public safety issue in the City of Oakland, as evidenced by the history of collisions between trains and the public. It is likely to become a greater concern with ongoing development near the tracks. Train traffic along the Union Pacific Railroad's (UPRR) mainline can be expected to increase over time.

D-3

A.2. Subsequent to our comment letter of June 2006 there have been a number of railroad crossing accidents at locations which may be impacted by this project. These incidents must be seriously considered as new and significant information and as substantial evidence for the record. Recent railroad crossing accident locations include:

- a. Broadway & Embarcadero (fatal pedestrian-train collision)
- b. Franklin Street & Embarcadero (vehicle-train collision)
- c. Market Street near Embarcadero (vehicle-train collision)
- d. 5th Avenue near Embarcadero (vehicle-train collision)
- e. Dennison Street near Embarcadero (vehicle-train collision)

D-3
cont.

B. Safety of Crossings

B.1. As of this date we have not received a response to our previous comments regarding the "Safety of Crossings" in our letter of June 20, 2006 (attachment). We recommend that the project install and/or contribute toward improvements at railroad crossings to mitigate the project's pedestrian and vehicular safety impacts at a number of locations. The following types of improvements need serious consideration:

- a. pedestrian safety treatments
- b. traffic channelization / median delineators
- c. improved railroad crossing warning devices
- d. traffic signal installation / configuration

D-4

B.2. The intersection analysis included in the Revisions indicates that congestion is likely around the railroad crossings. The actual delay experienced by motorists may be significantly greater than the average delay during the approach and passage of a train. These delays in turn may result in increased motorist impatience and disregard for the railroad crossing warning devices. These factors increase the potential for train-vehicle collisions.

D-5

C. Existing Conditions

C.1. The traffic analysis and proposed mitigation is deficient in not considering the existence of the Hanlen Lead track. The Hanlen Lead track exists along Embarcadero east from the 5th Avenue crossing and UPRR trains regularly use this track. The analysis must consider the impacts if the existing track remains.

C.2. Currently there is no agreement to eliminate this track, and there are significant complications in doing so. The elimination of this track may be subject to a decision of the federal Surface Transportation Board. FEIR Response M-2 confirmed this stating: "no agreement has been reached regarding the disposition of the spur line at this time. Because no definitive agreement has been reached regarding the removal of the spur line, this information was not included in the DEIR."

D-6

C.3. In the absence of a definitive agreement to eliminate the track, the traffic analysis must analyze the existing configuration.

D. Revised Intersection Impact Analysis

D.1. The analysis used to calculate the Level of Service (LOS) in the Intersection Traffic Impact Analysis failed to include the rail corridor and at-grade crossings and therefore is inadequate and incomplete for the purposes of determining the level of significance of the project's traffic impacts.

D-7

D.2. Table II.B-1 of the Revisions lists findings that the PM Peak Hour Intersection LOS would be significantly impacted at 5 of the intersections listed below. Railroad crossings are present at or affected by a number of the intersections identified in the traffic analysis, including the following:

- #3: Embarcadero & Broadway (LOS F)
- #4: Embarcadero & Oak Street
- #36: Embarcadero & 5th Avenue (LOS F)
- #37: Embarcadero & I-880 Northbound Off-Ramp – 6th Avenue (LOS F)
- #38: Embarcadero & I-880 Southbound On-Ramp – 10th Avenue (LOS F)
- #39: Embarcadero & I-880 Southbound Off-Ramp – 16th Avenue
- #40: 5th Avenue & 7th/8th Streets (LOS F)

D-7
cont.

D.3. The intersections at Embarcadero & Webster Street and Embarcadero & Franklin Street should have been included in the intersection analysis. These intersections and associated railroad crossings may be significantly impacted by the project, particularly when the cumulative traffic impacts of other projects near that location are considered.

D-8

E. Feasibility and Analysis of Proposed Mitigation Measures At or Near Railroad Crossings

E.1. As discussed above, the traffic analysis in the DEIR failed to include rail corridor and or at-grade crossings in the study, therefore it is inadequate for determining traffic impacts and appropriate mitigation measures to lessen the level of significance as required under CEQA. However, in order to assist the discussion, we offer comments below to the mitigation measures that are proposed in the Revisions.

D-9

E.2. The Revisions document fails to state that railroad crossing modifications cannot be carried out independently by the City. Such modifications, such as the proposed mitigation measure to install traffic signals at a railroad crossing, must be coordinated with UPRR and will require CPUC authorization at intersections along and adjacent to Embarcadero.

D-10

E.3. The presence of the railroad track and crossings restricts the physical and operational configuration of traffic signals and limits the feasible widening, potentially making the proposed mitigation measures infeasible.

D-11

E.4. The stated 'Significance after Mitigation' is questionable since the Revisions document fails to consider how proposed traffic signals would be affected by the presence of the railroad crossing, or the extent to which widening may be restricted by the presence of the railroad track.

E.5. The study finds that there are two particularly deficient intersections along the mainline railroad track. While CPUC staff has similar concerns at many of the intersections along Embarcadero, we focus here on the 2 railroad crossings along mainline track, which have a history of incidents, and which have been identified in the Revision as requiring mitigation measures:

D-12

- #3: Embarcadero & Broadway
- #36: Embarcadero & 5th Avenue

E.5.a. Embarcadero & 5th Avenue (Intersection #36)

E.5.a.i. This intersection is one of the closest intersections to the project and is planned as a main entrance to the development, yet the pedestrian and vehicular traffic analysis and proposed

D-13

mitigation is deficient. Extensive concerns and proposed mitigation measures were brought up in our previous letters and were for the most part dismissed without sufficient evidence, or were not addressed in the responses. The Revisions document in Impact and Mitigation Measure B.3j does not consider the railroad crossing at all. As we have not received a response to our June 2006 letter, we offer here further concerns regarding the issues at this intersection, in response to the FEIR.

E.5.a.ii. FEIR Response M-4: Paragraph 1

CPUC raised concerns about traffic queues extending over the tracks. The response states that “providing multiple left-turn lanes from 5th Avenue to Embarcadero, as well as two receiving left turn lanes” would address this concern. There are a number of problems with this response. It is not clear that there is enough roadway width to provide for the proposed lane configuration. Further, such a lane configuration may preclude critical safety improvements such as raised medians on approach to the crossing, bicycle lanes and ADA-compliant sidewalks with pedestrian safety treatments along the shoulder. Even with additional lanes, queues will still extend onto the tracks because there is very limited distance between the intersection and the track. That distance would be less than existing conditions after the proposed roadway widening. Other treatments such as pre-signals (traffic signals north of the track) will likely be required to address this issue.

E.5.a.iv. FEIR Response M-4: Paragraph 2

CPUC raised concerns about the feasibility of widening Embarcadero, due to the presence of the Hanlen Lead track. The response fails to address the concern, stating only that “the site plan reflects this widening” and that “the project applicant will be reconstructing the Embarcadero”.

D-13
cont.

As discussed above, this is an existing track and in the absence of a written agreement between the City and railroad, the analysis cannot assume that this track will be eliminated.

E.5.a.v. FEIR Response M-4: Paragraph 3

CPUC raised concerns about the need for a number of safety improvements. The response offers only that safety improvements would include the posting of DO NOT STOP ON TRACKS signs and refurbishing the minimum required existing signs and markings. Considering the major impact that this project will have on the configuration and traffic flow at the railroad crossing, the posting of two additional signs is insufficient to mitigate the concerns.

E.5.a.vi. FEIR Response M-8

CPUC raised concerns regarding the removal of abandoned tracks. The City has ongoing concerns regarding abandoned tracks in roadway throughout the City. Subsequent to our June 2006 letter, CPUC became aware of a serious incident at an abandoned track in Oakland. Abandoned tracks may impact traffic flow due to the motorists slowing at rough track surfaces.

The FEIR response states that neither the project sponsor nor the City would remove any railroad tracks as part of the proposed project. This is problematic because they have clearly stated in Response M-4 that the project applicant will be reconstructing Embarcadero where tracks are present in the roadway. Other specified mitigation measures would affect cross-streets. The project applicant should be required to eliminate abandoned tracks within roadways being modified by or directly affected by the project.

E.5.a.vii. FEIR Response M-5 and M-6

CPUC raised concerns regarding pedestrian and bicycle safety. Response F was referred to for related discussion. CPUC believes the stated analysis and proposed mitigation in Response F is deficient, as further discussed below.

E.5.a.viii. FEIR Response F: Pedestrian Activity at Nearby Rail Crossings

CPUC comments, as well as other comment letters, raised concerns regarding the FEIR's analysis of pedestrian traffic and safety. It should be noted that a fatal train-pedestrian incident occurred in the vicinity (at Broadway Street & Embarcadero) subsequent to our June 2006 comments. Although the traffic analysis does not specifically cover pedestrian traffic, it is clear that this project will increase pedestrian traffic at the intersection of Embarcadero & 5th Avenue and across the 5th Avenue railroad crossing. The traffic analysis could be impacted by additional pedestrian clearance time needed to address pedestrian safety concerns.

Appropriate accommodation for pedestrian safety may affect the phasing and configuration of traffic signals. Under railroad preemption, significant additional time (advance preemption) may be required to provide for pedestrian clearance prior to initiating a track clearance green phase. This pedestrian clearance time under railroad preemption, as well as the pedestrian clearance time on the regular cycle, may be significant due to the proposed widening of Embarcadero. This change in signal operation could affect the predicted LOS.

The text added to the DEIR IV.B-57 text on *Pedestrian Safety Impacts* and the associated proposed mitigation measures are insufficient. It states:

“Currently, the 5th Avenue crossing has safety equipment including crossing gates and warning lights. These facilities limit access by pedestrian as well as vehicles. ... While portions of 5th Avenue would be restriped by the project, no changes would be made to the existing crossing gates or warning signals.”

The stated mitigation measures are to maintain the existing fence and “install additional bicycle and pedestrian warning signage”.

There are a number of deficiencies with this response. Since pedestrians travel in both directions, automatic warning devices may be necessary in all four quadrants to provide sufficient pedestrian warning. Currently there are no sidewalks at the railroad crossing, which slows pedestrians and presents a tripping hazard. Considering the limited sight distance to approaching trains and the time it takes a pedestrian to cross the multiple mainline tracks at 5th Avenue, particularly in the absence of an ADA-compliant surface, additional automatic warning devices are appropriate. Specific mitigation measures were proposed in our comments of December 22, 2005. It is clear from the response in Response F that the responder is unfamiliar with pedestrian safety treatments that can be placed at railroad crossings.

E.5.b. Embarcadero & Broadway (Intersection #3)

E.5.b.i. A fatal train-pedestrian incident occurred at this intersection in 2007, subsequent to the Final EIR. Broadway is currently the central intersection in Jack London Square and has a large amount of both pedestrian and vehicular traffic. Pedestrian safety is clearly a concern at this location.

D-13
cont.

D-14

E.5.b.ii. The Revisions document includes Impact and Mitigation Measures B.3b which is deficient in its analysis because it does not acknowledge the presence of the railroad crossing. There are two mainline railroad tracks that currently run along the middle of the street. The presence of the railroad at this intersection is likely to be a factor in the traffic delay.

E.5.b.iii. Pedestrian clearance time will need to be reviewed. Due to the presence of multiple tracks in the roadway the assumed pedestrian speed may need to be reduced, and the corresponding pedestrian clearance time may need to be increased, potentially impacting the calculated LOS.

E.5.b.iv. The analysis fails to mention that modifications to this intersection will require close coordination with UPRR and authorization of CPUC. The proposed mitigation measure states only that City of Oakland design standards, Caltrans design standards and MUTCD signal warrants would be followed.

E.5.b.v. The proposed mitigation goes into details regarding fixed-time control, omission of a left-turn arrow, coordination with other intersections, and placement of pedestrian signal heads. This level of detail cannot be specified until further discussion is held regarding the railroad safety issues. CPUC recommends the following items at this intersection in the interest of railroad safety:

- a. split-phase operation with left-turn arrows for north-south Broadway traffic
- b. train-activated turn-prohibition signs
- c. additional railroad crossing flashing light signals for pedestrians in the northeast and southwest quadrants
- d. signage and markings to discourage motorists from stopping on the tracks
- e. additional channelization and possibly gate arms to discourage motorists from turning left across the track during the approach of a train
- f. curbing along Embarcadero to separate the vehicular lanes from the railroad tracks. This may potentially impact traffic flow at the intersection because the railroad track could not be used as a left-turn lane.

D-14
cont.

F. Conclusion

F.1. This project will have significant traffic related impacts on railroad safety due to its location adjacent to a railroad and a number of railroad crossings. The traffic impacts have been found to be significant at intersections associated with these crossings. The mitigations proposed to address Level of Service impacts appear to be infeasible in some cases, may preclude the installation of necessary safety mitigation, will require additional changes that may impact the traffic flow, and are insufficient to address the existing safety issues.

F.2. The traffic impact study is seriously deficient and fatally flawed in the lack of analysis for rail corridor and at-grade intersections which needs to be revised to include these rail facilities in order for the traffic analysis to be complete. Otherwise the information as presented in the report fails to disclose all the necessary information for the general public, affected agencies in order for the City Council to make a fully informed decision and without having all the information disclosed to them prior to the public hearing could subject the project for recirculation and or exposure for further litigation.

F.3. The revised document and attempt to comply with the Alameda County Superior Court Order again fails to address rail safety in the traffic analysis section of the document and unless it is

D-15

revised it will be inadequate in the analysis of project traffic impacts to rail crossings as described in our previous comments.

↑ D-15
cont.

F.4. Please provide us with a response to comments and staff report 10 days prior to the public hearing so we may have an opportunity to review and if necessary provide additional comments prior to the public hearing rescheduled for December 9, 2008. CPUC staff is scheduled to be present at the City Council hearing to provide public testimony on the significant environmental/safety affects from this project to the rail corridor and at-grade crossings.

↑ D-16

F.5. We request that the City and developer consult with us to discuss the concerns brought up in this and previous letters (attached) applicable to this project.

↑ D-17

Sincerely,



Kevin Schumacher
CPUC Rail Crossings Engineering Section

CC: Margaret Stanzione, City of Oakland (CEDA)
Raul Godinez II, City of Oakland (Public Works)
Eric Angstadt, City of Oakland (CEDA)
Terrel A. Anderson, UPRR
Moses Stites, CPUC

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



June 20, 2006

Margaret Stanzione
Community & Economic Development Agency, Planning and Zoning Division
City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

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

Dear Ms. Stanzione and Mr. Godinez:

Staff of the Commission's Consumer Protection and Safety Division – Rail Crossings Engineering Section (RCES) commented on the Draft EIR. We are appreciative of responses prepared to our letter (Letter M in the Final EIR), however, the EIR fails to make significant recommendations that address our concerns.

Railroad crossings present an ongoing and serious public safety issue in the City of Oakland, and it is likely to become more serious with increasing development near the tracks, congestion at rail crossings, and expected increases in train traffic. As the State Agency with regulatory oversight of rail safety within California, we have major concerns related to the proposed Oak to Ninth Mixed Use Development.

The following topics require further consideration.

1. Grade separation of crossings
2. Safety of crossings
3. Fencing along the railroad right-of-way
4. Removal of abandoned track

1. Grade Separation of Crossings

The proposed major thoroughfares of Oak Street and 5th Avenue should be further considered for grade separation. The City's response states clearly that the "operation and safety of Oak Street and 5th Avenue" would improve with grade separation. Although an initial engineering analysis of the grade separation options was prepared, the response does not make a recommendation on a course of action. The Oak Street overcrossing should be pursued further.

2. Safety of Crossings

Funding should be set aside to allow for major improvements to the 5th Avenue rail crossing, including medians and improved warning devices. The appropriate improvements must be determined through a diagnostic review including RCES, Union Pacific Railroad, Caltrans, and the City. Such a diagnostic review should be conducted prior to installation of traffic signals, restriping of the roadway, or installation of new signage near the rail crossing.

The EIR implies that the existing warning devices cannot be significantly improved as they already “limit the ability of pedestrians from the project to cross the tracks”. This is not accurate--the current pedestrian way is unimpeded by the warning devices.

We strongly disagree with this statement that “arms or gates could trap pedestrians along the tracks.” With proper design, pedestrians would not be trapped on the tracks. There are examples of pedestrian-specific rail crossing warning devices throughout California, and we are unaware of any incidents like the one described.

The final EIR, with only two minor mitigation measures related to railroad crossing safety, does not sufficiently address our recommendations for improvements at the railroad crossings. The response states that “pedestrian safety improvements *could* be installed at the existing at-grade crossing at 5th Avenue.” (emphasis added) We previously provided a number of specific recommendations which the City should consider in detail.

3. Fencing Along Railroad Right-of-Way

Our recommendation was that **vandal-resistant fencing** be installed along the railroad right-of-way **for the full length of the project**. The response does not address this by proposing to maintain the existing chain link fence.

4. Removal of Abandoned Track

Judging from brief discussion with Caltrans, it seems doubtful that Caltrans would complete removal of *all* tracks as indicated in response M-8, unless there were major negotiations with the City to carry out such a project. There are numerous industrial spur tracks in this area and it may require a detailed review to ensure that the the ties and track are removed.

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

Sincerely,

K. Schumacher

Kevin Schumacher
Utilities Engineer
Rail Crossings Engineering Section
California Public Utilities Commission

cc: Patrick Kerr, UPRR
Raul Godinez II, Dir. Public Works, City of Oakland

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298



December 22, 2005

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Raul Godinez II
Director of Public Works
City of Oakland Public Works Agency
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SUBJECT: Railroad Safety Issues related to the Oak to Ninth Project

Dear Ms. Stanzione and Mr. Godinez:

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

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

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

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

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

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

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

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

1. Closure

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

2. Grade Separations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Appropriate Fencing to Limit Access of Trespassers

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

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

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

5. Pedestrian and Bicycle Safety

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

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

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

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

6. Noise Analysis

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

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

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

7. Abandonment

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

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

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

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

Sincerely,

K Schumacher

Kevin Schumacher

Utilities Engineer
Rail Crossings Engineering Section
California Public Utilities Commission

cc: Patrick Kerr, UPRR

Comment Letter D

APPENDIX A:

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

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

Notes:

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

001: identifies Union Pacific Railroad

D: identifies the Niles Subdivision

Milepost: Here between 7.20 and 8.00

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

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

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

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

Standard No. 8: automatic flashing light signals

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

Standard No. 9: automatic gate and flashing light signals

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

PUBLIC UTILITIES COMMISSION



505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

October 18, 2005

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

Dear Ms. Stanzione:

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

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

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

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

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

Very truly yours,

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

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

cc: Pat Kerr, UP

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

September 20, 2005

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

Dear Ms. Stanzione:

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

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

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

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

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

Very truly yours,

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

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

cc: Pat Kerr, UP

Letter D Responses – California Public Utilities Commission

The comments submitted by the CPUC are all outside of the scope of the Court Order, Judgment and Writ. See Master Response B, Responses to Comments on Environmental Issues Outside the Scope of the Court Order. The comments raise issues that the CPUC raised in connection with the Draft EIR and which were either not raised in the litigation challenging the EIR, or were raised and the Court determined the City has adequately addressed the issue in the EIR. Nonetheless, for informational purposes for the public and decisionmakers, the responses below address and clarify a number of the points raised by the commenter.

- D-1. The comment describes the existing physical conditions regarding railroad facilities near the project site. The comment is noted.
- D-2. The commenter raises a concern about how analyses in the Final EIR and the *Revisions* addressed the rail corridor/crossings in the project area. As stated in the Final EIR (e.g., response to comments in Letter A and Letter M, both from the California Public Utilities Commission), plans for the proposed development project have taken into account the proximity of the rail corridor. The Response to Comment A-2 in the Final EIR described, and expanded upon, intersection improvements along Embarcadero and 5th Avenue recommended in the Draft EIR, which are designed to limit queuing, which in turn would reduce the potential for the backup of vehicles to spill onto the railroad tracks. Master Response F in the Final EIR provided an expanded discussion of aspects of pedestrian activity at rail crossings. See Response to Comment D-5, below, regarding traffic analyses in the EIR and the *Revisions*, vis-à-vis railroad crossings.
- D-3. The commenter notes collisions at railroad crossings that occurred since the City originally certified the EIR. The accident locations cited by the commenter are by and large removed (1.0 to 1.5 miles) from the project site, and there would be few, if any, project-generated trips passing through those locations. The only location near the project site (the single vehicle-train collision at the 5th Avenue crossing near Embarcadero) is acknowledged, but the occurrence of that one additional collision does not affect the EIR's impact determinations. As described in Responses to Comments RR-3 and RR-4 of the Final EIR, while the potential for motor vehicle or pedestrian accidents (including at a railroad crossing) would exist under project conditions, the *rate* at which those accidents occur (i.e., accidents per number of vehicles or pedestrians) would not be expected to increase as a result of the project (because the proposed project would not introduce to the project area incompatible uses or design features that do not comply with Caltrans design standards). Further, the EIR already acknowledged the potential for accidents and considered appropriate mitigation measures. Thus, the comments by the CPUC are beyond the scope of the *Revisions*. See Master Response B, Responses to Comments on Environmental Issues Outside the Scope of the Court Order.
- D-4. The CPUC notes vehicle and pedestrian collisions with train at railroad crossings in vicinities near the project. The CPUC also recommends improvements, e.g., signals and barriers to separate traffic streams, which may improve safety and railroad crossings.

Similar issues and comments were analyzed in the EIR, and the Court found the City's responses to be adequate. For example, the Draft EIR recognized the potential for conflicts between traffic streams, per Impact B.7. The CPUC recommended safety

improvements, including signals, medians and other barriers to separate traffic streams. In response, the City modified Mitigation Measure B.7, which would require, among other things, modifications to certain intersections, including signalization, the maintenance of fencing to separate pedestrian and train traffic, the installation of signage to warn pedestrians and cyclists, and the imposition of vehicle right turn only requirements. The Final EIR found that, with mitigation, the impacts would be less than significant. The Court did not find that the EIR was inadequate with respect to these issues. Rather, the Court held that the City had a reasonable basis for its conclusions regarding traffic stream impacts and mitigation measures and had adequately responded to comments by the CPUC and others. (See Court Order, pages 45-49; see also CPUC letter dated December 22, 2005 [Comment Letter M in the Final EIR] and the response thereto in the Final EIR pages V-14 et seq. and VI-31 et seq.)

Thus, the comments by the CPUC are out-of-scope. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Further, the recommendations are substantively similar to that which the CPUC previously provided. As such, the responses included in the Final EIR are relevant to the supplemental comments provided by the CPUC and adequately address the issues and comments provided by the CPUC.

- D-5. The commenter expresses an opinion that the intersection traffic analysis in the *Revisions* significantly understates the extent of congestion and delay at intersections in proximity to railroad crossings. The intersection analysis was based on the traffic engineering industry standard methodologies as presented in the 2000 *Highway Capacity Manual*. The operation analysis uses various intersection characteristics (lane geometry, traffic volumes, and traffic control device [signals or stop signs]) to estimate the average control delay (and associated level of service [LOS]) experienced by motorists traveling through an intersection. The reported LOS and delay represent average conditions during the weekday peak traffic hours (occurring during the 7:00 to 9:00 AM and 4:00 to 6:00 PM peak periods). The frequency of Amtrak passenger train service (Capital Corridor, San Joaquin, and Coast Starlight) during the aforementioned peak traffic hours is low (i.e., about four trains in each of the two two-hour periods), and freight rail service operates with no set/published schedule. While motorists wishing to cross the railroad tracks would experience delay during a train's approach and passage that is not experienced at other times, that added delay would not materially affect the intersection's peak-hour average delay and LOS.
- D-6. The commenter addresses the potential removal of railroad crossings or the Hanlon Lead by Caltrans in connection with its proposed I-880 seismic retrofit project. Neither the Oak to Ninth Project sponsor nor the City have proposed to, or would, remove the Hanlon Lead. The Caltrans proposal for the Hanlon Lead track is completely independent of, and would not be affected by, the Oak to Ninth project because the Hanlon Lead removal or relocation is part of the Caltrans I-880 project. Caltrans and the CPUC will make a decision with respect to the Hanlon Lead regardless of the Oak to Ninth Project. Moreover, the issues raised by the CPUC are outside the scope of the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- D-7. See Response to Comment D-5, above, regarding how the analysis used to calculate the intersection LOS is consistent with industry standard methodologies. Further, while the

- comment accurately describes the 2025 PM peak-hour intersection LOS presented in Table II.B-1 of the *Revisions*, the appropriate (and pertinent) table to cite is Table II.B-2 of the *Revisions*, which indicates that all of the cited intersections would operate at an acceptable LOS under 2025 conditions after implementation of EIR-identified mitigation measures.
- D-8. The commenter suggests that two intersections be added as EIR study intersections. Similar issues and comments were analyzed in the EIR, and the Court found the City's responses to be adequate. For example, the Draft EIR used a screening process to identify a project study area that adequately covers the potential project-generated traffic impacts. Comments on the Draft EIR suggested additional study intersections. The City's response pointed out that the suggested added study intersections do not warrant inclusion as a study intersection for the EIR per the aforementioned screening process. The Court did not find that the EIR was inadequate with respect to this issue. Thus, the comment is out-of-scope. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- D-9. See Response to Comment D-5, above, regarding how the analysis used to calculate the intersection LOS is consistent with industry standard methodologies. Also, see Responses to Comments D-10 through D-14, below, for responses to referenced specific comments.
- D-10. The comment refers to entities that are involved with modifications to railroad crossings. See Master Response B regarding what was included in the *Revisions* in order to comply with the Court Order. The City acknowledges that modifications to railroad crossings must be coordinated with UPRR and would require CPUC authorization. However, for City-controlled intersections (such as Embarcadero at 5th Avenue), there is no need for the City to seek authorization from CPUC, or any other agency, to install traffic signals.
- D-11. The commenter questions the feasibility of the proposed widening of Embarcadero and of the implementation of mitigation measures in that corridor due to the presence of railroad tracks and crossings. The presence of the railroad tracks and crossing was taken into consideration when mitigation measures identified for locations along Embarcadero were developed, and the Embarcadero widening by the proposed project is feasible regardless of what is done to the Hanlon Lead track as part of the Caltrans I-880 seismic retrofit project. The determination of impact significance after mitigation presented in the EIR and in the *Revisions* remains valid.
- D-12. See Responses to Comments D-13 and D-14, below, for responses to referenced specific comments.
- D-13. The commenter questions the feasibility of the mitigation measures identified for the intersection of Embarcadero and 5th Avenue. See Response to Comment D-4, above, regarding CPUC-cited collisions at railroad crossings that occurred since the City originally certified the EIR. Responses to comments in Letter M and Master Response F in the Final EIR stand as responsive to the commenter's concerns. However, see Responses to Comments D-6 and D-11, above, regarding how the Hanlon Lead track is completely independent of, and would not be affected by, the Oak to Ninth project, and how mitigation measures for locations along Embarcadero identified in the DEIR took the railroad tracks and crossing into account. Also see Response to Comment D-3, above,

about how CPUC-cited collisions at railroad crossings that occurred since the City originally certified the EIR is not significant new information.

An error was discovered in the mitigated LOS for AM peak-hour conditions at the intersection of Embarcadero and 5th Avenue, as reported in Table II.B-2 of the *Revisions*. The unmitigated LOS D (49.2 seconds of delay) was inadvertently reported as also being the mitigated LOS, which is incorrect. The improved conditions that the mitigation measure would provide for the PM peak hour logically would also provide improved conditions for the AM peak hour. As indicated on the LOS calculation sheet [page 10 of Appendix I of the technical resource document (Fehr & Peers Transportation Consultants, *Oak to Ninth Project Final Traffic Study*, August 26, 2005)], the correct mitigated AM peak-hour LOS would be LOS C (27.3 seconds of delay), and queues associated with LOS D conditions would not occur. Acceptable levels of service (LOS C) under mitigated conditions for the overall intersection and for the 5th Avenue approach to the intersection would ensure minimal queuing, and installation of additional signage (such as DO NOT STOP ON TRACKS), identified in the FEIR, would mitigate safety concerns.

As part of standard practice, the abandoned track across Embarcadero near 8th Avenue would be eliminated as part of the project's widening of Embarcadero along the project site frontage (i.e., from north of 4th Avenue to 9th Avenue).

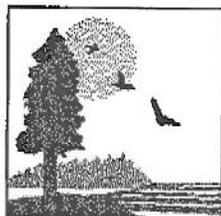
- D-14. The commenter questions the feasibility of the mitigation measure identified for the intersection of Embarcadero and Broadway. See Response to Comment D-3, above, about CPUC-cited collisions at railroad crossings that occurred since the City originally certified the EIR. Also see Response to Comment D-5, above, regarding traffic analyses in the EIR and the *Revisions*, vis-à-vis railroad crossings, and how the analysis is consistent with industry standard methodologies. Pedestrian clearance time, and other design details for the conversion from all-way stop-control to traffic signal control (including, as relevant, design consideration suggested by the commenter), would be finalized at the time signal installation is warranted. As per standard construction management practices, affected entities (such as UPRR) would be notified when traffic signal installation is to occur, but for City-controlled intersections (such as Embarcadero at Broadway), there is no need for the City to seek authorization from CPUC, or any other agency, to install traffic signals.
- D-15. See Responses to Comments D-2 through D-14, above, regarding specific comments that are reiterated in this Conclusion portion of the comment letter.
- D-16. The comment is noted. The City will provide public notice of the availability of this responses document and a public hearing scheduled for the City Council, at least ten days prior to the public hearing.
- D-17. The comment is noted and does not address issues within the scope of CEQA or the *Revisions*.

Comment Letter E

STATE OF CALIFORNIA

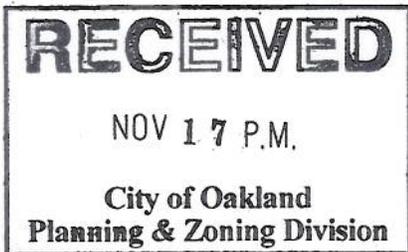
ARNOLD SCHWARZENEGGER, *Governor*

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



PAUL D. THAYER, *Executive Officer*
 (916) 574-1800 FAX (916) 574-1810
 Relay Service From TDD Phone 1-800-735-2929
 from Voice Phone 1-800-735-2922

Contact Phone: (916) 574-1227
 Contact FAX: (916) 574-1324



November 17, 2008

File Ref: G01-04
 ER-04-0009

Margaret Stanzione, Project Planner
 City of Oakland, Community and Economic Development Agency
 Planning Division
 250 Frank H. Ogawa Plaza, Ste 3315
 Oakland, CA 94612

Dear Ms. Stanzione:

RE: Combined Notice of Release and Availability of the Revisions to the Analysis for the Oak to Ninth Project EIR (SCH No. 2004062013) Prepared to Comply with the Alameda County Superior Court Order In Case No. RG06-280345 and Case No. RG06-280471

The staff of the State Lands Commission (SLC) has reviewed the subject document prepared to comply with the Alameda County Superior Court order. It is staff understanding that the subject document provides revisions to the analysis for the EIR regarding the Population, Housing, and Employment Section, Existing Condition Photographs and Project and Simulations, and Existing Conditions and Project Shadow Studies and does not include substantive revisions to other portions of the document. As such, SLC staff's comments to the EIR remain the same as per our letter dated October 24, 2005 (enclosed).

E-1

If you have any questions or concerns, please do not hesitate to contact me at (916) 574-1227 or via email at katog@slc.ca.gov. Thank you.

Sincerely,

Grace Kato
 Public Land Management Specialist

Enclosure

Comment Letter E

OCT-24-2005 MON 04:18 PM CA STATE LANDS COMM DEPM

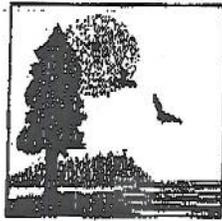
FAX NO. 916 574 1885

P. 02/04

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, Governor

CALIFORNIA STATE LANDS COMMISSION
 100 Howe Avenue, Suite 100-South
 Sacramento, CA 95826-8202



PAUL D. THAYER, Executive Officer
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 from Voice Phone 1-800-735-2922

Contact Phone: 916-574-1227
 Contact FAX: 916-574-1955

October 24, 2005

File Ref: G01-04

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

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

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

Dear Ms Gayou and Ms. Stanzione:

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

Background

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

Comment Letter E

OCT-24-2005 MON 04:16 PM CA STATE LANDS COMM DEPM

FAX NO. 916 574 1885

P. 03/04

Ms. Gayou and Ms. Stanzione

2

October 24, 2005

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

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

Specific Comments

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

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

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

Comment Letter E

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P. 04/04

Ms. Gayou and Ms. Stanzone

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October 24, 2005

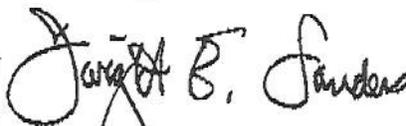
complete discussion will better inform the Port, Council, and Planning Commission as they consider the need for and character of public improvements.

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

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

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

Sincerely,



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

Letter E Response – California State Lands Commission

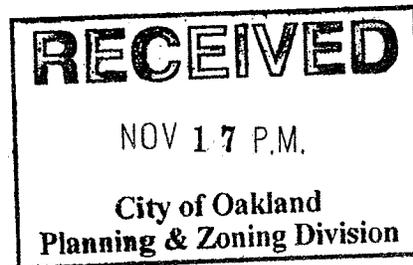
- E-1. Responses to the October 24, 2005 comments were previously presented in the EIR, and were responded to in responses to Letter I in the Final EIR. The comments raised therein are not within the scope of the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.

LAW OFFICES OF BRIAN GAFFNEY
 605 Market Street, Suite 505, San Francisco, CA 94105
 (415) 442- 0711 Phone (415) 442-0713 Fax

November 17, 2008

Via Facsimile & Email

Ms. Margaret Stanzione
 Project Planner
 City of Oakland
 Community & Economic Development Agency
 Planning Division
 250 Frank H. Ogawa Plaza, Suite 3315
 Oakland, CA 94612
 510 238 6538 fax
mstanzione@oaklandnet.com



**RE: PROPOSED REVISIONS TO THE OAK TO NINTH PROJECT EIR,
 Oakland #ER-04-0009**

Dear Ms. Stanzione,

This office submits the following comments on behalf of the Coalition of Advocates for Lake Merritt (CALM) and Joyce Roy regarding proposed revisions to the Oak to Ninth Project EIR dated September 30, 2008 ("Revisions to the EIR" or "REIR").

BACKGROUND

A Draft EIR was released for the project on August 31, 2005. Members of the public, including CALM and Joyce Roy, and various experts timely submitted written comments to the City of Oakland critiquing the Draft EIR and the project as proposed. A Response to Comments constituting the Final EIR was released on February 1, 2006. On June 20, 2006, the City certified the EIR for the project, adopted CEQA Findings, and adopted a Mitigation Monitoring and Reporting Program. The City approved General Findings for project approval. On June 23, 2006, the City filed its Notice of Determination related to the EIR, the adopted CEQA findings, the Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program. CALM and Joyce Roy timely filed suit.

On November 16, 2007, the Alameda Superior Court, Honorable Judge Jo-Lynne Lee, issued its Order Granting in Part the Writ of Mandate. The detailed 55 page opinion held that the EIR was deficient, *inter alia*, for failure to properly analyze the cumulative impacts of 1) Geology & Seismicity, 2) Noise, 3) Hazardous Materials, 4) Biological Resources, 5) Visual Quality, 6) Public Services, and 7) Utilities – as the EIR failed to properly consider past and present projects as part of its analysis of cumulative impacts. (See November 16, 2007 Order Granting in Part and Denying Part Writs of Mandate ("Order") at p. 32 - 34.) The Court held that the EIR was deficient as it used

Comment Letter F

Comments Regarding Proposed Revisions to the Oak to Ninth EIR
November 17, 2008
Page 2 of 14

an impermissible ratio theory in analyzing cumulative traffic impacts. (Order p. 34 - 36.) The Court also held that the EIR failed to provide any analysis of cumulative land use, population and housing impacts. (Order p. 38.) In response to motions for a new trial by Respondents (City of Oakland, Oakland City Council and Oakland Redevelopment Agency) and Real Parties (Oakland Harbor Partners, LLC, Signature Properties, Inc., and Reynolds & Brown), the Court reaffirmed its decision that the EIR violated CEQA. The Court set aside the EIR and the findings, statement of overriding considerations and Mitigation Monitoring and Reporting Program for the Oak to Ninth project.

F-1

PROPOSED CONSIDERATION OF THE REVISIONS TO THE EIR

The September 30, 2008 Notice of Release and Availability of Revisions to the Analysis for the Oak to Ninth Project EIR states that the City Council will hold a public hearing to consider re-certifying the EIR as revised. While the City Council should conduct a public hearing before approval of the proposed Project, the Oakland Planning Commission must also consider the EIR. Under Oakland Municipal Code section 17.158.340, entitled "Preparation of Environmental Impact Reports" section 17.158.340, subsection E states in part that:

After a final EIR has been prepared, it shall be forwarded to the City Planning Commission for certification. Such certification shall be deemed to be a finding that the document has been prepared in compliance with CEQA, the CEQA Guidelines, and this statement. In addition, the City Planning Commission shall also certify that the final EIR reflects the independent judgment of the city. Certification of the final EIR does not imply that the City Planning Commission endorses the proposed project, nor that the permit application(s) for the project will be approved.

F-2

Oakland Municipal Code 17.158.220, sections E and F also reference EIR certification by the Oakland Planning Commission.

Thus, the City of Oakland must have the Planning Commission consider the EIR before it is considered by the Oakland City Council. Nothing in the Orders or Writ of the Court changed this requirement.

CUMULATIVE IMPACT APPROACH OF THE REVISIONS TO THE EIR

The Revisions to the EIR misinterprets the requirement to analyze past projects as part of cumulative impacts and misapplies the recent California Supreme Court decision in *Environmental Protection and Information Center v. California Department of Forestry and Fire Protection* ("EPIC v. CDF), 44 Cal. 4th 459 (July 18, 2008).

F-3

The Revisions to the EIR repeatedly states that "past projects' refers to existing development" and that these projects can be found in the setting discussion in each section, as well as EIR appendix D.4 and the cumulative growth scenario. At the trial court level, Respondents and

Comment Letter F

Comments Regarding Proposed Revisions to the Oak to Ninth EIR
November 17, 2008
Page 3 of 14

Real Parties similarly argued that the cumulative impact analysis could be found in the environmental setting section, the EIR's "Cumulative Analysis Context" and the *Cumulative Growth Scenario* (EIR Appendix D.4). The trial court rejected this argument holding that if the EIR's conclusions concerning the effects of cumulative development are not supported by analysis, the EIR is inadequate:

The section of the EIR cited by Respondents, however, merely describes the physical environment in the vicinity of the proposed project, based on past and current projects approved for that area, as required by CEQA Guideline 15125(a). Appendix D.4 does not contain any analysis of the impact of the proposed project when viewed in connection with past or current projects, or even with future projects, as required by Public Resources Code 21083(b). In fact, Appendix D.4 instructs that it is to be used 'for analyzing the project's environmental impacts' (AR 1291), not that Appendix D.4 in fact constitutes that analysis. A summary of projections, as set forth in Appendix D.4, is not the same as an analysis of the cumulative impacts of a project. (See CEQA Guideline §15130(b)(1) and (b)(5), which differentiate the summary of projections from the analysis of cumulative impacts.) If the EIR's conclusions concerning the effects of cumulative development are not supported by analysis, the EIR is inadequate.

F-3
cont.

Order p. 33.

