

CITY OF OAKLAND FILED
AGENDA REPORT OFFICE OF THE CITY CLERK
OAKLAND

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TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: CEDA – Planning and Zoning
DATE: September 25, 2007

RE: Status Report on the Feasibility Analysis for the Adaptive Reuse of the Ninth Avenue Terminal, per Condition of Approval No. 25 of the Oak to Ninth Development, to Create a Vintner's Hall, Including a Winemaking Center, a Tasting Room, a Waterfront Restaurant, and a Water-Oriented Recreation Retail Facility Within 90,000 Square Feet of the Terminal Building

SUMMARY

This report is a follow-up to the City Council's consideration of a reuse proposal for the Ninth Avenue Terminal Building. As a condition of approval for the Oak to Ninth Mixed Use Project, the Council allowed Oakland Harbor Partners (OHP), the developers, to demolish all but 20,000 square feet (s.f.) of the 180,000 s.f. Ninth Avenue Terminal shed -- unless a viable proposal to adaptively reuse between 40,000 s.f. and 90,000 s.f. of the 1930s portion of the structure was approved by the City Council within one year. Condition of Approval #25 (COA #25) also specified a process for soliciting reuse proposals and allowed a one year timeframe for a decision on a project.

The Ninth Avenue Terminal Partners LLC (NATP) was the only respondent to the RFP. They propose a Vintner's Hall, including a winemaking center, a tasting room, a waterfront restaurant, and a water-oriented recreation retail facility using the 90,000 s.f. (1930s) portion of the building. COA #25 specified that the City Council would make a final determination regarding any option for the preservation of the Ninth Avenue Terminal building by June 30, 2007. On June 5, 2007, the City Council considered the proposed project, determined that there was not enough information to determine feasibility within the timeframe specified in COA #25 and authorized the continuation of the feasibility analysis. OHP consented to extend the period for the City Council to make a final determination pursuant to COA #25 to enable the City to continue the feasibility analysis. A schedule was approved for submittal of the additional information. All requested information is to be submitted to staff by the end of October 2007 so that the City Council can make a decision about the feasibility of the project by the end of December 2007. OHP agreed to this extension to complete the feasibility analysis. The City Council also requested staff to return in September with a progress report on the feasibility analysis.

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FISCAL IMPACT

Both the Request for Proposal and COA #25 for the adaptive reuse of the Ninth Avenue Terminal recognized that “the City does not have the financial capacity to contribute to this effort.” NATP, the project sponsors, are not requesting funding for the project, but are basing their financial analysis on certain critical assumptions and future agreements with the City. For example, NATP has assumed a lease agreement with the City for \$1.00/year for 66 years; that Oakland Harbor Partners would carry out some of the pier reinforcement or replacement work needed for the site; and that NATP would not be required to contribute to the community facilities district or other developer-funded financing mechanism that is going to be established to maintain the open space.

These assumptions are being investigated further. NATP has been working on the specific improvements that need to be made to the terminal shed and the wharf and the cost estimates to carry out these improvements. OHP has not committed to sharing any costs of the pier reinforcement or replacement work needed for the site. Preliminary market lease rates have been estimated between \$900,000 to \$1.0 million/year. The leasing cost will need to be factored into the revised pro forma for the proposed project. The new cost estimates and revised pro forma need to be completed and will be submitted for the final feasibility report to the City Council in December, 2007.

BACKGROUND

Attachment A to this staff report is the May 22, 2007 report to City Council which describes the proposed project and discusses the major issues associated with the creation of a Vintner’s Hall in the Ninth Avenue Terminal. As mentioned previously, the City Council approved a six-month extension to the decision deadline to allow the project sponsors to complete the economic feasibility analysis. The report identifies the information that is needed to complete the analysis and provides a schedule for when that information is due to the City.

KEY ISSUES AND IMPACTS

The following section describes the progress of the feasibility analysis as of September 1, 2007. Each item on the schedule is identified below with a description of the progress to date. This information has been obtained from meetings with the project sponsors (NATP) and from a letter dated August 29, 2007 submitted by the project sponsors describing the progress of the feasibility analysis to date (Attachment B).

Progress Report on the Feasibility Analysis

On June 5, 2007, the City Council agreed to:

- 1) Authorize City staff to ascertain the feasibility of the adaptive reuse proposal for a Vintner’s Hall in the 1930s portion of the Ninth Avenue Terminal building. In so doing, the City Council (1) makes a preliminary finding that the proposed uses are capable of being made

compatible with the approved Oak to Ninth Mixed Use Project; and (2) would be willing to consider the necessary land use approvals, including changes to the Planned Waterfront Development-4 (PWD-4) zoning district to allow the proposed uses in the Open Space-Regional Serving Park zoned area of the Oak to Ninth Project, subsequent to City Council confirmation of project feasibility, schedule and funding commitments.

- 2) Require the necessary information and analysis be completed to determine overall project feasibility and that NATP return to the City Council by October 31, 2007 with the following information and work tasks completed prior to a final determination of project feasibility:
 - a. By August 31, 2007, the project sponsor shall complete a building code analysis and the work necessary with the Building Division to develop a final cost estimate of improvements for the building, based on the change of occupancy, as determined by the City Building Official, and allowing the use of the *California Historical Building Code* and subject to approval by the Building Services Department and the Fire Department.

The issue, as described in the May 22, 2007 staff report, involves the building code requirements that will be used when assessing improvements to the building and the seismic upgrades that are required to the building and the wharf based on the building code requirements. The project sponsors were advised by the City that if the building were listed on the State Historic Register, then the *California Historical Building Code* could be used.

PROGRESS REPORT: The project sponsors retained Rolf Jensen & Associates, Inc. to prepare a building code and fire protection analysis, which has been submitted to the City. The analysis concluded that with the introduction of new uses, the building should be classified as a mixed-use building. The report then analyzed the proposed changes against the Uniform Building Code requirements and the *California Historical Building Code* requirements. The *Historical Building Code* allows the change in use; allows the size and height of the existing building as long as it is served by an automatic sprinkler system; and allows a 1-hour construction type (Type III, 1-hour). While several seismic upgrades to the building have been discussed, the major fire and life safety issue is the means of egress (number, location, and width/capacity of the exits). It appears that a means of egress can be incorporated that meets life safety requirements.

The project sponsors have also retained an historic architectural firm to assist with an application to list the 1930s portion of the Ninth Avenue Terminal (90,000 square feet) on the State Historic Register.

At the time this report was prepared, the Building Division and Fire Services Department were reviewing the Rolf Jensen report. Final costs estimates have not yet been calculated by the project sponsor.

- b. By September 30, 2007, the project sponsor shall submit all required modeling, analyses and information pertaining to structural reinforcement and other work to bring the building up to required seismic safety standards.

PROGRESS REPORT: The project sponsors retained Degenkolb Engineers, a structural engineering firm with experience in renovation of historic buildings, to perform a structural analysis of the Ninth Avenue Terminal and the wharf beneath it. Modeling assumptions and a preliminary draft of the report were discussed with Building Division and Planning staff. The consultant concluded that certain upgrades to the building are required to meet the *California Historical Building Code*, but no seismic upgrades are required to the 1,600 piles beneath the wharf.

The final report and cost estimates were not available as of the publication of this staff report.

- c. By October 31, 2007, the project sponsor shall complete preliminary negotiations with both OHP and the City pertaining to:
- phasing of the work;
 - a list of major deal points for the lease, operating requirements and management agreement with the City;
 - membership in the CFD/CSD or other funding mechanism for the maintenance of the facility or other equivalent means of participation;
 - a list of major deal points with OHP that distinguishes the financial obligations for improvements to the wharf (or portions thereof), the status of the trestle bridge, the installation of the Waterfront Trail adjacent to the remaining portion of the Ninth Avenue Terminal Building, pier repair and/or replacement.

PROGRESS REPORT: The project sponsors (NATP) met with Oakland Harbor Partners (OHP) to discuss how the adaptive reuse of the Ninth Avenue Terminal would integrate with the Oak to Ninth Development and whether some of the costs could be shared. Issues that were discussed are listed on the last page of Attachment B to this report. According to NATP, there was agreement on some items, but not all. Staff will schedule meetings with both NATP and OHP next month to further discuss the issues.

After the land is transferred from the Port, the City will own the Ninth Avenue Terminal Building. The City's Real Estate Division is in the process of preparing a preliminary list of negotiation points for a lease agreement with NATP for the proposed Vintners Hall. The most salient fact for the Council is that the approximate market value of the lease ranges from \$900,000 to \$1.0 million per year. This range is far different than NATP's assumption of \$1.00/year.

