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OAKLAND  
2003 JUL 17 PM 6:52

APPROVED AS TO FORM AND LEGALITY

  
Deputy City Attorney

## OAKLAND CITY COUNCIL

RESOLUTION No. 78008 C.M.S.

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### A RESOLUTION ADOPTING FINDINGS IN RESPONSE TO WRITTEN OBJECTIONS TO THE ADOPTION OF THE CENTRAL CITY EAST REDEVELOPMENT PLAN

**WHEREAS**, in accordance with the California Community Redevelopment Law (Health and Safety Code Section 33000, et seq.), the Redevelopment Agency of the City of Oakland (the "Agency") prepared and submitted to the City Council a proposed Redevelopment Plan for the Central City East Redevelopment Project (the "Plan"); and

**WHEREAS**, the City Council and the Agency held a joint public hearing on June 17, 2003, on adoption of the Plan; and

**WHEREAS**, the City Council has provided an opportunity for all persons to be heard and has received and considered all written comments received and all evidence and testimony presented for or against any and all aspects of the Plan; and

**WHEREAS**, Section 33363 of the Health and Safety Code provides that, before adopting the redevelopment plan, the legislative body shall make written findings in response to each written objection of an affected property owner or taxing entity and shall respond in writing to the written objections received before or at the noticed public hearing; now, therefore, be it

**RESOLVED:** That the City Council has considered all evidence and testimony on the adoption of the Central City East Redevelopment Plan and has responded in writing to the written objections received before or at the noticed public hearing; and be it further

**RESOLVED:** That the City Council hereby adopts the written findings in response to each written objection of affected property owners and taxing entities attached hereto as Attachment A and incorporated herein by reference.

IN COUNCIL, OAKLAND, CALIFORNIA, JUL 29 2003, 2003


**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, and PRESIDENT DE LA FUENTE -8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST:   
CEDA FLOYD  
City Clerk and Clerk of the Council  
of the City of Oakland, California

ATTACHMENT A

**CENTRAL CITY EAST REDEVELOPMENT PLAN  
WRITTEN FINDINGS IN RESPONSE TO OBJECTIONS**

[TO BE INSERTED]

**ATTACHMENT A**

**CENTRAL CITY EAST REDEVELOPMENT PLAN  
WRITTEN FINDINGS IN RESPONSE TO OBJECTIONS**

**Summary**

Listed below are responses to objections received about the Central City East Redevelopment Project and related actions. The responses are categorized in five sections: 1) notification and public participation, 2) CEQA, 3) blight and other redevelopment issues, and 4) issues previously responded to. Under each category are excerpts from the letters submitted along with a number assigned to each letter for reference purposes.

**Issue Section #1 – Notification and Public Participation**

	<b>Comments:</b>	<b>Reference:</b>
a.	<b>Notices were not given to businesses within the 5<sup>th</sup> Avenue Point area. This is a violation of H &amp; S Section 33385 which is not rectified by Section 33385b(4)B. These businesses were known to the agency as they held valid City of Oakland business licenses. The fact that 3385b(4)B requirement that they were “not known to the agency”.</b>	<b>1</b>
b.	<b>Our concern that we received no notice of the redevelopment project and were denied input into the proposed redevelopment plan and the environmental impact report preparation process.</b>	<b>4</b>
c.	<b>I am writing to reiterate my request that the boundaries of the Central City East Redevelopment project be amended to exclude the area west of the Embarcadero between Oak Street and the Ninth Avenue Terminal because the private property owners, tenants and business license holders of this area received no notice of the proposed redevelopment plan and the environmental impact report preparation process.</b>	<b>5</b>
d.	<b>Members of the Oak through Ninth community have been denied input into the redevelopment and environmental impact report preparation process.</b>	<b>5</b>
e.	<b>The basis for my opposition to the certification is that the private property owners, tenants and business license holders of the area west of the Embarcadero between Oak Street and the Ninth Avenue Terminal received no notice of the proposed</b>	<b>6</b>

	<b>Comments:</b>	<b>Reference:</b>
	<b>redevelopment plan and the environmental impact report preparation process and were therefore denied input into the entire process. I also object that the environmental impact report is not complete or accurate.</b>	
<b>f.</b>	<b>I object to the proposed adoption of the redevelopment plan and certification of the environmental impact report because they were prepared and completed in violation of the Oakland Sunshine Ordinance.</b>	<b>6</b>
<b>g.</b>	<b>The property owners, business owners and tenants in the Oak through Ninth area received no notice of the proposed redevelopment plan and the environmental impact report preparation. The entire Fifth Avenue waterfront community has been denied input into the redevelopment plan and environmental impact report preparation process.</b>	<b>7</b>
<b>h.</b>	<b>It is apparent from the PAC minutes that the organizations preparing the mailings, holding public meetings and conducting interviews were extremely selective in assembling their list of contacts to give the appearance of legal notice to the community of the proposed redevelopment plan and the environmental impact report preparation process. The waterfront community was specifically excluded from all notice and therefore was denied input into the entire process.</b>	<b>7</b>
<b>i.</b>	<b>Lack of notice that was given to our group in connection with the Central City East Redevelopment Project which affects and includes our area.</b>	<b>8</b>
<b>j.</b>	<b>As you know from the memorandum you have received from the City staff, California Health and Safety Code Section 3385 requires that businesses within the Project Area be given notice of the PAC formation and its meeting agenda</b>	<b>8</b>
<b>k.</b>	<b>Also enclosed are certificates signed by many of the 5<sup>th</sup> Avenue Point business owners certifying that they received no notices related to the PAC or otherwise related to the Redevelopment Plan</b>	<b>8</b>
<b>l.</b>	<b>The list does not contain any of these businesses or their addresses; thus explaining why the business owners did not receive the notices required by law.</b>	<b>8</b>
<b>m.</b>	<b>In this case it seems inconceivable that the agency can claim that the businesses were “unknown to the agency. The businesses held City of Oakland businesses licenses, many of the businesses</b>	<b>8</b>

	<b>Comments:</b>	<b>Reference:</b>
	<b>had been in business for decades at that same location and the 5<sup>th</sup> Avenue Point Alliance had been very active in all matters related to their artisan community; in particular the 1999 Estuary Policy Plan, yet not a word was heard from this group when the PAC was formed or when it conducted its meetings. The mailing list was simply in error.</b>	
<b>n.</b>	<b>I received no notice of any of the five public meetings to review the EIR for the Central City East Redevelopment Project.</b>	<b>9</b>
<b>o.</b>	<b>I received no notice of any of the five public meetings to review the EIR for the Central City East Redevelopment Project.</b>	<b>10</b>
<b>p.</b>	<b>Our community was neglected to be given proper and timely notice of the proposed redevelopment plan and the environmental impact report preparation process.</b>	<b>11</b>
<b>q.</b>	<b>The property owners, tenants and business license holders of this area did not receive proper and timely notice of the proposed redevelopment plan and environmental impact report preparation process.</b>	<b>12</b>
<b>r.</b>	<b>Owing to the fact that my neighbors and I received no notice of any of the five public meetings to review the EIR for the Central City East Redevelopment Project, I would like to request that you to eliminate the Fifth Avenue area south of the Embarcadero from the project area should you decide to approve it on June 17<sup>th</sup>.</b>	<b>13</b>
<b>s.</b>	<b>As a member of the Fifth Avenue community and the Conservation Committee of the Golden Gate Audubon Society I was very active in the process of development the Estuary Plan. My name is on at least 7 mailing lists of people interested in participating in public meetings concerning the waterfront and I am personally known by members of the Port of Oakland's Community Relations Department as a community liaison for the wetland restoration project underway at Clinton Basin which lies within the current proposed boundaries of the Project Area.</b>	<b>14</b>
<b>t.</b>	<b>I received no notice of any of the five public meetings to review the EIR for the Central City East Redevelopment Project.</b>	<b>14</b>
<b>u.</b>	<b>No tenant or business or even property owner, in this community Received ANY notice of the CCERP prior to a flyer given out by hand on May 22, 2003 two months after the EIR comment period closed, and one month after it was finalized, and after the final Oakland Planning Commission meeting certifying this EIR on May 21, 2003.</b>	<b>15</b>
<b>v.</b>	<b>I would like to have some evidence or proof of service or notice in reference to the EIR or Redevelopment Plan.</b>	<b>16</b>
<b>w.</b>	<b>I have held a business license at this address since March, 1991</b>	<b>17</b>