The Revisions to the EIR also incorrectly states that the Supreme Court set a low standard for consideration of past projects in an EIR. The California Supreme Court recently held that:

we agree [] that the statutory injunction to assess 'the incremental effects of an individual project . . . in connection with the effects of *past projects*, the effects of other current projects, and the effects of probable future projects" (Pub. Resources Code, § 21083, subd. (b)(2), italics added) signifies an obligation to *consider the present project in the context of a realistic historical account* of relevant prior activities that have had significant environmental impacts. "Such historical accounting assists, for example, in understanding development trends. (See Governor's Off. of Planning & Research, General Plan Guidelines (1990) pp. 44-46 [need to understand population, environmental and economic trends, including historical data, to guide development].) This historical information also may help to identify previous activities that have caused intensive environmental impacts in a given area, the full effects of which may not yet be manifested, thereby disclosing potential environmental vulnerabilities *that would not be revealed merely by cataloging current conditions.*"

F-4

EPIC v. CDF at 523, emphasis added.

The Supreme Court reasoned further that an analysis of past projects in an EIR "must reasonably include information about past projects to the extent such information is relevant to the

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understanding of the environmental impacts of the present project considered cumulatively with other pending and possible future projects.” *Id.* at 524. The Supreme Court found the EIR before it was sufficient where the EIR cumulative impact discussion of past projects was sufficient where the EIR 1) “acknowledge[d] population declines and degradation of habitat, including increased water temperature and sediment buildup in streams and loss of habitat for various species, 2) contained “detailed information about the current population and distribution and loss of suitable habitat for the marbled murrelet, the northern spotted owl, and the coho salmon,” and where the EIR acknowledged that “past logging practices are at least in part responsible for this loss and degradation.”

F-4
cont.

Thus, for the Oak to Ninth Project EIR’s analysis of cumulative impacts to pass muster, it must at a minimum “consider the proposed project in the context of a realistic historical account of relevant prior activities,” actually discuss the combined effects of the project in combination with past, present and future projects and not merely “catalogue current conditions.”

In addition, it appears that the City of Oakland has not revised its consideration of present and reasonably foreseeable future projects from that considered in 2005/2006. Since then what is reasonably foreseeable has changed. There has been no consideration of the Oak Knoll projects, the Measure DD projects at Lake Merritt (including the 12th Street at Lake Merritt Channel; E. 12th and 1st Avenue; 12th Street and Fallon) and each of the projects in the Active Major Development List attached hereto.

F-5

PROPOSED REVISIONS TO THE EIR

A. Revised Analysis of Cumulative Impacts from Land Uses, Plan and Policies

The Revisions to the EIR errs because it states where the lists of past, present and future projects can be found, but does not include those listed projects in its analysis of cumulative impacts.

F-6

1) Physical Division of an Existing Community

The Revisions to the EIR states the project would not result in any physical division of an existing community. (REIR, p. IIA-2.) The August, 2005 EIR contradicts this premise, however, stating that “Fifth Avenue Point is an integral part of the existing industrial, manufacturing and service use districts that surrounds it” and that the project “would separate the community from the industrial/manufacturing district that currently surround it.” (2005 EIR, p. IV.A-35). Impact A-1 of the EIR concludes that the project may result in the physical division of an existing community and that this is a potentially significant impact.

F-7

The Revisions to the EIR errs in concluding that because “mitigation measures will reduce this project specific potential impact to less than significant,” “[c]onsequently,” the project would not combine with other projects to physically divide an existing community.” The purpose of a

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cumulative impact analysis is to analysis whether even incremental impacts will be cumulatively considerable. Simply because project specific impacts are mitigated, does not have the consequence that there will be no cumulative impacts.

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F-7
cont.

The Revisions to the EIR also errs in stating there is no physical opportunity for the project in combination with any past, present or future projects to physically divide a community. As pointed above the 2005 EIR reached the opposite conclusion about the project. The Revisions to the EIR does not state how it reached an opposite conclusion. Also, the Revisions to the EIR itself states that “past transportation projects in the area have resulted in physically dividing the project site and the surrounding areas from nearby neighborhoods and the rest of the City.” Past uses on the project site have also “contributed to the site’s isolation.”

2) Consistency with Applicable Plans, Policies and Regulations

The Revisions to the EIR states the project would be consistent with plans (REIR, p. IIA-3.) The 2005 EIR contradicts this premise, however, stating that the project would be inconsistent with the Estuary Plan land use classification, development standards, and the Zoning Regulations which would constitute potential environmental change and result in physical effects. Impact A-2 of the 2005 EIR concludes that the “project would not be consistent with the existing, Estuary Policy plan land use classification and zoning districts for the project site, and that this is a potentially significant impact. (2005 EIR, p. IV.A-36, 38.) Moreover, based on the premise that “the project would be generally consistent with the land use policies of the applicable plans,” the Revisions to the EIR concludes that there will be no cumulative land use impact (REIR, p. II.A-4, emphasis added), but fails to consider the inconsistencies.

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F-8

The Revisions to the EIR also reasons that the “project would not contribute to any adverse land use/plans and policies impact.” (REIR, p. II.A-3) This “contribution” approach is not permitted under CEQA in a cumulative impact analysis as it leads to incorrect conclusions of less than significant impacts based on the comparative sizes of other projects.

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F-9

At page II.A-5, the Revisions to the EIR states that “existing uses that are compatible...will combine with the project to have a beneficial effects in terms of land use plan consistency.” Yet this premise does not take into account “existing uses (past projects) [that]...are no longer consistent with the City’s land use policies,” discussed at Revisions to the EIR p. II.A-4. The EIR cumulative impact analysis must analyze both inconsistent and consistent land use plans in combination with the proposed project.

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F-10

3) Land Use Compatibility

The 2005 EIR reasoned that the project would have a potentially significant land use compatibility impact (Impact A-3) because the project would introduce significant height to the site; increase noise, light and glare, and traffic; reduce/eliminate existing views; and result in substantial

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F-11
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change in existing environment and existing land uses. The Revisions to the EIR does not consider these project impacts in considering cumulative impacts.

F-11
cont.

The Revisions to the EIR again reasons that the project would not “contribute” to any cumulative impact related to a physical change in the environment. (REIR, p. IIA-5) This “contribution” approach is not permitted under CEQA in a cumulative impact analysis as it leads to incorrect conclusions of less than significant impacts based on the comparative sizes of other projects.

F-12

Also, the land use compatibility section impermissibly reasons that because the 2005 EIR found that project impacts had been mitigated, there could be no cumulative impact. CEQA requires consideration of the incremental impact of the project when added to other closely related past, present and reasonably foreseeable probably future projects. As the Supreme Court held, this is a statutory obligation. Simply because project specific impacts are mitigated, does not have the consequence that there will be no cumulative impacts.

F-13

B. Revised Analysis of Cumulative Impacts from Transportation, Circulation and Parking

The Court ruled that the EIR violated CEQA where it used a ratio theory that focused on the increased effect of the proposed project, rather than combined effect of the project together with other projects. The court ruled that

[w]hether a cumulative impact is determined based on a 5% increase in the present baseline volume ... or a 5% contribution to future traffic increases..., the result is essentially the same. A determination of cumulatively considerable impact would be made solely based on the percentage increase in traffic as compared to if the project were not implemented. This is precisely the ‘ratio theory’ repudiated in *Kings County Farm Bureau, supra*, 21 Cal.App.3d at 718-721, and *Los Angeles Unified School District, supra*, 58 Cal.App.4th at 1024-1028. The Court agrees that Respondents analyzed the proposed project’s cumulative effect on traffic using an improper ‘ratio theory’, and petitions for writ are **GRANTED** on this issue.

F-14

Order, p. 36.

Despite this, the Revisions to the EIR continues to focus on the project’s “contribution” to traffic levels of service. This approach is improper if by using a contribution approach the Revisions to the EIR is concluding that the more severe the existing problem, the less significant the project’s impact on the cumulative condition. Under the proper approach, a project’s impact would be more significant the more severe the existing environmental problem.

The Revisions to the EIR states that it applies significance criteria to determine if the project would have a considerable contribution to the those intersections forecast to operate at an unacceptable levels in the 2025 scenario. These are the same “significance criteria” that the EIR

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uses for project impacts. There is no discussion of how or why the EIR proposes these criteria. Moreover, the Revisions to the EIR only analyzes each of 18 intersections under one of the six significance criteria, and provides no explanation for why then other five criteria are not utilized.

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F-14
cont.

The Revisions to the EIR in only analyzing 2025 scenario plus project as the its cumulative traffic analysis is limiting analysis to future conditions plus project. This avoids the past projects and the historical context analysis.

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F-15

The Revisions to the EIR states that it only analyzes the traffic conditions at 18 intersections that are already forecast to operate at unacceptable level of service for the project level analysis. There is no explanation for why this limitation is employed. It is possible that intersections, which might operate at an acceptable level of service for the project, could have a cumulatively significant impact. Yet the approach adopted here impermissibly only analyzes cumulative impacts for a subset of all intersections - those for which the "project" impact was significant. The Revisions to the EIR has avoided analyzing the incremental impacts as part of its cumulative traffic assessment.

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F-16

The Revisions to the EIR concludes that for Impacts B.3c, B.3e, B.3h and B.3a "[n]o feasible mitigation measures are available that would improve its operations to acceptable levels." This conclusion should be supported by more analysis as to the feasibility or infeasibility of other mitigation measures. The Revisions to the EIR failed to comply with CEQA as it failed to set forth feasible measures to mitigate significant impacts. The EIR failed to discuss an adequate range of feasible traffic mitigations despite the fact that traffic agencies commented about the dearth of adequate feasible mitigations. For example, the City of Alameda requested that the EIR be revised to incorporate two additional feasible mitigation measures at Fifth and Broadway.

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F-17

F. Analysis of Impacts and Mitigations from Geology, Soils, and Seismicity

The Court found that the EIR failed to comply with CEQA by not providing a sufficient analysis to support the finding that the exposure of project residents and structures to seismic hazards would be mitigated to less than significant.

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F-18

The Revisions to the EIR proposes seismic significance criteria which impermissibly add mitigation to the analysis of impacts: "impacts associated with seismic hazards would be considered significant if the potential effects of an earthquake on a particular site could not be mitigated by an engineered solution;" whether impacts "can be overcome through engineering design solutions that will reduce to less than significant the substantial risk of exposing people or structures to loss, injury or death." Under CEQA, by contrast, an EIR analyzes a project for potential significant impacts, and then discusses feasible mitigations to reduce impacts to less than significance.

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F-18

Further, the Revisions to the EIR impermissibly defers analysis of project conditions and project seismic impacts until after EIR certification and couches this analysis as mitigations. The Revisions to the EIR states that Mitigation F.1 and Mitigation F.2 include site-specific geotechnical

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F-19
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investigation analyzing expected ground motions at the site. Thus, only after EIR certification will there be evaluation of seismic hazards and their effects. This approach flies in the face of CEQA because the EIR does not do its job of informing the public and the decision makers of project impacts before the project is approved. For example, under this approach only after project approval will there be an evaluation of the severity of impacts. This is particularly troubling given the uncertain nature of building such intense development on bay fill highly subject to seismic events. Deep foundation systems would be necessary to anchor the foundations of project buildings into more solid materials which are found at depths below the bay mud. Moreover, the Revisions to the EIR does not contain any analysis of actual seismic impacts upon which to base potential mitigations.

F-19
cont.

F-20

Also, both revised Mitigation F.1 and revised Mitigation F.2 reach the conclusion of less than significant impacts after mitigation without any analysis of how the EIR reached such conclusions.

F-21

The Revisions to the EIR amounts to an impermissible list of mitigations without analysis.

The EIR contains no evaluation for decision makers and the public about the feasibility of the proposed mitigations. The Revisions to the EIR expressly defers evaluation of the most effective and practical mitigation to after project approval.

F. Revised Analysis of Cumulative Impacts from Geology, Soils, and Seismicity

The Court found that the EIR failed to comply with CEQA by not including a sufficient analysis of the cumulative geology, soils, and seismicity impacts of the project.

As to the cumulative impacts analysis of geology, soils and seismicity, the Revisions to the EIR contains a vague definition of the geographic scope of the area affected by seismic impacts as "localized or even site-specific." Whether the scope here is localized or site-specific, what are the parameters of "local", and a reasonable explanation for such geographic limitations is omitted.

F-22

The Revisions to the EIR bases its conclusion of no significant cumulative seismic impacts on the premise that the project site is "physically isolated" and that "no present or reasonably future development projects occur near enough to the project site to combine with any project impacts." As discussed above, these premises are contradicted by the 2005 EIR. Also, there is no discussion as to what are the other present projects and future projects, and how they would combine with the proposed project and past projects. Moreover, there is no discussion of why the Embarcadero Roadway, the 1-880 freeway and other past projects would not combine with the proposed project to pose cumulative impacts in the event of an earthquake. The Revisions to the EIR states that *in general* past projects were built in accordance with building codes. There is no discussion of the past projects that were not in compliance, and their impact.

F-23

F-24

F-25

F-26

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The Revisions to the EIR is also flawed by determining that there will be no cumulative seismic impacts because “the potential for project impacts will be mitigated ...to less than significant” without supporting analysis.

F-27

G. Revised Analysis of Cumulative Noise Impacts from Traffic

The Court found that the EIR violated CEQA as the cumulative traffic noise impacts did not consider the impacts of the project together past, present and reasonable foreseeable projects. The Court also found that for traffic the EIR violated CEQA by utilizing an impermissible ratio approach.

F-28

The Revisions to the EIR uses an impermissible ratio approach when analyzing cumulative noise impacts. The Revisions to the EIR expressly analyzes roadway noise by comparing existing conditions to expected conditions in 2010 and 2025. (Revisions to the EIR, p. II.G-1.)

Because the noise analysis is based on the traffic analysis it incorporates and repeats many of the errors discussed above.

The Revisions to the EIR uses an impermissible significance criteria of “project impacts” for analyzing cumulative noise impacts. The cumulative impact analysis must look at the project in combination with other projects and not isolate the project’s incremental impacts. Also, there is no explanation for why the significance criteria must be a “permanent increase” in noise levels, when CEQA requires consideration of short and long term impacts and when the EIR considered intermittent and temporary noise to be significant. In addition, there is no explanation of why or how the proposed significance cumulative noise criteria was adopted when the EIR used ten different criteria to analyze project impacts.

F-29

F-30

The Revisions to the EIR uses a new geographic context for cumulative noise impacts, which is different from that used in the 2005 EIR, and provides no explanation for this change.

F-31

The Revisions to the EIR claims that the “existing traffic noise levels reported in the EIR reflect existing traffic from past projects within the study area,” but does not consider the present project in the context of a realistic historical account of relevant prior activities that have had significant environmental impacts.

F-32

The Revisions to the EIR still fails to analyze the project noise traffic in combination with past, present and future projects. The Revisions to the EIR states that “traffic data captures existing noise conditions and projected future noise conditions from past, present, and reasonably foreseeable future development” but omits any discussion of those impacts. Thus, the Revisions to the EIR reaches a conclusion with no supporting analysis.

F-33

H. Revised Analysis of Cumulative Hazardous Materials Impacts

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The Revisions to the EIR uses a new geographic context for cumulative hazardous materials impacts, which is different from that used in the 2005 EIR, and provides no explanation for this change.

F-34

The Revisions to the EIR fails to analyze the impacts of the project in combination with past, present, and future projects. This is demonstrated by the reference to "simultaneous" releases on page II.H-1, transport "at the same time" on page II.H-2, "collision" of a truck and simultaneous release on page II.H-2 and that remediation efforts must "combine" and occur "at the same time" at pages II.H-4 and II.H-5. Past and future projects by definition could never meet this novel criteria.

F-35

The Revisions to the EIR expressly looks *separately* at past projects combining with the project, present projects combining with the project, and future projects combining with the proposed project, but never examines the project hazard impacts in combination with past projects and present projects and future projects as required by CEQA.

The Revisions to the EIR expressly limits its analysis of cumulative hazardous impacts to remediation and accidental release of hazards particularly during transportation. By contrast, the 2005 EIR examined project specific impacts from "chemical use and potential buildup of associated toxic substances in soil and groundwater," "dredged sediment," "storage and release of petrochemical products," "underground storage tanks," "hazardous wastes," "generation and discharge of hazardous materials," "hazardous structural and building components during demolition and construction," and "use of solvents during construction." None of these likely impacts are considered as part of the cumulative impact discussion, and the Revisions to the EIR does not explain why.

F-36

The Revisions to the EIR impermissibly assumes that the potential for significant cumulative impacts will be eliminated by regulatory requirements, without explanation or supporting evidence.

F-37

The Revisions to the EIR revises the project description for its discussion of hazardous material impacts, and now calls the project a remediation effort and impermissibly limits its discussion to "remediation efforts." The Revisions to the EIR goes so far as to say that the Jack London Redevelopment Project is the "only reasonably foreseeable major project nearby that involves remediation activity," thus both redefining the project and cumulative geographic scope without explanation.

F-38

I. Revised Analysis of Cumulative Biological Impacts

The Revisions to the EIR fails to discuss the combined biological effects of the project in combination with past, present and future projects, but only lists and catalogues projects.

F-39

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The Revisions to the EIR reasons that there would be no significant cumulative biological impacts because of regulatory requirements. Not only is it impermissible under CEQA to assume, without supporting data, that all other projects will be properly mitigated, but the 2005 EIR and the Revisions to the EIR contradict this assumption. The 2005 EIR stated that "some projects may be approved even though they would have significant, unavoidable impacts on biological resources." The Revisions to the EIR acknowledges that some past projects were not implemented in accordance with regulatory requirements.

F-40
F-41

The Revisions to the EIR concludes that the project when combined with other projects would not result in a significant cumulative biological impact, but does not explain how it reached this conclusion when the 2005 EIR concluded that the project and future projects "could result in impacts on wetlands, other waters of the U.S. and special status species." Nor does the Revisions to the EIR explain how it reached its cumulative impact conclusion when the 2005 EIR reasoned that project construction activities would result in potentially significant impacts to wetlands and waters, to fishery resources in the Oakland Inner Harbor, to nesting habitat for breeding raptors, and to nesting and roosting bats.

F-42

J. Revised Analysis of Cumulative Population, Housing and Employment Impacts

The Revisions to the EIR refers to the 2005 EIR pages IV.J-1 to IV.J.-19 for the past project analysis of cumulative impact. However, reference to this section reveals that there is no discussion of the historical context of population, housing and employment within the geographic scope chosen to analyze cumulative impact. The closest that the 2005 EIR gets to this is a brief discussion of "Trends in Activity," but this does not discuss any population, housing or employment trends. Similarly reference to tables (Revisions to EIR, p. II.J-2) does not constitute discussion of projects or project impacts, nor do the referenced tables relate to the historical context.

F-43

The Revisions to the EIR impermissibly examines the "project's potential to contribute to cumulative impacts," not the impacts of the project in combination with past, present and future projects.

F-44

The Revisions to the EIR significance criteria omits a criteria used in the 2005 EIR (ie displace substantial numbers of people, necessitating the construction of replacement housing elsewhere in excess of City's Housing element) without explanation of why this criteria has not been applied to cumulative impacts.

F-45

The Revisions to the EIR cumulative population, housing and employment analysis impermissibly focuses on the "project" impacts, rather than the impacts of the project when combined with past, present and future projects as required by CEQA.

F-46

The Revisions to the EIR does not reveal what past, present and future projects it considers.

F-47

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K. Revised Analysis of Cumulative Visual Impacts

Neither the 2005 EIR nor the Revisions to the EIR analyzes past projects as part of a cumulative visual analysis. The Revisions to the EIR points to the project setting only. There is no consideration of the proposed project in the context of a realistic historical account of relevant prior activities or discussion of the combined effects of the project in combination with past, present and future projects.

F-48

The Revisions to the EIR determines that the cumulative impact is insignificant based on the "dense urban setting" or "developed urban area" when these are not significance criteria utilized by the 2005 EIR or the Revisions to the EIR.

F-49

The Revisions to the EIR discounts the adverse impact of all future projects as they are "primarily renovations, rehabilitations or use conversions" when this is not a significance criteria utilized by the 2005 EIR or the Revisions to the EIR.

F-50

Reference to photo simulations doesn't substitute for discussion of projects or project impacts, nor do the referenced photos relate to the historical visual context. The Revisions to the EIR expressly limits its consideration to the project and existing conditions.

F-51

The Revisions to the EIR does not employ each of its stated visual significance criteria in analyzing potential cumulative visual impacts.

F-52

Neither the 2005 EIR nor the Revisions to the EIR analyzes the cumulative shadow impact of the project in combination with past, present and future projects.

The Revisions to the EIR states that the proposed project and other past, present and future projects would change and alter the existing visual character and quality and views, but does not discuss if these changes would be significant and require mitigation.

F-53

The Revisions to the EIR does not reveal what past, present and future projects it considers.

L. Revised Analysis of Cumulative Public Service Impacts

Neither the 2005 EIR nor the Revisions to the EIR analyzes past projects as part of a cumulative public services analysis. The Revisions to the EIR points to the existing development only. There is no consideration of the proposed project in the context of a realistic historical account of relevant prior project impacts on public services. There is no discussion of the combined effects of the project in combination with past, present and future projects.

F-54

The Revisions to the EIR uses a geographic context for cumulative public service impacts, which is different from that used in the 2005 EIR, and provides no explanation for this change.

F-55

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The Revisions to the EIR states that the proposed project and other past, present and future projects would "increase the demand for police services," but doesn't discuss if the failure to construct new or altered facilities will affect response time, service ratios or other performance objectives. The Revisions to the EIR states that the proposed project and other past, present and future projects would "increase the demand for police services," but doesn't discuss if this impact will be adverse or significant. F-56

The Revisions to the EIR defers the analysis of fire department impacts to the CIP budgetary process which will occur later and outside the CEQA process. Moreover, this CIP process only analyzes existing facilities, not cumulative impacts. F-57

The Revisions to the EIR impermissibly assumes that all future police and fire facilities will be properly mitigated, without supporting rationale or evidence. F-58

There is no discussion of the combined effects of the project in combination with past, present and future projects on schools. Further, there is no conclusion of cumulative school impacts without mitigation. F-59

There is no discussion of mitigations despite the conclusion of the Revisions to the EIR that the proposed project when combined with other closely related past, present and reasonably foreseeable developments in the vicinity would result in significant adverse cumulative public service and recreation impacts. F-60

M. Revised Analysis of Cumulative Utilities and Service System Impacts

The Revisions to the EIR uses a geographic context for cumulative utility impacts, which is different from that used in the 2005 EIR, and provides no explanation for this change. F-61

The Revisions to the EIR does not analyze past projects as part of a cumulative water supply, wastewater or solid waste analysis. The Revisions to the EIR points to the EBMUD Urban Water Management Plan for current and projected usage. There is no consideration of the proposed project in the context of a realistic historical account of relevant prior project impacts on water supply and wastewater. There is no discussion of the combined effects of the project in combination with past, present and future projects. F-62

The Revisions to the EIR relies upon paper water.

IT IS UNCLEAR WHETHER ALL OR PORTIONS OF THE REVISIONS TO THE EIR ARE BEING ADDED TO THE EIR

The Revisions to the EIR states that certain specific Summary statements are added to the EIR. From this it is impossible to know if the entire Revisions to the EIR is being proposed to be F-63

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added to the EIR or only select statements in the document. Also, by adding the Revisions to the EIR to the 2005 EIR, there may be inconsistencies between the two documents, including but not limited to those mentioned above, without an explanation for such inconsistencies.

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F-63
cont.

THE CITY SHOULD HAVE PROCEEDED BY A RECIRCULATED REVISED EIR RATHER THAN ONLY SELECT REVISIONS TO THE EIR

Revision of an amended EIR to remedy its inadequate analysis necessarily requires recirculation of the revised EIR, rather than simply select sections as the City has done here. The EIR certification was set aside because it was inadequate under CEQA. The Revisions to the EIR constitute substantial new information that only can be understood by the public if it is released in the context of a new EIR. The revised environmental document must be subjected to the same critical evaluation, so that the public is not denied an opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn therefrom.

F-64

Further, under CEQA, when recirculating a revised EIR, the City of Oakland must in the revised EIR or by an attachment to the revised EIR, summarize the revisions made to the previously circulated draft EIR. The City has failed to include such a summary.

Conclusion

For the above reasons, the Coalition of Advocates for Lake Merritt and Joyce Roy believe that additional environmental review is necessary to comply with CEQA and the Order of the Alameda Superior Court.

Sincerely,

/S/ Brian Gaffney
Brian Gaffney

Enclosure

Exhibit A

CITY OF OAKLAND - ACTIVE MAJOR DEVELOPMENT PROJECTS

Oct -Nov 2008

Comment Letter F

PROJECT NAME	APPLICANT CONTACT (ADDRESS AND/OR APN)	LOCATION (ADDRESS AND/OR APN)	COUNCIL DISTRICT	DESCRIPTION	CITY CONTACT	STATUS
1 Altura Place	Gerald Green (415)377-5286	7500 Altura Place APN:040A-3845-013-03	6	■ Subdivision into 5 units	Robert Merkamp, 238-6283	Pre-application filed. Project inactive.
2 424 3rd St *	Abartare Architecture Iginio Pellizzari (510)655-1466	424 3rd Street APN:001-0139-008-00	3	■ 64 residential units ■ Ground floor commercial	Peterson Vollmann, 238-6167	Pre-application filed. Project inactive.
3 2314 San Pablo Avenue	Thomas Dolan (510)839-7200	2314 San Pablo Ave. APN: 008-0663-009-00	3	■ 53-74 residential units	Heather Klein, Major Projects, 238-3659	Pre-application filed. Project inactive.
4 Jack London Inn*	City Shapers Dwayne Jensen (510)836-9300	444 Embarcadero APN: 001 -141-017-02	3	■ 200 residential units ■ 3,000 S.F. of retail	Catherine Payne, Major Projects, 238-6168	Pre-application filed. Environmental Scoping Session 04/05/06. Design Review Committee 04/26/06. Planning Commission 03/21/07 for a informational report on a possible General Plan amendment. Project inactive.
5 -2100 Telegraph Ave	Avant Housing Tom Holt (415)775-7005	493 22nd Street 2100 Telegraph Ave 2150 Telegraph Ave APN: 008 -0648-011-03, 008 -0648-016-03	3	Mixed Use Development containing: ■ 670 car parking garage ■ Combination of residential retail, hotel ■ 17th Story residential tower	Lynn Warner, Major Projects, 238-6983	Pre-application filed.
6 -Pentecostal Way of Truth Academy	William Coburn (510)893-8826	1575 7th Street APN: 004 -0099-008-00	3	■ Replace and expand private school ■ Construct 6- 2-story units ■ Construct mixed use development with 70 senior units ■ Ground floor Commercial	Lynn Warner, Major Projects, 238-6983	Pre-application filed.
7 401 Alice Street*	Bob Baum (415)303-1411	401 Alice Street APN: 001 -0153-007-00	3	■ 58 condominium units ■ 5 flex units	Joann Pavlinec, Major Projects, 238-6344	Pre-application filed. Project inactive.

* 10K PROJECT (project includes residential units located in Downtown)
 - Denotes new project, a recent change to the project description, or status.
 Complied by Planning and Zoning, (510) 238-3941.
 List updated twice a year.

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Application Submitted	Under Review	EBALDC Carlos Castellanos (510) 287-5335	66th Ave. at San Leandro Street AFN: Multiple	6	Phase IV #67 residential units	Catherine Payne, Major Projects, 238-6168	Phase IV filed. Design Review Committee 10/22/08.
8 - Lion Creek Crossing (formerly Coliseum Gardens)	Madison Park Financial (510) 452-2944	1032 39th Street APN: 012 -0953-027-00	1	#25 residential units in Oakland #75 residential units in Emeryville	Catherine Payne, Oakland Major Projects, 238-6168 Miroo Desai Emeryville Senior Planner Senior Planner (510) 596-3785	Application filed. Project to be processed both the City of Emeryville and the City of Oakland. NOP published 08.30/07. DEIR published 05/19/08. FEIR preparation underway. Oakland Planning Commission pending 12/3/08 and Emeryville Planning Commission pending 12/1/08. Emeryville Council pending 01/06/08.	
10 Fruitvale Point	Terra Linda Development Carlos Piazola (510) 207-7238	880 Fruitvale Ave	5	#47 residential units #49 live/work units #4,000 S.F. commercial	Catherine Payne, Major Projects, 238-6168	Application filed.	
11 1530 Martin Luther King Jr. Way*	Frank Gonsalves (650) 508-9520	1530 M. L. King Jr. Way APN: 003-0071-001-00 003-0071-002-00 003-0071-010-00	3	#121 condominium units	Peterson Vollmann, 238-6167	Application filed. Environmental scoping underway. Design Review Committee 03/28/07. Design Review Committee 6/25/08.	
12 10550 International Blvd.	Anthony Batarce (510) 635-1700	10550 International Blvd. APN: 047 -5519-005-02 047 -5509-001-01	7	#92 residential units	Robert Merzkamp, 238-6283	Application filed. Project inactive	
13 - The Creekside Mixed Use Project formerly (5132 Telegraph)	George Hauser Hauser Architects (415) 519-5398	5132 Telegraph Ave APN: 014 -1226-013-00	1	#120 residential units #7,700 S.F. of commercial	Darin Ranelli, Major Projects, 238-3663	Application Filed. Design Review Committee 03/28/07 and 05/23/07. EIR Scoping Session 01/09/08. NOP published 12/21/07. DEIR published 08/15/08. FEIR preparation underway.	
14 Uptown Parcel 4 (Telegraph/19th Street)*	Forest City Residential, Inc. Susan Smartt (415) 836-5980	Telegraph/19th Street/New Street/Williams Street	3	#370 residential units	Catherine Payne, Major Projects, 238-6168	Application filed. Design Review Committee 07/25/07.	
15 1443 Alice Street*	Mark Borsak (415) 922-4740	1443 Alice Street / 1434 Harrison Street APN: 008 -0626-016-00 008 -0626-023-00	2	#245 residential units	Darin Ranelli, Major Projects, 238-3663	Application Filed. Environmental scoping underway. Design Review Committee 05/23/07. Project inactive.	

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16	325 7th Street*	YHLA Yui Hay Lee (510)836-6688	325 7th Street APN:001 -0189-005-00 001 -0189-013-00 001 -0189-014-01	2	■382 residential units ■9,000 S.F. commercial	Heather Klein, Major Projects, 238-3659	Application filed. Design Review Committee 11/07/07. NOP published 12/18/07. DEIR preparation underway.
17	1309 Madison Street*	Toby Levy (415)777-0561	1309 Madison Street APN:002 -0079-005-00	2	■72 condominium units	Lynn Warner, Major Projects, 238-6983	Application filed. Design Review Committee 09/05/07.
18	226 13th Street*	K H Associates Al Chan (510)601-8889	226 13th Street APN:002 -0077-001-00	2	■556 residential units ■36,424 S.F. retail	Lynn Warner, Major Projects, 238-6983	Project inactive.
19	~4311-4317 Macarthur Blvd	AMG & Associates, LLC (818)380-2600	4311- 4317 Macarthur Blvd APN:030 -1982-121-00 030 -1982-122-00 030 -1982-123-00	4	■115 apartment senior housing facility ■3,100 S.F. retail	Robert Merkamp 238-6283	Application filed. Design Review Committee 09/27/06. Planning Commission approval 02/20/08. Project withdrawn, prior to appeal to City Council.
20	250 12th Street*	YHLA Yui Hay Lee (510)836-6688	250 12th Street APN:002-0069-002	2	■215 residential units ■8,000 S.F. retail	Heather Klein, Major Projects, 238-3659	Application filed. Environmental scoping underway. Design Review Committee 10/25/06.
21	Emerald Views * (formerly 19th Street Residential Condominiums)	Ian Birchall (415)512-9660	222 19th Street APN: 008-0634-003-00	3	■370 residential units ■933 S.F. cafe	Heather Klein, Major Projects, 238-3659	Application filed. NOP published 11/09/07. DEIR preparation underway. LPAB for design review 04/14/08. Design Review Committee 04/23/08.
22	Skyline Ridge Estates	IPA Planning Solutions Ineda Adesanya (510) 839-4550	Equestrian Trail APN: 037A-3141-001-15	6	■22 single-family lots	Heather Klein, Major Projects, 238-3659	Application filed. NOP issued 05/10/04. Environmental Scoping Session 05/19/04.
Application Approved							
23	~1417-1431 Jefferson Street*	Highland Ave LLC Jerry Teneyck (415)454-1231	1417-1431 Jefferson Street APN: 003 -0071-018-00 003 -0071-017-00	5	■36 residential units ■Ground floor commercial	Ulla-Britt Jonsson, 238- 3322	Approval 05/05/08.
24	~Wattling Street	Phil Lesser (650)347-6014	3927 Wattling Street APN: 033-2170-003-00	5	■18 condominium units ■61 townhome units	Heather Klein, Major Projects, 238-3659	Application filed. Environmental scoping underway. Design Review Committee 10/24/07. Planning Commission approval 06/18/08.

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25	St Joseph's	BRIDGE Housing Corp Smitha Sesiadi (415) 989-1111	2647 International Blvd APN: 025 -0701-004-01	5	<ul style="list-style-type: none"> Rehabilitation of the historic building 80 units senior housing 15,000 S.F. office 	Joann Pavlinec, Major Projects, 238-6344	Application filed. LPAB 08/13/07 and 09/24/07. Planning Commission certification of the FEIR and project approval 12/19/07. Building permit #B0705698 in plancheck.
26	2985 Ford Street	8855 San Leandro St LLC (510)465-3700	2985 Ford Street APN:025 -0673-007-00	5	<ul style="list-style-type: none"> 56 condominium units 15 work/five units 	Robert Merkamp, 238-6283	Application filed. Planning Commission approval of project and TPM 11/07/07.
27	-Bakery Lofts	Madison Park Financial Frank Flores (510)452-2944	945 53rd Street APN: 049 -1173-002-00	1	<ul style="list-style-type: none"> Phase III 79 units 4,167 S.F. of commercial 	Lynn Warner, Major Projects, 238-6983	Application filed. Design Review Committee 03/28/07. Planning Commission approval 08/01/07. Grading Permit #GR0800085 submitted.
28	Courthouse Condominiums (formerly 2935 Telegraph Ave.)	MBH Architects (510) 865-8663	2935 Telegraph Ave.	3	<ul style="list-style-type: none"> 142 residential units 3,000 S.F. retail 	Joann Pavlinec, Major Projects, 238-6344	Application filed. NOP and Initial Study published 10/06/06. DEIR published 03/19/07; Design Review Committee 03/28/07 and 05/23/07. Planning Commission certification of the FEIR and project approval 08/01/07.
29	-HFH Apartments	Andy Geiz (510)652-4191	1401-1405 Wood Street APN: 0000-0310-012-00	3	<ul style="list-style-type: none"> Phase I 139 apartments Phase II 142 apartments 	Marge Stanzione, Major Projects 238-4932	Planning Commission approval 08/01/07. Grading permit #GR0800100.
30	4801 Shattuck Ave	Steven Tiffin (510)550-4200	4801 Shattuck Ave APN: 013-1162-009-01 013-1162-009-02 013-1162-010-00	1	<ul style="list-style-type: none"> 44 units 	Peterson Vollmann 238-6167	Design Review Committee 01/24/07. Planning Commission approval 04/04/07. Appeal denied by City Council 07/17/07. Litigation ruling in favor of project.

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31	1538 Broadway*	Forum Design Marc DiGiacomo (415)252-7063	1538 Broadway APN: 008-0622-007	3	<ul style="list-style-type: none"> ■69 residential units ■Ground floor food sales 	Peterson Vollmann 238-6167	Administrative approval 03/07/07.
32	2116 Brush Street	AGI Capital Tom Holt (415) 775-7005	2101-2116 Brush Street; 760 22nd Street APN: 003 -0025-010-00 thru 011-00 003-0035-006-00 thru 005-00 003-0023-007-01 thru 011-02	3	<ul style="list-style-type: none"> Parcel A ■63 residential units Parcel B ■18 residential units Parcel C ■65 residential units 	Heather Klein, Major Projects, 238-3659	Design Review Committee 10/25/06. Planning Commission approval 02/07/07. Extension granted 07/25/07.
33	459 23rd Street	Toby Levy (415)777-0561	459 23rd Street APN: 008 -0658-004-01 008 -0658-002-01	3	<ul style="list-style-type: none"> ■60 residential units ■Ground floor retail 	Peterson Vollmann 238-6167	Approved 12/28/06. Revision to increase the number of units to 70 approved 08/14/07. Grading permit expired.
34	1614 Campbell Street	Madison Park Frank Flores (510)452-2944	1614 Campbell Street APN:007 -0560-001-02	3	<ul style="list-style-type: none"> ■92 live/work conservation ■40 new residential units 	Peterson Vollmann 238-6167	Planning Commission approval 12/13/06. Revised to include only live/work units. Revision approved 07/29/08.
35	377 2nd Street*	Marge Vincent Vanguard Properties (415) 321-7077	377 2nd Street APN: 001 -0143-008-00 001 -0143-007-00 001-0143-010-00	3	<ul style="list-style-type: none"> ■96 units ■4,000 S.F. retail 	Heather Klein, Major Projects, 238-3659	LPAB 06/12/06. LPAB for design review 10/16/06. Planning Commission approval 12/13/06.
36	3860 & 3880 Martin Luther King Jr. Way	Neil Cotter (650) 259-9303	3860 & 3880 Martin Luther King Jr. Way APN: 012-0968-030-01 012-0968-031-00	1	<ul style="list-style-type: none"> ■74 residential units 	Darin Ranelletti, Major Projects, 238-3663 Kathy Kleinbaum, Redevelopment Division, 238-7185	Planning Commission approval 9/20/06. Building permit #B0700448. Project under construction.
37	3250 Hollis	Bill Lightner (415)267-2900	3250 Hollis Entire Block of 007-0593	3	<ul style="list-style-type: none"> ■46 live/work units ■74 residential units 	Peterson Vollmann 238-6167	Design Review Committee 08/23/06. Planning Commission approval 10/18/06. Extension granted 12/21/06.
38	989 41st Street	Pocket Development LLC Elizabeth Costello (510)655-8532	989 41st Street APN:012 -1021-021-01	1	<ul style="list-style-type: none"> ■48 residential units 	Lynn Warner, Major Projects, 238-6983	Design Review Committee 06/28/06. Planning Commission approval 11/15/06. Appeal filed but on hold. Project withdrawn. New project approved 08/01/07. New appeal filed.

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39	-Hollis 34	Degtown Development (510)428-1714	3241 Hollis Entire Block of 007-0620	3	■124 live/work units	Peterson Vollmann 238-6167	Application filed. Design Review Committee 08/23/06. Planning Commission approval 10/18/06. TTM approval 10/18/06. Extension filed.
40	-Tassafaronga Village	Housing Authority of the City of Oakland Bridget Galka (510)587-2142	68-81st Ave. & 1001 83 rd Ave. APN:042-4281-007-04 042-4280-001-01 041-4206-001-00	7	<ul style="list-style-type: none"> ■ General Plan Amendment from Business Mix to Mixed Housing Type ■ Redevelopment Plan Amendment from Industrial to Residential ■ Rezoning ■ 191 mixed housing residential (apartment, live/work, for sale, and affordable) 	Gary Patton, Major Projects Manager, 238-6281 Charity Wagner (contract planner) (415) 331-8282 Aubrey Rose 238-2071	Design Review Committee 05/24/06. Planning Commission approval and Mitigated Negative Declaration certification 06/20/06. City Council approval of General Plan Amendment, Redevelopment Plan Amendment, and Rezoning 10/03/06. Planning Commission approval of TTM 02/13/08. City Council approval of TTM 06/08 Building Permit # #B0801540 in planscheck.
41	-721-741 Broadway *	Carona Engineering Debo Sodipo (510)444-8311	721-741 Broadway APN: 001-0201-015-00	3	<ul style="list-style-type: none"> ■ 48 residential units ■ 5 live/work units ■ 2,300 S.F. retail 	Joann Pavlinec, Major Projects, 238-6344	LPAB 06/12/06. Planning Commission approval 8/16/06. Planning Commission approval for administrative design review 10/04/06. TTM approval 05/24/07. Extension granted 08/19/08.
42	460 Grand Ave	Jim Burns (510)339-8880	460 Grand Ave APN: 010-0779-012-00 010-0779-014-01 010-0779-015-01	3	■ 74 residential units	Darin Ranalletti, Major Projects, 238-3663	Design Review Committee 02/22/06. Planning Commission approval 06/07/06. Appeal denied by City Council 07/18/06.
43	-1919 Market Street	1919 Market Street Simon Chen (510) 452-2944	1919 Market Street APN: 005-0410-013-01	3	■ 58 units	Peterson Vollmann 238-6167	Planning Commission approval 04/05/06. TTM approval 04/05/06. Extension granted 03/12/08.
44	-14th Street Apartments - Wood Street	Bridge Housing Ben Metcalf (415)989-1111	Portions of APN: 0006-0029-001 and 0000-0315-006.	3	■ 99 Affordable housing units	Marge Stanzione, Major Projects 238-4932	Planning Commission approval 02/15/06. Project under construction.
45	2538 Telegraph Ave*	Rina Davis 2538 Telegraph LLC (510)390-4408	2538 Telegraph Ave 437 26th St APN: 009-0683-021-01 009-0683-024-00	3	<ul style="list-style-type: none"> ■ 97 residential units ■ 9,000 S.F. of commercial space 	Catherine Payne, Major Projects, 238-6168	Design Review Committee 11/16/05. Planning Commission approval 01/04/06. Extension granted.