- d. By October 31, 2007, the project sponsor shall submit a revised project budget and pro forma based on the results of the additional structural, seismic and building code compliance work as well as the negotiations and draft deal points with both the City and with OHP.

PROGRESS REPORT: This information is not yet available as all cost estimates have not been completed.

- e. By October 31, 2007, the project sponsor shall complete a pre-application process with the Bay Conservation and Development Corporation (BCDC) regarding proposed improvements.

PROGRESS REPORT: The project sponsors have discussed the proposed project with BCDC. Because BCDC is presently considering OHP's permit for the Oak to Ninth project, the timing of this pre-application process is particularly crucial. The application that has been submitted to BCDC is signed by OHP, the City, and the Port and includes 20,000 s.f. for the Ninth Avenue Terminal, as approved by the City Council. It does not include the 90,000 square feet adaptive reuse of the Ninth Avenue Terminal.

According to BCDC staff, OHP's application is not yet complete (as of the end of August 2007). When a complete application is submitted to BCDC, the Commission will hold a public hearing and vote on the project within 90 days of the filing date. The City has requested to BCDC that a decision on the application not be made before the City Council makes its final determination about the feasibility of the Vintner's Hall project in December. If the City Council approves the Vintner's Hall project, OHP's application could then be amended to include the 90,000 s.f. adaptive reuse of the Ninth Avenue Terminal prior to BCDC voting on OHP's application. Depending on when OHP's completed application is filed, BCDC may not have the option to postpone the public hearing.

Because of this timing issue, several options have been discussed with NATP. One option is to modify the current OHP application with NATP's proposal for a Vintner's Hall as an alternative to a portion of the Oak to Ninth site plan. The BCDC would be asked to consider both options at the same time; each with its own set of conditions. OHP and the City do not support this approach and do not want to modify the application. The consideration of another alternative could slow down the process of obtaining the necessary permits from this agency, as well as permits from other agencies.

Another option is to have NATP apply for its own permit with BCDC if the proposed project is approved by the City Council. If OHP has already received a permit from BCDC, then a modification to the permit would be required to the Oak to Ninth project and the permit for that portion of the site would need to be amended or replaced by the new permit obtained by NATP.

In addition to the timing of the permit actions, another issue is the criteria by which BCDC would evaluate the Vintner's Hall. Staff was unable to get a clear determination about how the project would be considered other than a response that if the Ninth Avenue Terminal were listed on the State Historic Register, it would be a different set of criteria for uses in the building and public access considerations. NATP will need to pursue these issues further with BCDC (but may not have a decision by the end of December 2007).

- f. By October 31, 2007, the project sponsor shall have formally contacted the State Lands Commission (SLC) for a preliminary finding or opinion regarding whether the proposed

use is consistent with the State Tidelands Trust provisions or what operating or physical conditions must be incorporated into the project so that it would be deemed compliant.

PROGRESS REPORT: The project sponsors have not yet met with SLC staff. City staff has been trying to arrange a meeting with SLC for over a month to discuss trust consistency issues, but it has been difficult to get the necessary parties together because of vacation schedules. In previous correspondence to the City, SLC raised a number of questions regarding the historic status of the Terminal, how the proposed use will operate in terms of public and non-public areas, the size of the restaurant and tasting room, etc., but is unable to make a consistency determination at this time. Staff expects to meet with SLC during September or early October.

- g. By October 31, 2007, any additional information necessary for any further environmental review information must be submitted by the project sponsor so that a CEQA determination may be completed for the project.

PROGRESS REPORT: Staff has told the project sponsors that much of the information in the Oak to Ninth EIR could be applied to the environmental review for the Vintner's Hall. However, specific new information would be required concerning traffic generation, truck trips and loading patterns, etc. NATP has indicated that it intends to contact the traffic consultants that prepared the traffic study for the Oak to Ninth EIR and request that this information and further evaluation be completed.

Financial Assumptions and Feasibility

After receiving NATP's Vintner's Hall proposal in February 2007, the City hired a financial consultant, National Development Council (NDC), to analyze the proposal's financial feasibility. The proposal was reviewed, Ninth Avenue Terminal Partners were interviewed, and financial documents were examined by NDC (Attachment A, "Financial Feasibility" section, pg. 11 - 12).

According to its review, NDC determined that the proposal may be **financially feasible** if the following unresolved issues could be assumed:

- Ninth Avenue Terminal Partners is a financially viable partnership and can afford to do the project
- There are no land ownership costs
- There are no construction costs associated with a new facility
- OHP pays for all rehabilitation/reconstruction of the piers
- The cost estimates for the proposed improvements are on the low side of cost estimates, but within the range of reasonable costs to carry out the improvements

NDC further determined that the proposal **may not be financially feasible** if the Vintners Hall project has to pay:

- Repairs and improvements based on the seismic study, which has not yet been completed

- Additional costs to upgrade the building as a result of the change of occupancy under the current Building Code or Historical Building Code
- Any improvements that may be necessary to meet stormwater run-off treatment (C.3 requirements)

NDC further concluded that the proposal **would not be financially feasible** if the Vintners Hall project had to pay for the currently estimated rehabilitation/reconstruction of the piers beneath the structure for a cost in the range of \$5-\$7 million (one half of the current estimated total cost of repairs). As described previously, NATP is currently working with their own structural engineer to model these seismic repairs and rehabilitation requirements using different approaches. This information and analysis will be part of item 2.b., due by October 31, 2007.

Other findings made by the financial consultant include:

- The project can afford to pay more than \$1 per year in rent to the City
- The project can afford to contribute to a Community Facilities District to support public improvements in the immediate area
- Based on the financial statements provided in confidence to NDC, the partners appear to have sufficient liquidity and capital to complete the proposed project
- It appears likely that sufficient demand exists from vintners with the financial capacity to make timely rent payments and fill this relatively small space

Staff believes that some of the information received to date addresses some of these issues, however, the financial feasibility cannot be finally determined without additional information and analysis being submitted to the City. Staff expects the information to be submitted by October 31, 2007 so that the City Council can make a final determination about the feasibility of the proposed project by the end of December 2007.

As a final note, staff received a letter (Attachment C) from East Bay Regional Parks Board Member John Sutter, concerning the potential loss of open space should the 90,000 square foot alternative be deemed feasible. He urges that if such a proposal is approved, that it should be conditioned upon providing at least as much open space elsewhere in the project, including the full width of the terminal platform between the building and the Estuary and the existing railroad trestle. Staff notes that the City is restricted in requiring more open space in the Oak to Ninth Project area due to the previously approved Planned Unit Development and Development Agreement between the City and OHP. Such changes in the approved plan would have to be mutually agreed upon by both the City and OHP.

SUSTAINABLE OPPORTUNITIES

Economic: The City would benefit from new industrial opportunities and would make Oakland a destination for wine tasting in the inner East Bay.

Environmental: The adaptive reuse of 90,000 square feet of the Ninth Avenue Terminal would preserve the oldest portion of the historic marine warehouse facility and reuse the older building and its historic materials for different industries than has occupied the building in the past.

Social Equity: Oakland residents, Bay Area neighbors, and out-of-town visitors would have opportunities to enjoy the City's waterfront and be exposed to a variety of activities. Passive recreational opportunities, active sports, and dining and wine tasting activities offer a wide variety of choices to all who access the waterfront.

DISABILITY AND SENIOR CITIZEN ACCESS

The project will be designed such that persons with disabilities and senior citizens would have access to Vintner's Hall in the Ninth Avenue Terminal and to Shoreline Park.

ACTION REQUESTED OF THE CITY COUNCIL

This is a progress report only; no action is requested of the City Council. Staff will return in December with the remainder of the information so that the City Council is able to make a final determination about the feasibility of the proposed project.