	<b>Comments:</b>	<b>Reference:</b>
	<b>and I receive many other notices from the City, but neither myself nor my neighbors in the Fifth Avenue area west of the Embarcadero has received any notice of this project.</b>	
x.	<b>I wish that I could have been brought into the process by written notice.</b>	18
y.	<b>I am entitled to Notice!</b>	19
z.	<b>Yet I did not receive notice of the proposed redevelopment plan for the Central City East Redevelopment Project.</b>	20
aa.	<b>I never received notice of the proposed Central City East Redevelopment Project, and its attendant Environmental Impact Report, which includes the property which I have rented for my home and studio for the past 21 years.</b>	21
bb.	<b>I did not receive notice of the proposed redevelopment plan for the Central City East Development Project.</b>	22
cc.	<b>I do not recall receiving information that would have allowed me to participate in the decisions that were made to create this new plan.</b>	23
dd.	<b>I did not receive notice of the proposed redevelopment plan for the Central City East redevelopment Project.</b>	24
ee.	<b>The property owners, tenants and business license holders of this area did not receive proper and timely notice of the proposed redevelopment plan and the environmental impact report preparation process.</b>	25
ff.	<b>I was not notified, thus denied due process.</b>	26
gg.	<b>The private property owners, tenants and business license holders of this area received <u>no</u> notice of the proposed redevelopment plan and the environmental impact report preparation process. The entire Fifth Avenue waterfront community has been denied input into the redevelopment plan and environmental impact process.</b>	27
hh.	<b>I did not receive notice of the proposed redevelopment plan for the Central City East Redevelopment Project.</b>	28
ii.	<b>I did not receive notice of the proposed redevelopment plan for the Central City East Redevelopment Project.</b>	29
jj.	<b>I did not receive notice of the proposed redevelopment plan for the Central City East Redevelopment Project.</b>	30
kk.	<b>I am writing to voice my objection to the process that has been followed in creating the Central City East Redevelopment Project Area and the EIR for that project. I have held a business license at this address since December 1, 1992 and in City of Oakland since 1901. I receive many other notices from the City, but neither myself nor any neighbors in the Fifth Avenue area west of the Embarcadero has received any notice of this project. The community has been shut out of the public</b>	31

	<b>Comments:</b>	<b>Reference:</b>
	<b>input process.</b>	
<b>ll.</b>	<b>I did not receive notice of the proposed redevelopment plan for the Central City East Redevelopment Project.</b>	<b>32</b>
<b>mm.</b>	<b>I have recently become aware that my neighborhood has been incorporated into the “Central City East Redevelopment Plan”. I also understand that a “final” EIR has been or is being adopted for this plan. While I have not problem with folks on the east side of 880 trying to redevelop, I think it incredible that no proper or legal notification as given to the residents or business owners on the west side of 880.</b>	<b>33</b>
<b>nn.</b>	<b>I did not receive notice of the proposed redevelopment plan for the Central City East Redevelopment Project. I would like to receive written notice of the subject plan.</b>	<b>34</b>
<b>oo.</b>	<b>I did not receive notice of the proposed redevelopment plan for the Central City East Redevelopment Project. I would like to receive written notice of the subject plan.</b>	<b>35</b>
<b>pp.</b>	<b>I am a resident of the 5<sup>th</sup> Avenue neighborhood. I am writing this letter to object the fact that I did not receive notice of any kind about the proposed Central City East Redevelopment Plan and of our being included in this plan. I understand that the City Council is going to decide on the future of this plan on June 17<sup>th</sup>, 2003. I proposed that the Oak to Ninth Street area be excluded from this redevelopment project. I have no objection to other neighborhoods redeveloping if they had the opportunity to study the plan. We WERE NOT told about the plan; therefore, we DID NOT receive this opportunity. I am willing to support any kind of legal action, agreed to by the 5<sup>th</sup> Avenue Waterfront Alliance, needed to put a halt to our inclusion in Central City East Redevelopment Plan.</b>	<b>36</b>
<b>qq.</b>	<b>I am a business owner at 499 Embarcadero (Fifth Avenue) in Oakland. I recently discovered that the City of Oakland has included Oak St. to 9<sup>th</sup> Ave. west of Embarcadero in its proposed redevelopment zone without notifying the current residents. As a licensed business owner for the last 13 years, I believe I am entitled to notice and an opportunity to participate in the discussion of projects that may affect my business. Please remove the Oak St. to 9<sup>th</sup> Ave. west of Embarcadero segment form this redevelopment zone.</b>	<b>37</b>
<b>rr.</b>	<b>I did not receive notice of the proposed redevelopment plan for the Central City East Redevelopment Project. I would like to receive written notice of the subject plan.</b>	<b>38</b>
<b>ss.</b>	<b>I did not receive notice of the proposed redevelopment plan for the Central City East Redevelopment Project. I would like to receive written notice of the subject plan.</b>	<b>39</b>



	<b>Comments:</b>	<b>Reference:</b>
tt.	<b>The property owners, tenants and business license holders of this area did not receive proper and timely notice of the proposed redevelopment plan and the environmental impact report preparation process.</b>	40

**Response:**

A number of commentators, particularly from the Fifth Avenue Point area, object that they did not receive written notice of formation of the Project Area Committee (“PAC”) for Central City East, or written notice of the Central City East Redevelopment Plan adoption, and thus did not have the opportunity to serve on the PAC or otherwise participate in Plan adoption. These commentators asked that their area either be exempted from eminent domain authority or removed from the Project Area entirely.

The City substantially complied with, and in many cases greatly exceeded, all legal requirements for public notification and community participation during the plan adoption process for the Central City East Redevelopment Project. The City made a good faith effort to send written notice of Plan adoption to all known residents, businesses, property owners, and community organizations in the project area, at considerable expense to the City. Five mass mailings were made at a cost of over \$100,000. The apparent failure of some businesses and tenants in the Fifth Avenue Point area and others to receive mailed notice during the Plan adoption process does not require the City to remove this area from the Project Area or to exempt it from eminent domain authority.

Community input into the Plan adoption process was provided primarily through the Central City East PAC. The Central City East PAC consists of 24 elected representatives of residential tenants, residential homeowners, and businesses, as well as community organizations designated by the City Council, from each of the four subareas in the project area. The PAC includes representatives from the Eastlake/San Antonio subarea, which includes the Fifth Avenue Point area.

California redevelopment law, as well as the City’s PAC election and formation rules, set forth the required published and mailed public noticing for PAC formation. Health and Safety Code Section 33385(b) requires the Agency to provide written mailed notice to all known residents, businesses, and community organizations in the project area of the opportunity to serve on the PAC and all meetings with respect to PAC formation. However, the law provides that **“This mailed notice requirement shall only apply when mailing addresses to all individuals and businesses, or to all occupants, are obtainable by the agency at a reasonable cost....If the agency has acted in good faith to comply with the notice requirements of this paragraph, the failure of the agency to provide the required notice to residents or businesses unknown to the agency or whose addresses cannot be obtained at a reasonable cost, shall not, in and of itself, invalidate the formation of actions of the project area committee.”**

The law provides a similar mailed notice requirement for the joint City and Agency public hearing. See Health and Safety Code Section 33349. First class mailed notice must be sent to all residents, businesses, and property owners of record. This provision has similar good faith language to the PAC formation notice provision, and also provides that the mailed notice requirement only applies when addresses are available at a reasonable cost. The law generally does not require that every stakeholder receive statutory notice; a local agency complies with a statutory mailed notice requirement if it substantially complies with the statute. *Morgan v. Community Redevelopment Agency* (1991) 231 CA3d. 243, 252-54, and *Downtown Palo Alto Committee for Fair Assessment v. City Council* (1986) 180 CA3d. 384, 392-96.

In the case of the Central City East PAC formation, the Agency sent out two mass mailings to all known residents, businesses and community organizations in the Project Area informing the community of the PAC formation process, including the time and place of informational meetings, the PAC elections, and the City Council hearings on PAC formation and certification. Each mailing went to over 33,000 addresses. Copies of those mailings are attached to the June 17, 2003 supplemental staff report to the Council. After its certification in June, 2002, the PAC held multiple public meetings in the Project Area. All of those meetings were publicly noticed in conformance with the Brown Act and the City's Sunshine Ordinance. The City also held public meetings with various other community organizations soliciting input into the Plan. Those efforts are described in Section X of the Report to Council. The City sent out two additional mass mailings notifying the community of various community meetings and workshops. Meetings were well-attended.

The City Council and the Planning Commission each took action on a number of Plan adoption steps since the Plan adoption process began in 2001. All Council and Planning Commission meetings were publicly noticed in conformance with the Brown Act and the City's Sunshine Ordinance. A mailing notifying Project Area residents, businesses, and property owners of the June 17, 2003, joint City/Agency public hearing was sent as required by law.