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46	51st & Telegraph, Civiq	Roy Alper 5110 Telegraph, LLC (510)550-7175	Area bounded by Telegraph, 51st and Clark Streets APN: - Multiple	3	<ul style="list-style-type: none"> ■ 68 residential units ■ Less than 3,000 S.F. of commercial space ■ 4 buildings built over, ■ Subterranean Parking 	Darin Ranalletti, Major Projects 238-3663	Design Review Committee 11/16/05. Planning Commission approval 1/18/06. Appealed to City Council. Appeal withdrawn at City Council 03/21/06. Extension granted 09/08/08.
47	116 6th St*	Affordable Housing Associates Adam Deromedi (510) 649-8500	116 6th Street APN: 001-0173-009-00	2	<ul style="list-style-type: none"> ■ 80 residential condominium units 	Heather Klein, Major Projects, 238-3659	Design Review Committee 10/26/05; Planning Commission approval 01/18/06. Extension granted 11/14/07.
48	Valdez & 23rd Street Project*	The Enterprise Group Walter Cohen (415) 221-2534	Valdez St./Webster/23rd St./24th Streets APN: 008-0668-004-00 008-0668-009-07 008-0668-005-00	3	<ul style="list-style-type: none"> ■ 281 residential units ■ 500 car parking structure including 250 public spaces ■ 12,000 S.F. retail 	Heather Klein, Major Projects, 238-3659	Design Review Committee 10/26/05; Planning Commission approval 12/07/05. TPM approval 02/28/06. Extension granted 09/19/07.
49	311 2nd St*	Embarcadero Pacific Michael Reynolds (510) 444-4064	311 2nd Street APN:001 -0149-007-00	3	<ul style="list-style-type: none"> ■ 105 residential condominium units 	Heather Klein, Major Projects, 238-3659	Design Review Committee 10/26/05; Planning Commission approval 01/04/06. Design Review Committee 02/22/06; Planning Commission approval 04/05/06. Design changes approved 10/26/06. Building permit #B0701724. Project under construction.
50	Emerald Parc	Tom Dolan (510) 839-7200	2400 Filbert Street APN: 005-0433-018-04	3	<ul style="list-style-type: none"> ■ 55 townhomes 	Peterson Vollmann 238-6167	Planning Commission approval. 11/16/05. Appeal denied by City Council 02/21/06. Extension granted 02/14/08.
51	Arcadia Park	Pulte Homes Amir Massth (925) 249-3297	98th Ave. at San Leandro St., APN - multiple	7	<ul style="list-style-type: none"> ■ 366 residential units 	Darin Ranalletti, Major Projects 238-3663	Planning Commission approval 9/21/05. City Council denial of appeal and approval of General Plan amendment, rezoning approval and project 12/06/05. P-job permit issued. Project under construction.

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52 -Red Star	National Affordable Communities David Booker (949) 222-9119	1396 5th Street APN: 004-0069-004-00	3	■119 affordable senior units ■3,300 S.F. commercial space	Darin Ranelletti, Major Projects, 238-3663	Design Review Committee 04/27/05. Planning Commission approval 06/17/05. Revised project submitted 04/16/08. Design Review Committee 05/28/08.
53 1755 Broadway*	1755 Broadway LLC Andrew Brog (310)963-7878	1755 Broadway APN:008 -0640-005-00.	3	■Conversion of floors 2-5 of office to 24 live/work condominiums.	Mike Rivera, 238-6417	Administrative approval 9/20/06. Building permit #B0602995. Project under construction.
54 Fox Theater	City of Oakland Redevelopment Agency	1807-1829 Telegraph Ave APN: 008 -0642-001-00	3	■Rehabilitation of the historic theater ■20,000 S.F. addition	Joann Pavlinec, Major Projects, 238-6344	LPAB approval 05/09/05. Planning Commission approval 06/01/05. Building permit for rehabilitation #B0600243. Project under construction.
55 Coast Lofts	Davis Baker Architects Francis Rush (510)763-7165	2715 Adeline Street 2700 Magnolia Street 1173 28th Street APN: 005-0446-001-01 005-0446-001-02 005-0446-008-01	3	■29 residential condominiums ■23 live-work units	Peterson Vollmann 238-6167	Planning Commission approval 05/04/05. Application expired.
56 Zephyr Gate - Wood Street	Pulte Homes (925) 249-3268	Wood Street APN: 006-0029-001-00	3	■130 residential condominium units	Marge Stanzione, Major Projects 238-4932	Design Review Committee 12/14/05. Planning Commission approval 03/08/06. Multiple building permits. Project under construction.
57 -2501 Chestnut Street	Bridge Housing Kristy Wang (415) 989-1111	2501 Chestnut Street APN: 005-0436-002-00	3	■50 live/work units	Feather Klein, Major Projects, 238-3659	Design Review Committee 08/11/04. Planning Commission approval 10/06/04. Vesting TPM submitted 08/21/06. Extension granted 09/29/06 and 11/13/07. Extension granted 10/15/08. Site cleanup occurring.

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58	-Jackson Center Two*	EBOP Associates, LLC	11th, 12th, and Alice Streets APN: 002-0075-002-00	2	■110 condominium units ■5,000 S.F. retail	Heather Klein, Major Projects, 238-3659	Design Review Committee 07/23/03; Planning Commission approval 09/03/03. Application filed for revisions to project. Design Review Committee 07/27/05; Administrative approval 09/16/05. TPM approval 02/14/06. Building permit #B0504575 expired.
59	1331 Harrison Project*	Toby Levy (415)777-0561	14th and Harrison Street APN: 002-0065-006-01	2	■98 condominium units ■9,000 S.F. commercial ■Structured parking	Heather Klein, Major Projects, 238-3659	Planning Commission approval 12/3/03. Design Review Committee approval for revisions 03/23/05. Project revisions approved administratively 04/25/05. Foundation permit #B0504335 expired.
60	557 Merrimac*	Dinar & Associates Masha Dinar (510) 893-3900	557 Merrimac APN:009-0689-04-001	3	■40 condominium units	Robert Merkamp 238-6283	Planning Commission approval 07/15/05. Building permit expired.
61	100 Grand*	Essex Property Trust John Eudy (650) 849-1600	124 Grand Ave and 2264 Webster St APN: 008-0655-007-00 & 008-0655-009-01	3	■241 residential units	Darin Rancletti, Major Projects, 238-3663	Planning Commission approval 07/06/05. TPM approval 03/06/06. Grading and building permit #GR0600054 and B0600463. Project under construction.
62	Pacific Cannery Lofts	PCL Associates Cal Inman (510)547-2122	1111-1119 Pine Street APN: 006-0029-002-00	3	■99 condo warehouse lofts ■45 live/work lofts ■15 townhouse lofts ■4 work/live lofts (part Wood Street Development)	Marge Stanzione, Major Projects 238-4932	LPAB approval 04/11/05. Design Review Committee approval 01/26/05. Planning Commission approval 06/17/05. Demolition permit #RB0505701. Multiple building permits. Project under construction.
63	683 9th Street*	James Peterson (510) 540-7747	683 9th Street APN: 001-0217-002-00	3	■50 condominium units	Heather Klein, Major Projects, 238-3659	Design Review Committee 2/11/04. Project administratively approved 10/29/04. TPM approval 10/28/05. Building permit #B0601195 in plancheck.

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64	~188 11th Street *	Lakeshore Partners Tom Peterson (510) 444-7191	176 11th Street, 198 11th Street, 1110 Jackson APN: 002-0081-008-00 002-0081-007-00 002-0081-002-00	2	<ul style="list-style-type: none"> ■ 287 residential units ■ 3,660 S.F. retail 	Heather Klein, Major Projects 238-3659	Design Review Committee 10/26/05; Planning Commission approval 12/07/05. Vesting TPM approval 07/31/06. Demolition permit #RB0603034. Extension granted 10/09/07.
65	2847 Peralta Street	William Lightner (415) 267-2900	2847 Peralta Street APN: 007-0589-018-02 007-0589-023-00	3	<ul style="list-style-type: none"> ■ 76 dwelling units and 24 live work units 	Peterson Vollmann 238-6167	Planning Commission approval 01/18/06. Grading permit #GR0600068.
66	630 Thomas Berkeley Square Housing *	SUDA/ Alan Dones (510) 715-3491	630 Thomas L. Berkeley Way APN: N/A - TPM7541 Parcel 3	3	<ul style="list-style-type: none"> ■ 88 residential condominium units ■ 3 commercial spaces 	Heather Klein, Major Projects, 238-3659	Design Review 07/27/05. Planning Commission approval 09/28/05. Building permit #B0505700. Project under construction.
67	Uptown Project *	Forest City Residential, Inc. Susan Smartt (415) 836-5980	Area bounded by San Pablo, Telegraph, 18th and 20th Streets APN - Multiple	3	<ul style="list-style-type: none"> ■ Approximately 665 residential units ■ 14,000 S.F. of retail and commercial ■ 580 parking stalls ■ Includes Parcels I-III and park 	Catherine Payne, Major Projects, 238-6168 Don Smith, Bldg. Permits, 238-4778	Planning Commission hearing on DEIR 10/15/03. Planning Commission FEIR certification 2/18/03. Pre-application filed. City Council approval of the DA 7/20/04. Planning Commission approval 06/01/05 of the FUD and Vesting TM. City Council approval of General Plan Amendment and Rezone 06/21/05. Project under construction for Phase I and III.
68	Steina Hills	Hillside Homes Edward Patmont (925) 946-0583	Between Rilea Way and Greenridge Drive on Keller Ave. APN: 04A-3457-033-01	6	<ul style="list-style-type: none"> ■ 32 single-family homes 	Heather Klein, Major Projects, 238-3659	DEIR published 01/05/05; FEIR published 2/18/05; Planning Commission certification of the FEIR and approval of the project 03/02/05; TTM approval 06/1/05. Grading permit #GR0500061. Building permits # RB0501810-13 and 15-18. City Council GHAD approval 12/05/06. Project under construction.

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69	Altenheim Senior Housing	Citizens Housing Corporation Kaori Tokunbea (415) 421-8605	1720 Macarthur Boulevard APN: 023-0494-001-07	5	Phase II ■ 83 apartments units (new construction)	Joann Pavlinec, Major Projects, 238-6344	LPAB approval 07/12/04. Planning Commission approval 01/06/05. Design Review revision submitted LPAB 03/12/07. Planning Commission approval 03/21/07. Multiple building permits in plancheck.
70	City Walk City Center T10 (2005)*	Olson Company (562) 596-4770	13th/14th/MLK/Jefferson APN: 002-0029-001-00	3	■ 3,000 S.F. retail ■ 252 residential units	Patrick Lane, Redevelopment Agency 238-7362 Don Smith, Bldg. Permits, 238-4778	Planning Commission approval 08/18/04. Building permit #B0500525. Project under construction.
71	~Lion Creek Crossing (formerly Coliseum Gardens)	EBALDC Carlos Castellmos (510) 287-5335	66th Ave. at San Leandro Street APN-Multiple	6	Phase III ■ 236 residential units ■ Lion Creek Park	Catherine Payne, Major Projects, 238-6168	Phase III under construction. Lion Creek Park PRAC 09/12/07. Planning Commission approval 09/19/07. Lion Creek Park under construction.
72	~Monte Vista Villas (formerly Leona Quarry)	The DeSilva Group David Chapman (925) 828-7999	7100 Mountain Boulevard APN: 037A-3151-001-01	6	■ 214 residential units	Bill Quesada, Building Services, 238-6345	City Council approval 12/03/02; City Council re-approval 02/17/04; Grading permit #GR0400025. Project under construction.
73	~Housewives Market*	A. F. Evans Steve Kbklin (415) 591-2204	8th/9th/Clay and Jefferson 801-807 Clay Street APN: 001-0209-001, 002, 003, 004	3	Phase II ■ 72-86 condominium units ■ 14,000 S.F. flexible space	Don Smith, Bldg. Permits 238-4778	Project finished construction. Project to return to Planning Commission for parking conditions of approval.
74	Jackson Courtyard Condominiums*	Gerald Green (415) 377-3286	210 - 14th Street APN 008 -0627-020-00	3	■ 45 condominium units	Heather Klein, Major Projects, 238-3659	Building Permit #B0800337. Project under construction.

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List updated twice a year.

CITY OF OAKLAND - ACTIVE MAJOR DEVELOPMENT PROJECTS
Oct -Nov 2008

PENDING PROJECTS					
Pre-Application Disclosures					
Application submitted - Under Review					
75 -1930 Broadway*	Encinal Jackson, LLC CB Wong (510) 628-9060	1930 Broadway 1944 Broadway 1941 Franklin APN: 008-0638-007-07 008-0638-005-00 008-0638-007-08	3	<ul style="list-style-type: none"> ■ approx. 85,200 S.F. retail/fitness club ■ approx. 829,500 S.F. of office space ■ 220 residential units ■ 444 parking stalls ■ Rehabilitation of the Tapscott Building 	Heather Klein, Major Projects 238-3659 Application filed. NOP published 10/10/08. Environmental Scoping Session before LPAB pending 11/17/08 and Planning Commission pending 11/05/08.
76 -Kaiser Center	Tomas Schoenberg The SWIG Company (415)291-1100	500 Lakeside Drive Area bounded by 20th and 21st Streets and Webster and Harrison Streets	3	<ul style="list-style-type: none"> ■ Demolition of 280,000 S.F. ■ 2 new towers: 42-stories with 780,000 S.F. office ■ 34-stories with 565,000 S.F. office and 22,000 S.F. retail 	Marge Stanzione, Major Projects 238-4932 Application filed. Environmental scoping underway. NOP published 05/22/08. Environmental Scoping Session before the LPAB 06/09/08 and Planning Commission 06/18/08. DEIR being prepared.
77 Oak Knoll Redevelopment Project	SunCal Oak Knoll LLC Pat Kelliher (510)251-0711	167 acre site 8750 Mountain Blvd. APN: Multiple	7	<ul style="list-style-type: none"> ■ 960 residential units (408 SFD, 248 townhomes, 304 condominiums) ■ 82,000 S.F. commercial 	Dina Tasini (contract planner) (510) 909-3020 Request for General Plan conformity 05/06. Director's determination of General Plan conformity 05/16/06. Request for amended General Plan conformity 12/06. Director's determination of amended General Plan conformity 12/20/06. NOP and Initial Study to prepare a Supplemental EIR issued 02/08/07. Environmental Scoping Session 02/28/07. Planning Commission denied the Appeal and upheld the General Plan determination 03/07/07. SEIR was published 09/06/07. Public hearing for the Draft SEIR 10/10/07. Design Review Committee 09/26/07.

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CITY OF OAKLAND - ACTIVE MAJOR DEVELOPMENT PROJECTS
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78	Mandela Grand Mixed Use Project	KS Properties, LLC Peter Sullivan (415)362-1700	13.3 acre site bounded by Mandala, W. Grand, Poplar, and 18th Street	3	<ul style="list-style-type: none"> ■ 1,577 residential units ■ approx. 300,000 non-residential S.F. 	Marge Stanzone, Major Projects 238-4932	Environmental application filed. NOP published 04/06/06. Environmental Scoping Session before LPAB 04/17/06 and Planning Commission 04/19/06. DEIR published 12/18/06. DEIR hearings before Planning Commission 01/17/07 and LPAB 01/29/07. FEIR and response to comments published 06/29/07. Project inactive.
79	Gateway Community Development Project (The Gateway)	Pacific Thomas Capital Randall Worsley (925) 939-7401	East 12th St. between 25th Ave. and Derby St.; APN - multiple	5	<ul style="list-style-type: none"> ■ 810 residential units ■ 26,000 S.F. commercial 	Darin Ranelletti, Major Projects 238-3663	Application filed. NOP published 11/23/05. Environmental Scoping Session 12/07/05. DEIR published 08/10/07. DEIR hearing session 09/05/07. FEIR preparation underway.
Application Approved							
80	Macarthur BART Transit Village	Macarthur Transit Community Partners, LLC Deborah Castles (510) 273-2002	7 acre site located between Telegraph, 40th, and Macarthur and Highway 24	1	<ul style="list-style-type: none"> ■ 540 residential units ■ 20,000 S.F. retail/commercial space 	Kathy Kleinbaum, Urban Development, 238-7185 Charity Wagner (contract planner) (415) 331-8282	NOP published 02/14/06. Environmental Scoping Session 03/15/06. Revised NOP published 06/13/07. DEIR published 01/31/08. FEIR and response to comments published 05/23/08. Planning Commission certification of the FEIR and project approval 06/04/08. City Council approval of the Rezoning on 07/15/08.
81	Fox Courts	Deni Adaniya (510) 841.4410, ext.19	Uptown Parcel 6 555-19th Street, 550-18th Street APN 008-0642-017	3	80 residential units; 2500 sf childcare; art space	Catherine Payne, Major Projects, 238-6168	Planning Commission approval 2/15/06. Project under construction.

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CITY OF OAKLAND - ACTIVE MAJOR DEVELOPMENT PROJECTS

Oct -Nov 2008

82	-Oak to Ninth Mixed Use	Oakland Harbor Partners, LLC Patrick Van Ness (925) 463-1122	64.2 acre waterfront site bounded by Fallon Street, Embarcadero Road, 10th Ave., and the Oakland Estuary APN: 0430-001-02, 0430-001-04 (por), 0460-003,004,0465-002, 0470-002 (por).	3 & 2	<ul style="list-style-type: none"> ■ General Plan Amendment from Central City East Redevelopment Plan Amendment and Central District Urban Renewal Plan Amendment ■ New Planned Waterfront Zoning District ■ Zoning Map Amendments ■ 3,100 residential units ■ 200,000 S.F. commercial ■ 3,950 structured parking spaces ■ 29.9 acres public open space ■ 2 renovated marinas; 170 boat slips ■ wetlands restoration area 	Marge Stanzione, Major Projects 238-4932	DEIR published 09/01/05. Design Review Committee 01/25/06. FEIR published 02/01/06. PRAC 02/08/06. LPAB 02/27/06. Planning Commission approval 03/15/06. Appeal filed 3/24/06. City Council denial of the appeal and approval of the project, amendments, rezoning, etc 06/20/06 and 07/18/06. Under litigation. Revised EIR published 09/30/08.
83	Wood Street (formerly Central Station) Mixed-Use Project	Carol Galante BUILD West Oakland, LLC PCL Associates, LLC (415) 989-1111 Andy Getz HFH Central Station Village, LLC Central Station Land, LLC (510) 652-4191	West Oakland Station Site - 16th and Wood Streets APN: various	3	<ul style="list-style-type: none"> ■ 1557 residential units (including 186 live/work units) ■ 13,000 S.F. commercial ■ 1.39 acres public open space ■ 2.82 acres private open space ■ Renovation of train station 	Marge Stanzione, Major Projects 238-4932	General Plan and Zoning Amendments required. DEIR published; Planning Commission certification of the FEIR and approval of the project 03/16/05. Appeal denied by City Council 05/17/05. Individual projects including Pacific Cannery Lofts, 14th Street Apartments, Zephyr Gate, and HFH Apartments proposals are approved.

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CITY OF OAKLAND - ACTIVE MAJOR DEVELOPMENT PROJECTS
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84	Jack London Square Redevelopment	Jack London Square Partners, Stuart Richard, (415)391-9800	Eight Development areas within Jack London Square bounded by Alice, 2nd, Harrison, and Embarcadero. APN - Multiple	3	<ul style="list-style-type: none"> ■ 1.2 million S.F. of mixed-use retail, commercial, and office ■ 1,700 seat movie theater ■ 250 room hotel, supermarkets, restaurants, and offices 	Catherine Payne, Major Projects, 238-6168	DEIR published 09/08/03; FEIR published 2/11/04. Planning Commission approval 03/17/04. City Council approval 04/04. Planning Commission approval of Site G 06/21/06. Design Review Committee 06/28/06 of Site C. Site C partially occupied. Site G and F under construction.
85	1640 Broadway Mixed Use Project*	1640 Broadway Associates Marge Cafarelli (415) 512-8118	17th and Broadway 1640 Broadway APN: 008-0622-001-01	3	<ul style="list-style-type: none"> ■ 177,600 S.F. of office ■ 4,710 S.F. ground floor retail ■ Structured parking ■ Alternative approved for 254 residential units with ground floor retail 	Heather Klein, Major Projects, 238-3659 Brian Matsumura, Blég. Permits 238-3882	Project approved 10/00; all residential alternative approved by Planning Commission 10/01. Administrative extension of approval granted for one year 10/04. Planning Commission re-approval 05/04/05. Vesting TPM approved 11/21/06. Extension granted 05/21/08.
86	~Broadway West Grand (formerly known as Neighborbon Mixed Use Project)*	Signature Properties Doug Park (925) 463-1122	2345 Broadway APN: 008 -0666-007-00	3	<ul style="list-style-type: none"> Parcel B ■ 267 residential units ■ 8,500 S.F. retail 	Catherine Payne, Major Projects, 238-6168	DEIR published 08/26/04. LPAB hearing 09/20/04. Planning Commission approval 10/06/04. ITM approval 06/20/06. Parcel B seeking amendments to the project. Design Review Committee 04/23/08. Planning Commission approval 06/04/08.
COMMERCIAL/INDUSTRIAL/ civic PROJECTS							
87	1547 Lakeside Drive Parking Structure	Don Parker Scottish Rite Temple (707)648-4420	1547 Lakeside Drive (fronting onto Madison Street, to the rear of the Scottish Rite Temple APN: 008-0630-008-01	3	<ul style="list-style-type: none"> ■ 220 space parking structure 	Joann Pavlinec, Major Projects, 238-6344	Pre-application filed.

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CITY OF OAKLAND - ACTIVE MAJOR DEVELOPMENT PROJECTS
Oct - Nov 2008

Application Submitted - Under Review		Application Approved	
88 - Foothill Square Redevelopment Project	Jay-Phares Corp. John Jay (510)562-9500	10700 Mac Arthur Boulevard APN: 047-5589-001-00 047-5589-001-06 047-5589-001-05 047-5589-001-04	7
		■ Redevelopment of a commercial shopping center approx. 13.8 acres	Aubrey Rose 238-2071
89 - Coliseum Center	Architectural Dimensions Matthew Weber (925) 932-3651	633 Heegenberger APN: 042-4218-001-16	7
		■ Commercial shopping center approx. 167,000 SF	Darin Ranalletti, Major Projects, 238-3663
90 - East Oakland Sports Center	City of Oakland Community and Economic Development Agency Project Delivery Division Lyle Ochler (510) 238-3389	9175 Edes Avenue APN: 044-5053-001-06	7
		■ Phased Master Plan for a sports center at Ira Jinkins Park. <i>Phase I</i> ■ 26,000 indoor swimming pool/water slide (natatorium), a dance/exercise room, a multi-purpose room/learning center, and other accessory activities. If funded a fitness/weight room and two outdoor basketball courts <i>Phase II</i> ■ 23,000 square foot facility and outdoor amenities	Lynn Warner, Major Projects, 238-6983
91 - City Center T12 (2005)*	Shorenstein Realty Investors Tom Hart (415) 772-7000	11th/12th/MLK/Jefferson APN: 002-0027-007-00	3
		■ Revision in program from 450 residential units to 600,000 SF office.	Lynn Warner, Major Projects, 238-6983
			Application filed. Application filed. Environmental scoping underway. Design Review Committee 08/13/08. Application filed. PRAC 01/09/08. Design Review Committee 02/27/08. Environmental impacts for the project were analyzed under Measure DD Implementation Project. Planning Commission certified the FEIR 02/13/08. Planning Commission approval 04/02/08. Revision from residential units to office square footage. Design Review Committee 09/26/07. Planning Commission approval and Addendum certification 12/05/07. Building permit #B0803952. Project under construction.

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92	1100 Broadway	Steven Wolmark SKS Investments (415)421-8200	1100 Broadway APN:002-0051-006-02	2	<ul style="list-style-type: none"> ■ Rehabilitation of the Key System Building ■ 310,285 S.F. of office ■ 9,810 S.F. of retail. 	Heather Klein, Major Projects, 238-3659	LPAB on 11/5/07 and 12/10/07. Design Review Committee on 10/24/07. Planning Commission approval and Addendum certification 02/13/08.
93	Lake Merritt Channel Wetland and Widening Project	City of Oakland	Lake Merritt Channel between Lake Merritt and I-880 APN: 0000-0450-001, 002, 0000-0455-001-01, 001-07, 008-05.012, 013, 015-02	2	<ul style="list-style-type: none"> ■ Widening and tidal restoration improvements along Lake Merritt in association with the 12th Street Reconstruction Project, 10th Street Bridge Project, and Lake Merritt Channel Improvement Project at the 7th Street Flood Control Station. 	Lesley Estes, Watershed Improvement Program Supervisor, 238-7431	DEIR published 04/14/05; Planning Commission hearing DEIR, 5/17/05. Planning Commission certification of the FEIR and project approval 07/05/06. This project also is included in the Measure DD EIR. The DEIR for Measure DD was published 07/20/07. The Planning Commission certification of the FEIR 02/13/08. Appeal denied by City Council 04/01/08.

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CITY OF OAKLAND - ACTIVE MAJOR DEVELOPMENT PROJECTS
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94 -Kaiser Permanente	Kaiser Permanente Judy DeVries (510) 752-2004	Generally the area surrounding the intersection of Broadway and Macarthur Boulevard.	1 and 3	■Master Plan for new Hospital	Scott Gregory (contract planner) (510) 535-6690 Gary Patton, Major Projects Manager, 238-6281	DEIR published 04/01/03; Environmental Scoping Session 4/13/05. Special Projects Committee 11/30/05. Design Review Committee 1/18/06, 04/26/06, 07/05/06. DEIR republished 03/02/06. FEIR published 05/26/06. Planning Commission certification of the FEIR and approval of the project 06/07/06. Planning Commission approval of the design of Phase I. City Council approval 06/27/06. Project under construction. Community meetings for Phase II underway. Design Review for Phase II 05/28/08. Planning Commission pending 11/19/08.
95 City Center T5/T6 (2005)	Shorenstein Realty Investors Nick Loukianoff (415) 772-7062	11th/12th/Clay/Broadway APN: 002-0097-038-00 through 002-0097-040-00	3	■600,000 S.F. office ■7,500 S.F. commercial	Patrick Lane, Redevelopment Agency 238-7362	Planning Commission approval of PPUD 4/00.

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CITY OF OAKLAND - ACTIVE MAJOR DEVELOPMENT PROJECTS
Oct -Nov 2008

SUCCESSFUL COMPLETIONS							
Residential Projects							
1	-Monte Vista Villas (formerly Leona Quarry)	The DeSilva Group David Chapman (925) 828-7999	7100 Mountain Boulevard APN: 037A-3151-001-01	6	■209 residential units ■3,350 S.F. community center	Bill Quesada, Building Services, 238-6345	Project completed.
2	-2355 Broadway*	2355 Broadway LLC John Protopoulos (510) 452-2944	2355 Broadway APN: 008-0666-006-00	6	■Adaptive re-use of historic building into 24 condominiums and ground floor retail	Heather Klein, Major Projects, 238-3659	Project completed.
3	-46th Street Lofts (formerly Flecto Project)	Levin, Menzies, Kelly Paul Menzies (925) 937-4111	47th and Adeline; land area is in both Oakland and Emeryville. 119 Linden Street APN: 049-1172-002 013-1172-003 013-1172-004	1	■79 units and 3,000 S.F. commercial space ■Adaptive reuse of and addition to the former Flecto building.	Catherine Payne, Major Projects 238-6168	Project completed.
4	-3rd/Broadway Mixed Use*	The Enterprise Group Walter Cohen (415) 221-2534	200/210/228 Broadway APN: 001 -0141-002-01 001 -0141-011-00	3	■134 residential units ■11,000 S.F. retail	Heather Klein, Major Projects 238-3659 Don Smith, Bldg. Permits 238-4778	Project completed.
5	-901 Jefferson*	Pyatok Architects Inc Gary Struthers (510) 465-7010	901 & 907 Jefferson Street APN: 002-0025-007-00 through 002-0025-009-00	3	■75 condominium units ■1,030 S.F. retail	Darin Ranelletti, Major Projects, 238-3663	Project completed.
6	Madison Lofts*	Affordable Housing Associates Mark Garrel (510) 649-8500	160 14th St. APN: 008-0628-005-01	3	■Approximately 76 condominium units ■2,666 S.F. of retail	Neil Gray 238-3878	Project completed.
7	8 Orchids*	BayRock Residential Marilyn Ponte (510) 594-8811	620-636 Broadway APN: 001-0197-002-00	2	■2,600 S.F. retail ■157 condominium units	Heather Klein, Major Projects, 238-3659	Project completed.
8	Mandela Gateway Townhomes	Bridge Housing Kristy Wang (415) 989-1111	1431 8th Street APN: 004-0067-021-00	3	■14 condominiums	Heather Klein, Major Projects, 238-3659	Project completed.

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9	Uptown Project *	Forest City Residential, Inc. Susan Smart (415) 836-5980	Area bounded by San Pablo, Telegraph, 18th and 20th Streets APN - Multiple	3	Parcel II	Catherine Payne, Major Projects, 238-6168	Project completed.
10	Coliseum Gardens	EBALDC Carlos Castellinos (510) 287-5335	66th Ave. at San Leandro Street APN-Multiple	6	283 residential units 7,500 S.F. of civic and commercial space	Catherine Payne, Major Projects, 238-6168	Phase I and Phase II Project completed.
11	66th & San Pablo	The Olson Company (925) 242-1050	6549 San Pablo Ave APN: 016-1506-001-02	1	72 condominium units	Lynn Warner, Major Projects, 238-6983	Project completed.
12	288 Third Street* (formerly 300 Harrison Street)	Signature Properties Chris Weekley (925) 463-1122	300 Harrison Street APN: 001-0153-016	3	91 condominium units	Joann Pavlinec, Major Projects, 238-6344	Project completed.
13	Altenheim Senior Housing	Citizens Housing Corporation Kaori Tokunhea (415) 421-8605	1720 Macarthur Boulevard APN: 023-0494-001-07	5	93 apartment units Rehabilitation of existing historic buildings	Joann Pavlinec, Major Projects, 238-6344	Phase I completed.
14	206 Second Street*	MV Jackson Robison Brown (415) 284-1200	206 Second Street APN: 001-0157-003-00	3	2,380 S.F. of live/work 1,310 S.F. of retail space 75 condominium units	Heather Klein, Major Projects, 238-3659	Project completed.
15	1511 Jefferson *	Meritage Homes of California Randall Harris (925) 256-6042	1511 Jefferson Street APN:003-0071-006-00	3	78 condominium units	Robert Merkamp 238-6283	Project completed.
16	Wheelink Project*	Jordan Real Estate Wayne Jordan (510) 663-3865	4th and Alice Street, ILS District 426 Alice Street APN 001 -0155-001-00	3	94 residential units 9,800 S.F. office	Scott Miller, 238-2235 Don Smith, Bldg. Permits 238-4778	Project completed.
17	Ford Street Lofts	Signature Properties (905) 436-9350	3041, 3061, and 3065 Ford Street APN: 025-0666-002-00	5	81 condominium residential units	Scott Miller, 238-2235	Project completed.
18	Lincoln Court Senior Housing	Domus Development 415-558-9500	2400 Macarthur Blvd APN: 029 -0993-020-01	4	82 senior housing apartment units	Robert Merkamp 238-6283	Project completed.

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19	Housewives Market*	A.F. Evans Steve Kuklin (415) 591-2204	8th/9th/Clay and Jefferson 801-807 Clay Street APN: 001-0209-001, 002, 003, 004	3	Phase I ■Between 102-111 condominium units ■11,000 S.F. flexible space ■3,000 S.F. of retail ■Structured parking	Gary Patton, Major Projects Manager, 238-6281 Don Smith, Bldg. Permits 238-4778	Project completed
20	Aqua Vita* (Harbor View or Second Street Lofts)	Urban Developments Marge Cafarelli (415) 512-8118	121-129 2nd Street APN: 001-0165-015-00	3	■100 condominium units ■5,190 S.F. of commercial / office	Heather Klein, Major Projects, 238-3659	Project completed.
21	Cotton Mill Studios	Tom Dolan Architects (510) 839-7200	1091 Calcutt Place APN: 019-0055-001-04	5	■74 unit live/work conversion	Joann Pavlinec, Major Projects, 238-6344	Project completed.
22	Glascok Residential Project "The Estuary"	Signature Properties Patrick Van Ness (925) 463-1122	2893 Glascok at Derby 4.1 Acres APN: 025-0674-001-00 025-0674-002-00 025-0674-003-00	5	■100 residential units	Scott Miller 238-2235	Project completed.
23	Green City Loft Project	Green City Development Martin Samuels (510) 635-7698	41st and Adeline; land area is in both Oakland and Emeryville. 1007 41st Street APN: 012-1022-001-00	1	■62 lot units on former office/warehouse site	Gary Patton, Major Projects Manager, 238-6281 Don Smith, Bldg. Permits 238-4778	Project completed
24	City Limits Project (Formerly FABCO)	Pulte Homes Dennis O'Keefe (925)249-3218	1165 and 1249 67th Street west of San Pablo Ave. APN: 049-1507-004-00 016 -1507-008-03 016 -1507-009-02	1	■92 condominium residential units	Scott Miller 238-2235	Project completed.
25	Palm Villas Residential Project	Em. Johnson Interest (510) 839-3057	9001-9321 MacArthur Blvd. APN: 047-5484-006-04, 007- 008-009-010-011-012-013-014-015-016-017-018-019-020-021-022-023-024-025-026-027-028-029-030-031-032-033-034-035-036-037-038-039-040-041-042-043-044-045-046-047-048-049-050-051-052-053-054-055-056-057-058-059-060-061-062-063-064-065-066-067-068-069-070-071-072-073-074-075-076-077-078-079-080-081-082-083-084-085-086-087-088-089-090-091-092-093-094-095-096-097-098-099-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000	7	■78 single family homes	Don Smith, Bldg. Permits, 238-4778	Project completed.
26	Ettie Street/Mandela Parkway	David Baker Architects (415) 896-6700	2818 Mandela Parkway APN: 007-0587-002-05	3	■91 live/work units	Gary Patton, Major Projects Manager, 238-6281	Project completed

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27	Arioso Project*	SNK Development (415) 896-1186	901 Franklin Street APN: 002-0096-004-00	2	<ul style="list-style-type: none"> ■ 88 condominium units ■ 6,000 S.F. commercial structured parking 	Gary Patton, Major Projects Manager, 238-6281 Don Smith, Bldg. Permits 238-4778	Project completed
28	Mandela Gateway Gardens (formerly Westwood Gardens)	Oakland Housing Authority and Bridge Housing Pete Nichol (415) 989-1111	1431 7th Street APN: 004-0067-021-00	3	<ul style="list-style-type: none"> ■ 200 residential units (40 units in replacement of existing Westwood Gardens) 15,000 S.F. of retail space - combination rental and ownership; Some live/work units. 	Heather Klein, Major Projects, 238-3659	Project completed.
29	Telegraph Gateway Project *	Tom Dolan Architects Scott Galka (510) 839-7200	Telegraph Ave. and 24th Street 2401 Telegraph Avenue APN: 008-0675-004-00	3	<ul style="list-style-type: none"> ■ 50 new residential lots ■ 3,300 S.F. ground floor retail 	Gary Patton, Major Projects Manager, 238-6281 Don Smith, Bldg. Permits 238-4778	Project completed.
30	Durant Square	Signature Properties (925) 463-1122	International Blvd. And Durant Ave. 10970 International Blvd. APN: 047-5519-043-00	7	<ul style="list-style-type: none"> ■ 43 new single family ■ 168 new townhouses ■ 40 new live/work (60 total) ■ Food 4 Less ■ Renovated building with continued commercial uses 	Heather Klein, Major Projects, 238-3659 Bill Quesada, Building Permits, 238-6345	Project completed.
31	Preservation Park III*	Signature Properties (905) 436-9350	11th - 12th and MLK on a vacant parcel 655 12th Street APN: 002-0021-011-01 002-0021-012-00	3	<ul style="list-style-type: none"> ■ 92 residential townhouses 	Gary Patton, Major Projects Manager, 238-6281 Don Smith, Bldg. Permits, 238-4778	Project completed.
32	San Pablo Affordable Senior Housing	Oakland Community Housing Inc. (510) 763-7676	3255 San Pablo Avenue between 32nd and 34th Streets APN: 005-0470-017-01	3	<ul style="list-style-type: none"> ■ 50+ residential units 	Gary Patton, Major Projects Manager, 238-6281 Don Smith, Bldg. Permits	Project completed.

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33	Bridge Housing - Linden Court	Bridge Housing (415) 989-1111	1089 26th Street. Near McClymonds High School in West Oakland APN: 005-0435-001-00	3	■ Low-income housing (approx. 79 units)	Gary Patton, Major Projects Manager, 238-6281 Don Smith, Bldg. Permits	Project completed.
34	Bridge Housing - Chestnut Court	Bridge Housing (415) 989-1111	2240 Chestnut Street, at West Grand APN: 005-0428-001-00	3	■ Hope IV project in conjunction with OHA ■ 58 affordable rental housing units ■ 6 affordable for sale housing units ■ 14 loft units, 4,000 S.F. retail ■ 4,000 S.F. supportive services	Don Smith, Bldg. Permits 238-4778	Project completed.
35	The Essex - Lake Merritt*	Lakeshore Partners Tom Peterson (510) 444-7191	17th and Lakeshore 108 - 17th Street APN: 008-0633-002-01	2	■ 270 residential units	Gary Patton, Major Projects Manager, 238-6281 Jim Oakley, Bldg. Permits 238-3637	Project completed.
36	Safeway Building*	Reynolds & Brown Dana Perry (925) 674-8400	4th and Jackson Streets 201 4th Street APN: 001-0155-008-00	3	■ Rense existing warehouse and add new top floor for approximately 46 live/work units ■ 4,500 S.F. ground floor commercial ■ 6,500 S.F. office	Gary Patton, Major Projects Manager, 238-6281 Don Smith, Bldg. Permits, 238-4778	Project completed.
37	Allegro Project*	SNK Development (415) 896-1186	3rd and Jackson Streets 208 Jackson Street APN: 001-0159-006-00	3	■ 312 units ■ 13,500 S.F. commercial ■ 4 new buildings	Gary Patton, Major Projects Manager, 238-6281	Project completed.
Commercial, Industrial, and Civic Projects							
38	-Head Royce School	John Malick & Associates John Malick (510) 595-8042	4315 Lincoln Ave APN: 029A-1367-004-04	4	■ Development of the Masterplan	Heather Klein, Major Projects, 238-3659	Project completed.
39	-Cathedral of Christ the Light	CMA Eileen Ash (415) 597-8414	2121 Harrison Street and Grand Avenue APN: 008-0633-024	3	■ 255,000 S.F. Cathedral	Catherine Payne, Major Projects, 238-6168	Project completed.