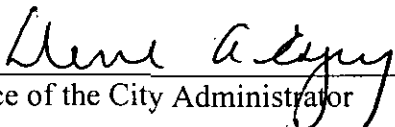
Respectfully submitted,



CLAUDIA CAPPIO
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APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:


Office of the City Administrator

ATTACHMENTS

- A. City Council staff report dated May 22, 2007
- B. Letter from Ninth Avenue Terminal Partners dated August 29, 2007
- C. Letter received from John Sutter dated August 14, 2007

CITY OF OAKLAND
AGENDA REPORT

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: CEDA – Planning and Zoning
DATE: May 22, 2007

ATTACHMENT A

RE: Consideration of a Proposal for the Adaptive Reuse of the Ninth Avenue Terminal, per Condition of Approval No. 25 of the Oak to Ninth Development, to Create a Vintner's Hall, Including a Winemaking Center, a Tasting Room, a Waterfront Restaurant, and a Water-Oriented Recreation Retail Facility Within 90,000 Square Feet of the Terminal Building

SUMMARY

On July 18, 2006 the City Council approved the Oak to Ninth Mixed Use Development Project. As a condition of approval for the project, the City Council allowed Oakland Harbor Partners (OHP), the developers of the Oak to Ninth Project, to demolish all but 20,000 square feet (s.f.) of the 180,000 s.f. Ninth Avenue Terminal shed unless a viable proposal to adaptively reuse between 40,000 s.f. and 90,000 s.f. of the 1930s portion of the structure was approved by the City Council within one year (see **Attachment A**, Condition of Approval #25). COA #25 also specified a process for soliciting reuse proposals and allowed a one year timeframe for a decision on a project.

The City issued a Request for Proposals (RFP) on September 15, 2006 and received one response to the RFP on February 15, 2007 from Ninth Avenue Terminal Partners LLC (NATP). The proposal is to create a Vintner's Hall, including a winemaking center, a tasting room, a waterfront restaurant, and a water-oriented recreation retail facility using the 90,000 s.f. (1930s) portion of the building. The proposal was reviewed by the Landmarks Preservation Advisory Board (LPAB) on April 9, 2007 and by the Planning Commission on May 16, 2007. Per COA #25, the City Council shall make a final determination regarding any option for the preservation of the Ninth Avenue Terminal building by June 30, 2007.

Staff believes the project has merit, but does not have enough information to determine feasibility within the timeframe specified in COA #25. Therefore, more information and analysis should be submitted by the end of October, 2007, to enable Council to make a final determination by the end of the year.

In order to proceed with this adaptive reuse project, the project sponsors will need to obtain approvals from the City for a zoning amendment to allow the proposed uses in the Open Space-Regional Serving Park zone approved for this portion of the site within the Oak to Ninth Project. Restaurants and alcoholic beverage sales are conditionally permitted within the OS-RSP zone, but manufacturing uses (winemaking and warehouse/storage) and retail activities are not

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allowed. An environmental determination is also required under CEQA. The proposed project would also need approvals from the State Lands Commission and the Bay Conservation and Development Commission. Additionally, the construction and implementation of the proposed project would need to be coordinated with the Oak to Ninth Mixed Use Development Project.

Staff recommends that the City Council authorize staff to evaluate the feasibility of the proposal and, depending upon the results of that evaluation to return to Council with a recommended lease and operation agreement with the project sponsors. As part of the feasibility evaluation, staff would need to receive and review more information and analysis regarding structural and seismic safety requirements, building and site improvements and how such costs will be shared between OHP and NATP.

FISCAL IMPACT

Both the Request for Proposal and Condition of Approval No. 25 for the adaptive reuse of the Ninth Avenue Terminal recognized that “the City does not have the financial capacity to contribute to this effort.” NATP, the project sponsors, are not requesting funding for the project, but are basing their financial analysis on certain critical assumptions and future agreements with the City. Specifically, NATP has assumed a lease agreement with the City for \$1.00/year for 66 years and that Oakland Harbor Partners will carry out some of the pier reinforcement or replacement work needed for the site. Additionally, NATP has assumed that the proposed use does not represent a change of occupancy for the building, and thus seismic safety and other building code upgrades may not necessarily be required. Staff does not believe that these assumptions are accurate based on a preliminary assessment. Thus, staff recommends that additional information and analysis be submitted within a five month period so that the Council can have the information to make a final determination about overall project feasibility.

BACKGROUND

The Oak to Ninth Mixed Use Development was approved for up to 3,100 residential units, 200,000 square feet of ground floor commercial space, a minimum of 3,950 parking spaces, 32 acres of parks and public open space, two renovated marinas (total 170 boat slips), and a wetlands restoration area. Approximately 50% of the proposed project is dedicated to parks and open space. After OHP completes the soil and water remediation, the City will accept the parks and open space areas, including the Ninth Avenue Terminal.

Authorizing Condition of Approval

Condition of Approval No. 25 for the Oak to Ninth Mixed Use Development Project set forth the following process for the Request for Proposals:

- 1) By September 15, 2006 the City shall issue a Request for Proposals soliciting projects, uses and funding sources for the preservation of the Ninth Avenue Terminal building in an amount greater than 40,000 square feet and no more than 90,000 square feet. The RFP shall indicate that uses must be Tidelands Trust consistent, that the building shall be preserved and

rehabilitated consistent with the Secretary of Interior Standards, and that the City does not have the financial capacity to contribute to this effort.

- 2) Proposals shall be received by February 15, 2007, and reviewed and a report prepared for the City Council's consideration of the options available based on specific criteria, including trust consistent purposes, timing of implementation, funding sources, financial capacity, etc.
- 3) City Council shall make a final determination regarding any option for the preservation of the Ninth Avenue Terminal building by June 30, 2007.

Proposed Uses

The project proposed by NATP is a winemaking center, housing a collective of East Bay winemakers within a 90,000 square foot remaining portion of the Ninth Avenue Terminal building. The East Bay Vintner's Alliance is a non-profit organization created to promote the East Bay urban winemaking community and is currently made up of twelve premium wineries based in Alameda, Berkeley, Emeryville and Oakland.

The majority of the space in the building (79,920 s.f.) will be occupied by the independent artisan wineries which will do all winemaking on site. They will be provided with their own production area and with a common space for equipment, supplies, and a 1,800 s.f. tasting room. The wineries will also offer wine tours for the public.

Each individual winery may occupy up to 3,360 square feet. Barrels and fermenting bins will be kept in each winery's individual space. De-stemmers, crushers, pumps, and other equipment used in small-scale winemaking are mounted on wheels, would be stored in a common area, and moved from space to space when needed.

The existing 40- foot wide center aisle will remain an open lane for circulation and foot traffic between wineries. The tasting room will have a waterfront location, occupying the existing ground floor office space in the northeast corner of the building.

A 3,360 s.f. waterfront restaurant is proposed at the southeast corner of the building. The restaurant would include both indoor and outdoor seating, each with excellent views of the water. A small 600 s.f. café is being considered for the southwest corner of the building.

A water-oriented recreational business that would offer both boat instruction and rentals to the public is proposed at the south end of the building, facing the water and adjacent to the restaurant. The facility would occupy about 5,040 square feet and would have dock access. A portion of the space would be retail and a larger portion of the space would be storage for the rental boats, canoes, and kayaks, and merchandise storage.

Project Boundaries

The boundaries of the project area go beyond the walls of the building. The boundary to the north follows the existing edge of the rear platform of the building. It is anticipated that the rear platform could become a covered public sidewalk in the future. The boundary to the east extends 20 feet beyond the existing platform edge, which is now a paved parking area. This area is intended for dedicated parking for the uses within the Vintner's Hall including the restaurant and tasting room. The boundary to the south extends 75 feet into the water. The project sponsors anticipate boating and docking uses in the future. The boundary to the west extends 48 feet toward the waterfront park and may be used for restaurant seating areas or for the proposed café (see **Attachment B**, Revised Project Diagram, dated April 9, 2007).

Previous Staff Reports

This staff report will discuss the Key Issues and Impacts related to the reuse proposal. For a more comprehensive description of the project, please refer to the staff reports that were prepared for the Planning Commission and Landmarks Preservation Advisory Board and are attached to this staff report.

The staff report prepared for the Planning Commission public hearing of May 16, 2007 includes a more detailed description of the proposal. Please refer to **Attachment C** for a discussion of Parking and Circulation, Public Access, San Francisco Bay Trail, Tidelands Trust Compliance, Repairs and Improvements to the Terminal Building, Structural Repairs, and the Financial Assumptions for the project.

The staff report prepared for the Landmarks Preservation Advisory Board meeting of April 9, 2007 provides a detailed description of the building; its architectural style, history, and landmark status (see **Attachment D**).