The mailing list for all of these mailings came from three sources: (1) County property records for the City of Oakland, (2) a commercially-purchased list of all businesses in the City of Oakland, and (3) a commercially-purchased list of all residences in the City of Oakland. Additional names were added to the list from those who attended community meetings held throughout the outreach process. These sources were mapped using the City's GIS system and the addresses that fell within the Project Area boundaries were combined in one mailing list referenced by source. Duplicate addresses were filtered out. All the mailings were sent by United States Postal Service first class mail using the services of a private printing and mailing service.

In addition to mailed notice, notices of meetings were published in the Oakland Tribune and other venues. See the June 17, 2003 supplemental staff report to the Council for a further description of the published noticing.

In a Project Area the size of Central City East, which encompasses nearly 3,400 acres and includes over 93,000 residents, it is inevitable, despite the best efforts of the City, that some Project Area residents or businesses will not receive individual notice. It appears that, for technical reasons, a number of businesses and residents in the Fifth Avenue Point area were inadvertently not included in the mailing list assembled for the project area. (However, as confirmed by the mailing company, the owners of record of these properties, including J.W. Silveira Company at 499 Embarcadero, and Robert A. Shultz at 48 Fifth Avenue with a mailing address at 4624 Brookdale Avenue, were included on the mailing list and did receive all written notices.) This does not obviate the conclusion that the City acted in good faith in purchasing commercial mailing lists and sending multiple mailed notices to 33,000 addresses, and thus substantially complied with the noticing statutes in redevelopment law. The omission of these addresses was not intentional, nor was it designed to exclude the Fifth Avenue Point community from the Plan adoption process.

A number of the business owners in the Fifth Avenue Point area pointed out that they had business licenses on file with the City, and were thus “known” to the City. The fact that a business had a business license on file with a City department does not mean that the City did not act in good faith to notify all “known” businesses in the Project Area. There are dozens of departments in the City, and each City department has access to many lists and databases that include names and addresses of residents and businesses in the City. It would be unreasonable to expect the Redevelopment Division of the Community and Economic Development Agency (the City department responsible for preparing the mailing list and sending out the notices) to assemble, cross-reference, and collate all lists that all other City departments may have had in their possession.

One commentator objects that he was not given a separate notice for each property he owns in the Project Area. The law does not require a redevelopment agency to send multiple notices to a property owner who owns multiple properties, nor does it require that notices be sent to each joint owner of a property. See *Morgan v. Community Redevelopment Agency* (1991) 231 CA3d. 243, 252-53

The mailing list has been corrected to include all tenants in the Fifth Avenue Point area. The City will request that the Fifth Avenue Point community work with the PAC and be included in the process of plan implementation.

**Issue Section #2 – CEQA**

	<b>Comments:</b>	<b>Reference:</b>
<b>a</b>	<p><b><u>Confusion Regarding the Kind of EIR</u></b></p> <p><b>While the Final EIR states that the EIR is a Program EIER (FEIR, pp. 1-1 - 1-2), the language in the draft EIR indicates that the EIR is a Project EIR.</b></p>	<b>3</b>

	<p><b><u>Lack of Sufficient Detail</u></b></p> <p>The Project lacks adequate detail to inform the public of the impacts of the Project.</p> <p><b><u>Inadequate Responses to Comments</u></b></p> <p>“The evaluation and response to public comments is an essential part of the CEQA process. Failure to comply with the requirement can lead to disapproval of a project.”</p> <p><b>A. <u>Response to Comments Related to Traffic Impacts</u></b> The Agency cannot plausibly set forth that redevelopment of this area makes no contribution to traffic on these freeway segments. Thus, this response is inadequate.</p> <p><b>B. <u>Response to Comments Related to Historic Preservation</u></b> In Comment B-1 the Landmarks Preservation and Advisory Board expresses concerns over impacts to historic structures and suggests rehabilitating historic structures as an alternative to eliminating them. The response to this comment is dismissive, stating that the” EIR is an informational, and not a policy document.” The EIR does not respond to this concern.</p> <p><b>C. <u>Additional Criticisms</u></b> The EIR’s response to comments B-%, B-14, C-3, D-2, and E-8 are both misleading and inadequate.</p> <p><b>Inadequate Mitigation Measures</b> One of the basic purposes of CEQA is to prevent significant, avoidable damage to the environment by requiring changes in projects through the use of feasible alternatives or mitigation measures. Mitigation measures set in the EIR, and the discussions addressing the mitigation of impacts, do not fulfill this purpose.</p> <p><b>Inconsistency With the General Plan</b> <b>Inadequate Alternatives Discussion</b></p>	
b	We find that the EIR was seriously flawed by our being left out of the preparation processes.	4
c	I also object that the environmental impact report is not complete or accurate.	6
d	Also, I object to the fact that the sensitivity of the wetland areas along the waterfront and its wildlife, some of which are protected as Endangered Species is not mentioned in the EIR.	14
e	1. The EIR for the CCERP completely avoids any direct	15

discussion of the 5<sup>th</sup> Avenue artisan area.

2. The EIR discussion of the demolition of the Ninth Avenue Terminal is premature and without merit. The EIR is incomplete when citing the eminent destruction of this building.
3. The EIR [page 3-6] describes the “Eastlake/San Antonio Subarea” with much finesse except the only mention of land south (waterside) of the Embarcadero s the 9<sup>th</sup> Avenue Terminal.
4. The EIR [page 3-1] goes on to describe the “Project Objectives #1 – Eliminate blighting influences and correct environmental deficiencies, including, among others, buildings in which it is unsafe or unhealthy for persons to live or work, incompatible or uneconomic land uses...”which could describe the 5<sup>th</sup> Avenue are to a tee if one compared it to any recent [or proposed] project by current developer.
5. The EIR [page 3-1] states also in “Project Objectives #2 – Assemble land into parcels suitable for modern integrated development...” again, taken with the statements made by the developer takes clear aim at the privately held 5<sup>th</sup> Avenue area being folded into an “modern integrated development.”
6. The EIR [page 13-5] INCORRECTLY states when speaking to “Significant UNAVOIDABLE EFFECTS” “the Estuary Policy Plan (EPP) anticipates demolition for the 9<sup>th</sup> Avenue Terminal...,” while the EPP speaks to the policy of reuse, not abuse.
7. Although the Oakland Cultural Survey designates the 5<sup>th</sup> Avenue area as a PDHP, the EIR leaves out any mention of this area in its list of PDHP properties [page 11-9, 10].

All in all, several of the above items show a direction and a deficiency in the EIR regarding how the 5<sup>th</sup> Avenue Artisan community should be treated. Due to this already pattern of neglect by the Redevelopment and /EIR process, *the 5<sup>th</sup> Avenue Waterfront community should be excluded from the redevelopment project area.*

The courts have found that agencies charged with preparing an EIR make the broadest outreach to the public. In the case *Plaggmier v City of San Jose*, the courts found that cities cannot ignore this basic directive of the CEQA process. If the Oakland City Council goes forward and includes the Oak to Ninth Avenue area in the CCERP and certifies the EIR for the CCERP, the council leaves this community no choice but to go before the courts with a write of mandate and demand our

	<b>rights to be heard in a higher court</b>	
<b>f</b>	<b>1. The private property owners, tenants and business license holders of this area received no notice of the proposed redevelopment plan and the environmental impact report preparation process. The entire Fifth Avenue waterfront community has been denied input into the redevelopment plan and environmental impact process. It is my understanding that public hearings and public input into redevelopment plans and environmental impact report preparation are required by law.</b>	<b>27</b>

**Responses on General CEQA Comments:**

Several commenters made general assertions that the EIR is inadequate. None of the comments, however, reveals evidence that the EIR is inadequate. The EIR fully complies with all of CEQA’s requirements for a program EIR prepared for a Redevelopment Plan, as specified in Public Resources Code Section 21090.

Some commenters have asserted that the EIR failed to evaluate effects of the Redevelopment Plan on the 5<sup>th</sup> Avenue artisan area. The EIR, however, does analyze environmental impacts and mitigation for this area. As discussed elsewhere in this report, the EIR analyzes potential effects of Plan implementation throughout the Plan area at a program level of detail. Please see the response to the letter of Remy Thomas Moose and Manley for further information.