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40	Center 21	John Sutton Premiss Properties (510)465-2101	2100 Franklin Street APN:008-0651-003-01	3	<ul style="list-style-type: none"> 15,000 S.F. retail 218,000 S.F. office 	Catherine Payne, Major Projects, 238-6168	Project completed.
41	Cox Cadillac Mixed Use	Bond Company Robert Bond (312) 853-0070	Intersection of Harrison St, 27th and Bay Place 230 Bay Place APN 010 -0795-027-01	3	<ul style="list-style-type: none"> 56,000 S.F. commercial Renovation of historic Cadillac Showroom 	Joann Pavlinec, Major Projects, 238-6344 Don Smith, Bldg. Permits, 238-4778	Project completed.
42	66 Franklin Street*	Komorous-Towey Klara Komorous (510)446-2244	66 Franklin Street APN:001-0060-322	3	<ul style="list-style-type: none"> Renovation of existing building with approximately 95 S.F. of commercial 	Joann Pavlinec, Major Projects, 238-6344	Project completed.
43	17th Street Parking Garage	California Commercial Investments Phil Tagami (510) 268-8500	16th and 17th Streets and San Pablo Avenue 1630 San Pablo APN: 008 -0620-015-00 008 -0620-014-00 008 -0620-009-01	3	<ul style="list-style-type: none"> +330 -space parking garage 	Heather Klein, Major Projects, 238-3659 Patrick Lane, Redevelopment, 238-7362	Project completed.
44	Thomas Berkley Square	SUDA/ North County Center for Self Sufficiency Alan Dones (510) 715-3491	San Pablo Ave between MLK Jr. Way, Thomas L. Berkley Way, and 21st Street. 630 20th Street APN: 008-0645-015-01 008-0645-01801 and 02 0080645-019 through 025	3	<ul style="list-style-type: none"> 114,000 S.F. office for the Alameda County Social Services Division and the North County Self Sufficiency Center 5,000 S.F. of retail 	Heather Klein, Major Projects, 238-3659 Don Smith, Bldg. Permits 238-4778	Project completed.
45	Infiniti of Oakland	Hendricks Automotive Ron Tye (925) 463-9074	Oakport Road at Hassler Way APN: 034-2295-005-04	7	<ul style="list-style-type: none"> New automotive dealership 	Heather Klein, Major Projects, 238-3659 Jay Musante, Redevelopment, 238-6658	Project completed.
46	Perkins Street Residential Care	A.F. Evans John Rimbach (510) 891-444-7191	468-484 Perkins St APN: 010-0767-014-00	3	<ul style="list-style-type: none"> 56 room care facility for elderly residents 	Gary Patton, Major Projects Manager, 238-6281 Don Smith, Bldg. Permits 238-4778	Project completed.

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Mixed-Use Projects									
47	Pyatok Architects Inc, Curtis Caton, (510)465-7010	2946 International Boulevard APN: 025-0716-012-00	3	■38 housing units ■20,115 S.F. clinic space	Jioann Pavlinec, Major Projects, 238-6344	Project completed.			
48	Signature Properties Doug Park (925) 463-1122	2345 Broadway APN: 008 -0666-007-00	3	Parcel A ■132 residential units ■21,300 S.F. retail	Catherine Payne, Major Projects, 238-6168	Project completed.			
49	Jack London Square Partners, Smart Richard, (415)391-9800	Eight Development areas within Jack London Square bounded by Alice, 2nd, Harrison, and Embarcadero. APN - Multiple	3	■Site C	Catherine Payne, Major Projects, 238-6168	Project completed; partial temporary certificate of occupancy.			
50	Dreyer's Site Residential Lofts* The Sierra COD Builders Kava Massib (510)644-1920	311 Oak Street APN: 001-0163-012-00	3	■220 units ■30,000 S.F. commercial	Gary Patton, Major Projects Manager, 238-6231 Don Smith, Bldg. Permits 238-4778	Project completed.			
51	Fruitvale Transit Village Phase I FDC, Evelyn Johnson, (510) 335-6911	Fruitvale BART Station	5	■Masterplan for residential and commercial/civic use and new parking structure	Darin Ranelletti, Major Projects, 238-3663 Jim Oakley, Bldg. Permits 238-3637	Project completed.			
52	Rainin Instruments Carl Groch, (415) 592-3950	Edgewater Drive & Hassler Road 7500 Edgewater Drive	7	■180,000 S.F. office/manufacturing/R&D facility	Jay Musante, Redevelopment, 238- 6658	Project completed.			
53	Lexus Dealership Lance Gidel (408) 370-0280	Oakport St. at Hassler Way APN: 034-2295-005-04	7	■22,000 S.F. building for auto sales, service, repair of parts ■Outdoor auto sales lot for 275- 290 cars	Heather Klein, Major Projects, 238-3659	Project completed.			

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54	Zhone Technologies	Joe Ernst (510) 864-5985	66th Avenue and Oakport Street 7195 Oakport	7	300,000 S.F. high-tech research and development campus	Don Smith, Bldg. Permits, 238-4778	Project completed.
55	Just Desserts	John Schmiedel (415) 864-6450	550 85th Avenue APN: 042-4313-001-00	7	64,525 S.F. bakery and warehouse	Don Smith, Bldg. Permits, 238-4778	Project completed.
56	City Center 19 (2000)	Shorenstein Realty Investors Nick Loukianoff (415) 772-7062	11 th /12 th Clay/Jefferson APN: 002-0033-006-00 through 015-00	3	450K office 7,500 S.F. retail	Gary Patton, Major Projects Manager, 238-6281 Don Smith, Bldg. Permits 238-4778	Project completed.
57	Extended Stay American Hotel - OTR Site	Extended Stay America Dan Stearns (425) 603-1530	Yerba Buena and Mandela Parkway APN: 007-0617-014-01	3	149 hotel rooms	Gary Patton, Major Projects Manager, 238-6281	Project completed.
58	Courtyard by Marriott Hotel	Marriott Don Celli (916) 369-4050	350 Hegenberger Road	7	154-room hotel	Don Smith, Bldg. Permits, 238-4778	Project completed.
59	Oakland Garden Hotel (Courtyard Marriott)	Michael Chan Oakland Garden Hotel (510) 251-6440	9 th and Broadway 900 Broadway APN: 002-0094-002-00	2	150-room hotel	Don Smith, Bldg. Permits 238-4778	Project completed.
60	1111 Jackson Street - Phase I	Peter Wong (510) 628-9060	1111 Jackson Street APN 002-75-002-00	2	Renovation of existing 111,000 S.F. State office building	Gary Patton, Major Projects Manager, 238-6281	Project completed.
61	Rotunda Building Reuse	Phil Tagami (510) 268-8500	1500 Broadway APN: 008-0619-004-01	3	Rehabilitation of historic building for office & commercial uses 187,000 S.F. office 50,000 S.F. retail	Gary Patton, Major Projects Manager, 238-6281	Project completed.
62	IKEA Parking Structure	Ikea Property, Inc. Doug Pass (925) 249-0317	Shellmound at I-80 4300 Shellmound Street	3	Additional 3-level parking structure for 800 cars in portion of existing surface parking lot	Gary Patton, Major Projects Manager, 238-6281 Brian Matsumura, Bldg. Permits, 238-3882	Project completed.

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63	Best Buy Retail Store	Best Buy - Architects MBH - Sherry Fraiser (510) 865-8663	Yerba Buena and Mandela Parkway (Portion of OTR site) APN: 007-0617-014-01	3	~45,000 S.F. Best Buy retail store proposed	Gary Patton, Major Projects Manager, 238-6281 Brian Matsumura, Bldg. Permits 238-3882	Project completed.
64	Expo Design Center	Mike Abate (714) 940-5810	Horton St., East Bay Bridge Shopping Center. Part of Oakland/Emeryville JPA	3	■K/MART vacating present store ■Home Expo Center has assumed lease. ■Exterior and interior remodeling proposed.	Gary Patton, Major Projects Manager, 238-6281 Brian Matsumura, Bldg. Permits 238-3882	Project completed.
65	Edgewater Distribution Center	AMB Property Corp.	7200 Edgewater Drive APN: 041 -39002-003-17	7	■406,700 S.F. warehouse/industrial use	Port of Oakland Commercial Real Estate 627-1210	Project completed.

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Letter F Response – Coalition of Advocates for Lake Merritt (CALM) and Joyce Roy / Brian Gaffney

- F-1. The commenter states that the Court “set aside the EIR and the findings, statement of overriding considerations and Mitigation Monitoring and Reporting Program for the Oak to Ninth project.” The Court did not set aside the EIR. The Court voided the certification of the EIR and ordered the City to take action as required by the Court Order, the Judgment and the Writ, which required the City to revise its analysis for specific issues. See Master Response A, Response to Comments on the Public Policy Merits of Project Approval, and Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Additionally, the only findings voided by the Court are the CEQA Findings.
- F-2. See Master Response C, Public Review Process of the *Revisions*.
- F-3. The commenter incorrectly states that the *Revisions* merely states that past projects are found in the setting discussion, EIR Appendix D.4, and that the cumulative growth scenario and does not include an analysis of the past projects. Each cumulative discussion section of the *Revisions* first describes the past, present, and reasonably foreseeable projects relevant to the particular topic (e.g., land use) and then contains an analysis of the cumulative conditions and the project’s potential contribution to those conditions in the context of the applicable significance criteria. These discussions vary depending on (1) whether there is any opportunity for the project to combine with other past, present or reasonably foreseeable development to create a cumulative impact; (2) whether cumulative development has resulted in a significant adverse impact under the significance criteria; (3) whether the project would result in a considerable contribution to any significant adverse cumulative impacts; and (4) whether the potentially significant cumulative impact or the project’s contribution are mitigated. The discussion of these considerations in the context of each environmental topic constitutes an analysis. The relevant description or listing of the past projects is an integral element of the analysis and as evidenced by the discussion in each section is not used as a substitute for an analysis.
- F-4. The commenter notes his interpretation of the recent California Supreme Court case: Environmental Protection and Information Center v. California Department of Forestry and Fire Protection, 44 Cal. 4th 459 (2008) (EPIC). The analysis in this document substantially exceeds the discussion of past projects found acceptable under CEQA by the Supreme Court in the EPIC case. The Supreme Court found the setting discussion in the EIR/EIS sufficiently discussed the cumulative impact of past projects. In particular, the Supreme Court stated that although the discussion of past projects in the setting section of the EIR/EIS was “somewhat muted in the EIS/EIR, it was present to some degree.” The Supreme Court also acknowledged “the discussion of cumulative impacts should be guided by the standards of practicality and reasonableness.” In any event, the approach taken in the *Revisions* is based on the direction provided by the Court Order and is not limited to the approach approved by the Supreme Court. The cumulative impacts analysis in the *Revisions* exceeds the standards described in EPIC.
- F-5. The commenter states that the City has not revised its consideration of present and reasonably foreseeable projects in the *Revisions*. The Court did not find invalid the EIR’s

scope of relevant present or reasonably foreseeable projects, therefore that analysis is not revised from the EIR. Instead, the Court found that the record contained data on past, present, and reasonably foreseeable projects, but certain sections of the EIR did not provide sufficient analysis of that data. The *Revisions* responds to each of the deficiencies found by the Court. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.

The EIR and the *Revisions* properly use the projections-based approach to cumulative impacts. The EIR uses a list of actual projects as a check to confirm that the projections-based approach provides meaningful and accurate information. The comment letter does not offer either facts or analysis that undermine or contradict the accuracy of the approach taken in the EIR and the *Revisions*. The commenter provides a copy of the City of Oakland's Active Major Development Project's List October-November 2008. The projects identified on the list are (1) located a distance from the Oak to Ninth Project site and surroundings to combine for a cumulative impacts; (2) identified in the Updated Cumulative Growth Scenario Updated for the Oak to Ninth Project, which was included in Appendix A.4 of the EIR; and/or (3) consistent with the Oakland General Plan and therefore already considered within the regional cumulative growth model. Thus, the projects included in the list attached to the comment letter do not provide support for the commenter's suggestion that the EIR and the *Revisions* do not properly consider cumulative impacts.

Although not within the scope of the Court Order, this response addresses the present and reasonably foreseeable projects named by the commenter; and the consideration of these projects demonstrates that the EIR and *Revisions* properly consider cumulative impacts. For example, the Oak Knoll Project is located approximately 9 miles from the Oak to Ninth Project site (along Interstate 580 in southeast Oakland). Thus, the Oak to Ninth Project and the Oak Knoll Project would not combine to result in cumulative impacts for topics that require physical proximity to combine and that are addressed by the Court Order (land use, geology, noise, hazardous materials, biological resources, and visual quality). The Oak Knoll Project is identified in the Oakland General Plan Land Use and Transportation Element, as well as the preceding 1996 Final Oak Knoll Reuse Plan and the 1998 Oak Knoll Redevelopment Plan, and is therefore incorporated in the regional cumulative growth model for population/housing, public services and utilities and services systems, which have a broader cumulative geographic scope.

The commenter also names the Measure DD projects at Lake Merritt, which are a series of projects funded by the Measure DD bond measure program. Measure DD projects were included in the analysis in the EIR, for example, in the Final EIR Master Response F (Pedestrian Activity at Nearby Rail Crossings), Master Response G, (Phasing of Open Space and Trail Improvements), and numerous responses to individual comments on the Draft EIR. Further, the Measure DD projects are in furtherance of and consistent with the Oakland General Plan and are thus reflected within the growth projections used in the cumulative analysis for the EIR.

- F-6. The commenter states that the *Revisions* errs because it states where the lists of past, present, and future projects can be found but does not include those listed projects in its analysis of cumulative impacts. The *Revisions* (page II.A-2) explains that present projects in the relevant geographic area are included among the projects listed in Tables D.4-5a, D.4-5b, D.4-6a, and D.4-6b in Appendix D.4 of the EIR; and that reasonably foreseeable

future projects expected to be completed in the geographic area by 2025 are in the cumulative growth projections and among the projects listed in Tables D.4-5a, D.4-5b, D.4-6a, and D.4-6b. The *Revisions* further explains that the present and future projects include housing opportunity sites in the Estuary Channel area and the area of East 10th Street and 9th Avenue, small-lot single-family residences in Embarcadero Cove, and new commercial and infill/intensification commercial projects in Embarcadero Cove. This summary of present and future projects is appropriate for the analysis of cumulative land use impacts, particularly given the physical separation of the proposed project from surrounding neighborhoods as explained later in the analysis in the *Revisions*.

- F-7. The commenter states that the *Revisions* discussion of community division impacts contradicts the EIR. The commenter is confusing the EIR discussion of a project-specific impact with the analysis of cumulative impacts provided in the *Revisions*. Impact A-1 in the Draft EIR states that “the project would develop new and different uses and buildings immediately adjacent to and surrounding Fifth Avenue Point and may result in the physical division of an existing community.” It is important to note that Fifth Avenue Point is surrounded by the project site, and thus the project alone could divide or disrupt this existing community. Mitigation Measure A.1 in the Draft EIR recommends design measures to address this impact. The *Revisions* states that the project would not result in any physical division of an existing community in any of the areas surrounding the project site, because of the site’s physical separation from other surrounding neighborhoods. This statement is an accurate assessment of the project’s impact when combined with past, present, and anticipated future projects in these surrounding neighborhoods. The *Revisions* goes on to state that the project-specific potential impact on the Fifth Avenue Point area could not combine with any other project, because Fifth Avenue Point is completely surrounded by the Oak to Ninth project and the potential impact is related to the project’s removal of the surrounding industrial/warehouse area on the project site. Thus, the Draft EIR and the *Revisions* are not contradictory.

The commenter further states that the *Revisions* errs in concluding that, because “mitigation measures will reduce this project-specific potential impact to less than significant,” “[c]onsequently, the project would not combine with other past, present, or reasonably foreseeable future projects to physically divide an existing community.” The commenter has taken this statement out of context. The complete statement from the *Revisions* (page II.A-3) is as follows:

The project-specific potential impact on the Fifth Avenue Point area could not combine with any other project, because the Fifth Avenue Point is completely surrounded by the Oak to Ninth project and the potential impact is related to the project’s removal of the surrounding industrial/warehouse area on the project site. There is no physical opportunity for any other project to contribute to this impact. Moreover, mitigation measures will reduce this project-specific potential impact to less than significant. Consequently, the project would not combine with other past, present, or reasonably foreseeable future projects to physically divide an existing community on the project site or in the surrounding area.

The *Revisions* thus does not conclude that the project would not contribute to cumulative impacts simply because the project-specific impact can be mitigated. The mitigation of

the project-specific impact is just one factor considered in the cumulative impact analysis.

- F-8. The *Revisions* does not simply state that the project would be consistent with plans, as the commenter suggests. The *Revisions* (pages II.A-3 through II.A-4) reiterates the EIR conclusions regarding project consistency with the Land Use and Transportation Element (LUTE) of the General Plan, the Estuary Policy Plan, and zoning regulations. The *Revisions* indicates that, while the project would result in changes to Estuary Policy Plan policies and zoning regulations for the site, these changes would be consistent with the LUTE and other General Plan policies, as described in the EIR. The *Revisions* goes on to evaluate the extent to which the project-proposed changes would contribute to cumulative impacts. The analysis concludes that, since the project would be generally consistent with the land use policies of applicable plans, it would not combine with past, present, or reasonably foreseeable future projects to cause a significant adverse cumulative land use impact based on a conflict with a plan or policy. In support of this conclusion, the *Revisions* describes the most relevant General Plan policies with which the project would be consistent, including policies encouraging revitalization of underused sites, development of mixed uses on the waterfront, improved public access to the shoreline, expanded parks and large open spaces, opportunities for using alternative transportation modes, sensitivity of new development to adjacent communities, preservation of sensitive environments, and a mix of housing types.
- F-9. The commenter believes the “contribution approach” to evaluating cumulative impacts is not permitted. CEQA Guidelines Section 15355 states that “the cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.” Thus, cumulative impact analysis evaluates the project’s incremental impact – or “contribution” – in relation to impacts from other projects. The approach used in the *Revisions* complies with CEQA Guidelines Section 15355. The analysis of cumulative land use policy impacts is not based on the comparative sizes of the projects; the commenter does not provide any evidence to support this claim.
- F-10. The *Revisions* (page II.A-5) states that “existing uses that are compatible with current plans and policies, present projects, and reasonably foreseeable future projects will combine with the project to have a beneficial effect in terms of land use plan consistency with plans and policies for this area of the Oakland Estuary.” In other words, the project would contribute to a trend of Estuary area development being increasingly consistent with planning policies for the area, and this trend is a potentially beneficial cumulative impact. The fact that some existing uses are not consistent with City land use policies that call for waterfront revitalization is not relevant to this conclusion regarding the cumulative policy impact.
- F-11. The commenter also suggests that the *Revisions* does not consider the project-specific land use compatibility impact in the analysis of cumulative impacts. The *Revisions* (pages II.A-5 through II.A-6) discusses the project-proposed land use changes in relation to cumulative impacts. The *Revisions* indicates that the potential land use compatibility impact is limited to concerns on the project site, and the EIR recommended mitigation measures that would reduce the impact to a less-than-significant level. For these reasons,

the project would not combine with other projects to create a significant adverse land use compatibility impact.

- F-12. The commenter believes the “contribution approach” to evaluating cumulative impacts is not permitted. CEQA Guidelines Section 15355 states that “the cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.” Thus, cumulative impact analysis evaluates the project’s incremental impact – or “contribution” – in relation to impacts from other projects.
- F13. The *Revisions* does not conclude that no cumulative land use compatibility impact would occur simply because the project-specific impact would be mitigated. As discussed above, the *Revisions* indicates that the project-specific impact would be limited to the boundaries of the project site, and thus would not combine with other projects to create a significant adverse cumulative impact.
- F-14. The commenter states that “...the *Revisions* to the EIR continues to focus on the project’s “contribution” to traffic levels of service,” and that this approach is improper. The approach taken in the *Revisions* to the assessment of cumulative traffic impacts in the EIR was proper, and consistent with CEQA Guidelines. The analysis first describes traffic conditions, and identifies unacceptable level of service (LOS), under cumulative conditions. (See Response to Comment F-15 below for a description of how 2025 With Project Conditions represent the cumulative [“all inclusive”] conditions.) The analysis then assesses whether the project’s incremental contribution to those cumulative conditions would be considerable (i.e., whether the project would cause a cumulative significant impact). Contrary to the commenter’s statement, the *Revisions* does not conclude that the more severe the existing problem, the less significant the project’s impact on the cumulative condition.

Further, regarding the significance criteria applied and the intersections analyzed under those criteria, the *Revisions* analyzes cumulative impacts using all of the six significance criteria to the extent applicable (i.e., when the conditions of the criteria were relevant – e.g., is it a signalized or unsignalized intersection?, is the intersection located within or outside the Downtown area?, what is the baseline LOS?). Each of the six criteria was used at least once to identify cumulatively considerable (significant) impacts.

- F-15. The *Revisions* does not avoid analysis of past projects. As stated on page I-5 of the *Revisions*, “past projects” refers to existing development. Specific to the analysis scenario for cumulative traffic impacts (2025 With Project Conditions), existing traffic volumes on study area roads (traveling through study area intersections) consist of traffic generated by occupants and visitors of previously approved projects (i.e., “past projects”). Those existing traffic volumes were increased to 2025 With Project Conditions by adding traffic growth tied to “present projects” (i.e., projects under construction at the time of the EIR preparation), “reasonably foreseeable future projects” (i.e., those reflected in the updated cumulative growth scenario projections), and the proposed Oak to Ninth Project. Therefore, analysis of 2025 With Project Conditions assesses the cumulative (“all inclusive”) conditions.

- F-16. The commenter misread the *Revisions* and incorrectly characterizes the basis for the 18 intersections being analyzed for cumulative impacts in 2025. As stated on page II.B-2 of the *Revisions*, the 18 intersections were selected for analysis because they would operate at an unacceptable LOS E or F under 2025 With Project peak-hour conditions. As stated in Response to Comment F-15, above, 2025 With Project Conditions represent the cumulative (“all inclusive”) conditions. The 34 intersections not analyzed for cumulative impacts in 2025 would all operate at acceptable levels of service LOS in the cumulative context (with past, present and reasonably foreseeable projects plus the proposed project), and therefore could not experience a cumulatively significant impact. The analysis presented in the *Revisions* fully demonstrates whether the project’s contribution to the unacceptable level of service in 2025 is cumulatively considerable.
- F-17. The *Revisions* complies with CEQA requirements to set forth feasible measures to mitigate significant impacts. The conclusion that no feasible mitigation measures are available (for Impacts B.3c, B.3e, and B.3h) to improve operations to acceptable levels (or at least to mitigate the project’s impact) was reached only after possible improvements were explored and tested for feasibility. The explorations entailed extensive field reviews, and reviews of previous studies. As stated on pages II.B-16 and II.B-17 of the *Revisions*, for those three intersections, physical constraints (i.e., inability to widen the Webster Tube, and insufficient available right-of-way for additional travel lanes) cause mitigation to be infeasible. That same support to the conclusion of infeasibility was provided previously in the Draft EIR and in Master Response C of the Final EIR.

Comments from agencies (including the City of Alameda) about the discussion of mitigation measures provided in the Draft EIR, and suggested additional measures, were fully responded to in the Final EIR (Master Responses C and D in the Final EIR).

It is noted that the commenter was mistaken to include Impact B.3a (Atlantic Avenue and Webster Street) in this comment. The *Revisions* cited improvements proposed by the City of Alameda, which would mitigate the project’s contribution to the cumulative impact to a less-than-considerable level.

- F-18. The significance criteria used in the *Revisions* are the same criteria used in the EIR. The *Revisions* revises only the analysis the City was required to revise by the Court. The geology significance criteria are not such an issue. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Moreover, the significance criteria acknowledge that compliance with building construction requirements is not optional for a project but is mandatory under California law. CEQA does not require public agencies to ignore compliance with the mandatory requirements of state and local law in assessing the potential for significant impacts. Additionally, the City conservatively did what the commenter suggests – it found the two seismic impacts to be potentially significant and required mitigation measures based on state and local codes, among other criteria.
- F-19. The commenter states that the seismic mitigation measures defer analysis of project conditions and impacts until after EIR certification. This deferral claim is beyond the scope of analysis required to comply with the Court Order, Judgment and Writ. The EIR analyzes seismic impacts in Section IV.F, Geology, Soils, and Seismicity. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the

- Court Order. Nonetheless, the EIR and *Revisions* contain a comprehensive analysis of the project site's geology, soils, and seismicity conditions. The two potential seismic impacts are fully acknowledged and detailed mitigation measures provided. This information and analysis confirmed that all of the conditions on the site can be addressed through standard geotechnical engineering solutions as required by the mitigation measures and state and local law. The additional site-specific design level geotechnical investigations and construction methods required by the mitigation measures can only be prepared when the project buildings are designed and the specific locations of buildings are identified. This occurs prior to issuance of building permits, as required by the mitigation measures. Further, the revised mitigation measures require the analysis and implementation of architectural and engineering methods and materials as warranted.
- F-20. The commenter states that the *Revisions* does not contain any analysis of actual seismic impacts upon which to base potential mitigations. This issue is beyond the scope of analysis required to comply with the Court Order, Judgment and Writ. The EIR analyzes seismic impacts in Section IV.F, Geology, Soils, and Seismicity. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. The EIR contains an analysis of the geology, soils and seismicity conditions on the project site. This information is the basis for the determination of the potential seismic impacts and mitigation measures. In the *Revisions*, the City addresses only the Court Order finding that the EIR did not sufficiently support the conclusion that the mitigation measures would mitigate potential seismic impacts to less-than-significant levels. No additional analysis is required. Moreover, actual seismic impacts (e.g., potential soil liquefaction) are considered.
- F-21. The commenter states that the *Revisions* does not analyze how Mitigation Measures F.1 and F.2 support a conclusion that potential impacts have been reduced to less-than-significant levels. The *Revisions* contains 14 pages (II.F-1 through II.F-14) of analysis to support the conclusion that potential seismic impacts have been reduced to less-than-significant levels. This analysis explains (a) the significance criteria; (b) the state regulations governing the mitigation of seismic hazards; (c) the California Building Code requirements relating the seismic safety, including an explanation of specific requirements; (d) the City of Oakland ordinances related to mitigating seismic and other geologic hazards; (e) the implementation process for regulatory requirements and responsibilities that ensure that projects are built in compliance with state and local seismic safety requirements; (f) the geologic/geotechnical investigations prepared for the project site; and (g) the seismic hazard mitigation. This comprehensive explanation and analysis supports the findings that the two potential seismic impacts are reduced to less-than-significant levels.
- F-22. The geographic context in the *Revisions* is the same as in the EIR (Draft EIR p.IV.F-21). The commenter raised this issue in the lawsuit challenging the EIR (“Petitioners argue that the EIR failed to define the geographic scope of the area affected by each cumulative impact, or provide a reasonable explanation for the geographical limitation used in the analysis,...”) (Court Order p. 37), and the Court specifically denied this challenge (“Petitioners challenge is not well taken The petitions for writ are DENIED as to this issue.”) (Court Order pp. 37-38). Thus, this comment is outside the scope of the *Revisions*. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.

- F-23. The conclusion regarding the potential for significant cumulative seismic impacts is premised on several factors: (a) the project's compliance with all applicable codes and mitigation measures, (b) the significant distance between project structures and other structures in the project area because of streets and setbacks, and (c) the compliance of other past, present, and future structures with applicable code requirements. All three of these factors are discussed in the *Revisions*. The EIR cumulative analysis focused on compliance with applicable code requirements and reached the same conclusion that no significant cumulative impacts would result. The *Revisions* provides an expanded analysis that specifically addresses the issues required by the Court. There is no inconsistency between the EIR and the *Revisions*.
- F-24. The *Revisions* explains that there are no other present or reasonably foreseeable future projects that could combine with the project and past projects to cause a significant cumulative impact. The surrounding past projects are identified and the analysis concludes that the physical distance between project structures and these other structures and the required code and mitigation compliance would prevent the possibility of any damage to project structures combining with nearby past projects. Similarly, there are no other present or future projects that are close enough for damage to those structures to combine with potential damage to the project structures, and all present and reasonably foreseeable future projects would be required to comply with seismic safety code and mitigation requirements. Thus, the analysis presents facts to support its conclusion that no seismic cumulative impacts would result.
- F-25. As described in the *Revisions*, potential structural damage to I-880 would not combine with any structural damage to buildings on the project site because I-880 is more than one hundred feet from any new structures on the project site.
- F-26. The *Revisions* analysis notes that, except for a portion of the Ninth Avenue Terminal (Terminal), all of the past structures on the project site will be demolished. Thus, these past projects could not contribute to any potential cumulative impact. Second, the analysis discusses the remaining Terminal structure, the buildings at the Fifth Avenue Point, and the Embarcadero roadway, the only past projects near or on the project site that, during or following a seismic event, could have the potential for structural damage to combine with the project structures. The Terminal and most likely the buildings in the Fifth Avenue Point were built under less sophisticated buildings codes and do not meet the requirements of current codes for seismic safety. As part of the project, the remaining portion of the Terminal and its supporting piers would be retrofitted to meet current seismic safety requirements. The EIR analysis, however, notes that setbacks and street widths are significant enough and the project's compliance with current building code and other seismic safety requirements will ensure that any damage to project structures would not combine with damage to these nearby structures to cause a significant cumulative effect. Thus, the analysis discusses past projects not in compliance with current codes and the potential for these projects to combine with the project for a cumulative impact.
- F-27. The Court found that the EIR had not sufficiently considered past and present projects in the cumulative geology impact discussion. The *Revisions* describes the limited opportunity for the potential structural damage to the project related to a seismic event to combine with structural damage related to a seismic event from other past, present, or reasonably foreseeable future projects to cause a cumulative significant impact. The

discussion identified the only past projects near the project structures and explained why no combining of impacts would occur. There are no present projects under construction near the project site that could combine with the project to cause significant cumulative impacts. Additionally, there are no future projects near the project site that would combine with the project for a significant adverse cumulative impact related to structural damage from seismic events. One nearby future project is the seismic upgrade of I-880. This project would reduce impacts related to structural damage from seismic events. Additionally, I-880 is located more than one hundred feet from any structure on the project site and potential structural damage from the freeway and the project would not combine for a cumulative impact.

- F-28. The *Revisions* considers the cumulative traffic noise impacts of the project together with past, present, and reasonably foreseeable future projects and does not use a “ratio theory” approach. This issue was not raised in the lawsuits challenging the EIR and was not addressed in the Court Order, the Judgment or Preemptory Writ. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Moreover, this statement is incorrect. The *Revisions* (page II.G-2) states that a cumulative traffic noise impact would result if the project would result in a 5-dBA permanent increase in ambient noise levels in the project vicinity above levels existing without the project. This significance criterion (i.e., a 5-dBA noise increase) is a quantified threshold, not a ratio. It measures the actual amount of traffic noise contributed by the project; it does not express project traffic noise as a percentage (or ratio) of total traffic noise. The EIR’s use of the 5-dBA threshold was not disapproved by the Court. The only issue required to be addressed in the *Revisions* was an explanation of how past and present projects are accounted for in the cumulative analysis. Neither the EIR’s methodology nor threshold for cumulative traffic noise was addressed by the Court.

The commenter indicates that the *Revisions* “expressly analyzes roadway noise by comparing existing conditions to expected conditions in 2010 and 2025” but does not elaborate on this comment. Comparing existing conditions to projected conditions is an integral part of cumulative impact analysis.

See Responses to Comments F-14 through F-17, above, for responses to the comments on the traffic analysis. The traffic analysis and the traffic noise analysis in the *Revisions* are consistent and adequately respond to the Court Order.

- F-29. The *Revisions* identifies and evaluates the amount of traffic noise that the project would contribute to the cumulative (year 2025) scenario. This scenario combines the project’s impacts with those of other projects anticipated to be developed by 2025. This approach does not improperly “isolate the project’s incremental impacts,” as stated by the commenter. The approach used in the *Revisions* is consistent with the CEQA Guidelines Section 15355, which states that “the cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.”
- F-30. As explained in the *Revisions* (p. II.G-1), the Court specifically addressed the EIR’s analysis of cumulative traffic noise impacts. The appropriate significance criterion for evaluating cumulative traffic noise impacts is the potential for a permanent increase in traffic noise. Intermittent or temporary noise (e.g., from construction traffic) was

- adequately addressed in Section IV.G, Noise, in the EIR and was not a subject of the Court Order. The Court Order did not raise questions about cumulative impacts from construction traffic [short-term] noise. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. The significance criterion cited in the *Revisions* (i.e., the potential for a 5-dBA permanent increase in ambient noise levels) is the most appropriate and measurable criterion for evaluating the project's contribution to cumulative traffic noise impacts, which is the sole noise-related issue raised by the Court Order. Other criteria listed in the EIR address issues such as project operational noise, construction noise, and airport noise and are not appropriate as significance criteria for cumulative traffic noise impacts.
- F-31. The geographic area used to conduct the cumulative impact analysis for roadway noise described in the *Revisions* is the same as the area described in the EIR and specifically upheld by the Court Order. As stated on page IV.G-29 of the EIR, the relevant geographic area is the Oak to Ninth District and surrounding freeways and major roadways in the vicinity; further, the cumulative analysis of roadside noise levels considered the results of noise measurements in the project area shown in Table IV.G-6 in the EIR. The *Revisions* merely provides further detail on the cumulative geographic context analyzed in the EIR by stating the roadway segments analyzed in Table IV.G-6. The analysis reflects cumulative noise generated by the project and background growth, as modeled from traffic levels along these roadways.
- F-32. The cumulative traffic noise data for existing, 2010, and 2025 conditions are shown in Table IV.G-6. The text on p II.G-2 of the *Revisions* explains the data in this chart, including how it incorporates past, present, and reasonably foreseeable projects, including the Oak to Ninth Project, and provides the technical evidence to show that no significant cumulative traffic noise impacts would occur.
- F-33. See Response to Comment F-32, above.
- F-34. The geographic area used to conduct the cumulative impact analysis for hazardous materials described in the *Revisions* is consistent with the area described in the EIR. Like the *Revisions*, the EIR recognizes that “hazardous material impacts typically occur in a local or site-specific context versus a cumulative context combined with other development projects” (Draft EIR p. IV.H-25), but indicates that effects of other projects may combine during the simultaneous transport of materials from other development sites, as also stated in the *Revisions* (p. IV.H-1). Therefore, the EIR identifies the “project vicinity (per the Oakland Cumulative Growth Scenario as refined for this EIR)” for the geographic context, recognizing both the local or site-specific nature of hazardous materials effects as well as the potential for combination during simultaneous local transport. The *Revisions* discussion of geographic context on page II.H-1 does not change or conflict with this description in the EIR.
- F-35. In order for the project to contribute to cumulative hazardous materials impacts, releases of project-related hazardous materials would need to occur simultaneously with, or at the same time as, releases from other projects in the vicinity. The commenter does not explain how the *Revisions* references to “simultaneous” releases and the use of the terms “combine” and “at the same time” represent a failure to analyze the impacts of the project in combination with past, present, and future projects. Simultaneous releases are the way in which cumulative hazardous materials impacts could occur. The commenter is also

incorrect in stating that “past and future projects by definition could never meet this novel criteria [sic].” The *Revisions* (Section II.H) explains the ways in which past, present, and future projects could combine to cause simultaneous releases, although it acknowledges the instances in which simultaneous releases would be unlikely. While hazardous conditions on existing sites that have not been cleaned up would remain in place until proposed for redevelopment, such sites do not exist adjacent to the project site to “combine” (through migration) to create a potential cumulative impact. Development or redevelopment of nearby contaminated sites would be required to remediate those conditions pursuant to existing regulatory requirements. The *Revisions* details the possible combinations of simultaneous hazardous materials releases and explains the reasoning for focusing on future projects. *s* (pp. II.H-1 through II.H-2 and pp. II.H-4 through II.H-5):

- *Past projects* would generally not combine with the project to cause a cumulative hazardous materials effect because these past projects have completed remediation efforts.
- *Present projects* also would be unlikely to combine with the project to cause a cumulative hazardous materials impact because the remediation work associated with these projects is expected to be completed prior to the start of remediation at the project site.
- *Reasonably foreseeable future projects* that could combine with the project are included in the cumulative growth projections. Some reasonably foreseeable future projects may involve remediation activities that could require transport of hazardous materials to an off-site location. Although predicting which, if any, of the future projects might result in the transport of hazardous materials at the same time as the project is speculative, this scenario could potentially occur and is analyzed in the *Revisions*.

As required by the Court, this discussion provides a detailed analysis of whether and how cumulative impacts may occur considering past, present, and reasonably foreseeable future projects. The commenter fails to acknowledge the whole analysis in this section, which examines the potential for past, present, and reasonably foreseeable future projects to combine with the project for a significant cumulative impact.