KEY ISSUES AND IMPACTS

Staff has reviewed the adaptive reuse proposal for the Ninth Avenue Terminal and has identified the major issues that need to be addressed when considering the proposed project. Following is the list of issues:

Historic Status of Ninth Avenue Terminal

Land Use Regulatory Controls

General Plan and Zoning Consistency

Environmental Review

Other Agency Approvals

Site Plan and Compatibility with the Oak to Ninth Project

Parking

Loss of Open Space

Upgrades to the Building and the Site
Repairs and Improvements to the Terminal Building
Structural Repairs

Financial Assumptions and Feasibility
Lease Rents

Negotiations with Oakland Harbor Partners

Historic Status

Issue: Historic Status of the Ninth Avenue Terminal

The Ninth Avenue Terminal is rated “A” Highest Importance by the Oakland Cultural Heritage Survey (OCHS). On May 10, 2004 the LPAB adopted a Resolution Initiating Landmark Designation of the Ninth Avenue Terminal and directed staff to forward the nomination to the Planning Commission for a public hearing on the proposed designation. The LPAB determined that the building “appears eligible for the National Register.” Condition of Approval No. 25 b. states that a restoration and reuse plan for the remaining portion of the Ninth Avenue Terminal must be submitted to the City within 90 days of final approval of the close of escrow with the Port of Oakland which includes “an application to nominate the remaining portion of the building and the site as a City of Oakland Landmark.”

Staff Recommendation: If the adaptive reuse proposal is approved by the City Council, that the 90,000 square foot remaining portion of the Ninth Avenue Terminal building should be nominated as a City of Oakland Landmark as specified in COA #25 for any remaining portion of the Ninth Avenue Terminal.

LAND USE AND REGULATORY CONTROLS

General Plan and Zoning Consistency

Issue: Is Vintner’s Hall consistent with the General Plan and Zoning Designation for the Oak to Ninth Mixed Use Development?

The General Plan designations for the Oak to Ninth Mixed Use Development are Planned Waterfront Development-4 for the developable portions of the site, and Parks, Open Space, and Promenades for the open space areas. The Ninth Avenue Terminal is located within the Parks, Open Space, and Promenades General Plan designation. Winemaking production, a manufacturing use, is not specifically mentioned as part of the intent or desired character of the Oak to Ninth Mixed Use Development Project.

The land uses proposed are not consistent with the Open Space zoning approved for the Oak to Ninth Mixed Use Project. The Ninth Avenue Terminal is zoned Open Space-Regional Serving Parks (OS-RSP) within the PWD-4 zone. Restaurants and alcoholic beverage sales are

conditionally permitted within the OS-RSP zone, but manufacturing uses (winemaking and warehouse/storage) and retail activities are not allowed. If this proposal moves forward, the zoning district would need to be amended to allow the proposed winemaking and retail uses.

Staff Recommendation: If the adaptive reuse proposal is approved by the City Council, NATP would need to obtain a Conditional Use Permit for the restaurant and alcoholic beverage sales and an amendment to the zoning district would need to be approved to allow the retail uses and winemaking and storage of wine barrels in the Open Space-Regional Serving Park zone. The City Council would also need to determine whether the proposal is consistent with the General Plan.

Environmental Review

Issue: Environmental Review of Vintner's Hall

Using the existing Environmental Impact Report (EIR) prepared for the Oak to Ninth Mixed Use Project as a basis, staff would need to evaluate whether further environmental review is required under the California Environmental Quality Act (CEQA) is required for the Vintner's Hall project. The expected traffic and circulation, air quality, noise, operating characteristics, etc. would need to be evaluated to ascertain whether the project triggers any of the requirements for environmental review under CEQA.

This evaluation would need to be completed prior to any City commitment to the project. For example, the City Council making a final determination of feasibility or acting on a lease and operating agreement and prior to consideration of likely planning entitlements (amendment to the PWD-4 zoning district, amendment to the Preliminary Development Plan, Conditional Use Permit, and Design Review).

Staff Recommendation: If the adaptive reuse proposal is approved by the City Council, direct staff to evaluate whether further environmental review is required under CEQA and to prepare such review if warranted.

Other Agency Approvals

Issue: Is the Ninth Avenue Terminal adaptive reuse proposal consistent with State Lands Commission and BCDC requirements?

The land occupied by the Ninth Avenue Terminal building and the other park and open space lands are under the jurisdiction of the State Tidelands Trust laws. Thus, the land uses proposed must be Tidelands Trust consistent and will need to be approved by the State Lands Commission (SLC). NATP believes that the uses are consistent. City staff has had preliminary conversations with the SLC, which is unable to give a definitive opinion at this time. SLC did, however, inquire about the level of public access to the winemaking portion of the building and requested a site plan explaining the uses. (There does not seem to be an issue about the restaurant or water-recreation retail.) SLC approval is necessary to establish Vintner's Hall within the Tidelands

Trust. Because it is unlikely that the City will have an answer prior to the City Council considering the proposal, if the project moves forward, City approval will need to be made contingent upon SLC agreement of the land uses, operating conditions and other relevant factors. See **Attachment E**, "California Tidelands: Lands Held in the Public Trust" for examples of allowable uses.

The reuse proposal must also be approved by the Bay Conservation and Development Commission (BCDC). BCDC has jurisdiction over all uses generally within 100-feet of the shoreline. According to BCDC staff, BCDC approval is necessary for the proposed uses and an application for adaptive reuse of the Terminal is required.

BCDC is already considering an application for the Oak to Ninth Project. The application filed by the three co-applicants (City, Port, and OHP) currently before BCDC requests authorization for a Shoreline Park and to retain a 20,000 square foot portion of the Terminal. Therefore, to accommodate the reuse proposal, the co-applicants would need to either: (1) amend the BCDC application *before* it is considered by the Commission; or (2) request a material amendment to the BCDC permit *after* the permit is issued. If the permit is amended after it is issued, the permittees may be required to offset the loss of open space at Shoreline Park that the Commission would have required as a component of the overall public access plan.

Staff Recommendation: Any City Council approval of the proposed project will need to be made contingent upon SLC and BCDC approval of the proposed land uses.

Site Plan and Compatibility with Oak to Ninth Project

Issue: How do the proposed uses operate, and are they compatible with the Oak to Ninth Project?

The site plan shows most of the winemaking and storage activities along the northern boundary of the building, with the restaurant, tasting room, and retail facility along the southern portion. These areas are basically separated by a 40-foot aisle down the center of the building. Public access to the activities within the building is expected to be from this 40-foot aisle.

Concern has been expressed about potential conflicts between truck activity, employee parking, and pedestrians using the same 40-foot aisle down the center of the building. According to the project sponsors, truck deliveries and shipments for the winery uses would be restricted to avoid conflicts between the public and the trucks. The exact hours and conditions need to be resolved with the wineries, but the likely hours for shipments and deliveries would be 7:30 a.m. to 10:45 a.m. Monday through Friday. Business hours for the restaurant, water-oriented recreation, snack and wine tasting uses also need to be resolved, but are anticipated to be hours that are typical for each of these businesses.

If the proposal moves forward, the City Council will need to decide whether the proposed uses are compatible with the proximity of the use to the adjacent public park, and the recently approved Oak to Ninth Project.

Staff Recommendation: Staff believes that with appropriate conditions, restrictions, and requirements, the proposed use could be acceptable at this location. An important aspect to consider is the amount of space that is devoted to winemaking. Staff believes that the restaurant and retail uses are important components of the Vintner's Hall project, and as such, they are important to integrating the proposed project with the larger Oak to Ninth development. A totally dedicated winemaking facility would not provide the linkages necessary to assure land use compatibility.

Parking

Issue: Does the proposal include enough parking?

The project proposes a total of 42 dedicated parking spaces for the combined uses directly in front of the Terminal building. Issues were raised during the hearings on the proposal about whether this was enough parking for the proposed uses. The City's Planning Code requires approximately 73 parking spaces for the combined requirements of manufacturing, retail and restaurants.

The parking for the proposed project is less than what would normally be required for this same combination of uses. However, there are a number of metered parking spaces available for the public along the streets within the Oak to Ninth Project that could be used if necessary. The parking lot shown in the Oak to Ninth Preliminary Development Plan adjacent to the entrance of the Terminal may not be available, however, as this area may be needed in order to meet stormwater run-off requirements (C.3 provisions) for the Oak to Ninth Project. This potential elimination would further reduce the adjacent parking by approximately 30 spaces.

Staff Recommendation: Overall, staff believes that the entire parking reservoir for the Oak to Ninth Project will be sufficient to accommodate the parking requirements for the proposed uses. However, staff recommends that a parking management analysis be included in future plans for this project because management of parking spaces at peak times is a major issue.

Loss of Open Space

Issue: Shoreline Park will be reduced in size by approximately 1.6 acres

The proposed Vintner's Hall will remove approximately 70,000 square feet of park space from the total amount of park and open space approved in the Oak to Ninth Project. This reduction in the size of Shoreline Park needs to be considered when discussing future land uses in this location.

Staff Recommendation: The City Council must decide between a reduction in the amount of open space versus the opportunity to adaptively reuse an historic structure.