**Responses on Historic Resources:**

Some commenters have asserted that the EIR’s evaluation of historic resources, including the potential demolition of the 9<sup>th</sup> Avenue Terminal and the 5<sup>th</sup> Avenue area is inadequate. The CCE DEIR includes an extensive analysis of historic resources in the CCE Project Area. As noted on page 11-10, the 9<sup>th</sup> Avenue Terminal Building is designated as a Potentially Designated Historic Property (PDHP), and appears eligible for listing on the National Register. Therefore, as further explained in the CCE EIR, this building is considered to be a potentially designated historic resource under CEQA because it is eligible for listing on the National Register and is on the local register. Further, the EIR identifies a potentially significant impact pertaining to the 9<sup>th</sup> Avenue Building (Impact 11.3), which calls out the potential removal or alteration of this historic resource depending on future plans for the site and surrounding area. This impact and related mitigation measure have been previously published and certified by the City in the Estuary Policy Plan EIR (Impact G.6, page III G-9 of EPP EIR.) The City has previously established that the 9<sup>th</sup> Avenue Terminal building may be altered or demolished as part of the development of Crescent Park in this area, and a statement of overriding considerations under CEQA Section 15093 was adopted. In order to maintain consistency between the CCE Redevelopment Plan and the Estuary Policy Plan, a similar impact was identified, along with a statement of overriding considerations. As part of the response to public comment to the CCE DEIR, the mitigation measure for this impact

was strengthened to require a separate environmental review that includes consideration of appropriate mitigation measures consistent with the Estuary Policy Plan (OAK 2.4) policy for the Oak-9<sup>th</sup> Street area.

### **Responses on CEQA Notice and Public Review**

Some commenters have expressed concern that they did not receive adequate notice of the availability of the EIR and the CEQA process. However, the City complied with all of CEQA's requirements for public notice in connection with the public review process for the EIR. Specifically, the City published a public hearing notice as part of the Planning Commission review of the DEIR; sent out a Notice of Availability to all those individuals and agencies that had responded to the Notice of Preparation or otherwise asked to be notified about the project and complied with the standard City CEQA notification policies (an extensive City – wide list as well as local agencies and the press.) The time periods for public review of the EIR also were fully in compliance with CEQA. The EIR was circulated for public review for a period of 45 days (February 5 through March 24, 2003) in accordance with CEQA Guidelines Section 15105. In addition, the City held a Planning Commission public hearing to solicit comments on March 5, 2003. The City prepared written responses to comments in accordance with CEQA's requirements, which were made available to the public 12 days (April 4, 2003) prior to the April 16, 2003 Planning Commission meeting considering certification, which fulfills City requirements that the final EIR is available at least 10 days prior to certification.

### **Responses to CEQA comments in letter of Remy Thomas Moose and Manley:**

1. Type of EIR. The Redevelopment Plan is “project,” for purposes of CEQA, as discussed in the EIR; however, as clearly stated in the EIR, the EIR is a Program EIR, prepared in accordance with Public Resources Code Section 21090 and the other requirements of CEQA and the CEQA Guidelines. This approach is consistent with the recent amendments to Public Resources Code Section 21090, which specify that an EIR for a redevelopment plan specify the type of EIR that has been prepared.

As noted in the CCE EIR, the document “will be used as a primary source of information upon which to evaluate potential environmental impacts of future projects, programs or other activities . . . “ (page 1-4.) As noted in the EIR's Project Description (see, e.g., pages 3-12 through 3-17, there are four key strategies, described at a general or programmatic level of detail, that would constitute the programs, policies and actions under the Redevelopment Plan: property improvement programs; public infrastructure improvement programs; assistance with the redevelopment of specific properties and provision of additional affordable housing opportunities. Further, the DEIR expressly states the intended uses of the CCE EIR (page 3-28.).

The commenter includes extensive discussions of purported discrepancies between recent amendments to Public Resources Code Section 21090 and the *Friends of Mammoth II* decision/CEQA Guidelines Section 15180. These comments do not indicate a flaw in the CCE EIR. The EIR provides a programmatic level of analysis, and more detailed

analysis is not reasonably feasible at this juncture. No development proposals or land use changes are proposed for the subject area. The need for further CEQA review in connection with any such future proposals will be determined when one is before the City, all in accordance with CEQA's requirements.

2. Recirculation of EIR. Recirculation of the CCE Redevelopment Plan EIR is not required because there is not "significant new information" required to be added to the EIR subsequent to public notice of availability of the Draft EIR but prior to certification. There is no evidence that any of the criteria for recirculation specified in CEQA Guidelines Section 15088.5 is met. Specifically:

- There is no evidence of a new significant impact that would result from the project or a new mitigation measures proposed to be implemented;
- There is no evidence of a substantial increase in the severity of an environmental impact that would result unless mitigation measures are adopted to reduce such impact to a less than significant level;
- There is no evidence of a feasible project alternative or mitigation measure considerably different from others previously analyzed that would clearly lessen the significant environmental impacts of the project;
- There is no evidence that the Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

None of the information in the record reveals a "fundamental" or "basic" flaw that compels substantial revision of the Draft EIR or indicates that the public has been deprived of opportunity for meaningful comment. To the contrary, nothing in record reveals any inadequacy in the document. There also has not been any new information of significant environmental effects, an increase in the severity of environmental effects, or in potential methods for reducing such effects by mitigation measures or alternatives not previously evaluated.

The commenter and some other members of the public have expressed their opposition to their inclusion in the area to be covered by the plan, and this opposition was expressed strongly and clearly in written correspondence and during the May 21, 2003 Planning Commission public hearing, as part of the consideration of the CCE Redevelopment Plan and prior to certification of the EIR.

3. Level of Detail. The EIR contains more than sufficient detail to inform the public about the potentially significant impacts of the CCE Redevelopment Plan.

As noted above, the EIR is a program EIR, prepared in accordance with CEQA's requirements for a program level of analysis. The EIR analyzes the reasonably foreseeable environmental effects of the Plan's implementation, applying the greatest level of detail reasonably feasible at this time. The level of detail fully complies with CEQA's requirements regarding the degree of specificity in an EIR, as the level of detail in the information, analysis and conclusions correspond directly with the underlying,



general programs and activities that are identified as the actions under the CCE Redevelopment Plan. (see CEQA Guideline Section 15146)

The commenter states that the Redevelopment Plan outlines the activities, authority and programs the Agency may engage in, criticizing the EIR for its statements that their use will conform to the General Plan. In requesting more detailed analysis of their use, it is possible that the commenter is confused about the exact nature of the Redevelopment Plan. This Redevelopment Plan will not function as a “land use plan,” such as a general plan or specific plan. The Redevelopment Plan is a tool that facilitates implementation of the existing General Plan; it does not authorize deviations from the General Plan. The Redevelopment Plan does not authorize any land use changes, confer any entitlements or commit the City with respect to any land use actions other than as specified and previously approved in the existing General Plan. While it is hoped that the Redevelopment Plan will facilitate achievement of General Plan-approved land uses, no specific project sites for redevelopment or development proposals that might be fostered by the Redevelopment Plan have been presented to the City.

The proposed Redevelopment Plan’s general level of specificity, which is wholly consistent with state law requirements for a redevelopment plan, dictates the program level of analysis contained in the EIR. Without information that simply is not currently available, it is not reasonably feasible to provide a more detailed level of analysis. Because such analysis would require mere speculation, it would not provide meaningful information to the public or the decision makers.

4. Project Description. The EIR’s Project Description fulfills CEQA’s requirements. The Project Description Section of the DEIR describes specific geographic sub-areas of the CCE Project Area, sets forth the specific project objectives, and details, under four general categories (property improvement programs, public infrastructure programs, assistance with redevelopment of specific properties and provision of additional affordable housing opportunities) what types of programs and other actions are contemplated (pages 3-13 through 3-21.) This description fully addresses the standards set forth in CEQA Guideline Section 15124 pertaining to project descriptions.

These program and activity sections are further specified by sub-area. As further described, these programs and activities “. . . are intended to be general and conceptual in nature, due to the lengthy time frame for implementation of the Redevelopment Plan, are intended to be flexible and provide the capacity to change in response to the realities of the marketplace” (page 3-13.) This level of description and detail is clearly provided for in CEQA Guideline Section 15168 where there are a series of contemplated actions related geographically and in connection with a continuing program; this type of analysis allows the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility with basic problems or cumulative impacts. The EIR uses precisely this approach.

5. References that are not accompanied by sufficient explanation. The commentor expresses concern that there are references to reports and plans in the EIR, but that these are not accompanied by sufficient explanation. While not stating specifically what reports this comment refers to, the EIR contains a detailed explanation and analysis of all relevant planning and policy documents in Chapter 3 (Project Description) and Chapter 4 (Land Use). These reports and plans include but are not limited to: the Estuary Policy Plan and Estuary Policy Plan EIR; the General Plan (Land Use and Transportation Element, Open Space Recreation and Conservation Element, and Historic Preservation Element). Detailed assessment of the CCE Redevelopment Plan's consistency is included in these Chapters.