- F-36. Hazardous materials releases during remediation or transportation represent the only reasonably foreseeable way in which the project’s hazardous materials impacts could combine with those from other past, present, and future development. See Response to Comment F-34, above. The commenter refers to a general list of issues provided in Section IV.H, Hazardous Materials, in the Draft EIR. The issues are addressed in the Draft EIR and incorporated into the cumulative impact discussion in the *Revisions* as appropriate. For example, “past chemical use and potential buildup of associated toxic substances in soil and groundwater” refers to an existing condition that would be remediated as part of the project; while unlikely, this remediation has the potential to cause hazardous materials releases that could combine with releases from other sites in the vicinity, as described in the *Revisions*.
- F-37. CEQA does not prohibit the use of existing regulatory requirements as mitigation measures. EIRs routinely recommend federal, state, and local laws and regulations as

- mitigation for hazardous materials impacts. See CEQA Guidelines Section 15064(h)(3), which provides: “A lead agency may determine that a project’s incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program which provides specific requirements that will avoid or substantially lessen the cumulative problem (e.g. water quality control plan, air quality plan, integrated waste management plan) within the geographic area in which the project is located. As described in the *Revisions*, in the unlikely event that hazardous materials releases from the project coincided with releases from other development, extensive federal, state, and local laws and regulations would make the potential for cumulative hazards even more unlikely. These laws and regulations are thoroughly described in the *Revisions*.”
- F-38. The commenter states that the *Revisions* revises the project description for the hazardous materials impact discussion. The *Revisions* states on page II.H-8 that “the proposed project would involve large-scale remediation activities that would substantially improve the environmental conditions on the site as well as for the adjacent Estuary.” This and similar statements throughout the hazardous materials analysis do not revise the project description but appropriately speak to the relevant component of the project, as described on page III-20 of the EIR Project Description, which discusses numerous components of the proposed project. The *Revisions* document appropriately discusses Jack London Square as a potential development site that could likely combine with remediation activities that could occur simultaneously on the project site. Reference to this nearby project does not redefine the project in any way. See Response to Comment F-34, above, regarding the cumulative context.
- F-39. In Section II.I of the *Revisions*, the subsection titled “Mitigations and Effects of Past, Present, and Future Projects” evaluates the combined biological effects of the project and past, present, and future projects. Issues discussed include biological conditions on sites within the study area (including prevalence of non-native vegetation, hazardous materials contamination, and storm drainage conditions), applicable mitigation measures, and the potential for cumulative benefits through wetland restoration and other improvements. The *Revisions* concludes that the project in combination with past, present, and reasonably foreseeable future projects would result in a less-than-significant cumulative impact on biological resources, particularly considering the positive effects of past and present projects on natural communities and wetlands in the vicinity. Contrary to the commenter’s statement, the *Revisions* does not “only lists and catalogues projects.”
- F-40. See Response to Comment F-37.
- F-41. Neither the EIR nor the *Revisions* states or assumes that all future projects will be properly mitigated, but that other projects would be required to implement measures and comply with applicable regulations that avoid and reduce adverse effects to biological resources and that, such projects result in beneficial effects in many cases. Further, it is appropriate to acknowledge, as the EIR does, that there may be projects approved that have significant effects despite regulatory compliance and implementation of measures, but this does not counter the beneficial effects that may occur with other projects that incorporate improvements to biological conditions, water quality, storm water, wetlands, etc. As discussed in Response to Comment F-37, CEQA does not prohibit the use of existing regulatory requirements as mitigation measures, and applicable biological

- resources regulations (which are thoroughly described in the *Revisions*) would make the potential for cumulative biological resources impacts even more unlikely.
- F-42. The commenter truncates the biological resources cumulative impact determination presented in the EIR to suggest that the impact would be significant. As the EIR states and the *Revisions* further clarifies to apply to biological resources *including* wetlands, “the effect of the project on biological resources, in combination with other foreseeable projects, would be less than significant.” The *Revisions* presents an in-depth cumulative analysis discussion starting on page II.I-2, which supports the continued less-than-significant cumulative impact determination from the EIR.
- F-43. The commenter states that the Draft EIR information referenced in the *Revisions* does not discuss “the historical context of population, housing and employment.” The EIR and the *Revisions* contain information about population, housing, and employment in the project area, Oakland, and the region. This information shows the result of all past development and other economic and social activities and trends. CEQA does not require a history of population, housing, and employment context or trends in order to evaluate potential cumulative impacts. It is sufficient to describe the existing conditions that fully reflect past development activity, and evaluate whether the results of this past activity in combination with present and reasonably foreseeable future development would result in potential significant adverse cumulative impacts based on the applicable significance criteria.
- F-44. The commenter incorrectly states that it is impermissible to examine the project’s potential to contribute to cumulative impacts. The CEQA Guidelines provide: “A cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts. An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR” (CEQA Guidelines Section 15130(a)(1)). Thus, if, under the significance criteria, a project does not contribute to a significant adverse cumulative impact, then no discussion of the potential impact is required.
- F-45. The commenter incorrectly states that the *Revisions* does not include the significance criterion from the EIR: Displace significant numbers of existing housing, necessitating the construction of replacement housing elsewhere in excess of that contained in the City’s Housing Element. This criterion is referenced as criterion (1) on page II.J-2 of the *Revisions* in the paragraph under the heading *Significance Criteria*. The commenter also incorrectly states that the *Revisions* does not explain why the criterion “has not been applied to cumulative impacts.” The paragraph under the heading *Potential for Displacement of Substantial Numbers of Existing Housing Units or People* on page II.J-2 of the *Revisions* discusses how the project, which does not displace housing, has no potential to contribute to this impact.
- F-46. The commenter states that the *Revisions* “impermissibly” focuses on the project impacts rather than the combined impacts of past, present, and future projects. CEQA requires a discussion of the project’s potential to contribute to a cumulative impact. In order to determine whether a project could contribute to a potential adverse cumulative impact, the City must consider the project’s potential to have an adverse impact under the significance criteria. In this analysis, the potential for the project to contribute to significant adverse cumulative impacts is fundamental. For example, the project could

- not contribute to a potential significant cumulative impact related to the displacement of substantial numbers of existing housing units (criterion (1)) because the project would not displace any housing units. Similarly, the reasons why the project would not contribute to a potential significant cumulative impact related to displacement of substantial numbers of businesses and jobs necessitating the construction of replacement facilities in excess of that contemplated by the General Plan or increasing the distance traveled between uses and their markets (criterion (2)) are explained on pages II.J-2 and II.J-3. Additionally, the analysis on page II.J-3 explains why no significant adverse cumulative impact under criterion (2) would occur from past, present, or reasonably foreseeable future projects. With respect to criterion (3), the text on pages II.J-3 and II.J-4 explains why the project has no potential for a potential impact based on this criterion. With respect to criterion (4), the text on pages II.J-3 and II.J-4 explains how the project, and other recent past projects, present projects, and reasonably foreseeable future projects, would have a beneficial impact on revitalizing this area of Oakland. Consequently, no significant adverse project or cumulative urban decay impact would occur. No additional discussion is required.
- F-47. The commenter incorrectly states that the *Revisions* did not identify past, present, and future projects considered. Pages II.J-1 and II.J-2 describe the sources of information about past, present and reasonably foreseeable future development that are considered in this analysis, and the analysis mentions specific projects. Additionally, the commenter overlooks the nature of the analysis that is appropriate based on the facts and the type of impacts discussed. CEQA does not require that an EIR research and document every individual project that contributes to generalized cumulative economic and social trends, particularly where the data show that no significant adverse cumulative impacts have or would occur and that the project has no potential to contribute to any such impacts.
- F-48. The *Revisions* (p. II.K-1) describes past and present projects, noting that they are generally small to medium-sized residential and commercial developments or rehabilitations and reuse of existing space. The *Revisions* describes visually prominent past projects, including the nearby residential condominiums known as The Landing and The Portobello as well as less visually prominent projects. Thus, the text and the photographs include past and present projects in the analysis as required by the Court Order.
- F-49. The *Revisions* uses the phrases “dense urban setting” and “developed urban area” as general descriptions of the visual environment in the project site vicinity. For example, the *Revisions* states that past and present projects, which are generally small to medium-sized residential and commercial developments or rehabilitations, are not visually significant given the “dense urban setting”; and that the interior and exterior lights of buildings and lighting visible through windows, in parking lots, and on city streets are typical of a “developed urban area.” These statements are relevant to the consideration of cumulative visual impacts. The *Revisions* does not imply that the noted phrases are “significance criteria” or rely on these statements alone to rule out cumulative impacts. The *Revisions* contains a thorough discussion of each of the aesthetics-related significance criteria contained in the CEQA Guidelines and the City of Oakland’s 2004 CEQA Thresholds/Criteria of Significance Guidelines. Also see Response to Comment F-50, below.

- F-50. See Response to Comment F-49, above. The statement cited by the commenter is part of the *Revisions*' description of past, present, and future projects as well as its analysis of cumulative impacts on visual character and quality. The fact that reasonably foreseeable future projects mainly involve renovations, rehabilitations, or use conversions of existing buildings is directly relevant to this analysis because, by reusing existing buildings rather than constructing new ones, the projects have less potential to affect the visual setting. The *Revisions* discusses this issue in detail. The *Revisions* does not imply that this statement about future projects is a significance criterion. The *Revisions* contains a thorough discussion of each of the aesthetics-related significance criteria contained in the CEQA Guidelines and the City of Oakland's 2004 CEQA Thresholds/Criteria of Significance Guidelines.
- F-51. The photo simulations referenced in the *Revisions* provide an important illustration of the existing visual setting and the project's potential impact on that setting. The commenter believes the photos do not "relate to the historical visual context." The photos directly relate to the "historical visual context" by illustrating past patterns of development in the area and the project's potential impacts on those patterns. The *Revisions* does not use the simulations as a "substitute" for discussion of projects or project impacts. Section IV.K of the *Revisions* thoroughly discusses the project's potential contribution to cumulative visual impacts, referring to the photo simulations only as illustrations in the discussion of impacts on visual character and views.

The commenter believes the *Revisions* "limits its consideration to the project and existing conditions." However the commenter himself notes the *Revisions* description of future projects as including renovations, rehabilitations, and use conversions of existing buildings (see Response to Comment F-50, above). In addition to describing the project and existing conditions, the *Revisions* describes and evaluates the effects of present and future projects; see the subsection titled *Cumulative Analysis Considering Past, Present, and Reasonably Foreseeable Future Projects in Addition to the Project* in Section II.K of the *Revisions*. Specific future projects noted in the *Revisions* analysis include the Jack London Square Redevelopment Project planned for nine sites located generally between Clay, Jackson, and 2nd Streets and the Embarcadero roadway.

- F-52. The commenter is incorrect in stating that the *Revisions* does not employ each of the stated visual significance criteria in analyzing potential cumulative visual impacts. In Section II.K the *Revisions*, the subsection titled *Visual Character and Quality* evaluates the potential for substantial degradation of existing visual character and quality. The subsection titled *Views and Scenic Vistas* evaluates potential adverse effects on scenic vistas and resources. The subsection titled *Light and Glare* evaluates the potential for new sources of light or glare. The subsection titled *Shadow* evaluates the potential for shadows to affect solar collectors, parks, open space, or historic resources. Finally, the subsection titled *Provision of Adequate Light* evaluates potential impacts in relation to policies and regulations that address the provision of adequate light. This approach is outlined in the subsection titled *Significance Criteria* in Section II.K of the *Revisions*.

The *Revisions* reproduces and refers to shadow diagrams (Draft EIR Figures IV.K-20 through IV.K-33) and other relevant figures in the Draft EIR and Final EIR. As discussed in detail in the *Revisions*, shadow from past projects is depicted in each of the existing condition shadow studies, and shadow from the proposed project is considered in combination with existing conditions in all of the shadow studies in the EIR. As stated in

the *Revisions*, no present or reasonably foreseeable future projects are known that would create increased shadow near the proposed project site that could combine with project shadows to create a cumulative shadow effect; the present and reasonably foreseeable future projects are either located too far away from the project site or are primarily renovations, rehabilitations, or use conversions of existing structures that would not involve substantial changes in building form or appearance. The commenter does not present any evidence to dispute these conclusions.

- F-53. The *Revisions* contains a detailed discussion of cumulative impacts on visual character and quality, and concludes that the proposed project, combined with closely related past, present, and reasonably foreseeable future projects, would not result in a significant adverse cumulative impact. Similarly, the *Revisions* contains a detailed discussion of cumulative impacts on views and scenic vistas, concluding that the proposed project, combined with closely related past, present, and reasonably foreseeable future projects, would not result in a significant adverse cumulative impact (and would in fact add to the visual interest of views in the area). CEQA does not require mitigation measures for impacts that are less than significant.

The commenter is incorrect in stating that “the *Revisions* does not reveal what past, present, and future projects it considers.” Section II.K of the *Revisions* describes past, present, and reasonably foreseeable future projects relevant to the analysis of cumulative visual impacts. In addition, in the evaluation of cumulative visual character and view impacts, this section of the *Revisions* specifies and describes particularly relevant projects, such as the future Jack London Square Redevelopment Project, which is depicted in photo simulations.

- F-54. As discussed in the *Revisions*, the analysis of cumulative public services impacts considers past projects through its evaluation of existing services and facilities along with cumulative growth projections, which account for past, present, and reasonably foreseeable future projects. “Past projects” (i.e., existing development) within the study area and the city as a whole contribute to existing and projected service demands. In the analysis of cumulative public services impacts, the important consideration is whether service demands from the project might combine with existing demands and other projected demands to create a need for new or altered public service facilities. Section II.L of the *Revisions* provides this analysis.
- F-55. The geographic contexts for cumulative public services topics presented in the *Revisions* is consistent with that in the EIR (Draft EIR p.IV.L-20); the *Revisions* document provides greater detail by providing a geographic context for each of the public services topics, whereas the EIR provided a comprehensive context that encompassed all of the topics.
- F-56. Section II.L of the *Revisions* discusses cumulative impacts on police services. The commenter mischaracterizes how the CIP information fits into the cumulative analysis. Fundamentally, the analysis demonstrates that the Oakland police and fire departments can meet past, present, and reasonably foreseeable projects growth without constructing major new facilities, the construction of which would have a significant impact. This conclusion is supported by the entire analysis in the *Revisions*.
- F-57. The *Revisions* does not defer analysis of fire service impacts to the CIP budgetary process. Section II.L of the *Revisions* discusses Oakland Fire Department (OFD) requests

- in the City's approved budget, noting that both the 2005-2010 and 2007-2012 CIPs focus on staffing, training, and maintenance and repair of existing facilities and do not provide for any new or physically altered facilities. This is one factor in the overall conclusion that past, present, and reasonably foreseeable development would not result in the construction of significant new facilities that could cause significant new impacts.
- F-58. As explained in Responses to Comments F-56 and F-57, above, the *Revisions* concludes that no new or altered police or fire protection facilities would be needed to serve the proposed project when considered in combination with past, present, and reasonably foreseeable future development. The *Revisions* goes on to indicate that, should any new or altered facilities be required in the future, mitigations measures imposed through the CEQA review process and the City's standard conditions of approval would likely reduce potential impacts to less-than-significant levels. As noted in the *Revisions*, this finding is consistent with City findings related to the Oakland General Plan. The finding is not essential to the current analysis of the project's contribution to cumulative impacts. Moreover, the comment is speculative and provides no evidence that the project would have a significant cumulative impact to police and fire facilities.
- F-59. The commenter is incorrect in stating that "there is no discussion of the combined effects of the project in combination with past, present and future projects on schools." The Draft EIR and *Revisions* discuss existing student enrollment in Oakland Unified School District (OUSD) schools, along with the number of students anticipated from the proposed project. As discussed in the *Revisions*, the OUSD expects overall enrollment to decrease in the foreseeable future. Thus, it is reasonable to conclude that the combined effect of the project and past, present, and reasonably foreseeable future projects would not result in the need for new or altered schools. The *Revisions* therefore concludes that the cumulative impact on schools would be less than significant and that no mitigation is required. Furthermore, as discussed in the *Revisions*, Senate Bill 50 (SB50) provides that developer payment of school impact fees must be deemed full and complete mitigation of school impacts. The project sponsor, the sponsors of all past projects since the passage of SB50, all present projects, and reasonably foreseeable future projects would be required to pay these fees, as noted in the *Revisions*.
- F-60. As described throughout Section II.L of the *Revisions*, the proposed project, combined with other closely related past, present, and reasonably foreseeable future development, would not result in a significant adverse cumulative public services and recreation impact. This point has been clarified in the revision of Impact L.6 contained in the *Revisions*. Since no significant impact has been identified, no mitigation is required.
- F-61. The geographic contexts for cumulative utility impacts topics presented in the *Revisions* are consistent with that in the EIR (Draft EIR p.IV.M-17); the *Revisions* provides greater detail by providing a geographic context for each of the utilities topics, whereas the EIR provided a comprehensive context that encompassed all of the topics. One variation is the geographic context for cumulative impacts on wastewater treatment utilities, which is clarified in the *Revisions* as EBMUD's Special District No.1, which includes the cities of Alameda, Berkeley, Emeryville, Oakland, and Piedmont, and as the Stege Sanitary District, which includes El Cerrito, Kensington, and parts of Richmond. This is an appropriate expansion and refinement of the geographic context described in the EIR as "Oakland and its surrounding areas, in accordance with the Oakland Cumulative Growth Scenario as refined for this EIR."

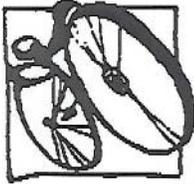
F-62. “Past projects” (i.e., existing development) within the applicable water, wastewater, and solid waste service areas contribute to, and are accounted for in, existing and projected service demands. In the case of water supply and wastewater service, for instance, the demand from past, present, and reasonably foreseeable future projects is reflected in the East Bay Municipal Utility District (EBMUD) Urban Water Management Plan (UWMP), which reports on current and projected demands based on regional population projections. For solid waste service (i.e., landfill capacity), the demand from past, present, and reasonably foreseeable future development is reflected in the Alameda County Integrated Waste Management Plan (ACIWMP), which identifies landfill disposal and capacity needs through the year 2025 based on existing and projected future development. The *Revisions* contains a detailed description of these planning documents. This approach is appropriate for the cumulative impact analysis. As described in the *Revisions*, both the UWMP and ACIWMP are based on comprehensive population projections; these projections account for existing development within the relevant service areas as well as reasonably foreseeable development. The *Revisions* details the ways in which the demand projections account for past, present, and reasonably foreseeable future projects in the relevant service areas and concludes that the project, when combined with these other projects, would not result in a significant adverse cumulative utilities impact. The commenter is therefore incorrect in stating that the *Revisions* does not discuss the combined effects of the project and past, present, and future projects.

The commenter’s statement that the *Revisions* “relies upon paper water” was not raised in the lawsuits challenging the EIR, and was not addressed in the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Moreover, the comment is inaccurate. The *Revisions* indicates that anticipated water demand would be met through existing water supply sources as well as new projects such as the Freeport Regional Water Project, a water supply project providing for delivery of water from the Sacramento River to EBMUD customers during drought years, and the Bayside Groundwater Project, a groundwater storage project. As indicated in the *Revisions*, both of these projects will provide supplemental water supplies to address the demand during multiple drought years. The *Revisions* states that (1) construction of the Freeport Regional Water Project is expected to be completed by 2009 (Draft EIR p. IV.M-2; see also 2005 UWMP p. 2-15); and (2) the Bayside Groundwater Project was to be considered for approval in 2005, and the 2005 UWMP projected completion of Phase 1 by December 2007 (Draft EIR p. IV.M-3; see also 2005 UWMP p. 2-18). Both projects are well under way and are intended only to provide supplemental water supplies in multiple drought years. Thus, it is not accurate to suggest that they represent “paper water” (i.e., a theoretical water supply, so-called because it exists only on paper). Further, the commenter does not provide any evidence or details to substantiate this claim.

F-63. The commenter states that “it is unclear whether all or portions of the *Revisions* to the EIR are being added to the EIR.” As stated in Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order, the Court required that aspects of the EIR be revised; the Court did not require the City to revise the entire EIR, but only directed that revisions explain how past and present projects were accounted for in the cumulative analysis. Consistent with the Court Order, the *Revisions* “does not revise the EIR in any respect other than as directed by the Court...when the [*Revisions*] document is approved by the City and the court, it will be one of the

documents constituting the EIR.” *Revisions* to impacts statements or mitigation measures in the EIR are presented in the edited underlined/strikeout text throughout the *Revisions* document to specify changes. The revised mitigation measures are incorporated in the revised Mitigation Monitoring and Reporting Program, which has been prepared and is attached to the Staff Report to the City Council regarding the EIR and the *Revisions*. See specific Responses to Comments below regarding the commenter’s statement that there may be inconsistencies between the EIR and the *Revisions* document.

- F-64. See Master Response C, Public Review Process of the *Revisions*. In addition, the commenter incorrectly implies that the *Revisions* are to be considered in a vacuum. The *Revisions* are to be considered together with the prior CEQA documents, and the City Council will exercise its discretion whether to re-certify the EIR, as revised.

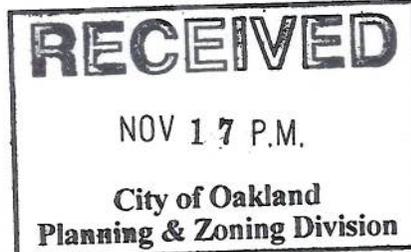


EAST BAY BICYCLE COALITION Comment Letter G

POST OFFICE BOX 1736 OAKLAND, CALIFORNIA 94604
FRUITVALE VILLAGE, 3301 EAST 12th ST, SUITE 143
www.ebbc.org (510) 533-RIDE

November 17, 2008

Margaret Stanzione, Project Planner
City of Oakland
Community and Economic Development Agency
Planning Division
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612



RE: Comments on Revisions to the Analysis in the Oak to Ninth project EIR
(sch. no.2004062013)

The East Bay Bicycle Coalition (EBBC) wishes to provide the following comments on the Revisions to the Analysis in the Oak to Ninth project EIR. We will focus on the revisions related to the Court Order finding that the EIR failed to comply with the California Environmental Quality Act (CEQA) because:

“ it did not include a sufficient cumulative impact analysis for the land use section and for the population and housing section; ... the traffic analysis relied on an improper ratio theory to evaluate cumulative impacts; ”

G-1

Population and Housing - The revised analysis fails to provide for mitigations to address the geographic isolation of the project site. The cumulative impacts of the proposed population and housing will significantly burden existing access and is not mitigated.

G-2

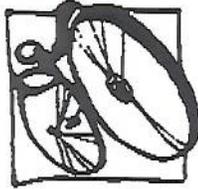
The revised analysis correctly acknowledges the geographic isolation of the project site by stating that “the site is physically separated from areas to the north by the Embarcadero Roadway, the railroad tracks, and the I-880 freeway.” (p. I.LA-2) Furthermore, the revised analysis unreasonably presumes that “as the Lake Merritt Channel improvements funded per Measure DD, will alleviate this condition and reconnect the Estuary waterfront with the other areas of the City.” (p. I.LA-3). Improvements proposed by Measure DD will be overburdened by the project population. Furthermore, Measure DD does not offer a grade-separated bicycle-pedestrian connection via the Lake Merritt Channel as the revised analysis implies. In short, we see no reduction in the isolation of the site forthcoming from the revised analysis.

G-3

The project will not offer improved access to the shoreline from the upland neighborhoods, nor will future residents find the limited options to cross the rail and highway barriers inviting for non-motorized travel. EBBC reiterates the comments we provided to the Oakland City Councilmember Henry Chang on 6/25/06 (See: attached EBBC_letterOakland Council). We continue to seek to reduce the isolation of the site and improve safe access for bicyclists and pedestrians by promoting a grade-separated access across the railroad tracks.

G-4

TO PROMOTE BICYCLING AS AN EVERYDAY MEANS OF TRANSPORTATION AND RECREATION



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The impacts of the added population will represent significant impacts on the existing commuter bikeway along Embarcadero—a component of the Bay Trail and a priority Regional Bikeway. Note that the proposed project site is between the Estuary Bridge crossings and Downtown Oakland. Degradation of this level route will impact commuters from Oakland as well as from the City of Alameda.

G-5

The PUC letter dated 12/22/2005 also commented “the issue of safety around the tracks must be addressed as part of this development.” In light of the cumulative population and housing impacts, the proposed mitigations to merely construct a fence and install “bicycle and pedestrian warning signage at the existing at-grade crossing along 5th Avenue” (VI-3) are woefully inadequate.

G-6

One option that can partially address the issues related to population and housing is to reduce the size of the project.

Traffic Analysis – We find no evidence that the traffic analysis included bicycle counts. Traffic impacts on bicyclists cannot be assessed without incorporation in the traffic analysis (note the distinction between traffic analysis and the “Draft Transportation Demand Managements Program” that appeared as Appendix A in the EIR. This represents a serious oversight given the project’s nexus with the Bay Trail, the Regional Bikeway along Embarcadero, and existing need for upland access to the shoreline, along with the future need to offer transportation options for shoreline residents.

G-7

Without providing mitigations that improve the access and safety to the project site for bicyclists and pedestrians, we can safely predict that the majority of future residents will be dependent on motor vehicles. Visitors to the shoreline will also likely arrive by motor vehicle to both reduce the attractiveness of the environment for bicyclists and pedestrians and add a parking burden to the site.

No transit service to the project site was addressed in the proposed mitigations.

G-8

All proposed traffic mitigations need to include a stated delivery schedule for inclusion in the Mitigation Monitoring and Reporting Program. Delivery of most traffic mitigations needs to occur in conjunction with the project construction. Completion of the Bay Trail path next to the shoreline should occur in total, since a piecemeal phasing would not function until the last portion of the network is complete.

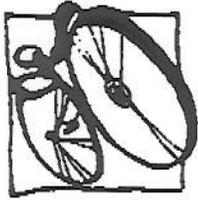
G-9

We note that the feasibility of implementing a mitigation for Impact B.3d (Traffic generated by buildout of the project under 2025 on 5th and Oak Streets at the I-880 Southbound On-Ramp) depends on a third party—Caltrans—and is neither promised, nor in the current Caltrans plans. Future roadway enhancements need to abide by AB 32 standards to assess project alternatives that reduce Vehicle Miles Traveled along with Greenhouse Gas Emissions.

G-10

G-11

TO PROMOTE BICYCLING AS AN EVERYDAY MEANS OF TRANSPORTATION AND RECREATION



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The project represents a dismal proposal in an era when the consideration of transportation alternatives to reduce emissions is mandatory in California. A recent correspondence from the State Attorney General to the Metropolitan Transportation Commission called for even "committed" projects to be assessed for their Greenhouse Gas Emissions (See: letter dated 10/1/08).

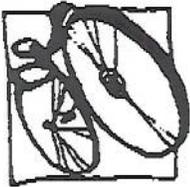
G-12

EBBC and our members respectfully wish to see development along the Oak to Ninth shoreline that sustainable and does not inconvenience travelers through the area, nor financially burden future generations or the State to provide infrastructure for a casually-conceived development proposal.

G-13

Robert Raburn, PhD

Executive Director



EAST BAY BICYCLE COALITION

POST OFFICE BOX 1736 OAKLAND, CALIFORNIA 94604

www.ebbc.org

June 25, 2006

The Honorable Henry Chang
City of Oakland Council Member
by fax 238-6910

Dear Council Member Chang:

The East Bay Bicycle Coalition is a member of the group appealing the Oakland Planning Commission approval of the Oak to Ninth Ave Project. Our interests focus on guaranteeing maximum feasible public access to the Oakland Estuary shoreline and mitigating the project's traffic impacts on bicyclists and pedestrians.

- Estuary access from the upland neighborhoods along a 1-1/2 mile stretch is currently limited to Oak St, 5th Ave, and 16th Ave. Oak St and 5th Ave are at-grade railroad crossings that are inherently unsafe for current vehicle and rail traffic volumes. We join the California Public Utilities Commission call for addressing track crossing safety as part of this development proposal (letter dated 12/22/05). This includes the PUC support for a grade-separated bicycle/pedestrian connection between the trails leading from Lake Merritt to Estuary Park and the Jack London Aquatic Center.
- The Bay Trail alignment through the project should be a continuous path next to the shoreline. Completion of the Bay Trail must accompany the project and not be deferred to a later date.
- Increased traffic on Embarcadero will place bicyclists and pedestrians who cross the narrow bridge over the Estuary Channel at greater risk. Currently the bridge represents a pinch point for bicycle travel along an otherwise superb on-street bikeway. Widening of this bridge is needed as mitigation for increased traffic generated by the project, as well as the increased train traffic that will cause more frequent crossing closures, diverting motorists to Embarcadero if the separated grade crossings mentioned above are not built.

Together, these suggestions will ensure that the Estuary shoreline is an integral component of Oakland, offering the new residents safe non-motorized access to Lake Merritt and downtown workplaces and transit, while providing the existing citizens with access to the public shoreline and regionally significant bikeways for commuters and recreational bicyclists.

Sincerely,

Robert Raburn
Executive Director
(510) 530-3444

TO PROMOTE BICYCLING AS AN EVERYDAY MEANS OF TRANSPORTATION AND RECREATION

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October 1, 2008

By Facsimile and U.S. Mail
(510) 817-5848

Ms. Ashley Nguyen
EIR Project Manager
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607

RE: Comments on the Notice of Preparation for Draft Environmental Impact Report For the Transportation 2035 Plan

Dear Ms. Nguyen:

The Attorney General submits these comments to the Metropolitan Transportation Commission ("MTC") on the Notice of Preparation for the Draft Environmental Impact Report ("DEIR") for the proposed Transportation 2035 Plan ("Proposed Transportation Plan"). Although the deadline for comments on the Notice of Preparation has passed, we request that MTC consider these comments in preparing the DEIR.

We commend MTC for committing to evaluate the climate change impacts of the investments identified in the Proposed Transportation Plan. We also commend MTC for working to provide funding for "smart growth" development strategies that will reduce vehicle emissions associated with new development, for working to expand the bicycle network, and for including other elements of a Climate Change Program in the Proposed Transportation Plan. As climate change is one of the most critical environmental challenges to face our communities today, we urge MTC to embrace the opportunity it has in the Proposed Transportation Plan and the accompanying DEIR to show further leadership by identifying a comprehensive transportation strategy that will reduce emissions of the greenhouse gasses ("GHG") that cause global warming.

Global Warming in California

The Intergovernmental Panel on Climate Change of the United Nations has found

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overwhelming evidence that global warming is occurring and is caused by human activity.¹ The California Climate Change Center reports that temperatures in the State are expected to rise 4.7 to 10.5°F by the end of the century.² Such increases would have serious consequences, including substantial loss of snowpack, an increase of as much as 55% in the risk of large wildfires, reductions in the quality and quantity of agricultural products, exacerbation of California's air quality problems, and adverse impacts on human health from increased heat stress, including heat-related deaths, as well as increases in asthma, respiratory, and other health problems.³

California recognizes that global warming is an urgent problem. As reflected in the California Global Warming Solutions Act of 2006 ("AB 32") and Executive Order S-3-05, we must substantially reduce our total GHG emissions by mid-century in order to stabilize atmospheric concentrations of GHGs at a level that will avoid dangerous climate change. This makes it imperative to address GHG emissions from the transportation sector, which account for 38% of the GHG emissions in the State.⁴ In the Bay Area, emissions from the transportation sector are even greater, accounting for 50% of the total.⁵ If we fail to make better transportation and land-use decisions – at all levels of government and at every opportunity – in a very short time, our climate goals may be out of reach. According to Rajendra Pachauri, Chairman of the United Nations Intergovernmental Panel on Climate Change ("IPCC"), "If there's no action before 2012, that's too late. What we do in the next two to three years will determine our future. This is the defining moment."⁶

¹United Nations Intergovernmental Panel on Climate Change, *Fourth Assessment Report: Climate Change 2007* (February 2007) *Working Group I Report, The Physical Science Basis, Summary For Policymakers* ("IPCC 4th").

²California Climate Change Center, *Our Changing Climate: Assessing the Risks to California* (July 2006) page 2, available at <<http://www.energy.ca.gov/2006publications/CEC-500-2006-077/CEC-500-2006-077.PDF>> (as of September 29, 2008). The report was prepared by the Climate Change Center at the direction of CalEPA pursuant to its authority under Governor's Executive Order No. S-3-05 (June 1, 2005) ("Exec. Order S-3-05").

³*Id.* at pp. 2, 10; Exec. Order S-3-05.

⁴California Air Resources Board, *Climate Change Draft Scoping Plan* (June 27, 2008) page 7 ("Draft Scoping Plan").

⁵Bay Area Air Quality Management District, *Source Inventory of Bay Area Greenhouse Gas Emissions* (November 2006) page 7.

⁶Rosenthal, *U.N. Chief Seeks More Leadership on Climate Change*, N.Y. Times (November 18, 2007).

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California Environmental Quality Act

As the Legislature has recognized, global warming is an "effect on the environment" under the California Environmental Quality Act ("CEQA"), and an individual project's incremental contribution to global warming can be cumulatively considerable.⁷ The projects authorized in the Proposed Transportation Plan will result in significant increases in the GHG emissions that contribute to global warming.

CEQA was enacted to ensure that public agencies do not approve projects unless they include feasible alternatives or mitigation measures that substantially reduce the significant environmental effects of the project.⁸ CEQA requires that "[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so."⁹ This requirement is recognized as "[t]he core of a DEIR...."¹⁰ Therefore, a DEIR must identify mitigation measures and examine alternatives that would reduce the emissions of greenhouse gases that contribute to global warming.¹¹ These requirements of CEQA are consistent with federal law, which requires the Proposed Transportation Plan to consider projects and strategies that will "protect and enhance the environment" and "promote energy conservation" and to discuss "potential environmental mitigation activities."¹²

An EIR like the DEIR for the Proposed Transportation Plan must provide an accurate depiction of existing environmental conditions.¹³ "Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined."¹⁴

⁷See Cal. Pub. Res. Code, § 21083.05, subd. (a); see also Sen. Rules Comm., Off. Of Sen. Floor Analyses, analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.), Aug. 22, 2007.

⁸Pub. Resources Code, § 21002.

⁹Pub. Resources Code, §§ 21002.1, subd. (b), and 21081; see also *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134.

¹⁰*Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal.3d 553, 564-65.

¹¹Pub. Resources Code, § 21002.1(a); Cal. Code Regs., tit. 14, § 15130, subd. (b)(5).

¹²23 U.S.C. §§ 134(h) and 134(i)(2)(B)(i). (See text accompanying fn. 19, *infra*.)

¹³Cal. Code Regs., tit. 14, § 15125, subd. (a).

¹⁴*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

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The DEIR Should Consider Climate Change Impacts, As Well As Effective Methods of Mitigation and Alternatives to Reduce Such Impacts

The Proposed Transportation Plan will authorize expenditure of approximately \$223 billion for transportation projects, including road construction and improvements that will provide additional road capacity and accommodate more vehicles. These projects will contribute cumulatively to the Bay Area's existing GHG load. In addition, implementing the Proposed Transportation Plan will result in increased GHG emissions during construction of the authorized projects, resulting in a significant cumulative impact on climate change. The DEIR should evaluate all the anticipated climate change impacts of GHG emissions from these actions, including emissions of black carbon from diesel-powered vehicles, as black carbon also contributes significantly to global warming.¹⁵

"Smart" land-use strategies can result in a reduction in vehicle miles traveled ("VMT") over the long term, which in turn is critical to reducing GHG emissions from the transportation sector. Statewide, VMT increased approximately 35% from 1990 to 2007, and under a business-as-usual scenario, VMT is currently expected to increase another 20% by 2020.¹⁶ According to the California Energy Commission, if we do not slow this anticipated growth in VMT, the increase will completely nullify the other advances that the State is making to control transportation-related emissions, including lowering the carbon content of fuel.¹⁷

As the Air Resources Board notes, "[t]he key to addressing the VMT challenge is providing people with more choices through diversified land use patterns, greater access to alternative forms of transportation including transit, biking and walking, and creating cities and towns where people can live, work and play without having to drive great distances."¹⁸ In addition, the way a transportation plan allocates funds among potential transportation projects can make a significant difference in the amount of transportation-generated GHG emissions in the future. The DEIR should discuss whether the Proposed Transportation Plan *maximizes* the use of available funds for public transit, alternative fuel vehicles, carpool, vanpool, rideshare, pedestrian and bicycle projects (including "Safe Routes to School" programs), and other measures that reduce VMT and/or GHG emissions.

¹⁵Black carbon is a strong absorber of solar radiation, and black carbon particles mixed with dust and chemicals in the air may be the second biggest contributor to global warming. (See California Air Resources Board, Health Effects of Diesel Particulate Matter pages 4-5, available at <http://www.arb.ca.gov/research/diesel/dpm_draft_3-01-06.pdf> [as of September 29, 2008].)

¹⁶Draft Scoping Plan Appendices page C-22.

¹⁷California Energy Commission, The Role of Land Use in Meeting California's Energy and Climate Change Goals, Final Staff Report (August 2007) pages 10, 18.

¹⁸ Draft Scoping Plan Appendices page C-22.

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CEQA requires that an EIR evaluate the potential environmental impacts of an entire project, which in this context we believe represents the entire \$223 billion of authorized expenditures – not just the \$31.6 billion for projects MTC identifies as “discretionary,” but also the \$191 billion for projects identified as “committed,” projects included in the prior Transportation Plan but not yet constructed. The EIR for the prior Transportation Plan was prepared before AB 32, with its GHG-emission reduction goals, was enacted. The prior Transportation Plan and EIR also were adopted before the enactment of the federal act (effective August 2005) (SAFETEA-LU) that requires a Transportation Plan to address projects and strategies that will “protect and enhance the environment, promote energy conservation, improve the quality of life”¹⁹ Finally, the California Transportation Commission (“CTC”) recently adopted the Addendum to the 2007 Regional Transportation Plan Guidelines, “Addressing Climate Change and Greenhouse Gas Emissions During the RTP Process;” this guidance also did not exist when the EIR for the prior Transportation Plan was adopted.²⁰

Accordingly, CEQA requires evaluation in the DEIR of climate change impacts both of the “committed” projects and the “discretionary” projects, and ways to eliminate or reduce such impacts. It also requires consideration of an alternative that, where feasible, eliminates from the Proposed Transportation Plan so-called “committed” projects that would contribute to adverse cumulative impacts on climate.²¹

The Proposed Transportation Plan includes projects that MTC has selected for funding with \$31.6 billion in “discretionary” funds. To select these projects, MTC stated it used a performance rating system to evaluate the projects’ anticipated effectiveness at meeting the region’s transportation goals. Among other things, the adopted goals include “climate protection,” and the “performance objectives” include reducing VMT and reducing emissions (including GHGs). We commend MTC for adopting these goals and objectives.

The Proposed Transportation Plan also includes an additional \$191 billion for projects that were authorized in the last Transportation Plan, which MTC refers to as “committed” projects. MTC indicates that the “committed” projects include about \$29 billion for transit and road expansion and \$162 billion to maintain the existing transportation system. We understand that the \$29 billion of “committed” projects for transit and roadway expansion have been proposed for inclusion in the new Transportation Plan without renewed evaluation of the relative need for, benefits of, or impacts of these projects vis-à-vis others, and regardless of how well they meet MTC’s identified goals and performance objectives. We urge MTC to rectify this omission with respect to the “committed” transit and roadway expansion projects (which reflect only 15% of the “committed” funding). MTC’s own research shows that achieving reductions in

¹⁹23 U.S.C. § 134(h)(1)(E).

²⁰It was adopted by the California Transportation Commission on May 29, 2008.

²¹If there is a contractual obligation or other overriding reason to complete a particular low-performing “committed” expansion project, the DEIR should discuss this.

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GHG emissions consistent with the goals of AB 32 will be extremely difficult;²² this highlights the need for careful and complete evaluation of impacts on VMT and GHG emissions of *all* expenditures for road and transit expansion in the Proposed Transportation Plan.

MTC staff's analysis indicates that many of the "committed" expansion projects support only one, in some cases *none*, of the identified performance goals. If low-performing "committed" projects were eliminated where feasible to do so, funding would be available to cover transit shortfalls, particularly for BART, Muni, and AC Transit, which together carry 80% of the transit riders in the Bay Area.²³ If these shortfalls are not addressed, or if they are addressed through fare increases, as recently proposed,²⁴ ridership may fall, with a concomitant increase in GHG emissions. The DEIR should address the implications of the potential transit shortfalls on GHG emissions and whether those impacts could be reduced by using funds currently proposed to be allocated to low-performing "committed" projects. This would be consistent with the direction in the CTC's guidelines for addressing climate change in RTPs to "[c]onsider shifting transportation investments towards improving and expanding urban and suburban core transit, programs for walkability, bicycling and other alternative modes, transit

²²See Therese W. McMillan, Deputy Executive Director, Policy, Metropolitan Transportation Commission, presentation to California Transportation Futures Symposium (September 3, 2008), Transportation 2035: S.F. Bay Area - Targeting Health Through Environment, available at <http://www.dot.ca.gov/hq/tpp/offices/osp/presentations/McMillan.T.ppt> (as of September 30, 2008).

²³There is currently a projected \$19 billion shortfall in transit capital and operating needs for transit in the Bay Area over the life of the Proposed Transportation Plan, and a projected \$4.2 billion shortfall in BART core capacity improvements. (See Commission Meeting presentation (July 23, 2008), Transportation 2035: Financially Constrained Investment Plan, page 22, available at http://apps.mtc.ca.gov/meeting_packet_documents/agenda_1116/T2035_Recommendations_short_v.3.ppt [as of October 1, 2008].) These figures were generated before recent increases in public transit ridership due to high gasoline prices. The American Public Transportation Association reports more than a 5% increase in BART ridership in 2008. (See <http://www.apta.com/research/stats/ridership/index.cfm> [as of September 29, 2008].) Thus, the funding needs for existing transit service may well exceed these estimates.

²⁴See, e.g., *Consider congestion pricing for BART*, San Francisco Chronicle (September 15, 2008), available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/09/15/EDIJ12T13A.DTL&hw=BART+fare&sr=001&sc=1000> (as of September 30, 2008); Gordon, *BART considers higher fares*, San Francisco Chronicle (September 12, 2008), available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/09/12/MNS412SGBC.DTL&hw=BART+fare&sr=002&sc=491> (as of September 30, 2008), which noted that BART trains are currently near capacity in peak hours.