UPGRADES TO THE BUILDING AND THE SITE

Repairs and Improvements to the Terminal Building

Issue: The implications of the change of use/occupancy for the Ninth Avenue Terminal and Building Code requirements

NATP has assumed that the uses proposed are primarily warehouse uses and are not a change of use or occupancy. As a result, the proposal does not address the potential need to upgrade portions of the structure to comply with either the current Building Code or the less restrictive provisions of the Historical Building Code.

NATP proposes very little alteration of the underlying exterior appearance of the Terminal building. Work includes repair of spalled concrete on the exterior and interior of the building, roof repairs, re-glazing windows, and repainting. Structural upgrades include bracing the clerestory windows, connecting the walls to the roof, and adding bracing frames in the exterior walls of the building. Fire sprinklers, sanitary sewer system, electrical and water systems will be repaired or upgraded. Handicapped bathrooms and partitions between restaurant, retail and warehouse uses would also be constructed.

The existing parking lot at the entrance to the building will be cleaned, repaired and striped. Landscaping appropriate to the Oak to Ninth development plan will be added to the perimeter of the parking areas. Waterside amenities such as tables, benches, and landscaping will be provided. A hardscape surface at the Shoreline Park entrance to the building is desired in order to facilitate concerts and other public events.

While portions of the proposed project fit within the “warehouse” occupancy classification, all of the new uses do not. Winemaking (a manufacturing use), the restaurant, café, retail store, and tasting room (45% of the existing warehouse space) are considered changes of use/occupancy and are required to comply with current standards. Under this finding, the building must be upgraded to the current Building Code regulations (1997 UBC) or to Historical Building Code regulations (75% of 1994 UBC). The use of the Historical Building Code may improve financial feasibility, but only if the Code’s criteria for historical status can be met.

Ninth Avenue Terminal Partners does not agree with the Building Official’s determination of change of occupancy and have retained a Fire Code consultant to advise them throughout this process. Staff notes, at this point, that the determination rests with the City Building Official and that the Building Department is experienced with developing a set of retrofitting standards that will accommodate both the historic status and new uses. These standards are critical to the life safety of building employees, patrons, and visitors.

Staff Recommendation: Staff recommends that this determination process proceed immediately so that an agreement can be reached regarding the structural and other work necessary for the proposed uses. This work will be critical to a more specific evaluation of the financial feasibility of the proposal.

Structural Repairs

Issue: Who will make the necessary structural repairs to the piers, dock and wharf?

Degenkolb Engineers was retained by NATP to evaluate the structural condition of the Ninth Avenue Terminal and the supporting dock and piers, and to review the two consultant reports on the Terminal building, shoreline and pier improvements that were prepared as part of the Oak to Ninth Project. In general, Degenkolb's report determined that if the occupancy did not change some voluntary structural upgrades would be prudent to reduce the risk of catastrophic collapse of the building (see Attachment F, Description of Repairs and Improvements.) This conclusion was similar to the engineering reports prepared for the Oak to Ninth Project.

The report prepared by Rutherford & Chekene Consulting Engineers as part of the Oak to Ninth Project (February 6, 2006) concluded that the building was in generally good condition, but the building could collapse in an earthquake. The report also included a number of voluntary improvements that could be made to strengthen the building to address the problem if the occupancy did not change. The report engineers concluded that although the terminal building's concrete walls and steel trusses appeared adequate and in good condition, there was a potential collapse hazard in the event of an earthquake because of an existing inability to adequately resist seismic forces. In addition, there is not adequate capacity in the transverse frames, their anchorage to the pier deck, the longitudinal clerestory straight sheathed shear walls or the straight sheathed roof diaphragm, to resist seismic forces sufficiently to protect life safety. The existing roof diaphragm connection to the walls was also found to be inadequate. In short, structural work is required to the main building components to meet seismic safety thresholds. The main point of the required structural work is to reduce the risk of catastrophic collapse during a major earthquake.

Until NATP has a seismic evaluation done, it is not known whether the work that is proposed in the description of repairs and improvements is enough to address the seismic issues identified in previous consultant reports. For a change of occupancy, significantly higher levels of seismic strengthening would be required.

Degenkolb did note that some structural repairs were needed to the piers and wharf and recommended that certain voluntary structural improvements be made. NATP is not proposing repairs to the wharf and piers and is assuming that the structural improvements to the building would be carried out by OHP.

The improvements to the wharf and piers are identified in a report prepared by Moffatt & Nichol for the Oak to Ninth Project (February 5, 2004). The report concludes that portions of the wharf and the piles beneath the wharf do not meet current building codes and need to be retrofitted in order to sustain a major earthquake. The major concern is the ability of the piles to resist the lateral forces of an earthquake. The report also provides several alternatives for the retrofit work with all alternatives assuming the demolition of the timber apron and timber railroad trestle because they are in such bad condition and would be very expensive to repair. In 2004 dollars, this work was estimated to cost \$10 million for all pier repairs.

Degenkolb, NATP's engineer, has also identified the need to upgrade the piles beneath the wharf. NATP has not included these improvements in their pro forma. Staff believes that some pier repair allowance must be assumed in order to find this project feasible. OHP has pier work to complete as well, and an agreement must be reached about this issue prior to deciding whether this project could move forward.

NATP is not proposing structural modifications to the underlying pier and slab and is assuming that any structural upgrades needed would be carried out by OHP as part of the work required for Shoreline Park.

Staff Recommendation: Staff believes that additional upgrades are required to the building, piers and wharf to bring the proposed project up to current code requirements. The City, NATP, and OHP would need to negotiate how the repairs will be carried out and who will pay for them.

FINANCIAL ASSUMPTIONS AND FEASIBILITY

Financial Assumptions

Issue: Are the financial assumptions acceptable?

The financial estimate NATP has provided for the project is primarily based on the assumption that the use/occupancy is no different than what it is now. The proposed improvements to the building are included in the proposal document and are described in **Attachment F** to this staff report. It is also assumed that the proposed project would not be responsible for any structural improvements to the piers and the wharf. Also, this estimate does not consider the costs of the seismic study and/or any improvements to the building, piers or wharf that could be recommended as a result of that study.

The proposal assumes a 66-year ground lease with the City at the minimal cost of \$1.00 per year. The proposal offers to lease space to the vintners at below-market-cost of \$0.50 per square foot/month. The lease rent for the restaurant space is proposed at \$2.25 per square foot/month and the retail establishment at \$1.00 per square foot/month.

The proposal also assumes that NATP will not make any financial contributions to the Community Facilities District/Community Service District that will be formed by the Oak to Ninth Project to pay for maintenance of the public parks and open space. Instead, NATP has indicated that they will be responsible for maintaining the area within their project boundaries.

Staff Recommendation: See "Financial Feasibility" discussion in the next section

Financial Feasibility

After receiving NATP's proposal, the City hired a financial consultant, National Development Council (NDC), to analyze the proposal's financial feasibility. The proposal was reviewed,

Ninth Avenue Terminal Partners were interviewed, and financial documents were examined by NDC (see **Attachment G**, letter from The National Development Council dated April 20, 2007).

According to this review, NDC determined that the proposal is **financially feasible** based on the following:

- Ninth Avenue Terminal Partners is a financially viable partnership and can afford to do the project
- There are no land ownership costs
- There are no construction costs associated with a new facility
- OHP pays for all rehabilitation/reconstruction of the piers
- The cost estimates for the proposed improvements are on the low side of cost estimates, but within the range of reasonable costs to carry out the improvements

The proposal **may not be financially feasible** if the Vintners Hall project has to pay:

- Repairs and improvements based on the seismic study, which has not yet been completed
- Additional costs to upgrade the building as a result of the change of occupancy under the current Building Code or Historical Building Code
- Any improvements that may be necessary to meet stormwater run-off treatment (C.3 requirements)

NDC further concluded that the proposal **would not be financially feasible** if the Vintners Hall project had to pay for the rehabilitation/reconstruction of the piers beneath the structure for a cost in the range of \$5-\$7 million (one half of the current estimated total cost of repairs).

Other findings of the financial consultant include:

- The project can afford to pay more than \$1 per year in rent to the City
- The project can afford to contribute to a Community Facilities District to support public improvements in the immediate area
- Based on the financial statements provided in confidence to NDC, the partners appear to have sufficient liquidity and capital to complete the proposed project
- It appears likely that sufficient demand exists from vintners with the financial capacity to make timely rent payments and fill this relatively small space

Staff believes that financial feasibility cannot be finally determined without additional information and analysis being submitted to the City. The staff recommendation portion of this report outlines both the schedule and the information needed for this proposal to move forward.