6. Inadequate Response to Comments. The City has made every reasonable effort to provide thoughtful and meaningful responses to comments received on the EIR. As required by CEQA, written responses were prepared on all comments received during the public review period on the Draft EIR. All comments received in the public review period were responded to in the Final EIR.

The commentor notes some specific concerns with the responses to comments. These are addressed as follows:

- A. **Traffic Impacts:** The commentor states that the City did not respond adequately to Comment A-3, in that further analysis is required because a segment of I-880 is projected to operate under Level of Service (LOS) under cumulative conditions. As noted in the City's response to comment A-3, a traffic impact analysis was completed, including a cumulative analysis, and the contribution by the projected growth within the CCE Redevelopment Plan was determined to be less than significant. Specifically, the projected increase in traffic resulting from the project did not meet the City's threshold of significance for cumulative impacts, as set forth on pages 5-16 to 17.
- B. **Historic Impacts:** The commentor presents concerns that the City failed to adequately respond to a number of comments received about potential historic preservation impacts. The City staff worked extensively with both the Oakland Historic Alliance (OHA) and the Landmarks Preservation Advisory Board (LPAB) to modify the CCE DEIR Chapter 11 and to come up with specific, feasible actions to further the policies, objectives and priorities of the General Plan Historic Preservation Element. Extensive text was added to the EIR pertaining to established policies for retaining historic buildings and special procedures for historic buildings where there is City involvement (as would be the case with redevelopment participation.) These text modifications and further program actions are set forth in the FEIR, pages 4-4 through 4-8. Two new exhibits were also added specifically locating Potentially Designated Historic Properties and other local register buildings within the program area.

The commentor also suggests that the small number of comments received on the Draft EIR indicates some flaw with respect to notice. However, all of CEQA's requirements

for notice with respect to the Draft EIR have been satisfied, including, without limitation, the requirements of CEQA Guidelines Section 15087 and the City's local guidelines. A public notice was published as part of the Planning Commission public hearing on March 5, 2003.

7. Mitigation Measures. The EIR's recommended mitigation measures comply with CEQA's requirements. As noted above, the EIR's analysis of impacts and mitigation is presented at the greatest level of detail that is reasonably feasible at this juncture. Contrary to the commenter's assertions, the EIR does not defer analysis that currently is reasonably capable of being undertaken. It is simply not possible to provide a more detailed review with the information currently known, particularly with no specific sites identified for future projects. As described previously in this report, the mitigation measures are appropriately general due to the programmatic nature of the document.

The specific questions raised by the commenter are addressed as follows:

A. The commenter questions the EIR's rejection of the widening of High Street to provide dual left turn lanes and three through lanes (page 5-25) as a mitigation measure to reduce the cumulative traffic impacts at High Street/International Boulevard. Based on the information currently available to the City and the Agency, this measure is economically infeasible and therefore cannot be relied upon as a means to mitigate such impacts. As indicated in the EIR, widening of High Street would require condemnation of a row of businesses. Specifically, the land area needed for traffic mitigation consists of 5 parcels containing a total of approximately 39,000 square feet. Structures and improvements total about 15,000 square feet. The area lies outside of the proposed redevelopment area.

- Purchase of the subject property would cost approximately \$1,942,000.
- Demolition costs would be approximately \$45,000.
- Costs for demolition and abatement of toxics in buildings are estimated at \$150,000. This number is conservative for building abatement since there have been no on-site studies. The abatement estimate does not include any remediation of subsurface contamination.
- Costs of appraisals and litigation would be approximately \$550,000.
- Compensation for loss of business income, relocation costs, new equipment, business reestablishment, and other protections and benefits provided for under the State of California Relocation Law" is estimated to cost \$1,000,000. The exact cost could be higher and must be calculated based upon an analysis of each business to be relocated and an appraisal of the value of lost business income and equipment replacement costs.

Based on the above, the total costs for the subject land acquisition would be over \$3,690,000. This amount does not include the value of traffic improvements that would need to be funded, which could add approximately \$1.1 million for the engineering, design, inspection and hard costs to add two additional through lanes over the two block area.

The total expenditure envisioned by this mitigation measure amounts to approximately \$4.8 million. This amount is equal to all of the non-housing revenue from the first two years of plan area life and over half of the revenue from year three. Together with staff overhead, this project would absorb all available project funding for the first three years of plan life. As a result the five-year implementation plan to eliminate blight would not be financially feasible. In summary, the costs of this mitigation would require a significant financial commitment of Redevelopment funds that, based on current information, could not be relied upon to be available. If, in the context of later review, such mitigation appears feasible, the City could revisit this as a potential means to mitigate these impacts.

B. The commenter asserts that the City has improperly deferred mitigation of hazardous substances impacts on sensitive wildlife habitats. The City has identified the impact and set forth a process by which specific actions would be taken to reduce or eliminate these impacts in conjunction with the agencies who also have jurisdiction over these Oakland estuary lands. This analysis and mitigation has not been improperly deferred. Working in cooperation with these Responsible Agencies, the City is obligated to comply with applicable remediation requirements and standards in order to address contamination within sensitive habitats. Such a process is identified in further detail in the Estuary Policy Plan EIR, incorporated by reference into the EIR and, accordingly, into the project and the adopted mitigation measures (pages III.M-7-10). Further, the City has established a sophisticated regulatory and policy framework for working with contaminated sites, as described in CCE DEIR pages 8-12. It would be premature and speculative to develop any specific remediation plans or other requirements at this level of analysis given the broad types of contamination present within the Program Area, the types of redevelopment land uses contemplated and the array of clean-up approaches available to reduce or eliminate the potential impact identified.

C. The commenter asserts that Mitigation Measures 9.2 defers environmental review to a later time with respect to determining projected water and waste water loads as compared to available capacity. This analysis, however, is not deferred. The City has clearly established (as previously described in the response to the project description comment) that the projected growth as the result of programs and other activities within the Redevelopment Plan area will fall within the projected build-out permitted under the General Plan Land Use and Transportation Element (LUTE) EIR (incorporated by reference in the EIR).

As noted in the LUTE, growth and increased development within the City during the planning period will essentially be a redevelopment strategy given the historic dense, urban development patterns well established in the City (Impact .3-1, page III.D.4). As part of the LUTE environmental review process, the City produced a technical report, which reviewed the existing levels of service for public facilities and infrastructure and what improvements would be required during the planning period. The conclusions of that report and the General Plan LUTE EIR were that no area-wide, large-scale mitigation measures would be required, such as a new sewage treatment plant, as the result of the projected General Plan growth. This conclusion was based on the fact that there is a well

developed existing infrastructure, and most of the land area south of I-580 is already densely developed with existing urban uses, thus only marginal increases in stormwater runoff are expected.

Water service and wastewater capacity are a standard part of the development review process for projects, and the City has established a standard procedure for evaluating existing sub-basin capacity, determining current flows, and then addressing the net increase in flows from a proposed specific project.

The key point of the analysis in the Central City East Redevelopment Plan EIR is that there are no additional broad, program-wide mitigation measures required in light of this extensive existing framework. As redevelopment projects occur, they will follow a standard review process with improvements required for repair, rehabilitation or minor increases in capacity as required on a project by project basis.

D. The commenter asserts that the City did not establish criteria upon which to evaluate future impacts to AC Transit service and BART service. To the contrary, the City has established thresholds of significance for transit use, as identified on page 5-17 of the CCE DEIR. Further, as the City would not have the sole authority to implement a mitigation measure to address future, potential impacts to AC Transit or BART, a more general mitigation approach is used. It should also be noted that any further efforts to address specific improvements to a bus line or BART station are speculative at this time, given the broad level of analysis that overall ridership in the program area is projected to increase by more than 3 percent during peak periods; the analysis is not specific to actual routes. At this time, in the absence of a specific development project, it would be entirely speculative to ascertain which bus line or BART station might be affected would be speculative at this time

E. The commenter asserts that Mitigation Measure 10.1.C (potentially significant cumulative impacts to existing park and recreational facility deficits) is deficient in that there is no certainty of the timing of such funding or what the mitigation will actually improve. However, the City has established a detailed set of standards and an inventory of park and recreational needs and priorities, by geographic area, in its General Plan Open Space, Conservation and Recreation Element (OSCAR), which is incorporated by reference into the EIR. This information is summarized for the Central City East Redevelopment Plan in the DEIR on pages 10-2 through 10-7. The City has aggressively pursued funding for parks and open space, particularly in the flatland areas of the City that are underserved. In addition, as described in the Alternatives Chapter 13, Alternative 3 (Parks and Recreation Focus), Oakland voters passed a \$ 198 million bond measure (Measure DD), to implement many of the park and open space projects called for within the Project Area by the OSCAR (as described on pages 13-8 and 9 of the CCE DEIR.) In conclusion, this mitigation measure, at a program level of detail, is generally describing what program-wide efforts should be taken by the Redevelopment Agency to further the objectives of the OSCAR within the Project Area.