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access, housing near transit, and local blueprint plans that coincide with the regional blueprint.”²⁵

The DEIR should also address, at a minimum, the following issues:

1. *The impact of high-occupancy toll (“HOT”) lanes on carpooling, transit ridership, VMT, and GHG emissions.* A principal benefit of the HOT lane network is savings in travel time for people driving alone (both in the HOT lane and in other lanes). Some commentators have expressed concerns about the effect of HOT lanes on “induced travel,” noting that “at the same time that some drivers are encouraged to stay away from congestion or higher peak-period tolls, others are drawn to use the HOT lanes because they are relatively less congested than other options.”²⁶ At least one expert panel has expressed concerns that a proposed increase in freeway lane miles for a “managed lane” network similar to the HOT lane network proposed here would “perpetuate auto-oriented development and reduce transit’s competitiveness.”²⁷

In recognition of these concerns, the DEIR should evaluate, for each corridor, the effect of (1) creation of a new lane to be used as a HOT lane, or (2) conversion of an existing HOV lane to a HOT lane, whichever is applicable, including any increase in the carpool requirement from 2 to 3 occupants,²⁸ on the following: (a) carpooling rates, (b) VMT, (c) induced travel (commuters, carpoolers, telecommuters, etc., who are thereby induced to start driving alone), and (d) long-term housing distribution patterns (i.e., “induced growth” of housing in areas

²⁵California Transportation Commission, Addendum to the 2007 Regional Transportation Plan Guidelines: Addressing Climate Change and Greenhouse Gas Emissions During the RTP Process (May 29, 2008) page 2 (emphasis added).

²⁶ Dahl, *The Price of Life in the Fast Lane* (2003) 111 *Envl. Health Persp.*, Number 16, available at <<http://www.chponline.org/members/2003/111-16/spheres.html>> (as of September 30, 2008), citing the director of the Bridge Tolls Advocacy Project in New York.

²⁷See Independent Transit Planning Review Services December 2006 Final Report, prepared for the San Diego Association of Governments (December 2006) pages ES-5 and 3-32, available at <http://www.sandag.cog.ca.us/uploads/publicationid/publicationid_1274_6239.pdf> (as of September 30, 2008). The panel also observed, “Smart Growth efforts will likely be weakened by managed lanes’ alleviation of congestion and its encouragement of auto-oriented growth away from transit corridors.” (See *id.* at pp. 6-16.)

²⁸ The Bay Area High-Occupancy/Toll (HOT) Network Study Final Report notes that implementing HOT lanes will likely require increasing carpool occupancy requirements. MTC, Bay Area High-Occupancy/Toll (HOT) Network Study Final Report (September 2007) page 7.

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where HOT lanes can be used to commute to employment centers).²⁹ The DEIR should provide both short-term and long-term evaluation of the environmental impacts/benefits of the HOT lane network. In particular, the EIR should evaluate the potential effects of induced travel where the freeway is expanded to create a HOT lane.³⁰

2. *The effect on GHG emissions of different prioritizations of uses of HOT lane revenues.* MTC recently adopted "HOT Network Implementation Principles" that indicate HOT lane revenues will be used "to finance and construct the HOT network" and "provide transit services and improvements in the corridors." However, it is not clear when *any* excess revenues will be generated from the HOT lane network, and what the priority will be for investment of such revenues. We understand that, if completing the area-wide HOT lane network is the priority use for HOT lane revenues, the anticipated benefits of excess revenue from the HOT lane network would not accrue to public transit until the network is completed in 2025. The EIR should disclose the anticipated timing and amount of excess revenues (i.e., revenues not need to cover network expenses), and

²⁹The California Department of Transportation's ("Caltrans") own guidance for preparing an EIR recognizes the need to evaluate how a project will influence growth. (See Caltrans, EIR/EA Annotated Outline (April 2008) pages 37-39, available at http://www.dot.ca.gov/ser/downloads/templates/eir_ea_SER.doc [as of September 30, 2008]; Caltrans, Guidance for Preparers of Growth-related, Indirect Impact Analyses (May 2006), available at [http://www.dot.ca.gov/ser/Growth-related IndirectImpactAnalysis/gri_guidance.htm](http://www.dot.ca.gov/ser/Growth-related%20IndirectImpactAnalysis/gri_guidance.htm) [as of September 30, 2008].)

³⁰ The Superior Court for the County of Sacramento recently invalidated Caltrans's EIR for an HOV lane project in Sacramento, in part because it did not adequately evaluate the impacts of induced travel. (See *Environmental Council of Sacramento v. Caltrans* (July 15, 2008, 07CS00967) <http://nastsacramento.blogspot.com> [as of September 29, 2008].) There are numerous reports and studies on the "induced travel" impacts of new freeway lanes and recommended methods of analysis. (See, e.g., U.S. Department of Transportation Federal Highway Administration, *Induced Travel: Frequently Asked Questions*, available at <http://www.fhwa.dot.gov/Planning/itfaq.htm> [as of September 30, 2008]; Cervero & Hanson, *Induced Travel Demand and Induced Road Investment* (2002) 36 J. Transp. Econ. & Pol'y, Part 3, pp. 469-490; Litman, *Generated Traffic and Induced Travel: Implications for Transport Planning* (September 17, 2007), available at <http://www.vtpi.org/gentraf.pdf> [as of September 30, 2008]; Litman, *Smart Transportation Investments: Reevaluating the Role of Highway Expansion for Improving Urban Transportation* (October 6, 2006), available at http://www.vtpi.org/cong_relief.pdf [as of September 30, 2008]; Cervero, *Road Expansion, Urban Growth, and Induced Travel: A Path Analysis* (Spring 2003) 69 APA Journal, No. 2, pp. 145-163; Noland, *Relationships between highway capacity and induced vehicle travel* (2001), 35 Transp. Res. Part A: Policy and Practice, Issue 1, pp. 47-72.)

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should compare the anticipated effect on GHG emissions of this planned prioritization of the use of these revenues to the anticipated effect on GHG emissions of an alternative that applies a significant percentage of HOT lane revenues to unfunded transit needs as the revenue is generated (rather than after the HOT network is completed). In particular, the EIR should evaluate the benefits of using HOT lane funds for transit improvements that would maintain and increase transit ridership in the completed HOT lane corridors.³¹

3. *The projected effects of the different alternatives on VMT and GHG emissions.* In addition, the DEIR should provide and evaluate at least one alternative designed to maximize the reduction of GHG emissions. As you are aware, there are many policies and/or projects that MTC could consider to help achieve this goal, some of which it is already considering and could fund at a significantly higher level. While this letter is not intended to provide a complete list, some of the possibilities include the following: focus on eliminating transit shortfalls; increase service capacity to meet increased demand for public transit in core urban areas; increase funding for transportation infrastructure to serve infill and mixed use development located near employment centers and provide incentives for such development; increased incentives for use of public transit, ridesharing and carpools; and expanded public transit frequency of operation.
4. *Green Construction Policy.* To further reduce the impact of the projects in the Proposed Transportation Plan on air quality and climate change, the EIR should evaluate the effect of including a mandatory "green construction" policy. Such a policy could require, for example,
 - use of an emissions calculator in the planning of every construction project, one that uses the proposed equipment fleet and hours of use to project nitrogen oxides, particulate matter, and carbon dioxide emissions, then quantifies the reductions achievable through the use of cleaner/newer

³¹ The way the revenue is used could impact the effectiveness of HOT lanes. (See Dahl, R., *The Price of Life in the Fast Lane* (December 2003), 111 Environmental Health Perspectives, Number 16, available at <<http://www.ehponline.org/members/2003/111-16/spheres.html>> [as of September 29, 2008], citing the transportation director of Environmental Defense, who stated that "[t]he key element for truly effective congestion pricing [] is dedication of HOT lane fees to public transit and public health purposes in the same transit corridor.") Along similar lines, the California Air Resources Board's Draft Scoping Plan identifies congestion pricing as a GHG-reduction measure under consideration, emphasizing that the GHG emission reductions would come from "relief of severely congested traffic, some reduction in vehicle travel, and from the investment of funds in transit infrastructure that would provide additional transportation options during congested hours." (Draft Scoping Plan p. 38 [emphasis added].)

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equipment;³²

- that all off-road construction vehicles be alternative fuel vehicles, or diesel-powered vehicles with Tier 3 or better engines or retrofitted/repowered to meet equivalent emissions standards as Tier 3 engines;³³
- use of the minimum feasible amount of GHG-emitting construction materials (cement, asphalt, etc.);³⁴
- use of cement blended with the maximum feasible amount of flyash or other materials that reduce GHG emissions from cement production;
- use of lighter-colored pavement with increased reflectivity, which reduces the “heat island” effect;
- recycling of construction debris to maximum extent feasible;
- planting of shade trees in or near construction projects where feasible.

Finally, the DEIR also should consider feasible measures to mitigate and/or reduce emissions of criteria pollutants (including black carbon and other particulate matter) from diesel buses, such as requiring retrofitting of diesel buses with particulate traps, replacing diesel buses

³²The calculator used in the Sacramento Metropolitan Air Quality Management District’s program is available at <<http://www.airquality.org/ceqa/index.shtml#construction>> (as of September 29, 2008).

³³Similarly, the South Coast Air Quality Management District has called for the State, in selecting projects that will be funded from Proposition 1B, to impose a condition that requires “use of lowest emitting construction equipment and fuels available.” (South Coast Air Quality Management District Res. No. 07-07 (April 6, 2007), “Resolution Expressing Conditions for Funding Projects with Proposition 1B Funds in the South Coast District.”)

³⁴A new production method known as “warm-mix” asphalt technology that significantly reduces GHG emissions during application may prove to be a feasible alternative road paving material. (See Moore, *Warm-Mix Asphalt (WMA) Potentially Can Provide Important Benefits for Paving Contractors, Reduce Fuel Costs and Diminish Green-House Gases*, Construction Equipment (March 1, 2007), available at <<http://www.constructionequipment.com/article/CA6421459.html>> [as of September 29, 2008]. Warm-mix asphalt was used successfully in Yellowstone National Park in August 2007, and, this fall, Logan International Airport in Boston will become the first in the U.S. to pave a runway with the new asphalt mix. (See “Green” Asphalt Saves Energy and Reduces Greenhouse Gas Emissions (August 6, 2008), available at <http://fvpower.org/news/email_story.html?post_id=3165> [as of September 29, 2008]).

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with the lowest-emitting available alternative fuel buses, requiring that all new buses have the lowest level of emissions feasible, and planting particulate-absorbing trees near freeways and busy streets. Emissions of these pollutants is a critical health issue for the region, which does not meet attainment standards for ozone and particulate matter.³⁵

Global warming presents California with one of its greatest challenges to date. MTC has the opportunity to take steps to address the problem of climate change constructively, while educating the public and decision-makers. We urge MTC to meet the challenge with the Proposed Transportation Plan and DEIR. Please do not hesitate to contact us if the Attorney General's Office can be of any assistance.

Sincerely,

/S/

LAURA J. ZUCKERMAN
SANDRA GOLDBERG
Deputy Attorneys General

For EDMUND G. BROWN JR.
Attorney General

³⁵See generally, e.g., California Air Resources Board, Health Effects of Diesel Exhaust, available at <http://www.oehha.org/public_info/facts/dieselfacts.html> (as of September 29, 2008); California Air Resources Board, Draft Diesel Particulate Matter Health Risk Assessment for the West Oakland Community (March 19, 2008), available at <<http://www.arb.ca.gov/ch/communities/ra/westoakland/westoakland.htm>> (as of September 29, 2008); and the Bay Area Air Quality Management District's air quality summaries, available at <http://www.baaqmd.gov/pio/qa_summaries/index.htm> (as of September 29, 2008).

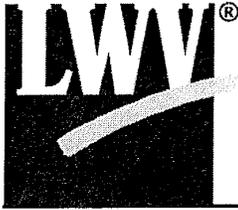
Letter G Response – East Bay Bicycle Coalition

- G-1. The introductory comment is noted.
- G-2. The analysis of potential cumulative population and housing impacts of the project is presented in the *Revisions* (Section II.J) and addresses the applicable significance criteria. The comment suggests that there would be a significant cumulative population and housing impact resulting from burden on existing access and mitigation is required. The *Revisions* analysis concludes that the project, combined with past, present and reasonably foreseeable future projects would not result in a significant cumulative impact on population and housing (and employment). No mitigation is required. The project would improve access to the site for vehicles, pedestrians, and bikes. These improvements are described on pages III-19 and III-20 of the EIR.
- G-3. The commenter raises an issue not within the scope of the Court Order (viability of improvements funded per Measure DD to address existing site “isolation”). The EIR discusses the relationship of the project site to other areas and improvements envisioned to address “community division” in Section IV.A, Land Use, Plans, and Policies. See Master Response B, Responses to Comments on Environmental Issues Outside the Scope of the Court Order.

With regard to cumulative land use impacts, the *Revisions* analysis of potential cumulative land use impacts evaluates the effects of the project combined with other past, present and reasonably foreseeable projects against the applicable significance criteria; there is no criterion or impact associated with reducing the existing isolation of the project site, as the commenter suggests.

- G-4. Project site access and safety is fully analyzed in Section IV.B, Transportation, Circulation, and Parking, in the EIR. This topic is not discussed in the *Revisions* as it is not within the scope of the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. In addition, see Response to Comment G-3, above.
- G-5. Project effects on existing and proposed bikeways and other pedestrian and bicycle facilities are fully analyzed in Section IV.B, Transportation, Circulation, and Parking, in the EIR. This topic is not discussed in the *Revisions* as it is not within the scope of the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- G-6. See Response to Comment D-4 regarding safety issues near the tracks. Bicycle and pedestrian safety impacts are fully analyzed in the EIR; mitigation measures identified therein were previously reviewed and approved as adequate. This topic is not discussed in the *Revisions* as it is not within the scope of the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- G-7. The project traffic analysis and mitigation measures in Section IV.B, Transportation, Circulation, and Parking, in the EIR were determined to be adequate; the *Revisions* only addresses the cumulative traffic intersection analysis pertaining to use of a significance criterion that represents a “ratio theory” approach. The comment addresses a topic not

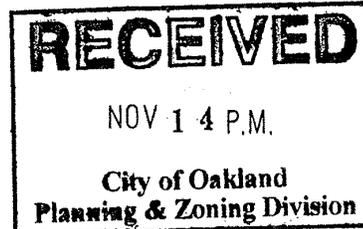
- within the scope of the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- G-8. The commenter raises an issue not within the scope of the Court Order. However, in Section IV.B, Transportation, Circulation, and Parking, the EIR identifies mitigation measures (Mitigation Measures B.4a and B.4b) that address transit service impacts. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- G-9. The implementation schedule for all proposed traffic mitigations identified in the EIR is identified in the revised Mitigation Monitoring and Reporting Program, which is revised to reflect the *Revisions*.
- G-10. Impact B.3d is identified as significant and unavoidable because, as the EIR (Section IV.B, Transportation, Circulation, and Parking) and the commenter state, implementation of Mitigation Measure B.3d is not certain because the City of Oakland, as Lead Agency, could not implement the measure without the approval of Caltrans. If the mitigation measure is implemented, the impact would be less than significant. This issue is not within the scope of the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- G-11. The commenter addresses a topic not within the scope of the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. However, the EIR identifies several project elements and mitigation measures that reduce project vehicle trips and potential effects on both traffic (in EIR Section IV.B, Transportation, Circulation, and Parking) and air quality (in EIR Section IV.C, Air Quality).
- G-12. First the commenter refers to the merits of the project. See Master Response A, Response to Comments on the Public Policy Merits of Project Approval. Further, the commenter raises a topic that is not within the scope of the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- G-13. The comment is noted and also speaks to the merits of the project. See Master Response A, Response to Comments on the Public Policy Merits of Project Approval.



**The League
of Women Voters
of Oakland**

November 14, 2008

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



RE: Comments on the Revisions to the Oak to Ninth Avenue Project EIR

Dear Ms. Stanzione:

Enclosed are the comments by the League of Women Voters of Oakland on the Revisions to the Analysis in the Oak to Ninth Project EIR.

The League of Women Voters is a nonpartisan political organization which encourages the informed and active participation of citizens in government and influences public policy through education and advocacy.

We do not support or oppose any political party or any candidate. We do, however, take action on selected government issues in the public interest. Any such action, including the enclosed comments, is based on thorough study of a subject, and member agreement on how to achieve solutions in the public interest. The enclosed comments are based on our position on the Oakland waterfront.

Sincerely,

A handwritten signature in cursive script that reads 'Helen L. Hutchison'.

Helen Hutchison
President, League of Women Voters of Oakland

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League of Women Voters of Oakland: Oak to Ninth EIR Comments

I. Transportation, Circulation and Parking

A. **General question:** We note that the words “significant impact” and “unavoidable” are used repeatedly throughout this section. Would reducing the scale of the project, including reducing the number of units, avoid some or all of the impacts listed as “unavoidable” in this section?

H-1

B. In the subsection area, Intersection **Impacts**, it shows that the project will have a significant impact on area intersections at rush hour, particularly the evening rush hour. The number of intersections going to an ‘F’ level LOS doubles (from 5 to 10) in the evening rush hour.

H-2

1. Where is the impact of the commuter and freight train traffic discussed and shown in these studies? Is the expected service increase of the Capitol Corridor trains outlined in the letter of October 24, 2005 accounted for? Where and how?

2. What impact do freight trains have on LOS? On intersections?

C. Choke Points: We see that great stress is given to the fact that the road in front of the project will be widened to 4 lanes, but given that the roads that feed in and out of the project are still two lanes, we have the following question:

H-3

How can doubling the lanes in front of the project help traffic flow when all the access routes in and out of the project are still 2 lanes: 5th Avenue, the newly retrofitted bridge over the estuary, all of the freeway access roads?

II. Noise

Where in the noise analysis is the noise from the trains taken into account? This includes both the horns and the noise made as the trains run along the tracks.

H-4

III. Police Services and Fire Protection/Emergency Medical Resource Services

1. How will emergency services access this site during peak traffic LOS at F and expected increased train traffic?

H-5

2. Will the City or developer provide a fire boat/EMS to access this area?

IV. Libraries

The EIR impact statement is “modified for clarity in response to the Court Order”. It states “The proposed project, when combined with other closely related past, present and reasonably foreseeable future project development in the vicinity would result in a **significant adverse cumulative public services and recreation impact.**” (emphasis added) It then goes on to conclude that “no new or physically altered facilities will be required...”.

H-6

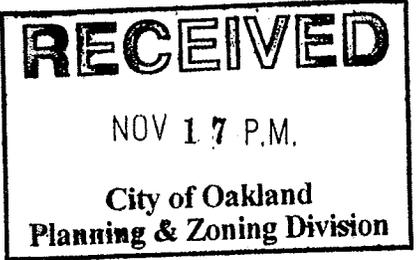
How does the second statement follow logically from the first? If there is a significant adverse impact, how can there be no new services or facilities required?

November 8, 2008

Letter H Response – League of Women Voters of Oakland

- H-1. The commenter raises questions about how modifying the project may reduce significant and unavoidable impacts identified in the EIR, which is a topic outside the scope of the Court Order. The EIR analyzed a range of project alternatives to address the significant impacts identified for the project. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- H-2. The commenter raises environmental topics (vehicular and train traffic) that are not within the scope of the Court Order. The Court required the City to prepare specific revisions to the analysis in the EIR that do not pertain to this topic. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Also see Response to Comment D-5.
- H-3. See Response to Comment H-2, above.
- H-4. The commenter raises an environmental topic (train noise) that is not within the scope of the Court Order, which required the City to prepare revisions to the analysis to address noise from traffic and the cumulative intersection traffic significance criteria. The EIR analyzes the impact of the noise environment on the project in Section IV.G, Noise (Impact G.3), according to the applicable significance criteria. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- H-5. The comment raises issues related to an environmental topic (emergency access) that is outside the scope of the revisions to the EIR required by the Court Order. The EIR analyzes emergency access in Section IV.B, Transportation, Circulation, and Parking. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- H-6. The statement in the *Revisions* cited by the commenter contained a typographical error that has been corrected in the Errata section at the end of this chapter. The corrected statement reads as follows (NOTE: Underlining indicates inserted text for page II.L-7 of the *Revisions*):

Impact L.6: The proposed project, when combined with other closely related past, present and reasonably foreseeable future development in the vicinity, would not result in a significant adverse cumulative public services and recreation impact; no new or physically altered facilities will be required, and cumulative development would not result in substantial or accelerated physical deterioration of existing parks and recreational facilities. (Cumulative Impact: Less than Significant)



Ninth Avenue Terminal Partners LLC
1155 Third Street, Suite 290
Oakland, CA 94607

November 17, 2008

VIA EMAIL

Ms. Marge Stanzione
Planner IV
Community and Economic Development Agency
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612

RE: Ninth Avenue Terminal Reuse

Dear Ms. Stanzione:

Ninth Avenue Terminal Partners LLC supports the Oak to Ninth Avenue project. We would like to see it move forward.

We received a copy of the "Revisions" document that was sent to us. We have not reviewed the "Revisions" document in detail, however it does not appear to mention our proposal for the Ninth Avenue Terminal. For example, on page I-2 in the Project Summary section there is no mention of the RFP process that were part of the approvals and that we participated in.

As you know, we submitted a proposal in February 2007 and since then have submitted a great deal of supporting documentation to you. We also attended a number of public hearings at which votes were taken on our proposal.

Because we are not lawyers or CEQA experts, we do not know whether the lack of mention in the "Revisions" document is a problem. We certainly want to make sure our proposal receives due consideration given the amount of effort we have expended on it and the level of community support it has received. Please consider our proposal and back-up documentation as the City of Oakland moves forward with the Oak to Ninth Avenue project.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stuart Rickard".

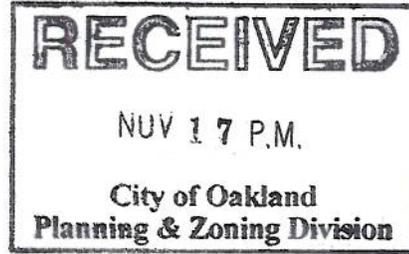
Stuart Rickard

I-1

Letter I Response – Ninth Avenue Terminal Partners LLC

- I-1. The commenter’s proposal for the Ninth Avenue Terminal is neither an environmental issue nor within the scope of the Court Order. See Master Response A, Response to Comments on the Public Policy Merits of Project Approval; and Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.

Comment Letter J



November 17, 2008

Margaret Stanzione, Project Planner
City of Oakland
Community and Economic Development Agency
Planning Division
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612

RE: Comments on the Revisions to the Analysis for the Oak to Ninth Project EIR – ER-04-0009

On behalf of the Oakland Greens, we wish to submit the following comments. Our reading of the revised EIR tells us that the document is riddled with significant impacts with few or no proposals for mitigation. We believe that a proper EIR is more than a list of impacts. We believe that it must contain proposals for mitigation for all impacts identified as significant. We further believe that such mitigations are the sole financial responsibility of the developer and should not be left to the city or other public agencies. A proper EIR should include legally enforceable agreements with the developer that apply to all the mitigations required. These agreements should include all actions required for mitigations and their financial costs.

J-1
J-2

In addition, we believe that the revised EIR underestimates impacts in many sections. Using traffic as an example, common sense tells us that the effects will be much worse than the revised EIR suggests. If the CEDA process does not remedy these deficiencies, we would hope that the judge will.

J-3

In closing, we believe that the best mitigation would be a considerable scaling back of this project. In addition to reducing the traffic impacts, a smaller project would allow restoring the public park (and access) plans which were part of the Estuary Policy Plan before this development was approved.

J-4

Sincerely,

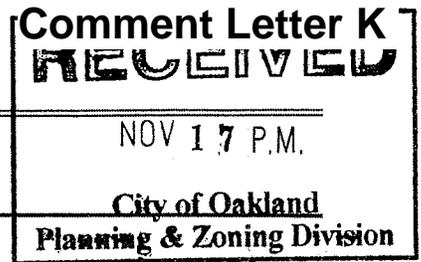
Akio and Kate Tanaka for the Oakland Green Party
1019 Harvard Road
Oakland, CA 94610
(510) 914-8355
katetanaka@aol.com

Letter J Response – Oakland Green Party

- J-1. The *Revisions* concludes that cumulative impacts related to the following environmental topics would be less than significant: land use (Impact A.5); geology (Impact F.8); noise (Impact G.5); hazardous materials (Impact H.7); biological resources/wetlands (Impact L.8); population, housing, and employment (Impact J.6); visual quality and shadow (Impact K.5); public services (Impact L.6); and utilities and service systems (Impact M.6). Mitigation measures are not required for these less-than-significant impacts.

The *Revisions* clarifies mitigation measures for seismic-related impacts (Mitigation Measures F.1 and F.2), including specific requirements of the project applicant. The *Revisions* also identifies a series of significant cumulative traffic impacts (Impact B.3a through B.3q) and identifies mitigation measures for these impacts. The *Revisions* thus recommends mitigation measures for all impacts identified as significant, as requested by the commenter.

- J-2. For significant cumulative traffic impacts, the *Revisions* identifies the project applicant's mitigation responsibilities and indicates which traffic improvements are outside the control of the City of Oakland (e.g., because the intersection is within another jurisdiction). The role of an EIR is to identify feasible mitigation measures, not to "include legally enforceable agreements" that "include all actions required for mitigations and their financial costs," as suggested by the commenter. Under CEQA and related case law, mitigation measures must be reasonably related to the project impact. Thus, not all mitigation measures can legally be made "the sole financial responsibility of the developer," as suggested by the commenter.
- J-3. The commenter does not provide any evidence or details to substantiate the claim that the *Revisions* "underestimates impacts in many sections," other than to state that "common sense tells us that the [traffic] effects will be much worse than the revised EIR suggests." Thus, no further response is possible.
- J-4. This comment raises issues regarding the merits of the project and does not pertain to the revisions to the EIR required by the Court Order. See Master Response A, Response to Comments on the Public Policy Merits of Project Approval.



November 17, 2008

(By electronic transmission)

To: Margaret Stanzione, Project Planner
City of Oakland, Community and Economic Development Agency
Planning Division
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612

Subject: Case ER-04-0009 Oak To Ninth Project EIR

Dear Ms. Stanzione:

Oakland Heritage Alliance respectfully submits this comment letter regarding the proposed Revisions to the Analysis in the Oak to Ninth Project EIR:

Because the Court vacated and set aside the EIR, CEQA Findings, and Statement of Overriding Considerations for the project, no EIR has been validly certified and no valid supporting findings have been adopted. The City must therefore certify an EIR and adopt any necessary findings and statement of overriding considerations if the project is to proceed. The decisionmaking body must consider the entire EIR, findings, and statement of overriding considerations, not just the selected revisions that have been circulated. Unless the entire EIR and findings are placed before the decisionmaking body for certification and adoption with the supporting record, that body cannot exercise the required independent judgment. No provision of CEQA or the Guidelines authorizes a narrowly focused "revision" when an EIR has been voided by court Order.

The Oakland Municipal Code specifies that the Planning Commission is the decisionmaking body charged with certifying EIRs. (Municipal Code § 17.158.340(E).) The City Council should defer as the Code requires, remand certification to the Planning Commission, and await the Commission's decision.

The City should withhold EIR certification for this project until the sponsor makes the following changes to the project to protect cultural resources and public safety:

K-1
K-2

1. An EIR should not be certified until the City Council has reconsidered the feasibility of preserving at least the 1920s portion of the Ninth Avenue Terminal, or at least completed its consideration of the pending proposal for the reuse of the Ninth Avenue Terminal. Ninth Avenue Terminal Partners should be permitted to proceed with its project application to demonstrate the feasibility of Terminal reuse, and promote preservation of this historical resource.
2. An EIR should not be certified until the City has conducted a study of project impacts on auto, pedestrian, and bicycle safety at all train track crossings, and bolstered the traffic stream impact analysis and findings with effective mitigation measures. The existing measures are inadequate according to the CPUC and are in urgent need of review and enhancement to protect life and limb.
3. An EIR should not be certified until the City has conducted a study of project impacts on auto, pedestrian, and bicycle safety at key intersections, and bolstered the attendant impact analysis and findings with effective mitigation measures.

K-2
cont.

The proposed seismic mitigation measures to reduce impacts F.1 and F.2 to less than significant remain deficient. They fail to cure the deficiencies identified by the Court, that the EIR fails to state what mitigation techniques will actually be used, and fails to analyze and establish how the mitigations will, in fact, reduce these impacts to a less than significant level.

The EIR establishes that the project is located on an extraordinarily risky site for residential development from a seismic safety standpoint. The site is characterized by highly unstable and filled soils that are subject to extreme ground accelerations, as well as the potential for liquefaction and earthquake-induced settlement. The seismic risk posed by unstable soils is compounded by the project's proposed building heights, residential character, large unit capacities, and secondary impact risks, most notably fire and impaired emergency response. The geological information and data in the EIR explaining the severity of the general seismic risk should be placed before the decisionmaking body as part of this process.

K-3

Impact F.1 is that seismic ground shaking could potentially injure people and cause collapse or structural damage. The EIR establishes that there is a high risk of earthquake damage and related personal injury unless there is significant mitigation.

The proposed mitigations for F.1 are essentially the same as the City and the project proponent proposed to the Court during the new trial proceedings. These measures were fully briefed, and the Court found them insufficient.

In substance, they were:

1. a site-specific design level investigation by a registered geotechnical engineer;
2. structural design requirements prescribed by the most current version of the California Building Code, including applicable City amendments, “to ensure that the structures can withstand ground accelerations expected from known active faults;” and
3. project plans that incorporate these structural design requirements and meet current building code requirements.

These mitigations do not specify any objective performance criteria.¹ They only state that the design requirements and plan must meet building code requirements. Compliance with code means adherence to a set of rules and regulations, and is not per se an objective performance standard. The proposed mitigations do not state the performance standard the building codes require. No evidence or analysis is provided of what the code performance standard is, much less how it would mitigate injury and damage to less than significant.

Building codes provide for a “life safety” performance standard and discourage design and construction to higher performance standards, such as immediate reoccupancy. “Life safety” means that in an earthquake of likely intensity and duration, even a severe one, building occupants would not be crushed by the collapse of the building, or by debris falling from the building. Life safety contemplates that the structure and/or critical systems of a building may nevertheless be severely damaged, rendering it uninhabitable. Thus, code standards do not mitigate the risk of catastrophic property damage in the event of severe earthquakes to less than significant.

Although many people assume that the building codes provide optimal protection that practically mitigates significant risk of damage to buildings and injury to occupants, this is a misconception. For Californians, this is perhaps best exemplified by the collapse of the code-compliant Cypress Structure during the Loma Prieta (6.9) earthquake in 1989 at a location not far distant from this project. Another example is the dangerous cracking discovered in 300 code-compliant welded moment resisting steel frame buildings following the 1994 Northridge (6.7) earthquake, necessitating billions of dollars in repairs.

¹ The phrase “can withstand ground accelerations expected from known active faults” appears to be merely explanatory, because it has no operational meaning within the body of the codes. At a minimum, the City should clarify whether it intends “withstand” to refer to a standard other than life safety and, if so, specify it.



K-3
cont.

Significantly, California prescribes higher than life safety performance standards for schools, hospitals, police, and emergency response buildings. An informed building owner can choose to specify these higher standards, at considerably higher cost, and thus obtain superior assurance that the building can be reoccupied after a severe earthquake. These higher than “code” performance standards include immediate reoccupancy, life cycle cost, and repairability.

That these superior performance standards are generally not applied to housing projects is immaterial because the issue is not whether a life safety standard would meet the “standard of care” for structural engineers. Rather, it is whether under CEQA building code compliance will mitigate property damage and personal injury to less than significant.

By specifying “code,” the proposed Oak to Ninth mitigations contemplate a limited, indeed “minimal,” life safety standard. The standard allows that although the buildings will not collapse in a severe earthquake, their structures or systems may nevertheless be damaged to the point of rendering them uninhabitable, even to the point of having to be demolished. This means that Oak to Ninth Avenue owners and occupants face potential displacement from their homes for a significant period of time, or even the total loss of their homes and investments.²

Moreover, the code’s life safety standard provides protection only against severe injury caused by the building itself. The standard does not protect against injury from falling objects, such as heavy bookcases, furniture, televisions, water heaters, etc. This risk is of course generic to all Californians living in its seismically active areas. Nevertheless, it is acute and should be specially evaluated for this project because of the potential for extreme ground accelerations at the site, increasingly amplified at the upper floors of structures ranging to 20 stories.

The life safety standard applicable to structures does not provide protection against the earthquake-induced secondary risks of fire and delayed emergency response. The proposed mitigations focus on foundational and building structural measures, but contain no provisions for the seismic hardening of the water supply and utility infrastructure within and leading to the project site.

The destruction of San Francisco in 1906 resulted primarily from fires that could not be fought because of broken water mains, not from structural collapse. Considerable damage in

² The EIR does not state whether earthquake insurance would be reasonably available to protect the assets of condominium owners and renters at Oak to Ninth Avenue and, if so, the limitations on deductibles and coverages. Although not relevant to mitigation, insurance could bear on overriding considerations if the City finds that the seismic impact is significant and cannot feasibly be mitigated.

K-3
cont.

San Francisco's Marina District following the Loma Prieta earthquake was due to fire that was difficult to control because of the loss of vulnerable water mains laid in mud flats.

This is not only a fire control issue, but also a building systems issue because lack of water or other power infrastructure could severely compromise the reoccupancy of the buildings after an earthquake.

In addition to absence of any discussion of utility loss impacts on property damage and reoccupancy delay, the EIR does not address the potential large costs to the City and other public agencies of repairing utility lines serving the project.

Constricted access to the Oak to Ninth project due to the adjacent Interstate 880 and railroad tracks may impair the rendition of emergency fire and medical services to project residents in the aftermath of a severe earthquake. More than 150 fires broke out within hours after the 1995 earthquake (6.9) in Kobe, Japan, which for the most part could not be fought because streets were blocked by collapsed buildings and debris.

Delay in providing emergency services to the project in the event of a severe earthquake is likely even if all streets are open. But it is also likely that some or all access streets may be blocked by freeway collapse or debris, or rendered impassable because of ground ruptures or liquefaction, further impairing, impeding, or delaying response to fires and the rendition of emergency medical and other rescue services.

In sum, code compliance is not per se a performance standard. The performance standard contemplated by the building codes is life safety. Because this standard does not mitigate seismic and fire damage to buildings in a severe earthquake (or even injury to persons due to causes other than structural failure) to less than significant, there can be and is no evidence or analytical route to sustain the conclusion that impact F.1 is mitigated to less than significant.

Impact F.2 is the potential for the exposure of people or property to liquefaction of earthquake-induced settlement. The EIR is clear that these risks are present, and that mitigation measures are essential. The proposed mitigation measures are a site-specific design level investigation to develop measures to mitigate liquefaction to a less than significant level by the listed means.

These mitigations likewise do not address liquefaction risk to the integrity of water mains and power conduits serving the project, and the resultant increased risk of fire and impairment of reoccupancy.

K-3
cont.

K-4

Comment Letter K

OHA doubts whether the feasibility and cost-efficiency of mitigating only liquefaction per se to a less than significant level can be assessed before the results of the site-specific study are in hand. OHA requests that the site specific investigation be completed before the mitigation determination is made, or that specific evidence be placed in the record that the listed means are in fact feasible and cost-effective to mitigate the liquefaction risk, and that this determination can be made without first completing the study.

K-4
cont.

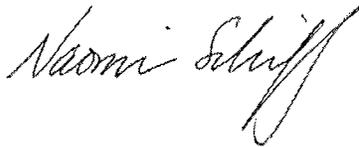
The proposed mitigation measures do not provide any mitigations against settlement at the site resulting from an earthquake. OHA requests that mitigations be specified. OHA reserves the right to comment on the settlement mitigations once they are proposed.

* * * * *

OHA requests that the EIR honestly report that the seismic risks of this project are significant and cannot feasibly be mitigated to a less than significant level through design and construction measures that meet only the minimal standards of the building codes. OHA also asks that before certifying an EIR and re-authorizing this project, the City take affirmative steps to promote a seismic performance standard for this project that secures early reoccupancy of the residential towers following a severe earthquake, and effectively mitigates the thus far unmitigated, but significant, secondary risks of fire and impaired emergency services. The City's process for ensuring a sounder seismic program for the protection of Oak to Ninth residents could include referral of the project to a genuinely independent panel of seismic experts and/or an engineering design competition.

K-5

Sincerely,



Naomi Schiff
For the Board of Oakland Heritage Alliance

Cc:

Valerie Garry, President, Oakland Heritage Alliance
Boardmembers, Oakland Heritage Alliance
Arthur D. Levy, Levy, Ram & Olsen LLP

Letter K Response – Oakland Heritage Alliance

- K-1. The *Revisions* amends and supplements the analysis in the EIR. The City will exercise its discretion whether to re-certify the EIR, as revised, as well as whether to re-adopt CEQA findings and Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, as they may be revised. See also Master Response C, Public Review Process of the *Revisions*.
- K-2. This comment is beyond the scope of the *Revisions*. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. In addition, as to the first point on page 2 of the letter (regarding Terminal Reuse) please note that the City has received a proposal from Ninth Avenue Terminal Partners (Partners) to reuse 90,000 square feet of the 1930's portion of the Ninth Avenue Terminal. The reuse proponents have submitted documentation that asserts that reuse would be feasible. However, the City has determined that the data submitted to date does not support such a conclusion. For example, as demonstrated by an expert report submitted by the Oak to Ninth developers, the Partners; proposal is based upon unrealistic assumptions regarding rehabilitation and construction costs as well as fair market rent. Thus, to date, an alternative to the plans per the Oak to Ninth Project approval is not feasible. Accordingly, the infeasibility determination that the Council previously reached, and that the Court upheld, remains valid.

As to the second point on page 2 (re: project impacts related to traffic streams, see the Response to the Comment Letter D CPUC) 4.

As to the third point on page 2 (re: other traffic impacts), see responses to Comment Letter D, Responses to Comments F-3 through F-5, F-14 through F-17, responses to Comment Letter G, and the traffic discussion in the *Revisions*.

- K-3: The commenter makes numerous assertions in this letter with respect to the analysis of the seismic Mitigation Measures F.1 and F.2. The overarching assertions are (1) the mitigation measures do not specify objective performance criteria and have not meaningfully been revised; and (2) the Building Code life safety standards do not provide for “immediate reoccupancy” of buildings following an earthquake, mitigate for other damage falling objects within the building, or protect against fire, utility disruption, and delayed emergency response. These assertions are addressed below.

Objective performance criteria: The Court Order did not include a finding regarding the performance criteria in the mitigation measures. Instead, it found that the EIR did not provide a sufficient analysis to support the finding that seismic hazards would be reduced to a less than significant level by showing how the mitigation measures would be applied. Thus, this comment is beyond the scope of the Court Order. See Master Response B. Further, the *Revisions* explains how the requirements of state and local codes, including the California Building Code, are objective performance criteria and are based on expert data, study, and experience as discussed in the *Revisions*. The nature of these requirements and their ability to reduce the potential impact to below the applicable standard of significance are explained on pages II.F-3 through II.F-14. Compliance with the standards required by the applicable codes is a mandatory requirement, and it is not necessary to repeat all of the detailed of requirements of these codes. Further, the *Revisions* includes revised mitigation measures that will reduce the impact to a level of

less than significant by requiring the developer to incorporate and implement the engineering methodologies.

Life safety requirement: The commenter asserts that the life safety requirements of the Building Code do not provide for “immediate reoccupancy” of buildings and do not mitigate for property/building damage from an earthquake. These issues are not addressed in the Court Order. See Master Response B. The standard of significance for potential seismic impacts is the exposure of people or structures “to substantial risk of loss, injury or death.” Compliance with the stringent life safety requirements of state law will reduce to a less-than-significant level the substantial risk of building loss and injury or death. The commenter recognizes this effect of the building codes by stating: “Life safety ‘means that in an earthquake of likely intensity and duration, even a severe one, building occupants would not be crushed by the collapse of the building or by debris falling from the building.’” This result meets the significance criterion of substantially reducing the risk of loss of the building (i.e. complete collapse) and thus substantially reducing the risk that occupants would be injured or killed. There is no CEQA requirement to avoid repair to structures or to ensure that all buildings can be occupied immediately after an earthquake.