Lease Rents

Issue: Should the project sponsors be charging market rate rents for the proposed uses?

The project proposes to lease space to the vintners at \$.50 per square foot net per month; to the restaurant at \$2.25 per square foot net per month; and to the water-oriented retail facility at \$1.00 per square foot net per month for a total income of approximately \$618,336 per year. The project proposes to pay the City \$1.00 per year for rent.

As a point of comparison, the City's Real Estate Division estimates that the market rate for lease rents for similar uses about \$.70 to \$.90/s.f. net for industrial space; and from \$1.25 to \$2.00/s.f. for retail or restaurant space, depending on the size of the facility (the larger the space, the less expensive the rent). In both cases, NATP would be deriving significant financial advantage given the annual income received versus the \$1.00 annual rent paid to the City. Staff realizes that if the proposal moves forward, negotiations will likely change these calculations. Staff also notes that the \$1.00/year or any other below-market lease rate would represent a subsidy to the project sponsor and thus would not be consistent with the original City Council direction to not participate financially in this type of project.

Staff Recommendation: If the adaptive reuse proposal moves forward, City staff should be directed to negotiate the major deal points to be incorporated into a lease agreement with the City.

Negotiations with Oakland Harbor Partners

Issue: How can the City analyze the proposed project when it is assumed that structural repairs and the retention of other project features depend on cooperation with another entity?

Much of the success of the proposed project relies on negotiations with Oakland Harbor Partners. Vintner's Hall would be using Ninth Avenue, to be constructed by OHP, to enter and exit the facility. The road construction and utility improvements would need to be completed prior to the implementation of this project. Also, there needs to be agreement on the 16 foot wide timber apron directly south of the Terminal building. OHP proposes to demolish the apron and Vintner's Hall wants to retain it. Vintner's Hall wants to maintain the trestle bridge and OHP has approval to demolish the structure. Both the apron and the trestle bridge were determined to be in substantial disrepair and were recommended for demolition by the consulting engineers. The structural improvements to the piers and wharf structure would also need to be negotiated.

Staff Recommendation: Require that NATP negotiate to resolve these issues with OHP and return to the City Council with the results of the negotiation by early Fall 2007.

SUSTAINABLE OPPORTUNITIES

Economic: The City would benefit from new industrial opportunities and would make Oakland a destination for wine tasting in the inner East Bay.

Environmental: The adaptive reuse of 90,000 square feet of the Ninth Avenue Terminal would preserve the oldest portion of the historic marine warehouse facility and reuse the older building and its historic materials for different industries than has occupied the building in the past.

Social Equity: Oakland residents, Bay Area neighbors, and out-of-town visitors would have opportunities to enjoy the City's waterfront and be exposed to a variety of activities. Passive recreational opportunities, active sports, and dining and wine tasting activities offer a wide variety of choices to all who access the waterfront.

DISABILITY AND SENIOR CITIZEN ACCESS

The project will be designed such that persons with disabilities and senior citizens would have access to Vintner's Hall in the Ninth Avenue Terminal and to Shoreline Park.

RECOMMENDATIONS AND RATIONALE

Staff believes that the proposal deserves serious evaluation. Although the Oak to Ninth General Plan and Zoning district regulations do not expressly permit some of the proposed uses, staff believes that these uses could compatibly co-exist with the Oak to Ninth Mixed Use Development. The adaptive reuse of the Ninth Avenue Terminal would preserve the oldest portion of the historic structure and activate this portion of the project site. The wine production use is also consistent with other food production and distribution businesses in the area such as the new Harvest Hall in the Jack London development and other food-related companies to the immediate south of Embarcadero Cove.

However, there is a tradeoff. The retention of an additional 70,000 s.f. of space more than the 20,000 s.f. that was approved for the Ninth Avenue Terminal means that there is a reduction in the size of Shoreline Park. Further, this proposal cannot be pursued before other critical information is submitted regarding seismic safety and remodeling upgrades, project timing (in relation to the other work necessary for the Oak to Ninth Project) and earnest negotiations with the City and OHP concerning costs, lease agreements and operating requirements.

Staff recommends that the City Council:

- 1) Authorize City staff to ascertain the feasibility of the adaptive reuse proposal for a Vintner's Hall in the 1930s portion of the Ninth Avenue Terminal building. In so doing, the City Council (1) makes a preliminary finding that the proposed uses are capable of being made compatible with the approved Oak to Ninth Mixed Use Project; and (2) would be willing to consider the necessary land use approvals, including changes to the Planned Waterfront Development-4 (PWD-4) zoning district to allow the proposed uses in the Open Space-Regional Serving Park zoned area of the Oak to Ninth Project, subsequent to City Council confirmation of project feasibility, schedule and funding commitments.
- 2) Require more information and analysis be performed to determine overall project feasibility and that NATP return to the City Council by October 31, 2007 with the following information and work tasks completed prior to a final determination of project feasibility:
 - a. By August 31, 2007, the project sponsor shall complete a building code analysis and the work necessary with the Building Division to develop a final cost estimate of

improvements for the building, based on the change of occupancy, as determined by the City Building Official, and allowing the use of the *California Historical Building Code* and subject to approval by the Building Services Department and the Fire Department.

- b. By September 30, 2007, the project sponsor shall submit all required modeling, analyses and information pertaining to structural reinforcement and other work to bring the building up to required seismic safety standards.
- c. By October 31, 2007, the project sponsor shall complete preliminary negotiations with both OHP and the City pertaining to:
 - phasing of the work;
 - a list of major deal points for the lease, operating requirements and management agreement with the City;
 - membership in the CFD/CSD for the maintenance of the facility or other equivalent means of participation;
 - a list of major deal points with OHP that distinguishes the financial obligations for improvements to the wharf (or portions thereof), the status of the trestle bridge, the installation of the Waterfront Trail adjacent to the remaining portion of the Ninth Avenue Terminal Building, pier repair and/or replacement;
- d. By October 31, 2007, the project sponsor shall submit a revised project budget and pro forma based on the results of the additional structural, seismic and building code compliance work as well as the negotiations and draft deal points with both the City and with OHP;
- e. By October 31, 2007, the project sponsor shall complete a pre-application process with the BCDC regarding proposed improvements;
- f. By October 31, 2007, the project sponsor shall have formally contacted the State Lands Commission for a preliminary finding or opinion regarding whether the proposed use is consistent with the State Tidelands Trust provisions or what operating or physical conditions must be incorporated into the project so that it would be deemed compliant.
- g. By October 31, 2007, any additional information necessary for any further environmental review information must be submitted by the project sponsor so that a CEQA determination may be completed for the project.

After this supplemental information and analysis have been submitted, the City Council will be asked to make a final determination regarding project feasibility.

ALTERNATIVE RECOMMENDATION

The City Council could decide not to pursue the proposal and make the determination that the proposed project is not financially viable at this time. There is still a great deal of information

that needs to be provided, agreements need to be negotiated, and approvals must be obtained from other agencies. The City Council may not want to spend the time and resources on pursuing the proposal and allow the Oak to Ninth Project to move forward as approved (allowing all but 20,000 square feet of the Ninth Avenue Terminal to be demolished).

In making this determination, the City Council could make the following findings to support this decision:

- The proposed project and the information which has been submitted to the City does not contain sufficient detail to ascertain what other structural and code compliance improvements are necessary. Based on preliminary analysis, the pro forma does not contain adequate funding for life safety and seismic safety construction work to be completed. Since the City will be the trustee for this property due to the State Public Trust designation, there are important liability considerations for the City. Thus, City subsidy or other agreements, which have not been secured with the master developer, OHP, would be required. This finding is based on a feasibility assessment completed by The National Development Council (NCD), as set forth in this staff report.
- The proposed project assumes that there will not be a change of occupancy for the building. This assumption is incorrect and the Building Official has determined that based on the project description submitted, a change of occupancy would be triggered, thus requiring additional life safety and seismic safety improvements.
- The proposed project assumes that the City will charge \$ 1.00/year for rental of the building. This assumption is not based on market rate rents, and thus would be considered a subsidy. This assumption is therefore in direct conflict with the City Council's determination that no subsidy be available for this type of project.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council direct staff to pursue the proposed adaptive reuse of the 1930s portion of the Ninth Avenue Terminal and authorize staff to negotiate a lease and operation agreement with the project sponsors, subject to the submittal of more information and analysis regarding structural and seismic safety requirements, building and site improvements and how such costs will be shared between OHP and NATP. The specifics are listed above in the "Recommendations" section of this staff report.