F. With regard to archeological resources, the commenter asserts that Mitigation Measures 11.B and 11.C are not adequate because there are not specific standards or procedures set forth that developers would be required to complete if archeological resources were found. The CCE DEIR contains an inventory of potentially significant archeological sites (page 11-15.) Only two recorded prehistoric sites are identified within the project area, one of these is badly damaged. Given the densely developed historic urban pattern within this part of the City, it is unlikely that unique archeological resources would be encountered.

In addition, it should be understood that the archaeological mitigation measures will be implemented in conjunction with the state mandated mitigation standards and requirements established in Public Resources Code Section 21083.2. Section 21083.2, which is implemented by the City in evaluating the potential impacts of development projects on archaeological resources, establishes a detailed procedure for the identification of resources to be protected and mitigation of impacts to such resources. The statute unambiguously directs specific actions the City must employ to mitigation potentially affected resources. The requirements of Section 21083.2, together with the EIR mitigation measures (as well as the low likelihood of encountering unique archaeological resources), provide more than substantial evidence to support the City's conclusion that any such impacts will be mitigated to a less than significant level.

Modifications to Mitigation Measures 11.1A, 11.1B and 11.1C are being incorporated to clarify the foregoing. A modification of Mitigation Measure 11.2 (Subsurface Cultural Resources) was already completed as part of the FEIR (FEIR page 4-7).

8. Inconsistency with the General Plan. The EIR, as previously noted, contains a thorough analysis of the Redevelopment Plan's consistency with all the applicable land use and environmental policy documents in the City of Oakland. This analysis is set forth in the Land Use Chapter (Chapter 4) of the DEIR, the project description and in numerous other instances in the administrative record for the project. The lack of a specific mention of the 5<sup>th</sup> Avenue area is not sufficient grounds to deem the entire Redevelopment Plan inconsistent with the General Plan, particularly given the numerous references to the Estuary Policy Plan policies and objectives for this area throughout the consideration of this Redevelopment Plan.

9. Alternatives Analysis. The EIR analyzes a reasonable range of reasonably feasible alternatives in compliance with CEQA (Chapter 13, pages 13-1 through 13-13 of the EIR). The alternatives were selected on the basis of their ability to feasibly attain most of the basic project objectives while substantially lessening or avoiding any of the significant effects of the project. The EIR analyzed three alternatives: the required No Project, a Reduced Project (no residential development assistance) Alternative and a Parks and Recreation Focus Alternative. In addition, the EIR describes three other alternatives that, consistent with CEQA, were considered but rejected for analysis in the EIR. Two of these have been previously evaluated and rejected in other EIRs (Estuary Policy Plan: Environmentally Superior Alternative and the General Plan LUTE Environmentally Superior Alternative).

The commenter suggests that the EIR should have examined an alternative that eliminates property located in the Fifth Avenue Point area from the Redevelopment Plan. There is no evidence, however, that an alternative involving altered boundaries would reduce any significant environmental effect. The elimination of the Fifth Avenue Point area would not reduce any of the two significant and unavoidable impacts identified in the EIR (the potential alteration or demolition of the 9<sup>th</sup> Avenue Terminal and the congestion at the High Street/International Boulevard intersection.) CEQA does not require or contemplate that an EIR analyze alternatives that fail to mitigate significant impacts. Moreover, such a change would fail to attain the basic project objectives, as described in the EIR.

The commenter further notes that the EIR does not provide criteria for including land in the Redevelopment Plan area. The plan area was not designated by the EIR. The May 27 staff report on this item discussed at length the background regarding the designation of the Plan boundaries. In summary, the boundaries of the area were first set when the City Council adopted the boundaries of the survey area at the beginning of the plan adoption process in 2001. The boundaries of the survey area were expanded in a series of Council actions as Councilmembers and community organizations asked that their areas be added.. The area boundaries were set by the Planning Commission on December 5, 2001, when it adopted the Preliminary Plan. The adopted project area boundaries are coterminous with the survey area.

**Issue Section #3 – Blight and other redevelopment issues**

	<b>Comments:</b>	<b>Reference:</b>
a	<b>The 5<sup>th</sup> Avenue Point Property is not blighted or otherwise necessary for the redevelopment of other blighted properties. As such, it is not subject to inclusion in the Project. Any perceived “blight” is related to the use and continuation of the use of the property as an “artisan community” under the Estuary Policy Plan. Including the 5<sup>th</sup> Avenue Point property in the Project pursuant to H&amp;S Code section 33321 is also not supportable.</b>	1
b	<b>Additional Considerations Pursuant to California Redevelopment Law</b>	3
c	<b>These required conditions do not describe the Silveira property at Fifth Avenue Point.</b>	3
d	<b>The court further explained that the determination of whether a property belongs in the redevelopment area must be based on an area’s existing use and not its potential use. (Id. at p.554) Redevelopment “never can be used just because the public agency considers that it can make a better use or planning of an area than its present use or plan.”</b>	3
e	<b>Pursuant to H &amp;S Section 33350.5, the Silveiras hereby request</b>	1

	<b>that the 5<sup>th</sup> Avenue Point property (the “Property”) be excluded from the Project. The Property is covered by the Oakland Estuary Policy Plan and is slated for preservation by such Plan. It is inappropriate to include it in a “Redevelopment Plan” which has a primary focus the acquisition and renovation of blighted property.</b>	
<b>f</b>	<b>Pursuant to H&amp;S Section 33320.2, the Fifth Avenue Point property and other properties to the West of Interstate 880 constitute a non-contiguous portion of the Project area. The existence of the State owned freeway between the two portions of the Project creates two non-contiguous areas and requires that findings be made in accordance with H&amp;S Code Section 33320.2. These findings have not and cannot be made. In connection therewith, the related findings required by H&amp;S Section 33367(d)(9), (10) and (11) have not and cannot be made.</b>	<b>1</b>
<b>g</b>	<b>The simple fact that the Redevelopment Plan allows for the acquisition of the 5<sup>th</sup> Avenue Point Property by eminent domain and its subsequent “redevelopment” makes it inconsistent with the Estuary Policy Plan and the City of Oakland General Plan. This inconsistency constitutes a violation of H&amp;S Section 33331. The required finding that the possible condemnation of the 5<sup>th</sup> Avenue Point property “is necessary for the execution of the redevelopment plan”, which finding is required pursuant to H&amp;S 33367(d)(6), cannot legitimately be made, and if made would conflict with the Estuary Policy Plan.</b>	<b>1</b>
<b>h</b>	<b>As required by H&amp;S Code Section, 33333, the Redevelopment Plan does not adequately show by “diagram and in general terms” (a) the approximate amount of open space to be provided and street layout, (b) limitations on the type, size, height, number and proposed use of buildings, (c) the approximate number of dwelling units, and (d) the property to be devoted to public purposes and the nature of such purposes.</b>	<b>1</b>
<b>i</b>	<b>In the case of the Eastlake/San Antonio Subarea, there was absolutely no representation by private property owners or business owners in the area encompassed by the Estuary Policy Plan.</b>	<b>1</b>
<b>j</b>	<b>As citizens of Brann Street we are asking that you speak in our behalf to have Brann Street at Camden Street, Brann Street at Havenscourt and Foothill/Havenscourt names removed from the list. We strongly oppose to redevelopment because we feel it will only add the problems that already exist in our area.</b>	<b>2</b>
<b>k</b>	<b>Our time for review of the proposed redevelopment plan and attendant environmental impact report has been extremely limited. Upon further review of the adopted estuary policy plan, and with counsel from our attorneys, we feel that the following paragraph should be inserted into Page 6 (following Paragraph 4)</b>	<b>4</b>



	<p><b>of the Redevelopment Plan for the Central City East redevelopment Project and adopted as part of the redevelopment plan on Tuesday night:</b></p> <p><b>“The Agency shall not acquire real property in the ‘Fifth Avenue Point’ area, as such area is designated in the Oakland Estuary Policy Plan, so long as such real property continues as a neighborhood of artists and artisan studios, small businesses and water-dependent activities, as the same are described in said Estuary Policy Plan.”</b></p>	
I	<p><b>Our main concern is the high probability that we and our neighbors will be evicted from our homes if this project proceeds as planned.</b></p>	11
m	<p><b>I am asking that the Oak thru Ninth Avenue Terminal area, west of the Embarcadero be excluded from the Redevelopment Plan because: What does the 60 acre water front parcel have to due with improvement of the streets of Oakland?</b></p>	26

**Response:**

A number of commentators question the findings of blight for the Project Area and otherwise question the inclusion of the Fifth Avenue Point area into the Project Area.