The commenter also asserts that the life safety requirements of the building code do not ensure that objects inside buildings do not fall and cause injury during an earthquake. This issue was not addressed in the Court Order. Potential injury from falling objects within a building is not covered by the standards of significance and is not a CEQA impact. The City has no authority to regulate the placement of objects within private

The comments regarding potential utility loss and potential impaired emergency access impacts on property damage and potential associated reoccupancy delay and costs were not addressed in the Court Order. The project’s potential impacts on the City’s emergency plans are discussed in the EIR (p. IV.H-25) and were found to be less than significant. This issue was not raised in the lawsuits challenging the EIR and was not addressed in the Court Order. See Master Response B.

The commenter also asserts that the *Revisions* fails to consider the costs to repair utility lines. This is not an environmental issue under CEQA.

- K-4. The commenter states that the mitigation measure for liquefaction (F.2) does not address the risks to water mains and power conduits serving the project site and the increased risk of fire and impairment of reoccupancy. Additionally, the commenter states that the mitigation measures do not provide mitigation for settlement from an earthquake. The commenter requests site-specific investigations before mitigations are developed or evidence that the listed means are feasible and cost-effective to mitigate the liquefaction risk. The geotechnical investigation prepared for the project site provides the information necessary to identify potential liquefaction and settlement impacts on the project site associated with a seismic event. Mitigation Measure F.2 is based on the findings and recommendations of the site geotechnical investigation. All of the remedial methods in the geotechnical investigation and required by the building codes are standard, accepted, and proven engineering practices used throughout the Bay Area to overcome unfavorable soil conditions. By adopting the mitigation measure, the City has determined that it is feasible to implement the mitigation requirements. (See discussion in *Revisions* on II.F-12 through II.F-13.) Mitigation Measure F.2 requires additional site-specific studies based

on final designs and locations for the project improvements (both structures and infrastructure). These studies cannot be performed until the buildings and other improvements are designed and their precise location identified. These site-specific studies are intended to confirm the precise remedial actions that will be required. Consequently, it is standard practice to require these studies and the development of precise remedial actions prior to the issuance of building permits. Mitigation Measure F.2 provides mitigation requirements for both liquefaction and settlement induced by seismic events, and thus no additional mitigation is necessary.

The requirements of Mitigation Measure F.2 apply to all improvements associated with the project, including the installation of water, power, and other utilities. The City requires that the standards in this mitigation measure and the building codes apply to all improvements associated with the project. Additionally, PG&E and EBMUD both require applicants for utility improvements to provide a site specific soils report that must set forth the specific requirements for design and installation of the utilities system to avoid or reduce to a less than significant level impacts from liquefaction. This will be achieved through surcharging (stockpiling soil to compress the liquefiable material), flexible connections and piping for power and welded steel piping for water that allow for soil movement from seismic induced liquefaction and settlement without damage to the connections and piping. For PG&E utilities, the applicant will retain a joint trench designer to prepare detailed drawings of the system that must be approved by PG&E. PG&E recently modified its installation requirements to require the use of flexible piping and flexible connections which allow for ground movement and settlement from seismic events without causing a break in the system. EBMUD will design and install (or retain a contractor supervised by EBMUD) the water system based on the applicant's site specific soils report and paid for by the applicant. The power utilities will be owned and maintained by PG&E and the water utilities will be owned and maintained by EBMUD.

- K-5. The EIR and *Revisions* provide complete and accurate information about the seismic risks associated with development on the Oak to Ninth project site. These risks are typical of sites where San Francisco Bay has been filled. Sites in Oakland, Emeryville, San Francisco, Richmond, Redwood City and Alameda have the same or worse soil conditions as the Oak to 9th project site. No unexpected or atypical conditions have been identified by the commenter or by the geotechnical experts who have studied the site. The strict requirements of state and local law and reflected in Mitigation Measures F.1 and F.2 are based on expert study and data and proven techniques that will ensure that the potential for a significant impact associated with a seismic event (based on the City's significance criteria) is avoided or mitigated to a less than significant level. "Early reoccupancy" of project buildings is not a CEQA issue. Moreover, given that the project structures will be constructed in compliance with current, sophisticated building code and engineering standards, the project buildings are substantially less likely than many older structures to suffer damage in an earthquake that would preclude subsequent occupancy.

The commenter mischaracterizes the life safety requirements of the building code. The building code establishes the high standard of "life safety" as the minimum requirement that must be met for new structures. This is not, as characterized by the commenter, a low or minimal standard. The state has chosen a stringent performance requirement for new structures and other improvements to protect people from building collapse during an earthquake. In this way, the state and the city are imposing on new construction a high standard as the minimum requirement. Further, the mitigation measures mandate

incorporation of engineering techniques and methodologies as revealed by expert investigation. Consequently, the commenter's suggestions for additional requirements are not supported by any evidence in the record and thus are not warranted.

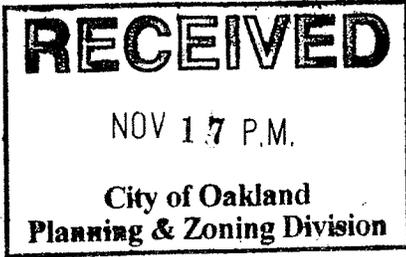


South of the Nimitz Improvement Council
229 Harrison Street
Oakland, CA 94607
Voice: 510-893-9829 Fax: 510-763-8866

South of the Nimitz Improvement Council is an informal association of business and property owners interested in shaping the future of the SoNi District, the area between the Nimitz Freeway and the Oakland-Alameda estuary, stretching from Fallon Street to Adeline Street. Active participation and generous contributions by all are encouraged.

November 17, 2008

Margaret Stanzione, Project Planner
City of Oakland
Community and Economic Development Agency
Planning Division
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612



RE: Comments on the Revisions to the Analysis for the Oak to Ninth Project EIR – ER-04-0009

Dear Ms. Stanzione:

Comments in this letter focus for the most part on the Transportation, Circulation, and Parking section of the revised EIR (pages II.B-1 to II.B-17) and specifically those impacts that may affect the SoNi District (aka the Jack London District).

GENERAL COMMENTS AND QUESTIONS

1. Planning Commission Role: Every Draft EIR and Final EIR SoNiC ever commented on has first been reviewed by the Planning Commission before being reviewed by City Council. We believe this process is required by both city and state law. If this process is not going to be followed for the revised EIR, shouldn't the Introduction to the revised EIR explain and justify the proposed non-conforming approval process? Without this, SoNiC believes the revised EIR is incomplete.

L-1

2. Mitigation Measures: The Draft EIR included as Table II-1 a "Summary of Impacts and Mitigation Measures..." and the Final EIR included a revised Table II-1. Table II-1 was used as the basis for the Mitigation Monitoring and Reporting Program that was prepared as an attachment to the Development Agreement (Exhibit B) and approved by Resolution 79981, which was vacated and set aside by the Court. Table II-1 is not included in the revised EIR.

L-2

Does the omission of Table II-1 from the revised EIR mean that despite the revised analysis, no new impacts have been identified and no new mitigation measures are being proposed? If the answer is "yes", SoNiC is astonished (and disagrees). If the answer is "no" SoNiC believes the revised EIR is incomplete.

TRANSPORTATION, CIRCULATION, AND PARKING COMMENTS AND QUESTIONS

Impact B.3b: Embarcadero and Broadway: As with other mitigation measures, it is unclear how costs of installing traffic signals will be allocated between various development projects, especially the Jack London Square Redevelopment Project. This is one of several mitigations where the developer is required to pay its "fair share" but it is unclear how the developer's "fair share" will be determined, who the final arbiter will be, and how completion of the work will be ensured. Can this be clarified?

L-3

Impact B.3c: 5th Street and Broadway: This intersection has been a problem during rush hour for several years. The Oak to 9th project will obviously exacerbate the problem. To declare that the impact of the proposed project is “significant and unavoidable” is an obvious understatement. To say there are “no feasible mitigation measures” leaves the City Council with only one choice: reduce the size of the proposed project until there are “feasible mitigation measures.” To do anything else is a gross disservice to everyone who works and/or lives in the Jack London District as well as anyone who commutes to Alameda via the Webster Tube. L-4

Impact B.3d: 5th and Oak Streets: This intersection has been a problem during rush hour for several years. The Oak to 9th project will obviously exacerbate the problem. To declare that the cumulative impact of the proposed project is “significant and unavoidable” is an understatement. During rush hour the problem extends along Oak Street, 5th Street, 4th Street, and Madison Street. Even if CalTrans cooperates fully, it is unlikely the problems at these intersections can be mitigated. Reducing the size of the proposed project seems like the only alternative. L-5

Impact B.3e: 6th and Jackson Streets: SoNiC believes the analysis of this intersection as well as the analysis of 5th and Jackson Streets is faulty. Current conditions during rush hour are already at LOS F for several hours each day. The impact is obvious on 4th Street as well as 7th Street and for several blocks on both Jackson and 6th Streets. The revised EIR is absolutely wrong when it states that “...the addition of turn lanes ... would not be feasible.” By removing parking underneath the freeway, a turn lane could be added northbound on Jackson Street and this, together with a left turn signal, could improve traffic flow immediately. Reducing the size of the proposed project should be considered as an important mitigation measure for this intersection. L-6

Trains: Where in the revised EIR is there any analysis of how increasing train traffic will affect specific intersections such as Embarcadero and Broadway, Embarcadero and Oak Street, Embarcadero and 5th Avenue, etc.? Without this, the revised EIR is incomplete. L-7

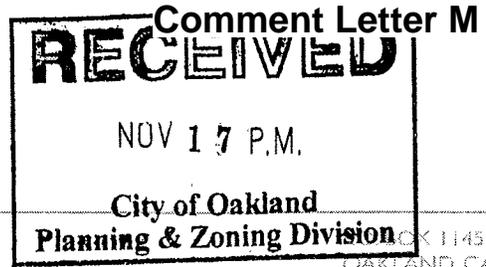
Global Warming: No one disputes that vehicles waiting at intersections contribute to global warming. The California Legislature and CEQA recognize that a project’s incremental contribution to global warming can be cumulatively considerable. However an analysis of the impact of the proposed project’s contribution to global warming has not been included in the revised EIR. Without this, the revised EIR is incomplete. L-8

Sincerely,

Gary Knecht
President

Letter L Response – South of Nimitz Improvement Council (SONIC)

- L-1. The public review and comment process for the *Revisions* is specified in the first paragraph of page I-2 of that document and in the Notice of Availability of the *Revisions*. Also see Master Response C, Public Review Process of the *Revisions*.
- L-2. A revised Mitigation Monitoring and Reporting Program to reflect changes made by the *Revisions* has been prepared and is attached to the Staff Report to the City Council regarding the EIR and the *Revisions*. The *Revisions* addresses the numbering sequence of cumulative traffic impacts and text changes to the mitigation measures that address cumulative geology, soils, and seismicity impacts.
- L-3. The commenter raises topics not within the scope of the revisions required by the Court Order. However, as discussed in responses to comments in the Final EIR, specifics regarding the fair share process that is required for some mitigation measures are addressed in the Mitigation Monitoring and Reporting Program. This topic is not addressed in the *Revisions*. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- L-4. Traffic impacts of the project are analyzed thoroughly in Section IV.B, Transportation, Circulation, and Parking, in the EIR. The Court required the City to prepare specific revisions to the analysis in the EIR that do not pertain to this topic, but that revise the use of a “ratio theory” approach to the cumulative traffic intersection analysis. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- L-5. See Response to Comment L-4, above.
- L-6. See Response to Comment L-4, above.
- L-7. See Response to Comment H-4, above.
- L-8. The commenter raises a topic that is not within the scope of the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.



OAKLAND, CA 94611-0456

November 17, 2008

Margaret Stanzione, Project Planner
City Of Oakland
Community and Economic Development Agency
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612

RE: Comments on the proposed revisions to the Oak to Ninth Avenue Project
DEIR: Case # ER-04-0009
Sent via e-mail:mstanzione@oaklandnet.com

Dear Ms. Stanzione:

Waterfront Action is a citizen-based non-profit organization. Our mission is to promote full implementation of the Estuary Policy Plan and the Lake Merritt Park Master Plan; to protect the public trust; and to educate the citizens about the region's waterfront and its assets.

We are very concerned that the City chose to bypass the Planning Commission as part of the review of this DEIR, as that is another opportunity for the public to hear and comment on the document. Process is important to all of us. When procedures are changed to expedite a DEIR, it raises the concern of those of us trying to keep the public informed and involved.

M-1

Board of Trustees:

Deborah Cooper
Frank Dobson
This is Waterfront Action's response to the proposed revisions to the Oak to Ninth Avenue Project, Case # ER-04-0009:

George Duncan Transportation, Circulation and Parking

Robert Kidd
Nate Miley
There are a number of intersections that are listed as LOS E or F based on the project's development:

M-2

- Ann Richter 1. If the project were reduced in scale to a total of 1600 units, would that resolve the "significant impact" and "unavoidable" impacts?
Doug Siden 2. Alternatively, what changes in the project would be required for the project to not significantly impact these intersections?
Sandra Threlfall

Rick Wiederhorn
Brian Wiese
Reference is made to signaling a number of intersections:

M-3

- Richard Winnie 3. Would "roundabouts" at LOS E or F reduce traffic stacking and improve safety?

Comment Letter M

4. How can doubling the number of lanes in the area of the project alone in any way improve traffic movement when the adjacent Embarcadero Bridge, Fifth Avenue and the Embarcadero are two lane corridors? M-4

Pedestrian/bicycle access:

5. Where is the safe access route for pedestrians and bicyclists to the 32 acres of open space? M-5

As projected in the October 24, 2005 DEIR Comment Letter by the Capitol Corridor JPA, the system will be significantly increasing the number of trains passing by this project in the next five years:

6. What is the future forecast for the impact of closed intersections due to train traffic, both commuter and freight? What will be the frequency and duration of closures due to train traffic? M-6

Police Services and Fire Protection/EMR Services

7. With surrounding intersections functioning at an LOS F rating during commute hours and with the projected increase in train traffic, how will emergency vehicles access the project site in a timely manner? M-7
8. Will the City or project developer reinstate Oakland's Fire Boat for emergency services access to the project by water? M-8

The Ninth Avenue Terminal was not part of this DEIR, although questions remain. The Port of Oakland is the trustee of the Public Trust lands in Oakland. Yet the cumulative damage to the historical fabric of the waterfront under the Port's protection continues. The loss of this 1929 Ninth Avenue Terminal would be inconsistent with the Port's oral commitment to the community that the Ninth Avenue Terminal would remain as a historic example of "break-bulk" after the Howard Terminal was demolished. We believe that demolition of any part of the original 1929 Ninth Avenue Terminal structure would be a major loss for the public historically. A viable re-use proposal has been submitted to the City by the Ninth Avenue Terminal Partners. The re-use of the terminal would be another opportunity for the public to see the 32 acres of open space and use it. M-9

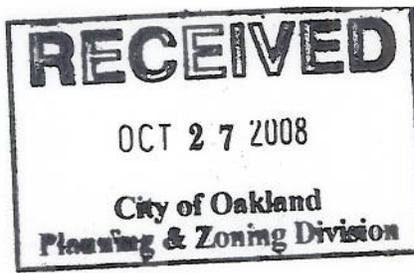
Sincerely,

Sandra Threlfall

Sandra Threlfall
Executive Director

Letter M Response – Waterfront Action

- M-2. The comment suggests fundamental changes in the project as a means of reducing project contributions to cumulative traffic impacts. The analysis suggested by the commenter exceeds the EIR revisions required by the Court Order, and the alternatives analysis in the EIR thoroughly analyzes smaller project options. See Master Response A, Response to Comments on the Public Policy Merits of Project Approval.
- M-3. The commenter raises a question about traffic operations, which were analyzed thoroughly in Section IV.B, Transportation, Circulation, and Parking, in the EIR. The Court required the City to prepare specific revisions to the analysis in the EIR that do not pertain to this topic, but that revise the use of a “ratio theory” approach to the cumulative traffic intersection analysis. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- M-4. See Response to Comment M-3, above. In addition, the underlying EIR thoroughly considers circulation issues.
- M-5. See Responses to Comment M-3 and M-4, above.
- M-6. See Responses to Comment M-3 and M-4, above.
- M-7. See Response to Comment M-3, above.
- M-8. See Response to Comment M-3, above.
- M-9. The comment raises issues about the Ninth Avenue Terminal project and “cumulative damage to the historical fabric of the waterfront.” The comment does not pertain to the project that is the subject of the EIR or to the revisions required by the Court Order. The EIR analyzes potential historic resources impacts in Section IV.E, Cultural Resources. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.



Comment Letter N

Marina Carlson
2100 10th Avenue
Oakland, CA. 94606

October 22, 2008

RE: CEQA Oak to Ninth
ER04-0009

Margaret Stanzione, Project Planner
City of Oakland, CEDA
250 Frank Ogawa Plaza, suite 3315
Oakland, CA. 94612

Dear Ms. Stanzione,

Although I am appealing to the Mayor and City Council members to vote this project down, I would like to submit for your consideration a range of mitigations that would alleviate the costs to the public and the inevitable economic consequences of this problematic development proposal.

N-1

The ABAG produced liquefaction maps clearly show the project area will be affected and the CEQA document acknowledges this fact. However the document does not include any protections from liquefaction or special building requirements for the roadways and utilities. Unless these will be private roads the city would have to pay for repairs after a seismic event. Would the Redevelopment Agency be the responsible agency? Will the city depend on FEMA for help? If so, I recommend that a NEPA study be included with this CEQA document because of the dependence on FEMA dollars after the much anticipated earthquake along the Hayward fault. Please address this issue.

N-2

I also suggest that the City of Oakland contact FEMA to make sure that the repairs to this area after a large seismic event will be paid for.

Oak to Ninth CEQA Issues:

- 1. Urban design and best planning (CEQA II A-1 & IIA-3)

N-3

Stop the creation of a gated community. I am referring to the constant description of this land as cut off from the community and isolated.

Mitigation: Build an overpass for public access midway between 5th ave. and 16th Ave.

Stop the creation of a 2nd downtown. The City of Oakland would have a new skyline which refocuses the publics view away from our downtown. It will look like a separate city.

N-4

Mitigation: There is no mitigation that will address this significant effect.

Comment Letter N

The Cumulative effect P.II A-2 and significant criteria (2) incorrectly states that this project does not conflict with any applicable land use policy including our general plan or zoning ordinance. The project does result in changes to our policies and plans. These changes amount to a spot zoning and special amendments to our General Plan to accommodate this project.

N-5

2. Floods from Global Warming
3. Liquefaction from the expected Earthquake

Mitigations: Mayor Ron Dellums and City Council members will pay and be personally liable to repair the roads, utilities, and pipelines in the event of a disaster. These disasters are predicted in this area in the foreseeable future. The Mayor and City Council should indemnify the taxpayer, who at this point could be held responsible for these repairs.

N-6

Require earthquake insurance be purchased by the city for the public roadways and infrastructure.

Require a study of other mitigations to deal with the projected and anticipated loss of land in the foreseeable future.

Require a pumping station or require the project be built on stilts. on stilts.

Require these solutions before the problem is upon us.

4. Water Resources: CEQA II M-2

We are presently in a drought condition. The projects impact will be significant due to the additional 3,100 housing units and 200,000 sq. ft. of commercial space.

N-7

Mitigation: The developer will install a desalination plant to mitigate the increase in water demand.

5. Services: CEQA II L-3

Fire and Emergency Medical Response Services.

The goal of fire and emergency services response time is 7 minutes.
The response time of 7 minutes cannot be accomplished. Many times a train can block access to this area for 20 minutes or more.

N-8

Mitigations: Require the project applicant pay for a fire boat.

Require a public overpass that can accommodate emergency vehicles as well as pedestrians, cyclists and wheelchairs halfway between 5th Ave. and 16th Ave.

N-9

Comment Letter N

Police Services:

Mitigations: Provide for private security services or contribute to the Police Department for the additional Police necessary to patrol this area.

N-10

Provide funds for Park Rangers to patrol the park areas that will be developed.

Compensate the Coast Guard to insure the security of the waterfront due to the proposed increase of population at this location and its proximity to Coast Guard Island.

6. Transportation: Public access to this area is limited.

N-11

Mitigation: Require payment or contract with AC Transit for the extra bus routes needed or provide for private shuttles to insure access other than the automobile to this location.

I am including a copy of a letter I have written to the Mayor and City Council and ask that you include all of the relevant CEQA issues I have identified in your next report.

N-12

As a final note, I am voicing my objection to the constrained process for public review and comments on this CEQA document. This supplemental environmental review will not have the benefit of a public hearing at the planning commission level. It will not include the planning commissioner's comments and scrutiny which is given all other supplemental environmental documents. The "revisions" to this EIR and additional mitigations are substantive. A project of this size and complexity requires a full airing of all of the issues involved. All of the other planning approvals that have been suspended are based on the E.R. and could be changed or set aside pending the outcome of the final, final E.I.R. I am concerned that the City Council may, in the future, choose to bypass the planning commission and certify EIRs for any project that they fear would be too controversial thus stifling public input. This change in the usual process could lead to abuse of our planning procedures.

N-13

Thank you for your consideration.

Sincerely,


Marina Carlson

Cc: Mayor and Council members

FEMA

WRCB

Coast Guard

Comment Letter N

Marina Carlson
2100 10th Avenue
Oakland, CA 94606

RE: Oak to Ninth CEQA
Revisions #RG06-280471

October 22, 2008

Mayor Ron Dellums and City Councilmembers
One City Hall Plaza
Oakland, CA. 94612

Dear Mayor and Councilmembers,

It is not often that a Mayor and City Council have the opportunity to correct a grave error from a previous administration's decision.

The Oak to Ninth project was approved in a very different economic climate.

At this time, the city needs to make sure that the vacant housing that is already built is occupied and the property owners that are in foreclosure can stay in their homes. This effort is essential for the sake of the neighborhoods and for the cities tax rolls.

Surely these economic times tell you that this project will not be realized for decades to come. Don't tie up this land. Don't tie your hands.

We are in the middle of a drought. We have been asked to cut our water use. Is it wise to add households before our water supply has increased? Are we rationing now for households that haven't yet arrived? In a recent article on the drought the Chronicle states that the " Water Resources Control Board has issued permits promising more than 3.4 times the amount of water available during high-flow years".

Look at the simulation on p. IV.K-13 and p. IV.K-36 of the CEQA document. Do we really want a 2nd downtown? A downtown far from public transportation? Do we want a gated community? (See p.II.H.1 "geographic context"). The gates are at 5th Ave. and 16th Ave. and are the only access across the freeway, BART, and train tracks.

The City Council should realize that going to court was not the act of a few troublemakers. There are many people that felt that our objections were not taken seriously nor given proper respect under the Brown administration.

Now that we have a different Mayor, you can redirect the high-rise and high density development to Oakland's downtown district; close to public transportation, close to shops and services, close to government offices and open to all.

I propose a new approach to the development of this part of the estuary. The city should start from the perspective of public access, parks and open space opportunities. These

N-14

N-15

N-16

N-17

N-18

Comment Letter N

spaces should be planned in advance of any commercial enterprises proposed. These public access spaces should be selected for the public's maximum enjoyment. Then, after the public has been served, then see what spaces, if any, can be developed. Don't plan the access and parks from leftover spaces seen from the developer's maximum build out perspective.

N-18
cont.

The conjunction of sea, rail and freeway cannot be duplicated. This is an asset. The Ninth Avenue Terminal is an asset. Adaptive reuse is the highest and best use for this building.

N-19

The threat of Global Warming is real and if the projections are correct this area will be totally underwater in the foreseeable future. Who will make the needed repairs to continue housing in this area? Are we permitting building in a future flood plane?

N-20

On the ABAG website excerpts from the "real dirt on liquefaction" speaks to the extensive damage to roads, sewer and natural gas pipelines that will occur. Who will pay to rebuild the roads, utilities, pipelines and housing in the event of the inevitable earthquake and liquefaction? If the city is counting on FEMA to make these repairs, shouldn't a NEPA study be required as well as the CEQA study? Can we get some guarantee that FEMA will come to the rescue? Have they been contacted?

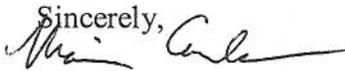
N-21

Are you, the Mayor and Citycouncilmembers willing to be personally liable for the problems that will occur after the earthquake and indemnify the taxpayers of Oakland for the repairs to the infrastructure within the project boundaries?

N-22

Please find this CEQA document inadequate. The proposed project is undermining to Oakland's General Plan and zoning laws. Please do not spot zone this area to accommodate an overdone and unmitigatable project damaging to the public's best interest. Please vote this project down.

N-23

Sincerely,

Marina Carlson

Cc: Margaret Stanzione, Project Planner
FEMA
WRCB
ABAG



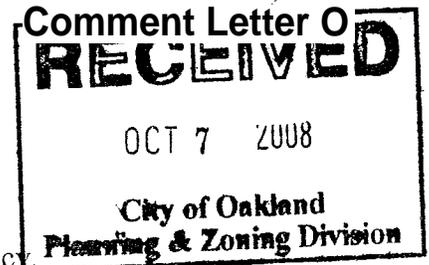
Letter N Response – Marina Carlson

- N-1. Comments regarding the merits of the project do not pertain to the revisions to the EIR required by the Court Order. See Master Response A, Response to Comments on the Public Policy Merits of Project Approval. See the responses that follow for discussion of the mitigation measures suggested by the commenter.
- N-2. The commenter errs in stating that the *Revisions* document “does not include any protections from liquefaction or special building requirements for the roadways and utilities.” Chapter II.F, Geology, Soils, and Seismicity, of the *Revisions* contains extensive analysis of liquefaction hazards and recommends mitigations (Mitigation Measure F.2) that include conformance to existing state laws, City ordinances, and application of accepted, proven construction engineering practices. These measures are commonly recognized as full and acceptable mitigation for liquefaction hazards. The fiscal considerations mentioned by the commenter (possible sources of government funding for road repairs after an earthquake on the Hayward fault) are speculative and outside the scope of CEQA analysis.
- N-3. The comment raises topics (urban design and planning) that are outside the scope of the revisions to the EIR required by the Court Order. Moreover, neither the EIR nor the *Revisions* represents the project as a proposed “gated community,” as the commenter suggests. Section IV.A, Land Use, Plans and Policies, of the EIR discusses public access to and from the project. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- N-4. The comment raises a topic (the project’s impact on views of the city skyline) that is outside the scope of the revisions to the EIR required by the Court Order. Section IV.K, Visual Quality and Shadow, of the EIR evaluates project impacts on views. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.
- N-5. The comment raises issues related to an environmental topic (project conflicts with applicable land use policies) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.A, Land Use, Plans and Policies, of the EIR evaluates potential project conflicts with applicable land use policies, including Oakland General Plan policies and zoning regulations.
- N-6. The first topic raised by the commenter (global warming-related floods and suggested mitigation measures) is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. See also Response to Comment L-8, above.

Regarding liquefaction issues, see Response to Comment N-2, above. The mitigation measures suggested by the commenter for liquefaction impacts (e.g., assigning personal liability for disasters, purchasing earthquake insurance) involve analysis of fiscal responsibilities and are outside the scope of CEQA analysis. The commenter’s suggestion for “a study of other mitigation to deal with the projected and anticipated loss of land in the foreseeable future” is unclear and would involve making speculative assumptions about the effects of possible future disasters.

- N-7. The comment raises issues related to an environmental topic (project impacts on water service) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.M, Utilities and Service Systems, of the EIR evaluates the project's potential impact on water service, and Section II.M of the *Revisions* provides an extensive analysis of cumulative impacts on water service. The mitigation measure suggested by the commenter (installation of a desalination plant) is not reasonably related to a potentially significant impact identified in accordance with CEQA.
- N-8. The comment raises issues related to an environmental topic (fire and emergency medical service response times to the project site) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.L, Public Services and Recreation Facilities, of the EIR evaluates potential project impacts on fire and emergency medical services, including emergency access to the project site.
- N-9. See Response to Comment N-8, above. The mitigation measure suggested by the commenter (construction of an overpass for emergency vehicles) is not reasonably related to a potentially significant impact identified in accordance with CEQA.
- N-10. The comment raises issues related to an environmental topic (mitigation for police service impacts resulting from the project) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.L, Public Services and Recreation Facilities, of the EIR evaluates potential project impacts on police service. The mitigation measures suggested by the commenter (private security services, funding for park rangers, Coast Guard compensation) are not reasonably related to a potentially significant impact identified in accordance with CEQA.
- N-11. The comment raises issues related to an environmental topic (limited public access to the project area) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.A, Land Use, Plans and Policies, of the EIR discusses public access (including transit access) to and from the project, and Section IV.B, Transportation, Circulation, and Parking, of the EIR evaluates project impacts on site access, circulation, and transit service.
- N-12. See Responses to Comments N-14 through N-23, below.
- N-13. See Master Response C, Public Review Process of the *Revisions*.
- N-14. This comment raises issues regarding the merits of the project and does not pertain to the revisions to the EIR required by the Court Order. See Master Response A, Response to Comments on the Public Policy Merits of Project Approval.
- N-15. The comment raises issues related to an environmental topic (project impacts on water service) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.M, Utilities and Service Systems, of the EIR

- evaluates the project's potential impact on water service, and Section II.M of the *Revisions* provides an extensive analysis of cumulative impacts on water service.
- N-16. The comment raises issues related to environmental topics (the project's impact on views, the separation of the project site from surrounding development, and public access to the site) that are outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.K, Visual Quality and Shadow, of the EIR evaluates project impacts on views. Regarding the site's separation from surrounding development and related issues, see Response to Comment N-3, above.
- N-17. This comment raises issues regarding the merits of the project and does not pertain to the revisions to the EIR required by the Court Order. See Master Response A, Response to Comments on the Public Policy Merits of Project Approval.
- N-18. This comment raises issues regarding the merits of the project and does not pertain to the revisions to the EIR required by the Court Order. See Master Response A, Response to Comments on the Public Policy Merits of Project Approval. Chapter V, Alternatives, of the EIR evaluates development alternatives for the project site, including the No Project Alternative, Estuary Plan Alternative, Enhanced Open Space/Partial Ninth Avenue Terminal Preservation Alternative, Reduced Development/Ninth Avenue Terminal Preservation Alternative, and Ninth Avenue Terminal Full Preservation Sub-Alternative.
- N-19. See Response to Comment N-18, above.
- N-20. The comment raises issues related to an environmental topic (global warming-related floods) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. See also Response to Comment L-8, above.
- N-21. See Response to Comment N-2, above. Chapter II.F, Geology, Soils, and Seismicity, of the *Revisions* contains extensive analysis of liquefaction hazards and recommends mitigations (Mitigation Measure F.2) that include conformance to existing state laws, City ordinances, and application of accepted, proven construction engineering practices. These measures are commonly recognized as full and acceptable mitigation for liquefaction hazards. The fiscal considerations mentioned by the commenter (possible sources of funding for repairs after an earthquake) are speculative and outside the scope of CEQA analysis.
- N-22. See Responses to Comments N-2, N-6, and N-21, above. Assigning personal liability for damage due to potential future disasters, as suggested by the commenter, is outside the scope of CEQA analysis.
- N-23. This comment raises issues regarding the merits of the project and does not pertain to the revisions to the EIR required by the Court Order. See Master Response A, Response to Comments on the Public Policy Merits of Project Approval. Regarding project consistency with the Oakland General Plan and zoning regulations, see Response to Comment N-5, above.



October 6, 2008

Margaret Stanzione, Project Planner
City of Oakland, Community and Economic Development Agency
Planning Division
250 Frank H. Ogawa Plaza, Suite 1315
Oakland, CA. 94612

RE: Oak to Ninth Avenue Project, Comments on Project and Revisions to the EIR

My comments/concerns are as follows:

Density/traffic/parking – 3100 housing units will cause significantly more traffic on the Nimitz Freeway 880 and surrounding streets. Project too dense.] O-1

Streetscape/Parking. Sidewalks seem very narrow and no street parking indicated. How much available? In the other areas of downtown Oakland where condos are built street parking is very limited and almost non-existent. Increased congestion results. It's almost impossible to go visit the area as you cannot find a place to park.] O-2

Noise level from freeway traffic. Believe there is a state law about sound walls. There will need to be a sound wall along the freeway for noise abatement.] O-3

Tower buildings. Too high near to be reduced. City of Oakland building codes need to restrict building heights along any waterfront areas. Building near any waterfront area should be low rise.] O-4

Open views of Oakland hills. The Oakland hills are a major scenic attraction of the East Bay. High rise buildings block views of the hills and area from adjacent communities and neighborhoods. It becomes a competition. Who can build a higher building with better views? It's a money making scheme of builders who will **sell million dollar condos for the views for a few at the** expense of open unblocked views from the rest of the residents living in adjacent communities and neighborhoods.] O-5

Oakland finally got rid of the old Montgomery Ward building in East Oakland after over 20 years which was seen for miles and miles and was a wall blocking views. The high-rise commercial across from the Coliseum is another example.] O-5

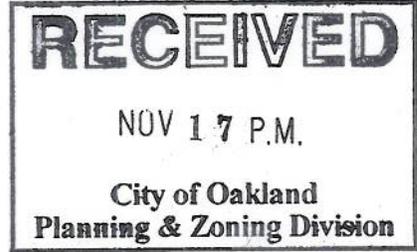
Access to Public Transportation. EIR does not address access to public transportation. The Oak to Ninth street area is isolated from the rest of Oakland due to the railroad tracks and freeway.] O-6

Sincerely,

Kathleen Jensen
122 Cypress St.
Alameda, CA. 94501

Letter O Response – Kathleen Jensen

- O-1. The commenter raises issues related to an environmental topic (the project's density and related traffic and parking impacts) that is outside the scope of the revisions to the EIR required by the Court Order. The *Revisions* evaluates cumulative traffic impacts as required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.B, Transportation, Circulation, and Parking, of the EIR evaluates the project's traffic and parking impacts, and Chapter V, Alternatives, of the EIR evaluates development alternatives for the project site.
- O-2. The commenter raises issues related to an environmental topic (sidewalk width and lack of on-street parking) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.B, Transportation, Circulation, and Parking, of the EIR evaluates the project's parking and pedestrian safety impacts.
- O-3. The commenter raises issues related to an environmental topic (freeway traffic noise and sound wall requirements) that is outside the scope of the revisions to the EIR required by the Court Order. The *Revisions* evaluates cumulative traffic noise impacts as required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.G, Noise, of the EIR evaluates project-related noise impacts and the need for sound walls.
- O-4. The commenter raises issues regarding the merits of the project (i.e., proposed building heights) and does not pertain to the revisions to the EIR required by the Court Order. See Master Response A, Response to Comments on the Public Policy Merits of Project Approval.
- O-5. The commenter raises issues related to an environmental topic (Project effects on views) that is outside the scope of the revisions to the EIR required by the Court Order. The *Revisions* evaluates cumulative visual quality impacts as required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.K, Visual Quality and Shadow, of the EIR evaluates project impacts on views.
- O-6. The commenter raises issues related to an environmental topic (access to public transportation) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.A, Land Use, Plans and Policies, of the EIR discusses public access to and from the project, and Section IV.B, Transportation, Circulation, and Parking, of the EIR evaluates project impacts on site access, circulation, and transit service.



November 17, 2008

Margaret Stanzione, Project Planner
City of Oakland
Community and Economic Development Agency
Planning Division
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612

RE: Comments on the Revisions to the Analysis for the Oak to Ninth Project EIR – ER-04-0009

Dear Ms. Stanzione:

The revised EIR seriously underestimates the effect of this project on the residents of Alameda, particularly in the area of traffic. We should not have to remind you that Alameda is an island with limited connection points to the mainland. Plans for developing the west end of the island will severely impact traffic flow from the Posey tube to the 880 corridor at exactly where Oak to Ninth traffic will converge. Traffic tie-ups that can be anticipated will last for years. This rises above the level of mere inconvenience to matters of life and death. The likelihood of delays of emergency vehicles trying to get to and from the island is a serious concern for the health and safety of people living in Alameda.

P-1

Please consider these points in the EIR.

Sincerely,

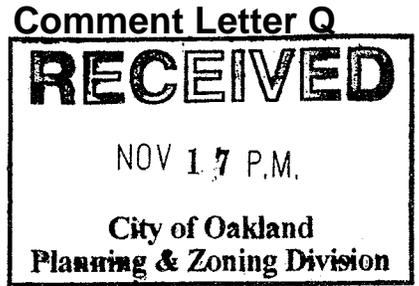
Dr. Arthur Lipow
Dr. Arthur Lipow

Gretchen Lipow

Gretchen Lipow
gretchenlipow@comcast.net

Letter P Response – Dr. Arthur Lipow and Gretchen Lipow

- P-1. Traffic impacts of the project are analyzed thoroughly in the EIR. The Court required the City to prepare specific revisions to the analysis in the EIR that do not pertain to this topic, but that revise the use of a “ratio theory” approach to the cumulative traffic intersection analysis. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order.



November 17, 2008

Via Email: mstanzione@oaklandnet.com

Ms. Margaret Stanzione, Project Planner
City of Oakland, Community and Economic Development Agency
Planning Division
250 Frank Ogawa Plaza, Suite 3315
Oakland, CA 94612

**RE: PROPOSED REVISIONS TO THE OAK TO NINTH PROJECT EIR,
Oakland #ER-04-0009**

Dear Ms. Stanzione:

I would like to comment on the failure to analyze increased greenhouse gas emissions that will be produced by this project and their effect on global warming. Because the EIR has been set aside, the Attorney General rule that EIRs analyze these impacts should apply.

Recently a letter from Attorney General to the Metropolitan Transportation Commission (MTC) stated that CEQA required evaluation of both "committed" projects, those not yet constructed, and "discretionary" projects for greenhouse gas emissions. Goals need to be adopted that "include 'climate protection' and...reducing emissions (including GHGs)." Q-1

This project with constricted egress and access for 3100 plus autos which will be driving at little more than idling speed will be emitting enormous quantities of polluting emissions including those that will contribute to Global Warming. This is not an infill project; it is a stand-alone isolated project without transit. It is like a suburban development and will require high usage of cars. Even if AC Transit could afford to serve the project, how would the buses get thru the congestion? They would have to expand their service to include helicopters.

JOYCE ROY
(510) 655-7508

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EMAIL: joyceroy@earthlink.net

Adoption of the **540-unit Environmentally Superior Alternative** would materially reduce these impacts.

There is no analysis of the effect on the project of the climate changes that are predicted to affect the San Francisco Bay during the lifetime of this project. According to the BCDC website, "The Intergovernmental Panel on Climate Change and the 2006 California Climate Action Team Report project that mean sea level will rise between 10 and 90 cm (12 and 36 inches) by the year 2100." The worst-case scenario needs to be analyzed.

Referring again to the letter from the Attorney General to MTC, a Green Construction Policy needs to be adopted. This would be in line with the City of Oakland **Sustainable Community Development Initiative**. Construction needs to conform to Sustainable Green Building practices.

Sincerely,

Joyce Roy

Attachment: Letter from Attorney General to MTC dated October 1, 2008



Q-1
cont.

Comment Letter Q

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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October 1, 2008

By Facsimile and U.S. Mail
(510) 817-5848

Ms. Ashley Nguyen
EIR Project Manager
Metropolitan Transportation Commission
101 Eighth Street
Oakland, CA 94607

RE: Comments on the Notice of Preparation for Draft Environmental Impact Report For the Transportation 2035 Plan

Dear Ms. Nguyen:

The Attorney General submits these comments to the Metropolitan Transportation Commission ("MTC") on the Notice of Preparation for the Draft Environmental Impact Report ("DEIR") for the proposed Transportation 2035 Plan ("Proposed Transportation Plan"). Although the deadline for comments on the Notice of Preparation has passed, we request that MTC consider these comments in preparing the DEIR.