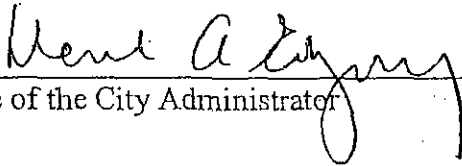
Respectfully submitted,



CLAUDIA CAPPIO
Director of Development
Community and Economic Development

Prepared by:
Margaret Stanzione, Planner IV
CEDA-Planning & Zoning

APPROVED AND FORWARDED TO THE
COMMUNITY AND ECONOMIC DEVELOPMENT COMMITTEE:



Office of the City Administrator

ATTACHMENTS

- A. Oak to Ninth Project Condition of Approval #25
- B. Revised Project Diagram dated April 9, 2007
- C. Planning Commission Staff Report (without attachments) dated 5/16/07
- D. Landmarks Preservation Advisory Board Staff Report (without attachments) 4/9/07
- E. Summary of Tidelands Trust Uses
- F. Description of Repairs and Improvements
- G. Letter from The National Development Council dated April 20, 2007
- H. Proposal for Ninth Avenue Terminal dated February 15, 2007

~~Item 6
Community and Economic Development
May 22, 2007~~

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

August 29, 2007

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,

This letter is to provide you with a written update of the progress of Ninth Avenue Terminal Partners LLC ("NATP") in preparing the information and analysis requested by the City Council on June 5, 2007. At that meeting, the City Council directed us to meet certain timelines to determine "overall project feasibility" by October 31, 2007, and also to provide an interim report on progress at a September City Council meeting.

The work we have done since June supports the analysis that we made in our February 15, 2007 proposal to transform the historic Ninth Avenue Terminal into an attractive destination on the Estuary without financial assistance from the City of Oakland.

After the June Council meeting, we met with you on June 11, 2007 and provided you a schedule for our work. We have since met with you approximately every other week and have provided schedule updates on an on-going basis.

The information and analysis requested by the City Council is listed below:

- 2) a. *"By August 31, 2007, the project sponsor shall complete a building code analysis and the work necessary with the Building Division to develop a final cost estimate of improvements for the building, based on the change of occupancy, as determined by the City Building Official, and allowing the use of the California Historical Building Code and subject to approval by the Building Services Department and the Fire Department"*

This building code analysis is complete; please see attached report by Rolf Jensen & Associates dated May 7, 2007. In addition, our team has met with Mr. Ray Derania, the City Building Official, on April 18, 2007 and August 6, 2007, and with Gary Collins of the Fire Department on July 18, 2007, to discuss and confirm the proper code analysis

and approach to the design of the project. Our approach the project is consistent with the discussions in those meetings.

- 2) b. *"By September 30, 2007, the project sponsor shall submit all required modeling, analyses and information pertaining to structural reinforcement, and other work to bring the building up to required seismic safety standards."*

NATP has retained Degenkolb Engineers, a structural engineering firm with extensive experience in renovation of historic buildings, to perform a structural analysis of the Ninth Avenue Terminal and the wharf underneath it. The conclusions of this report were reviewed with you, Mr. Alain Placido, and Mr. Derania on August 6, 2007. The final report will be completed on September 7, 2007. It states that certain upgrades to the building are required to meet the State Historic Building Code.

We have distributed the Degenkolb drawings relating to the building seismic upgrades to subcontractors and expect to have an accurate cost estimate for these upgrades by the time we appear before the City Council at the end of September.

The wharf, which was constructed with public funds in 1929, has been well-maintained and was designed to support much higher loads than are anticipated from our proposed use. The Degenkolb analysis concludes that the wharf, which under the building is supported by some 1,600 piles, does not require a seismic upgrade to meet the State Historic Building Code.

- 2) c. *"By October 31, 2007, the project sponsor shall complete preliminary negotiations with both OHP and the City pertaining to:*

- *phasing of the work;*
- *a list of major deal points for the lease, operating requirements and management agreement with the City;*
- *membership in the CFD/CSD for the maintenance of the facility or other equivalent means of participation; a list of major deal points with OHP that distinguishes the financial obligations for improvements to the wharf (or portions thereof), the status of the trestle bridge, the installation of the Waterfront Trail adjacent to the remaining portion of the Ninth Avenue Terminal Building, pier repair and/or replacement"*

On April 27, 2007, Moe Wright and I met with Mr. Michael Ghielmetti of OHP at his offices in Pleasanton to review our proposal and the attached "Areas of Cooperation" list. At that meeting we found some areas of agreement and some areas where additional negotiation was needed. We also have reviewed this list with you and described our conversation with Mr. Ghielmetti. No follow-up meetings on these issues have occurred, and we would like to schedule them as soon as possible.

In our meeting August 27, 2007, with Ms. Cappio and you, we discussed having a joint meeting of the City, OHP, and NATP sometime around the end of September. We also your obtaining a list of typical lease provisions from Mr. Frank Fanelli. We expect to receive this document from you soon and will review it as soon as we receive it.

- 2) d. *"By October 31, 2007, the project sponsor shall submit a revised project budget and pro forma based on the results of the additional structural, seismic and building code compliance work as well as the negotiations and draft deal points with both the City and with OHP"*

As noted above, our structural analysis and construction costing work is ahead of schedule. Negotiation of draft deal points should occur as soon as possible.

- 2) e. *"By October 31, 2007, the project sponsor shall complete a pre-application process with the BCDC regarding proposed improvements"*

On June 22, 2007, I met with Mr. Steve McAdam and Mr. Brad McCrae of BCDC, to discuss the process for BCDC review of our proposal. Various issues and approaches were discussed, but without a firm conclusion. We each agreed to do some research and talk again.

Moe Wright and I have since spoken to you and Ms. Claudia Cappio regarding the process for BCDC review. As you know, OHP (jointly with the City of Oakland and the Port of Oakland) has submitted an application to BCDC which assumes the demolition of all but 20,000 square feet of the Ninth Avenue Terminal. To the best of my knowledge, this application is still considered "incomplete" by BCDC, but OHP has concluded the design review process and the next step will be a presentation to the BCDC Board.

As we have expressed to you, we are very concerned about the joint OHP/City/Port application to BCDC because it does not allow for the renovation of the Ninth Avenue Terminal. BCDC staff has indicated to me that obtaining BCDC approval for the renovation of the Ninth Avenue Terminal would likely become more difficult if the current OHP/City/Port application is approved by the BCDC Board without modification. We do not wish to slow down OHP's BCDC approval process, but we would like to have assurance that our project will be reviewed on its merits and given the best possible opportunity for approval. If the joint OHP/City/Port application is processed by BCDC without modification, it could jeopardize BCDC approval of our proposal.

Our concerns regarding BCDC relate to the process and sequence of approvals, as opposed to BCDC policy. BCDC policy is supportive of historic preservation. At our August 27, 2007 meeting with you and Ms. Cappio, you indicated that the OHP/City/Port application will not be heard by the BCDC Board prior to the December Oakland City Council meeting at which NATP's proposal for the Ninth Avenue Terminal will be heard. This sequence allows clarification of the status of the Ninth Avenue Terminal before BCDC action. We understand that if the NATP proposal is approved by the City Council, we will work with OHP and the City to address the BCDC process.

There is no formal "pre-application process" at BCDC. We believe the best approach to the directive from the Oakland City Council is to work with City and BCDC staff to address the issue underlying this directive, which is to determine whether our proposal is consistent with BCDC policy and requirements.

- 2) f. *"By October 31, 2007, the project sponsor shall have formally contacted the State Lands Commission for a preliminary finding or opinion regarding whether the proposed use is consistent with the State Tidelands Trust provisions or what operating or physical conditions must be incorporated into the project so that it would be deemed compliant"*

On July 30, 2007, Ms. Cappio wrote a letter to Ms. Grace Kato of the California State Lands Commission requesting a meeting with her as soon as possible to discuss our project. I understand that no meeting has been set. We are interested in attending this meeting.

Additionally, we have interviewed legal counsel experienced in Public Trust law to represent us in this matter. We expect to select counsel shortly. Once we have counsel and have completed the necessary preparation to meet (and depending on the outcome of the meeting Ms. Cappio has requested), we will meet with the State Lands staff to review our project.

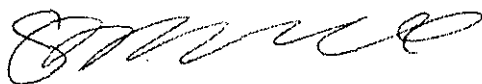
- 2) g. *"By October 31, 2007, any additional information necessary for any further environmental review information must be submitted by the project sponsor so that a CEQA determination may be completed for the project"*

At our August 27, 2007 meeting with you and Ms. Cappio, you requested that we prepare a detailed project description and that we contact Mr. Chris Gray of Fehr & Peers to evaluate the traffic impacts of our proposal in comparison to the traffic analysis that was completed for the Oak to Ninth EIR. We will prepare a detailed project description. We will also make contact with Mr. Gray, with the goal of obtaining a letter from him regarding the traffic generated by the uses in our proposal.