Redevelopment law requires the City Council to make certain finding with respect to blight conditions in a proposed project area before a redevelopment plan is adopted. Among these, the Council must find that one or more physical and economic blight conditions exists in the project area, and that the project area is “an area in which the combination of [blight] conditions ... is so prevalent and so substantial that it causes a reduction of, or lack of, proper utilization of the area to such an extent that it constitutes a serious physical and economic burden on the community which cannot reasonably be expected to be reversed or alleviated by private enterprise or governmental action, or both, without redevelopment.” (Health and Safety Code Section 33030.)

The blight question then centers on whether conditions of blight predominate or prevail over the entire project area. Not every part of a proposed project area must be blighted. Council is not required to demonstrate that blight conditions exist for each property, each block, or each neighborhood of a project area. The law specifically allows inclusion of lands and buildings that are not blighted if they are necessary for the effective redevelopment of the project area and are not included merely for tax increment revenue purposes. See Health and Safety Code Section 33321.

Keyser, Marston & Associates, the consultants who conducted the blight study for the Central City East Redevelopment Project (see Chapters II and III of the Report to Council), properly concluded that the “evidence collected in the Project Area clearly demonstrates a prevalent and substantial combination of blighting conditions.” The consultants found evidence that nearly all of the physical and economic blighting

conditions identified in redevelopment law are prevalent in the Central City East Project Area. The consultants further concluded that the Project Area is underutilized and burdens the community because of such conditions, and that blight cannot be reversed or alleviated without redevelopment.

While the blight study includes some specific indicia that the Fifth Avenue Point area includes blight conditions, the City cannot say at this time which blight criteria applies to the Fifth Avenue Point area in particular. Many of the blight factors were analyzed at the Project Area level, so it would not be possible to say if those factors apply to any particular neighborhood in the Project Area. However, the City Council is not required by law to show that the Fifth Avenue Point area itself, or any other particular neighborhood, is blighted; only that it is part of an overall Project Area that meets the blight test. Blight conditions must only be shown to prevail throughout the Project Area, not be present in each and every parcel. Nonblighted properties may be included in a Project Area, unless they are included only for tax increment revenue purposes.

A number of commentators are concerned generally with the issue of eminent domain. Eminent domain is used very infrequently by the Agency. There are numerous protections for property owners and occupants in eminent domain law. The Plan includes further limitations on the Agency's eminent domain authority, especially eminent domain for single family owner-occupied properties.

One commentator maintains that the Fifth Avenue Point area is "slated for preservation" in the Estuary Plan and therefore should not be included in a redevelopment project area or be subject to the Agency's eminent domain authority. The fact that the area might be "slated for preservation" in the Estuary Plan is not inconsistent with its inclusion in the Project Area. Redevelopment does not necessarily mean the conversion of existing uses to different uses. The Central City East Redevelopment Plan and Implementation Plan both include many goals, objectives, programs and policies that provide for the preservation and rehabilitation of properties to maintain and enhance their present use and occupancy. Note that the Planning Commission made findings that the Central City East Redevelopment Plan is consistent with the General Plan and, by inference, the Estuary Plan (since the Estuary Plan is incorporated into the General Plan).

The fact that properties in the Fifth Avenue Point area, like other properties in Central City East, might be subject to eminent domain is not inconsistent with the Estuary Plan or other "preservation" policies. First, nothing in the Central City East Plan requires the use of the Agency's eminent domain authority against any particular property. Eminent domain is in fact rarely used by the Agency, and most redevelopment activities never involve this authority. Second, nothing in the Plan provides that eminent domain authority, if exercised, may be used only to convert a property to another use. Put another way, the Agency could acquire a property through eminent domain for the public purpose of rehabilitating the property to maintain it in its present use.

The same commentator asserts that the Project Area is "noncontiguous" and objects that the Agency did not adopt blight findings for each "noncontiguous" area. It is true that the

law generally does require that separate blight findings be made for each noncontiguous area of a project area. However, the Central City East Project Area is one contiguous project area. There is no basis for the contention that the presence of a state highway through a project area acts to split the project area into two noncontiguous areas. “Noncontiguous” means that one or more subareas of a project area are not neighboring or adjoining, and do not share a common boundary. See Black’s Law Dictionary. Interstate 880 does not split Central City East into two separate noncontiguous areas; the highway itself is located within the legal boundaries of the Project Area. It appears that the commentator believes that a state highway may not be included within a project area because it is state-owned property. He is mistaken. While property owned by the state or federal government may not be subject to some provisions of a redevelopment plan, such as the authority to acquire such property through eminent domain, nothing in the law provides that such property must be excluded from a redevelopment project area. Project areas in Oakland include many state and federal properties, and the Agency has in fact participated in the redevelopment of several of these properties.

A commentator claims that the Plan does not adequately include the information required under Health and Safety Code Section 33333. The Land Use maps included as Attachment No. 3 to the Plan, as well as Section 400 (Uses Permitted in the Project Area) of the Plan, both show (a) the approximate amount of open space to be provided and street layout; (b) limitations on type, size, height, number, and proposed use of buildings; (c) the approximate number of dwelling units; and (d) the property to be devoted to public purposes and the nature of such purposes.

A commentator contends that the blight report does not show that blight hinders existing uses or the area’s economic viability. The blight consultant in fact did analyze and conclude that blight conditions in the Project Area meant that properties in the Project Area are underutilized due to blight conditions, and that the presence of blight conditions burdens the community in terms of low revenues, higher need for fire services and code enforcement services, and residential overcrowding. The blight study looked at existing conditions in the Project Area in their present use, and concluded that they exhibited conditions of both economic and physical blight. The blight findings are rooted in conditions as they exist now in the Project Area, and are in no way based simply on the notion that a better use may be possible.

In a related point, the same commentator read the blight report to favor large businesses over small. While it is true that the report did look at parcel size, this is entirely appropriate, since inadequate parcel size is specifically cited as a physical blight factor in redevelopment law. See Health and Safety Code Sections 33031(a)(2) and (a)(4). It is a misconception that the Agency favors large businesses over small; the Central City East Redevelopment Plan and its Implementation Plan both include policies and programs to assist the preservation and enhancement of existing small businesses. Two of the goals stated in the Plan and the Implementation Plan are to “retain existing businesses” and “stimulate opportunities for adaptive re-use and preservation of existing building stock in the Project Area.” The Implementation Plan calls for (1) Agency loans to rehabilitate, expand, replace equipment, or modernize commercial properties, (2) Agency matching

grants to improve business facades, and (3) Agency financial assistance to preserve and improve historic properties; all of these programs are specifically targeted to existing businesses. See pages 137-138 of the Report to Council. Other programs, such as improvements to public infrastructure, will benefit both existing and new businesses, large and small.

Finally, several commentators question in general terms the benefits of redevelopment to their communities. The benefits of redevelopment to the community in terms of preventing and eliminating blight, improving community facilities and public infrastructure, preserving historic structures, and assisting homeowners and small businesses in rehabilitating their properties, are set forth at length in the Report to Council.

**Below are responses to the correspondence listed as f, g, h, and i and numbered 2, 4, 11, and 26.**

- f. Comment noted. Redevelopment's purpose is to eliminate blighting conditions. The subject areas are residential in nature and the Agency must comply with applicable density and design controls contained in the General Plan and Zoning Ordinance. The Agency cannot discriminate against households of any income level by purposely excluding them. Eminent domain is limited to commercial corridors, and multi-family dwellings and blighted buildings in neighborhoods. Eminent domain is not permitted for use on owner-occupied housing in residential neighborhoods.
- g. The Agency and City Council considered your request for inclusion of a paragraph that would not allow the Agency to acquire property in the Fifth Avenue Point area. The proposed wording was problematic as it would not have allowed the Agency to acquire land even with the owner's consent. Additionally, the Council/Agency directed the PAC to take up this issue and report back with a recommendation, possibly including a plan amendment, to address the eminent domain issue.
- h. Currently, the tenants have no additional protection resulting from being outside of a redevelopment area, should the owner sell the property. If the Redevelopment Agency were to participate at some time in the future with redevelopment of the site special relocation provisions would apply. However, the comment seems aimed at the issue of eminent domain. The Council/Agency directed the staff and PAC to work with your community to see if a solution could be crafted that would address your issue. Such a solution could be incorporated into a plan amendment. By the time of the hearing on these comments it is anticipated that the PAC will have met with the tenants of the Fifth Avenue Point area.
- i. Redevelopment is intended to serve many purposes beyond improving streets. The key purpose is to eliminate blighting conditions and facilitate housing and economic development. All underutilized, blighted areas are included to allow redevelopment financing and other tools to make feasible what private development alone cannot.