We commend MTC for committing to evaluate the climate change impacts of the investments identified in the Proposed Transportation Plan. We also commend MTC for working to provide funding for "smart growth" development strategies that will reduce vehicle emissions associated with new development, for working to expand the bicycle network, and for including other elements of a Climate Change Program in the Proposed Transportation Plan. As climate change is one of the most critical environmental challenges to face our communities today, we urge MTC to embrace the opportunity it has in the Proposed Transportation Plan and the accompanying DEIR to show further leadership by identifying a comprehensive transportation strategy that will reduce emissions of the greenhouse gasses ("GHG") that cause global warming.

Global Warming in California

The Intergovernmental Panel on Climate Change of the United Nations has found

Ms. Ashley Nguyen
October 1, 2008
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overwhelming evidence that global warming is occurring and is caused by human activity.¹ The California Climate Change Center reports that temperatures in the State are expected to rise 4.7 to 10.5°F by the end of the century.² Such increases would have serious consequences, including substantial loss of snowpack, an increase of as much as 55% in the risk of large wildfires, reductions in the quality and quantity of agricultural products, exacerbation of California's air quality problems, and adverse impacts on human health from increased heat stress, including heat-related deaths, as well as increases in asthma, respiratory, and other health problems.³

California recognizes that global warming is an urgent problem. As reflected in the California Global Warming Solutions Act of 2006 ("AB 32") and Executive Order S-3-05, we must substantially reduce our total GHG emissions by mid-century in order to stabilize atmospheric concentrations of GHGs at a level that will avoid dangerous climate change. This makes it imperative to address GHG emissions from the transportation sector, which account for 38% of the GHG emissions in the State.⁴ In the Bay Area, emissions from the transportation sector are even greater, accounting for 50% of the total.⁵ If we fail to make better transportation and land-use decisions – at all levels of government and at every opportunity – in a very short time, our climate goals may be out of reach. According to Rajendra Pachauri, Chairman of the United Nations Intergovernmental Panel on Climate Change ("IPCC"), "If there's no action before 2012, that's too late. What we do in the next two to three years will determine our future. This is the defining moment."⁶

¹United Nations Intergovernmental Panel on Climate Change, *Fourth Assessment Report: Climate Change 2007* (February 2007) *Working Group I Report, The Physical Science Basis, Summary For Policymakers* ("IPCC 4th").

²California Climate Change Center, *Our Changing Climate: Assessing the Risks to California* (July 2006) page 2, available at <<http://www.energy.ca.gov/2006publications/CEC-500-2006-077/CEC-500-2006-077.PDF>> (as of September 29, 2008). The report was prepared by the Climate Change Center at the direction of CalEPA pursuant to its authority under Governor's Executive Order No. S-3-05 (June 1, 2005) ("Exec. Order S-3-05").

³*Id.* at pp. 2, 10; Exec. Order S-3-05.

⁴California Air Resources Board, *Climate Change Draft Scoping Plan* (June 27, 2008) page 7 ("Draft Scoping Plan").

⁵Bay Area Air Quality Management District, *Source Inventory of Bay Area Greenhouse Gas Emissions* (November 2006) page 7.

⁶Rosenthal, *U.N. Chief Seeks More Leadership on Climate Change*, N.Y. Times (November 18, 2007).

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California Environmental Quality Act

As the Legislature has recognized, global warming is an “effect on the environment” under the California Environmental Quality Act (“CEQA”), and an individual project’s incremental contribution to global warming can be cumulatively considerable.⁷ The projects authorized in the Proposed Transportation Plan will result in significant increases in the GHG emissions that contribute to global warming.

CEQA was enacted to ensure that public agencies do not approve projects unless they include feasible alternatives or mitigation measures that substantially reduce the significant environmental effects of the project.⁸ CEQA requires that “[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.”⁹ This requirement is recognized as “[t]he core of a DEIR....”¹⁰ Therefore, a DEIR must identify mitigation measures and examine alternatives that would reduce the emissions of greenhouse gases that contribute to global warming.¹¹ These requirements of CEQA are consistent with federal law, which requires the Proposed Transportation Plan to consider projects and strategies that will “protect and enhance the environment” and “promote energy conservation” and to discuss “potential environmental mitigation activities.”¹²

An EIR like the DEIR for the Proposed Transportation Plan must provide an accurate depiction of existing environmental conditions.¹³ “Before the impacts of a project can be assessed and mitigation measures considered, an EIR must describe the existing environment. It is only against this baseline that any significant environmental effects can be determined.”¹⁴

⁷See Cal. Pub. Res. Code, § 21083.05, subd. (a); see also Sen. Rules Comm., Off. Of Sen. Floor Analyses, analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.), Aug. 22, 2007.

⁸Pub. Resources Code, § 21002.

⁹Pub. Resources Code, §§ 21002.1, subd. (b), and 21081; see also *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134.

¹⁰*Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County* (1990) 52 Cal.3d 553, 564-65.

¹¹Pub. Resources Code, § 21002.1(a); Cal. Code Regs., tit. 14, § 15130, subd. (b)(5).

¹²23 U.S.C. §§ 134(h) and 134(i)(2)(B)(i). (See text accompanying fn. 19, *infra*.)

¹³Cal. Code Regs., tit. 14, § 15125, subd. (a).

¹⁴*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 952.

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The DEIR Should Consider Climate Change Impacts, As Well As Effective Methods of Mitigation and Alternatives to Reduce Such Impacts

The Proposed Transportation Plan will authorize expenditure of approximately \$223 billion for transportation projects, including road construction and improvements that will provide additional road capacity and accommodate more vehicles. These projects will contribute cumulatively to the Bay Area's existing GHG load. In addition, implementing the Proposed Transportation Plan will result in increased GHG emissions during construction of the authorized projects, resulting in a significant cumulative impact on climate change. The DEIR should evaluate all the anticipated climate change impacts of GHG emissions from these actions, including emissions of black carbon from diesel-powered vehicles, as black carbon also contributes significantly to global warming.¹⁵

"Smart" land-use strategies can result in a reduction in vehicle miles traveled ("VMT") over the long term, which in turn is critical to reducing GHG emissions from the transportation sector. Statewide, VMT increased approximately 35% from 1990 to 2007, and under a business-as-usual scenario, VMT is currently expected to increase another 20% by 2020.¹⁶ According to the California Energy Commission, if we do not slow this anticipated growth in VMT, the increase will completely nullify the other advances that the State is making to control transportation-related emissions, including lowering the carbon content of fuel.¹⁷

As the Air Resources Board notes, "[t]he key to addressing the VMT challenge is providing people with more choices through diversified land use patterns, greater access to alternative forms of transportation including transit, biking and walking, and creating cities and towns where people can live, work and play without having to drive great distances."¹⁸ In addition, the way a transportation plan allocates funds among potential transportation projects can make a significant difference in the amount of transportation-generated GHG emissions in the future. The DEIR should discuss whether the Proposed Transportation Plan *maximizes* the use of available funds for public transit, alternative fuel vehicles, carpool, vanpool, rideshare, pedestrian and bicycle projects (including "Safe Routes to School" programs), and other measures that reduce VMT and/or GHG emissions.

¹⁵Black carbon is a strong absorber of solar radiation, and black carbon particles mixed with dust and chemicals in the air may be the second biggest contributor to global warming. (See California Air Resources Board, Health Effects of Diesel Particulate Matter pages 4-5, available at <http://www.arb.ca.gov/research/diesel/dpm_draft_3-01-06.pdf> [as of September 29, 2008].)

¹⁶Draft Scoping Plan Appendices page C-22.

¹⁷California Energy Commission, The Role of Land Use in Meeting California's Energy and Climate Change Goals, Final Staff Report (August 2007) pages 10, 18.

¹⁸ Draft Scoping Plan Appendices page C-22.

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CEQA requires that an EIR evaluate the potential environmental impacts of an entire project, which in this context we believe represents the entire \$223 billion of authorized expenditures – not just the \$31.6 billion for projects MTC identifies as “discretionary,” but also the \$191 billion for projects identified as “committed,” projects included in the prior Transportation Plan but not yet constructed. The EIR for the prior Transportation Plan was prepared before AB 32, with its GHG-emission reduction goals, was enacted. The prior Transportation Plan and EIR also were adopted before the enactment of the federal act (effective August 2005) (SAFETEA-LU) that requires a Transportation Plan to address projects and strategies that will “protect and enhance the environment, promote energy conservation, improve the quality of life”¹⁹ Finally, the California Transportation Commission (“CTC”) recently adopted the Addendum to the 2007 Regional Transportation Plan Guidelines, “Addressing Climate Change and Greenhouse Gas Emissions During the RTP Process;” this guidance also did not exist when the EIR for the prior Transportation Plan was adopted.²⁰

Accordingly, CEQA requires evaluation in the DEIR of climate change impacts both of the “committed” projects and the “discretionary” projects, and ways to eliminate or reduce such impacts. It also requires consideration of an alternative that, where feasible, eliminates from the Proposed Transportation Plan so-called “committed” projects that would contribute to adverse cumulative impacts on climate.²¹

The Proposed Transportation Plan includes projects that MTC has selected for funding with \$31.6 billion in “discretionary” funds. To select these projects, MTC stated it used a performance rating system to evaluate the projects’ anticipated effectiveness at meeting the region’s transportation goals. Among other things, the adopted goals include “climate protection,” and the “performance objectives” include reducing VMT and reducing emissions (including GHGs). We commend MTC for adopting these goals and objectives.

The Proposed Transportation Plan also includes an additional \$191 billion for projects that were authorized in the last Transportation Plan, which MTC refers to as “committed” projects. MTC indicates that the “committed” projects include about \$29 billion for transit and road expansion and \$162 billion to maintain the existing transportation system. We understand that the \$29 billion of “committed” projects for transit and roadway expansion have been proposed for inclusion in the new Transportation Plan without renewed evaluation of the relative need for, benefits of, or impacts of these projects vis-à-vis others, and regardless of how well they meet MTC’s identified goals and performance objectives. We urge MTC to rectify this omission with respect to the “committed” transit and roadway expansion projects (which reflect only 15% of the “committed” funding). MTC’s own research shows that achieving reductions in

¹⁹23 U.S.C. § 134(h)(1)(E).

²⁰It was adopted by the California Transportation Commission on May 29, 2008.

²¹If there is a contractual obligation or other overriding reason to complete a particular low-performing “committed” expansion project, the DEIR should discuss this.

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GHG emissions consistent with the goals of AB 32 will be extremely difficult:²² this highlights the need for careful and complete evaluation of impacts on VMT and GHG emissions of *all* expenditures for road and transit expansion in the Proposed Transportation Plan.

MTC staff's analysis indicates that many of the "committed" expansion projects support only one, in some cases *none*, of the identified performance goals. If low-performing "committed" projects were eliminated where feasible to do so, funding would be available to cover transit shortfalls, particularly for BART, Muni, and AC Transit, which together carry 80% of the transit riders in the Bay Area.²³ If these shortfalls are not addressed, or if they are addressed through fare increases, as recently proposed,²⁴ ridership may fall, with a concomitant increase in GHG emissions. The DEIR should address the implications of the potential transit shortfalls on GHG emissions and whether those impacts could be reduced by using funds currently proposed to be allocated to low-performing "committed" projects. This would be consistent with the direction in the CTC's guidelines for addressing climate change in RTPs to "[c]onsider shifting transportation investments towards improving and expanding urban and suburban core transit, programs for walkability, bicycling and other alternative modes, transit

²²See Therese W. McMillan, Deputy Executive Director, Policy, Metropolitan Transportation Commission, presentation to California Transportation Futures Symposium (September 3, 2008), Transportation 2035: S.F. Bay Area - Targeting Health Through Environment, available at <http://www.dot.ca.gov/hq/tpp/offices/osp/presentations/McMillan.T.ppt> (as of September 30, 2008).

²³There is currently a projected \$19 billion shortfall in transit capital and operating needs for transit in the Bay Area over the life of the Proposed Transportation Plan, and a projected \$4.2 billion shortfall in BART core capacity improvements. (See Commission Meeting presentation (July 23, 2008), Transportation 2035: Financially Constrained Investment Plan, page 22, available at http://apps.mtc.ca.gov/meeting_packet_documents/agenda_1116/T2035_Recommendations_short_v.3.ppt [as of October 1, 2008].) These figures were generated before recent increases in public transit ridership due to high gasoline prices. The American Public Transportation Association reports more than a 5% increase in BART ridership in 2008. (See <http://www.apta.com/research/stats/ridership/index.cfm> [as of September 29, 2008].) Thus, the funding needs for existing transit service may well exceed these estimates.

²⁴See, e.g., *Consider congestion pricing for BART*, San Francisco Chronicle (September 15, 2008), available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/09/15/EDIJ12T13A.DTL&hw=BART+fare&sn=001&sc=1000> (as of September 30, 2008); Gordon, *BART considers higher fares*, San Francisco Chronicle (September 12, 2008), available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/09/12/MNS412SGBC.DTL&hw=BART+fare&sn=002&sc=491> (as of September 30, 2008), which noted that BART trains are currently near capacity in peak hours.

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access, housing near transit, and local blueprint plans that coincide with the regional blueprint.”²⁵

The DEIR should also address, at a minimum, the following issues:

1. ***The impact of high-occupancy toll (“HOT”) lanes on carpooling, transit ridership, VMT, and GHG emissions.*** A principal benefit of the HOT lane network is savings in travel time for people driving alone (both in the HOT lane and in other lanes). Some commentators have expressed concerns about the effect of HOT lanes on “induced travel,” noting that “at the same time that some drivers are encouraged to stay away from congestion or higher peak-period tolls, others are drawn to use the HOT lanes because they are relatively less congested than other options.”²⁶ At least one expert panel has expressed concerns that a proposed increase in freeway lane miles for a “managed lane” network similar to the HOT lane network proposed here would “perpetuate auto-oriented development and reduce transit’s competitiveness.”²⁷

In recognition of these concerns, the DEIR should evaluate, for each corridor, the effect of (1) creation of a new lane to be used as a HOT lane, or (2) conversion of an existing HOV lane to a HOT lane, whichever is applicable, including any increase in the carpool requirement from 2 to 3 occupants,²⁸ on the following: (a) carpooling rates, (b) VMT, (c) induced travel (commuters, carpoolers, telecommuters, etc., who are thereby induced to start driving alone), and (d) long-term housing distribution patterns (i.e., “induced growth” of housing in areas

²⁵California Transportation Commission, Addendum to the 2007 Regional Transportation Plan Guidelines: Addressing Climate Change and Greenhouse Gas Emissions During the RTP Process (May 29, 2008) page 2 (emphasis added).

²⁶ Dahl, *The Price of Life in the Fast Lane* (2003) 111 *Envtl. Health Persp.*, Number 16, available at <<http://www.ehponline.org/members/2003/111-16/spheres.html>> (as of September 30, 2008), citing the director of the Bridge Tolls Advocacy Project in New York.

²⁷See Independent Transit Planning Review Services December 2006 Final Report, prepared for the San Diego Association of Governments (December 2006) pages ES-5 and 3-32, available at <http://www.sandag.cog.ca.us/uploads/publicationid/publicationid_1274_6239.pdf> (as of September 30, 2008). The panel also observed, “Smart Growth efforts will likely be weakened by managed lanes’ alleviation of congestion and its encouragement of auto-oriented growth away from transit corridors.” (See *id.* at pp. 6-16.)

²⁸ The Bay Area High-Occupancy/Toll (HOT) Network Study Final Report notes that implementing HOT lanes will likely require increasing carpool occupancy requirements. MTC, Bay Area High-Occupancy/Toll (HOT) Network Study Final Report (September 2007) page 7.

Ms. Ashley Nguyen
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where HOT lanes can be used to commute to employment centers).²⁹ The DEIR should provide both short-term and long-term evaluation of the environmental impacts/benefits of the HOT lane network. In particular, the EIR should evaluate the potential effects of induced travel where the freeway is expanded to create a HOT lane.³⁰

2. ***The effect on GHG emissions of different prioritizations of uses of HOT lane revenues.*** MTC recently adopted “HOT Network Implementation Principles” that indicate HOT lane revenues will be used “to finance and construct the HOT network” and “provide transit services and improvements in the corridors.” However, it is not clear when *any* excess revenues will be generated from the HOT lane network, and what the priority will be for investment of such revenues. We understand that, if completing the area-wide HOT lane network is the priority use for HOT lane revenues, the anticipated benefits of excess revenue from the HOT lane network would not accrue to public transit until the network is completed in 2025. The EIR should disclose the anticipated timing and amount of excess revenues (i.e., revenues not need to cover network expenses), and

²⁹The California Department of Transportation’s (“Caltrans”) own guidance for preparing an EIR recognizes the need to evaluate how a project will influence growth. (See Caltrans, EIR/EA Annotated Outline (April 2008) pages 37-39, available at http://www.dot.ca.gov/ser/downloads/templates/eir_ea_SER.doc [as of September 30, 2008]; Caltrans, Guidance for Preparers of Growth-related, Indirect Impact Analyses (May 2006), available at [http://www.dot.ca.gov/ser/Growth-related IndirectImpactAnalysis/gri_guidance.htm](http://www.dot.ca.gov/ser/Growth-related%20IndirectImpactAnalysis/gri_guidance.htm) [as of September 30, 2008].)

³⁰ The Superior Court for the County of Sacramento recently invalidated Caltrans’s EIR for an HOV lane project in Sacramento, in part because it did not adequately evaluate the impacts of induced travel. (See *Environmental Council of Sacramento v. Caltrans* (July 15, 2008, 07CS00967) <http://nastsacramento.blogspot.com> [as of September 29, 2008].) There are numerous reports and studies on the “induced travel” impacts of new freeway lanes and recommended methods of analysis. (See, e.g., U.S. Department of Transportation Federal Highway Administration, *Induced Travel: Frequently Asked Questions*, available at <http://www.fhwa.dot.gov/Planning/itfaq.htm> [as of September 30, 2008]; Cervero & Hanson, *Induced Travel Demand and Induced Road Investment* (2002) 36 J. Transp. Econ. & Pol’y, Part 3, pp. 469-490; Litman, *Generated Traffic and Induced Travel: Implications for Transport Planning* (September 17, 2007), available at <http://www.vtpi.org/gentraf.pdf> [as of September 30, 2008]; Litman, *Smart Transportation Investments: Reevaluating the Role of Highway Expansion for Improving Urban Transportation* (October 6, 2006), available at http://www.vtpi.org/cong_relief.pdf [as of September 30, 2008]; Cervero, *Road Expansion, Urban Growth, and Induced Travel: A Path Analysis* (Spring 2003) 69 APA Journal, No. 2, pp. 145-163; Noland, *Relationships between highway capacity and induced vehicle travel* (2001), 35 Transp. Res. Part A: Policy and Practice, Issue 1, pp. 47-72.)

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should compare the anticipated effect on GHG emissions of this planned prioritization of the use of these revenues to the anticipated effect on GHG emissions of an alternative that applies a significant percentage of HOT lane revenues to unfunded transit needs as the revenue is generated (rather than after the HOT network is completed). In particular, the EIR should evaluate the benefits of using HOT lane funds for transit improvements that would maintain and increase transit ridership in the completed HOT lane corridors.³¹

3. ***The projected effects of the different alternatives on VMT and GHG emissions.*** In addition, the DEIR should provide and evaluate at least one alternative designed to maximize the reduction of GHG emissions. As you are aware, there are many policies and/or projects that MTC could consider to help achieve this goal, some of which it is already considering and could fund at a significantly higher level. While this letter is not intended to provide a complete list, some of the possibilities include the following: focus on eliminating transit shortfalls; increase service capacity to meet increased demand for public transit in core urban areas; increase funding for transportation infrastructure to serve infill and mixed use development located near employment centers and provide incentives for such development; increased incentives for use of public transit, ridesharing and carpools; and expanded public transit frequency of operation.

4. ***Green Construction Policy.*** To further reduce the impact of the projects in the Proposed Transportation Plan on air quality and climate change, the EIR should evaluate the effect of including a mandatory “green construction” policy. Such a policy could require, for example,
 - use of an emissions calculator in the planning of every construction project, one that uses the proposed equipment fleet and hours of use to project nitrogen oxides, particulate matter, and carbon dioxide emissions, then quantifies the reductions achievable through the use of cleaner/newer

³¹ The way the revenue is used could impact the effectiveness of HOT lanes. (See Dahl, R., *The Price of Life in the Fast Lane* (December 2003), 111 *Environmental Health Perspectives*, Number 16, available at <<http://www.ehponline.org/members/2003/111-16/spheres.html>> [as of September 29, 2008], citing the transportation director of Environmental Defense, who stated that “[t]he key element for truly effective congestion pricing [] is dedication of HOT lane fees to public transit and public health purposes in the same transit corridor.”) Along similar lines, the California Air Resources Board’s Draft Scoping Plan identifies congestion pricing as a GHG-reduction measure under consideration, emphasizing that the GHG emission reductions would come from “relief of severely congested traffic, some reduction in vehicle travel, and from the investment of funds in transit infrastructure that would provide additional transportation options during congested hours.” (Draft Scoping Plan p. 38 [emphasis added].)

Ms. Ashley Nguyen
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equipment;³²

- that all off-road construction vehicles be alternative fuel vehicles, or diesel-powered vehicles with Tier 3 or better engines or retrofitted/repowered to meet equivalent emissions standards as Tier 3 engines;³³
- use of the minimum feasible amount of GHG-emitting construction materials (cement, asphalt, etc.);³⁴
- use of cement blended with the maximum feasible amount of flyash or other materials that reduce GHG emissions from cement production;
- use of lighter-colored pavement with increased reflectivity, which reduces the “heat island” effect;
- recycling of construction debris to maximum extent feasible;
- planting of shade trees in or near construction projects where feasible.

Finally, the DEIR also should consider feasible measures to mitigate and/or reduce emissions of criteria pollutants (including black carbon and other particulate matter) from diesel buses, such as requiring retrofitting of diesel buses with particulate traps, replacing diesel buses

³²The calculator used in the Sacramento Metropolitan Air Quality Management District’s program is available at <<http://www.airquality.org/ceqa/index.shtml#construction>> (as of September 29, 2008).

³³Similarly, the South Coast Air Quality Management District has called for the State, in selecting projects that will be funded from Proposition 1B, to impose a condition that requires “use of lowest emitting construction equipment and fuels available.” (South Coast Air Quality Management District Res. No. 07-07 (April 6, 2007), “Resolution Expressing Conditions for Funding Projects with Proposition 1B Funds in the South Coast District.”)

³⁴A new production method known as “warm-mix” asphalt technology that significantly reduces GHG emissions during application may prove to be a feasible alternative road paving material. (See Moore, *Warm-Mix Asphalt (WMA) Potentially Can Provide Important Benefits for Paving Contractors, Reduce Fuel Costs and Diminish Green-House Gases*, Construction Equipment (March 1, 2007), available at <<http://www.constructionequipment.com/article/CA6421459.html>> [as of September 29, 2008]. Warm-mix asphalt was used successfully in Yellowstone National Park in August 2007, and, this fall, Logan International Airport in Boston will become the first in the U.S. to pave a runway with the new asphalt mix. (See “Green” Asphalt Saves Energy and Reduces Greenhouse Gas Emissions (August 6, 2008), available at <http://fypower.org/news/email_story.html?post_id=3165> [as of September 29, 2008]).

Ms. Ashley Nguyen
October 1, 2008
Page 11

with the lowest-emitting available alternative fuel buses, requiring that all new buses have the lowest level of emissions feasible, and planting particulate-absorbing trees near freeways and busy streets. Emissions of these pollutants is a critical health issue for the region, which does not meet attainment standards for ozone and particulate matter.³⁵

Global warming presents California with one of its greatest challenges to date. MTC has the opportunity to take steps to address the problem of climate change constructively, while educating the public and decision-makers. We urge MTC to meet the challenge with the Proposed Transportation Plan and DEIR. Please do not hesitate to contact us if the Attorney General's Office can be of any assistance.

Sincerely,

/S/

LAURA J. ZUCKERMAN
SANDRA GOLDBERG
Deputy Attorneys General

For EDMUND G. BROWN JR.
Attorney General

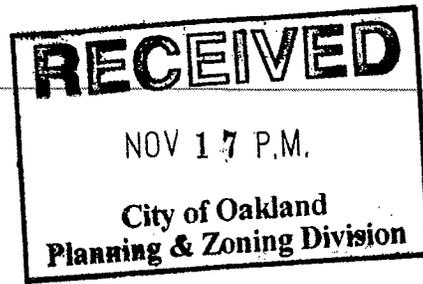
³⁵See generally, e.g., California Air Resources Board, Health Effects of Diesel Exhaust, available at <http://www.oehha.org/public_info/facts/dieselfacts.html> (as of September 29, 2008); California Air Resources Board, Draft Diesel Particulate Matter Health Risk Assessment for the West Oakland Community (March 19, 2008), available at <<http://www.arb.ca.gov/ch/communities/ra/westoakland/westoakland.htm>> (as of September 29, 2008); and the Bay Area Air Quality Management District's air quality summaries, available at <http://www.baaqmd.gov/pio/air_summaries/index.htm> (as of September 29, 2008).

Letter Q Response – Joyce Roy

Q-1. See Response to Comment L-8, above.

Comment Letter R

Stanzione, Margaret



From: John Sutter [sutteroakland@comcast.net]
Sent: Monday, November 17, 2008 3:58 PM
To: Stanzione, Margaret
Subject: Oak to 9th supplemental DEIR

Dear Ms Stanzione

Here are my individual comments about the DEIR:

The document makes many references to the developer paying its "fair share" to improvements at various intersections. This is a very vague standard. What is the formula by which the fair share is to be determined at each intersection? When will the developer be required to pay? Who will decide how much? If there is no requirement to pay before units are sold, the fair share requirement is likely to become meaningless. Will the developer be required to post a bond to assure actual payment? Why were some intersections designated for this requirement but not others? Would a reduction of the number of units reduce the number of intersections subject to this requirement?

R-1

The court required that past, current and reasonably foreseeable future projects must be considered for various impacts, including traffic impacts. Some projects have been approved since the original DEIR was drafted. Other projects have been proposed, including one huge one near Lake Merritt. Proposed rezoning in downtown is currently under consideration. Have these developments been considered in the current document? If not, why not?

R-2

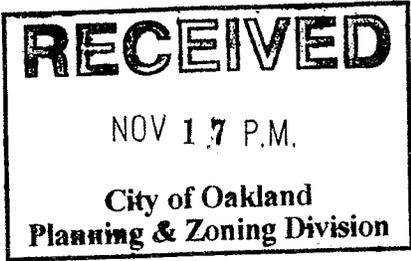
Please acknowledge receipt of this e mail.

Yours truly,

John Sutter
3627 Klamath St.
Oakland, CA 94602
510 530 3711

Letter R Response – John Sutter

- R-1. See Response to Comment L-3, above. Also see Response to Comment H-1, above, regarding changes to the project to reduce potential impacts.
- R-2. The Court did not require the City to reopen the entire EIR, but to make specific revisions. No other aspect of the EIR is required to be revised. Thus, the *Revisions* addresses the EIR analysis and is not required to reassess the cumulative setting of past, present, and reasonably foreseeable future projects. Also see Response to Comment F-5, above.



James E Vann
251 Wayne Avenue
Oakland, California 94606

16 November 2008

City of Oakland
Community & Economic Development Agency
Planning Division
250 Frank Ogawa Plaza, Suite 3315
Oakland, California 94612
Attn: Ms Margaret Stanzone
Project Planner

Subject: Comments on Proposed Revisions to Oak to Ninth Project EIR
Case No: Oakland # ER-04-0009

I write to submit individual comments relating to the proposed "Revisions to the Analysis in the Oak to Ninth Project EIR (Sch No 2004062013) Prepared to Comply with the Alameda County Superior Court Order in Case No RG06-280345 and Case No RG06-280471," prepared September 2008.

Chapter II. A: Consistency with Applicable Plans, Policies and Regulations:

The paragraph relating to the Estuary Policy Plan, which states: *Any site-specific potential adverse impact from these changes would be mitigated to a less-than-significant level as provided in mitigation measures A.2a and A.2b;* and the concluding paragraph, which states: *Lastly, the conclusion that there are no significant adverse cumulative land use/plans and policies impact in the Project is supported by the analysis and findings ...* overlook the fact that the Estuary Policy Plans identifies approximately 41 acres of open space; whereas the Oak to Ninth Project proposes approximately 32 acres of open space. This is an approximate 27% reduction in open space from that presented in the Estuary Policy Plan, which I contend is a significant adverse impact.

S-1

Chapter II. B: Transportation, Circulation, and Parking:

Table II.B.-1, which lists intersections analyzed for traffic impact omits or fails to list, or to analyze a number of important intersections, namely:

1. Two planned new signalized intersection at the re-designed 12th Street overcrossing of the Lake Merritt Channel; at E 12th St & 1st Ave; and at 12th St and Fallon St.
2. The signalized intersections of the 16th Ave overpass at E 12th St and at Embarcadero.
3. Intersections and signalized crossings south and east along Embarcadero to the Park St Bridge and easterly to new residential and commercial developments, and westerly across the Bridge to Alameda.

S-2

I contend that actual and cumulative effects of the Project on traffic from south and east at these intersections and related others are significant, and require mitigation.

Chapter II. B: Transportation, Circulation, and Parking – General Comments:

- | | |
|--|-----|
| 1. No acknowledgement is given to the relative locational “isolation” of the project, and the need for, or provision of transportation alternatives to assure access by the public to proposed project amenities. | S-3 |
| 2. Various offers of compensation contributions are proposed to assist with needed traffic mitigations – all to occur at varying dates into the future. However, the legal obligation to fulfill the compensation commitments is lacking. The Revision EIR should include signed promissory letters, enforceable under law, for each such compensation commitment. | S-4 |
| 3. How is “optimizing traffic signal timing” a mitigation when the volume of traffic remains the same or expands ? The number of vehicles are subjected to longer waits and longer stacking; and the cumulative carbon being exhausted multiplies exponentially. | S-5 |
| 4. What is the projected volume of pedestrian trips to and from the Project, and/or as result of the Project ? How is pedestrian safety provided for over the adjacent active grade level train crossing ? | S-6 |
| 5. How will the Project comply with “climatic impacts” and “reduction of the Project’s contribution to global warming” as specified in Attorney General’s letter of 1 October 2008, titled: <i>Comments on the Notice of Preparation for Draft Environmental Impact Report for the Transportation 2035 Plan.</i> | S-7 |

Chapter II. F: Geology, Soils, and Seismicity:

Mitigation Measure F.2 (for liquefaction and earthquake induced settlement), concludes that the significance of this impact after mitigation is “Less than Significant.” I contend that the effects of liquefaction are immeasurable, and that effects are partly unknowable. Accordingly, the potential impact of the Project being constructed in a “liquefaction designated area” must continue to be projected as “significant,” regardless of proposed mitigations.	S-8
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Chapter II. G: Noise:

The Summary paragraph, Impact G.5, after being edited, concludes: “ <i>Cumulative Impact: Less than Significant,</i> ” and “ <i>Mitigation: None Required.</i> ” This conclusion erroneously overlooks or omits grossly significant noise sources, namely:	S-9
1. Projected widening by Caltrans of the elevated I-880 freeway, which will involve heavy construction, and that will extend over a period of years.	
2. Train traffic is projected to increase significantly in number of trips daily at the Project site, and at all hours.	
No mitigation is proposed for these greater than significant noise sources.	

Chapter II. I: Biological Resources / Wetlands:

The Summary paragraph, Impact I.8, after being edited, concludes: “ <i>Cumulative Impact: Less than Significant,</i> ” and “ <i>Mitigation: None Required.</i> ” This conclusion erroneously omits how dredged materials are proposed to be safely disposed.	S-10
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Chapter II. J: Population, Housing, and Employment:

The Summary paragraph, Impact J.6, concludes: "Cumulative Impact: Less than Significant," and "Mitigation: None Required." This conclusion overlooks the relative locational "isolation" of the Project and the inhabitants of its 3100 housing units, caused by geographical and physical separation by freeway, train tracks, BART yards, and other obstructions. The Revision EIR fails to state what actions will be taken to reduce the effects of physical isolation and psychological separation from city and community interaction.

S-11

Chapter II. L: Public Services and Recreation Facilities:

The Summary paragraph, Impact L.6, after being edited, concludes: "Cumulative Impact: Less than Significant," and "Mitigation: None Required." This conclusion erroneously overlooks or omits grossly significant services impacts, namely:

S-12

1. The Project fails to project the impact of 3100 new residential units -- including a realistic projection of the number of children that will reside in the new development -- on schools in the vicinity of the Project. Further, the Project fails to analyze the present state of overcrowding of schools in the vicinity of the Project, and proposes no mitigations of actual and projected conditions.
2. The Project fails to project the impact of 3100 new residential units -- including a realistic projection of the number of children that will reside in the new development -- on libraries, if any, in the vicinity of the Project.
3. The Estuary Policy Plan stated that development of the Oak to Ninth Area would result in "a major recreation and open space destination for the region." The Project fails to offer attractions, facilities, or sufficient and varied amenities or services that will make the Project a major recreation and open space destination for the East Bay region.

S-13

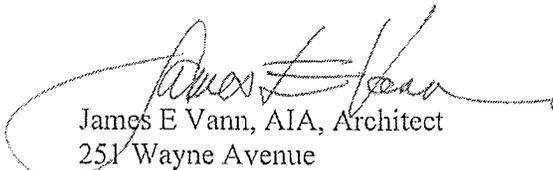
S-14

Approval Process not in Compliance with Oakland Municipal Code:

The announced procedure for approval of the Revision EIR and its resubmittal to Alameda Superior Court omits public hearings and adoption by the City Planning Commission, as mandated prior to referral to City Council, and is in violation of the Municipal Code, specifically: Oakland Municipal Code, Section 17.158.340, entitled "Preparation of Environmental Impact Records, and Section 17.158.220.

S-15

Respectfully Submitted,



James E Vann, AIA, Architect
 251 Wayne Avenue
 Oakland, California 94606
 510.763.0142
jamesevann@aol.com

Letter S Response– James E. Vann

- S-1. The comment raises issues related to an environmental topic (project consistency with the Estuary Policy Plan) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.A, Land Use, Plans and Policies, of the EIR evaluates project consistency with the Estuary Policy Plan.
- S-2. The commenter states that cumulative effects would be significant and require mitigation at various intersections that are not listed in Table II.B-1 of the *Revisions*. See Response to Comment D-8, above.
- S-3. The comment raises issues related to an environmental topic (“isolation” of the project and the need for transportation alternatives) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.A, Land Use, Plans and Policies, of the EIR discusses public access (including transit access) to and from the project, and Section IV.B, Transportation, Circulation, and Parking, of the EIR evaluates project impacts on site access, circulation, and transit service.
- S-4. The commenter states that the *Revisions* should include “signed promissory letters” for “compensation commitments” recommended by traffic-related mitigations. Providing such documentation is outside the scope of the revisions to the EIR required by the Court Order. CEQA does not require that recommended mitigation measures be accompanied by the type of documentation suggested by the commenter.
- S-5. The commenter suggests that “optimizing traffic signal timing” would lead to longer vehicle delays and cumulatively greater air quality impacts. Optimization of traffic signal timing is a common mitigation measure that reduces vehicle delays. The commenter has not provided evidence or support for the statement that signal optimization would cause greater traffic or air quality impacts. This topic is also previously addressed within Master Response E in the Final EIR.
- S-6. The comment raises issues related to an environmental topic (project pedestrian trip volumes and pedestrian safety at the adjacent train crossing) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.B, Transportation, Circulation, and Parking, of the EIR evaluates project impacts on pedestrian safety.
- S-7. The comment raises issues related to an environmental topic (the project’s “climatic impacts” and reduction of the project’s contribution to global warming) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. See also Response to Comment L-8, above.
- S-8. The commenter contends that the effects of liquefaction are “immeasurable” and “partly unknowable” and that related project impacts cannot be mitigated. The commenter does not provide additional details or evidence to support this assertion. Chapter II.F, Geology, Soils, and Seismicity, of the *Revisions* contains extensive analysis of liquefaction hazards

- and recommends mitigations (Mitigation Measure F.2) that include conformance to existing state laws, City ordinances, and application of accepted, proven construction engineering practices. These measures are commonly recognized as full and acceptable mitigation for liquefaction hazards.
- S-9. The comment raises issues related to an environmental topic (construction noise from future widening of I-880 and noise from train traffic) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. The Court Order required additional analysis of cumulative traffic noise impacts, i.e., the impacts that would result if traffic noise related to the project were added to traffic noise from other closely related past, present, and reasonably foreseeable future projects. Section IV.G, Noise, of the EIR evaluates other project-related noise impacts, including project exposure to the surrounding noise environment, and recommends mitigation measures.
- S-10. The commenter is incorrect in suggesting that the *Revisions* (specifically Impact I.8) does not address how dredged materials would be safely disposed. Chapter II.I, Biological Resources/Wetlands, of the *Revisions* includes extensive discussion of federal, state, and local requirements that regulate dredging and dredged material disposal.
- S-11. The comment raises issues related to a topic (effects of “physical isolation” and “psychological separation from city and community interaction”) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.A, Land Use, Plans and Policies, of the EIR discusses public access to and from the project. The psychological effect of physical isolation is not a required or appropriate topic for evaluation under CEQA.
- S-12. The comment raises issues related to an environmental topic (project impacts on schools) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.L, Public Services and Recreation Facilities, of the EIR evaluates project impacts on schools.
- S-13. The comment raises issues related to an environmental topic (project impacts on libraries) that is outside the scope of the revisions to the EIR required by the Court Order. See Master Response B, Response to Comments on Environmental Issues Outside the Scope of the Court Order. Section IV.L, Public Services and Recreation Facilities, of the EIR evaluates project impacts on libraries.
- S-14. This comment raises issues regarding the merits of the project and does not pertain to the revisions to the EIR required by the Court Order. See Master Response A, Response to Comments on the Public Policy Merits of Project Approval.
- S-15. See Master Response C, Public Review Process of the *Revisions*.

Errata to the Revisions

The following text corrections are made to the *Revisions* (new inserted text is shown as underlined format; deleted text is shown as ~~strikeout~~ format):

1. Page II.B-10 – Paragraph at bottom of page (pertaining to Mitigation Measure B.3j):

The project applicant shall pay for this measure. After implementation of this measure, the intersection would operate at an acceptable LOS C ~~LOS D~~ or better in both AM and PM peak hours.

2. Page II.B-15 – Portion of Table II.B-2 (pertaining to the mitigated LOS and delay at Intersection #36 during AM peak hour):

**2025 CONDITIONS
AM AND PM PEAK HOUR MITIGATED INTERSECTION
LEVEL OF SERVICE (LOS) AND DELAY (seconds/vehicle)**

No.	Intersection	Mitigation	With Project Condition				Mitigated Condition			
			AM Peak		PM Peak		AM Peak		PM Peak	
			LOS	Delay	LOS	Delay	LOS	Delay	LOS	Delay
#36	Embarcadero & 5th Avenue	Widen Embarcadero	D	49.2	F	>100	<u>C</u> D	<u>27.3</u> 49.2	C	29.9

3. Page II.G-2 - Paragraph under *Significance Criteria*:

Significance Criteria

Based on the EIR’s traffic noise significance criteria, a cumulative traffic noise impact would result if the project, combined with other past, present, and reasonably foreseeable future projects, would result in a 5-dBA permanent increase in ambient noise levels in the project vicinity above levels existing without the project.

4. Page II.L-7 – Last full paragraph under *Summary*:

Impact L.6: The proposed project, when combined with other closely related past, present and reasonably foreseeable future development in the vicinity, would not result in a significant adverse cumulative public services and recreation impact; no new or physically altered facilities will be required, and cumulative development

would not result in substantial or accelerated physical deterioration of existing parks and recreational facilities. (Cumulative Impact: Less than Significant)

Mitigation: None required.