Lastly, we understand that due to staff report scheduling, all documentation relating to the Council directives listed above would ideally be delivered to you by October 12, 2007. We will endeavor to meet this deadline.

Thank you for your assistance with this project.

Sincerely,



Stuart Rickard



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May 7, 2007

VIA E-MAIL: mwright@bbiconstruction.com

Mr. Moe Wright
BBI Construction, Inc.
1155 Third Street, Suite 230
Oakland, CA 94607

**9th AVENUE TERMINAL, OAKLAND
OCCUPANCY CLASSIFICATION**

Dear Mr. Wright:

We have reviewed the proposed use of the building located on 9th Avenue, in Oakland, California. The building is currently a warehouse with about 90,000 square feet of area. The building construction has concrete exterior walls, and steel truss roof framing with a wood roof deck. The building has an automatic sprinkler system. Within the building, there is a two-story portion used as office. This could be classified as a mezzanine. Our review is for compliance with the current prevailing code the California Building Code (CBC), which amends the 1997 Uniform Building Code (UBC).

The proposed use for the following:

1. A-3/Assembly – 50 for more occupants, but less than 300.
2. B/Offices.
3. F-1/Factory. This may include wine making/processing.
4. M/Mercantile and Retail.
5. S-1/Moderate Hazard Storage.
6. S-2/Low Hazard Storage. This includes beer and wine in bottles or non-combustible containers.

Based on these proposed uses, there are no occupancy separations required within this building for the proposed uses.

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New State Code – The State has adopted a new code. The model code currently selected by the Building Standards Commission (BSC) is the family of codes from the International Code Conference (ICC). The adoption date is January of 2007. The expected publication date is July 4, 2007, with an effective date of January 1, 2008. Any project permitted on or after January 1, 2008 will be subject to the new code. There are substantial differences between the current model code (UBC) and the new model codes. The differences would change the design approach for compliance with the code.

The duration and anticipated permit date for this project will establish which code should be applied. If the design is substantially completed before the new codes are adopted, but submission for a permit is not anticipated until after the new code takes effect, a petition to the City could be made to request continuation of the current code for the duration of the project. This should be evaluated as the effective date of the code approaches. There are many advantages to using the new code.

Occupancy Classification – The current uses are B/Office and S-1/Storage. Portions of the building are going to change to include the A-3/Assembly, F-1/Manufacturing, and M/Mercantile. The building should be classified as a mixed-use building. The key is compliance with Section 3405 of the CBC for "Change in Use". The prevailing code states that when there is a change in use, the building is required to comply with the current code for the new use. Since only a portion of the building is being altered, this becomes more interpretive. The key then is to address the structure and life safety elements that may be affected by the change.

The structural engineer, Degenkold, has reviewed this requirement. The fire and life safety issue focuses around the construction and means of egress (MOE). The MOE can be addressed to comply with the current code for the number, location, and width/capacity of the exits. The construction classification may need some consideration.

Construction Classification – The current construction classification of the building could be a Type III-N. The exterior walls are non-combustible, but there is wood (combustible) roofing material.

Maximum Allowable Area – Under the current code, a Type III-N building of B, F-1, M, and S-1 use may be 12,000 square feet in area. An area increase can be taken for a multi-story building (X2) and sprinklers (X2), to 48,000 square feet (12,000 X 4). An additional increase may be taken for a side yard separation of 60 feet on three sides, or 40 feet on all four sides. If this is available, the area can be further increased to 96,000 square feet. This would bring the building into compliance with the current code. If the side yards are not available, the building could be called a non-conforming existing building. Please refer to the discussion below regarding the application and use of the California Historic Building Code (CHBC).

The A-3 use, which has a basic allowable area of 9,100 square feet, would have to be evaluated with the other uses. This should not affect the classification, unless the A-3/Assembly area exceeds 18,000 square feet of the total building.

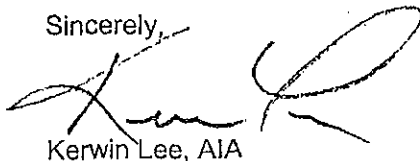
Mean of Egress – Compliance with the requirements for the MOE should not be a problem in the proposed design. This will depend upon existing openings and the placement of the new uses in the building. This will have to be evaluated as the design proceeds.

California Historical Building Code (CHBC) – The City has stated that the CHBC may be applied to this building. In order to apply the CHBC, it should be confirmed or filed for if the building is a registered historic landmark. The use of the CHBC affords many benefits for existing conditions. The CHBC allows the following:

1. Change in Use – The CHBC does not require any change when there is a change in use within the building. The only exception is compliance with the prevailing code for exiting and life safety elements.
2. Allowable height and area – The CHBC does not limit the height or area of a building as long as it stays within the designated historical envelope and the installation of an automatic sprinkler system. Expanding beyond the historical envelope will require compliance with the prevailing code.
3. Construction Classification – A building can be considered 1-hour construction with the installation of an automatic sprinkler system. This would classify the building as Type III, 1-hour.

The proposed changes to the building appear to be even with the limitations under the current prevailing code. Although the use of the CHBC could afford additional benefits, it may not be necessary. What should be considered from this point is the proposed changes and where they are anticipated in the building.

Sincerely,



Kerwin Lee, AIA

KL/GVA:tf
S42588LTTF-8145

Ninth Avenue Terminal

Areas of Cooperation between OHP and NATP

Entitlement-related

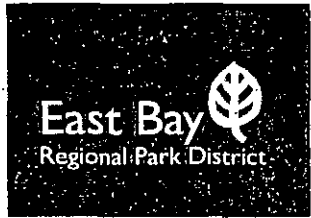
- BCDC coordination (immediate)
- Port, City, State Lands, Army Corps, BCDC, SHPO, Parks, others
- Use of CEQA documents, analysis, and consultants

Design and Construction-related

- Structural and other investigations
- Design and permitting
 - Clear boundaries of areas of improvement responsibilities of each party
- Wharf repair and upgrade or insurance
- Wharf railing and walking surface upgrade
- Wooden wharf apron retention and repair
- Erosion control under wharf
- Utility connections, size and locations
- Construction timing and access
- Trestle preservation and repair
- Open space design
- Cooperation with financing

Operations-related

- Easements / access (if any)
- Long term pier (wharf) maintenance
- Parking configuration and sharing; meters, time limits
- Maintenance district fees
- Events
- Hours of operation
- Noise
- Cleaning and maintenance of open space
- Future modification of open space, parking, etc.
- Future change of use
- Liability (property damage and PI) exposure and related insurance coverage
- Security



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August 14, 2007

Claudia Cappio, Development Director
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

ATTACHMENT C

Re: Ninth Avenue Terminal - Loss of Open Space

Dear Claudia:

The City is currently evaluating the proposal to preserve over 90,000 square feet of the Ninth Avenue Terminal. This proposal would result in the further loss of over 1-1/2 acres of planned open space in the Oak to Ninth Project as planned by Oakland Harbor Partners (OHP). I write to urge that approval of the proposal should be conditioned on providing at least as much open space elsewhere in the project as would be lost by the terminal expansion.

Note that this loss of planned open space is an addition to the large loss of planned open space in the 1999 Estuary Policy Plan as compared to the OHP project as approved by the City Council last year. That loss is about 40%.

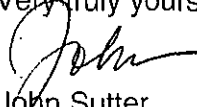
Where is such additional open space to be found? The obvious location is by enlarging Channel Park so that all land between the Fifth Avenue community ("the outparcel") and the Lake Merritt Channel would be developed as a park. If the Council wishes to maintain the project's 3,100 unit density, units proposed to be built in the Channel Park area could be shifted to the area east of the Fifth Avenue community. This approach would be similar to that employed by the City Council last year for the expansion of Estuary Park.

Additional important open space which should be preserved in the project area include (1) the full existing width of the terminal platform between the terminal building and the Estuary (OHP proposes to demolish about half of the platform in this area), and (2) the existing railroad trestle leading from the Terminal to the Embarcadero. These features are needed for a viable and useable Bay Trail. If preserved, they will also tend to make the Ninth Avenue Terminal more attractive to visitors and more useable for prospective Terminal tenants.

These views represent my opinion and not necessarily the Park District policy.

Thank you.

Very truly yours,


John Sutter

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Per 

Originals to: Mayor Ron Dellums, City Council, Dan Lindheim, Budget Director

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