#### **Issue Section #4 – Issues Previously Responded to**

**Attached in Exhibit “A” is a series of six letters and one email from Robert W. Shapiro (Shapiro, Buchman, Provite , Patton LLP). Also included in Exhibit “A” is the response letter and email.**

#### **Response:**

**Below are responses to a letter submitted by the Law Offices of Charles E. Steidtmann referenced as letter number 1 in the index of letters regarding Central City East.**

[1] The fact that the Fifth Avenue Point area is “slated for preservation” in the Estuary Plan is not inconsistent with its inclusion in a redevelopment project area. Redevelopment does not necessarily mean the conversion of existing uses to different uses. The Central City East redevelopment plan and implementation plan both include many goals, objectives, programs and policies that provide for the preservation and rehabilitation of properties to maintain and enhance their present use and occupancy. Please note that that the Planning Commission made findings that the Central City East redevelopment plan is consistent with the General Plan; the Estuary Plan is incorporated into the General Plan.

[2] SEE ABOVE.

[3] The law generally does require that separate blight findings be made for each noncontiguous areas of a project area. However, the Central City East project area is one contiguous project area. There is no basis for the contention that the presence of a state highway through a project area acts to split the project area into two noncontiguous areas. “Noncontiguous” means that one or more subareas of a project area are not neighboring or adjoining, and do not share a common boundary. Interstate 880 does not split Central City East into two separate areas; the highway itself is located within the legal boundaries of the Central City East project area. While property owned by the state or federal government may not be subject to some provisions of a redevelopment plan, such as the authority to acquire such property through eminent domain, nothing in the law provides that such property must be excluded from a redevelopment project area. Project areas in Oakland include many state and federal properties, and the Agency has in fact participated in the redevelopment of several of these properties.

[4] The fact that properties in the Fifth Avenue Point area, like other properties in Central City East, might be subject to eminent domain is not inconsistent with the Estuary Plan or other “preservation” policies. First, nothing in the Central City East plan requires the use of the Agency’s eminent domain authority against any particular property. Eminent domain is in fact rarely used by the Agency, and most redevelopment activities never involve this authority. Second, nothing in the plan provides that eminent domain authority, if exercised, may be used only to convert a property to another use. Put

another way, a redevelopment agency could acquire a property through eminent domain for the public purpose of rehabilitating the property to maintain it in its present use.

[5] The Land Use maps included as Attachment No. 3 to the Central City East redevelopment plan, as well as Section 400 (Uses Permitted in the Project Area) of the plan, both show (a) the approximate amount of open space to be provided and street layout; (b) limitations on type, size, height, number, and proposed use of buildings; (c) the approximate number of dwelling units; and (d) the property to be devoted to public purposes and the nature of such purposes.

[6] SEE NOTICE DISCUSSION

[7] SEE NOTICE DISCUSSION

## Index of Letters Regarding Central City East

Index						
No.	Letter No.	Letterhead	Dated Filed With City Clerk	Date of Letter	Signed by	Subject
1	1	Law Offices of Charles E. Steidtmann	6/17/03	6/16/03	Charles e. Steidtmann	Redevelopment Plan for the Oakland Central City East Redevelopment Project. Statement of Objections
2	2	Brann/Camden, Brann/Havenscourt Foothill	None	None	No signature- Brann/Camden, Brann/Havenscourt	Remove Brann Street at Camden Street, Brann Street at Havenscourt and Foothill/Havenscourt from Redevelopment area
3	3	Remy, Thomas, Moose & Maney, LLP	6/17/03	6/17/03	Mary E. Handel	Environmental Impact Report (EIR) for Central City East Redevelopment Plan
4	4	The Fifth Avenue Waterfront Alliance	None	6/11/03	Jeanne M. Chiang	Denied input into proposed plan and Environmental Impact Report (EIR) for Central City East Redevelopment Plan
5	5	Pamela Weber	None	6/8/03	Pamela J. Weber	Amend boundaries of Central City East Redevelopment - Exclude area west of the Embarcadero between Oak Street and the Ninth Avenue Terminal
6	6	Weber & Co.	None	6/9/03	Charles M. Weber, Jr.	No notice received of Proposed Redevelopment Plan and Environmental Impact Report preparation process
7	7	Pamela Weber	None	6/10/03	Pamela J. Weber	No notice received of Proposed Redevelopment Plan and Environmental Impact Report preparation process
8	8	Pamela Weber	None	6/17/03	Pamela J. Weber	Redevelopment Plan for the Oakland Central City East Redevelopment Project: Statement of Objections- Lack of notice about Redevt Plan
9	9	Aletha Worral, Owner of Frames	None	6/4/03	Aletha Worral	No notice received of the 5 public mtgs. to review the EIR
10	10	Cheryl Beere, Owner of Jane B. Designs	None	6/4/03	Cheryl Beere	No notice received of the 5 public mtgs. to review the EIR
11	11	5th Avenue Waterfront Community	None	6/5/03	Monica Schwaerbild	Not given proper and timely notice
12	12	5th Avenue Waterfront Alliance	None	6/4/03	Jeanne Chiang	Property owners, tenants and business license holders did not receive notice of proposed redevelopment plan and EIR process.
13	13	Christopher Phillip	None	6/4/03	Christopher Phillip	No notice received of 5 public meetings to review the EIR for CCE
14	14	Patty St. Louis	None	6/4/03	Patty St. Louis	No notice received of 5 public meetings to review the EIR for CCE
15	15	Leal Royce Charonnat Architect - Engineering	None	5/27/03	Leal Royce Charonnat	No notice received by tenant or business or even property owner

**Index of Letters Regarding Central City East**

No.	Letter No.	Letterhead	Dated Filed With City Clerk	Date of Letter	Signed by	Subject
16		Robert Schultz	None	6/4/03	Robert Schultz	Requests evidence or proof of service or notice of EIR or Redevelopment Plan
17		Jeanne M. Chiang, Architect	None	6/5/03	Jeanne Chiang	No notice received in the Fifth Avenue area west of the Embarcadero
18		Fauxreal Woodgraining	None	6/6/03	Craig Clemens	No notice received.
19		Kathleen G. Callahan	None		Kathleen G. Callahan	No notice received.
20		Harlan Barr	None	6/5/03	Harlan Barr	No notice received.
21		Stewart Port	None	6/5/03	Stewart Port	No notice
22		Anne Austin Studios	None	6/5/03	Anne Austin pinata	No notice
23		Tony Pellegrino	None	6/4/03	Tony Pellegrino	Does not recall if notices received
24		Cecilia Abotomey	None	None	Cecilia Abotomey	No notice
25		5th Avenue Waterfront Alliance	None	6/4/03	Cecilia Abotomey	No Notice
26		Robert Schultz	None	6/5/03	Robert Schultz	No notice and question re: 60 acre waterfront parcel
27		Weber & Co.	None	6/5/03	Charles M. Weber, Jr.	No notice
28		Made in the Motherland	None	None	Daphne Schrampf?	No notice
29		Petey Baker	None	None	Petey Baker	No notice
30		Pamela J. Weber	None	6/5/03	Pamela J. Weber	No notice
31		Phoenix Iron Works	None	6/5/03	Carol Russell	No notice
32		Chuck's Marine	None	None	Charles Thompson	No notice



**Index of Letters Regarding Central City East**

No.	Letter No.	Letterhead	Dated Filed With City Clerk	Date of Letter	Signed by	Subject
33		Terry D. Sanders	None	6/4/03	Terry D. Sanders	No notice
34		William Dougherty	None	None	William R. Dougherty	No notice
35		Andy J. Rowling	None	None	Andy J Rowling	No notice
36		Cynthia Weiss	None	None	Cynthia Weiss	No notice
37		Kevin Manning	None	None	Kevin Manning	No notice
38		Keith & Angela Margis	None	None	Keith & Angela Margis	No notice
39		All Craft	None	None	Joe Brigandi	No notice
40		5th Avenue Waterfront Alliance	None	6/4/03	Jeanne Chiang	No proper and timely notice to property owners, tenants and business
41		Shapiro, Buchman, Provine, Patton LLP	6/17/03	6/17/03	Robert W. Shapiro	Notification, Environmental Impact Report CEQA, and general redevelopment questions.