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## OAKLAND CITY COUNCIL

ORDINANCE NO. \_\_\_\_\_ C.M.S.

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**AN ORDINANCE REZONING PROPERTY IN THE OAK TO NINTH AVENUE MIXED USE DEVELOPMENT PROJECT SITE FROM HEAVY INDUSTRIAL (M-40) TO PLANNED WATERFRONT ZONING DISTRICT (PWD-4) AND OPEN SPACE-REGION SERVING PARK (OS-RSP), AND FROM CIVIC CENTER/DESIGN REVIEW COMBINING ZONE (S-2/S-4) TO OPEN SPACE-REGION SERVING PARK (OS-RSP) WITH THE EXCEPTION OF THE JACK LONDON AQUATIC CENTER WHICH WILL REMAIN S-2/S-4**

**WHEREAS**, on May 28, 2004, in accordance with the California Environmental Quality Act ("CEQA"), City staff issued a Notice of Preparation stating the City's intent to prepare an Environmental Impact Report ("EIR") for the Oak to Ninth Avenue Mixed Use Development Project; and

**WHEREAS**, as part of the proposed Project, the applicant requested a rezoning of the portion of the Project site zoned M-40 and S-2/S-4 to PWD-4, OS-RSP, and S-2/S-4 to allow for a residential, commercial, and open space mixed use development on the Project site; and

**WHEREAS**, on September 1, 2005, the Draft EIR for the Project, SCH #2004062013, was released by the City for a 54-day public review and comment period and on September 28, 2005, October 12, 2005, and October 17, 2005, respectively, the Planning Commission, the Parks and Recreation Advisory Commission, and the Landmarks Preservation Advisory Board held public hearings to provide the public with additional opportunities to comment on the DEIR; and

**WHEREAS**, on December 3, 2005, the Planning Commission conducted a site visit to the Project site; and

**WHEREAS**, on February 1, 2006, the City released the Final EIR for the Project and on June 9, 2006 the City published an addendum to the Final EIR; and

**WHEREAS**, on February 8, 2006, the Parks and Recreation Advisory Commission, and, on January 9, 2006 and February 27, 2006, the Landmarks Preservation Advisory Board, held public hearings on the Project, and

**WHEREAS**, on December 14, 2005 and January 25, 2006, the Design Review Committee of the Planning Commission held public hearings on the Project; and

**WHEREAS**, on January 25, 2006, the Planning Commission held a public hearing to discuss the major environmental and policy issues pertaining to the Project; and

**WHEREAS**, on March 15, 2006, the Planning Commission held a public hearing on the Project and certified the EIR, adopted CEQA Findings and a Statement of Overriding Considerations, adopted a Mitigation Monitoring and Reporting Program, adopted General Findings, recommended adoption of General Plan Amendments, recommended adoption of amendments to the Central City East Redevelopment Area Plan and the Central District Urban Renewal Plan, recommended adoption of an ordinance rezoning the Project site from M-40 and S-2/S-4 to Planned Waterfront Zoning District-4, Open Space-Region Serving Park, and S-2/S-4, recommended adoption of an ordinance adopting the Planned Waterfront District-4 zoning district, recommended adoption of a Development Agreement ordinance, approved a Preliminary Development Plan, approved Design Guidelines, approved a Vesting Tentative Subdivision Map, and adopted Conditions of Approval; and

**WHEREAS**, on March 15, 2006, the Planning Commission recommended that the City Council adopt the Planned Waterfront Zoning District-4 (PWD-4) Oak-to-Ninth Mixed Use Development Project; and

**WHEREAS**, on March 15, 2006, the Planning Commission recommended that the City Council rezone the portions of the Project site currently zoned M-40 and S-2/S-4 to Planned Waterfront District (PWD-4), Open Space-Region Serving and S-2/S-4; and

**WHEREAS**, the notice required by the Oakland Municipal Code section 17.144.060 has been given.

**WHEREAS**, an appeal of the Planning Commission actions was filed on March 24, 2006 by Arthur D. Levy on behalf of Oakland Heritage Alliance, Rajiv Bhatia, John Sutter, East Bay Bicycle Coalition, League of Women Voters of Oakland, Waterfront Action, Coalition of Advocates for Lake Merritt, and Sierra Club Northern Alameda County Regional group; and

**WHEREAS**, on March 28, 2006 the City Council and the Oakland Redevelopment Agency held a public Informational Workshop on the Project and the Project approvals; and

**WHEREAS**, the City Council and the Oakland Redevelopment Agency held a public hearing on June 20, 2006, which was noticed in accordance with legal requirements; and

**WHEREAS**, the appellants and all other interested parties were given the opportunity to participate in the public hearing through oral testimony and the submittal of written comments; and

**WHEREAS**, on June 20, 2006, the City Council fully reviewed, considered, and evaluated the Project EIR, all of the staff reports prepared for the Project including the attachments to the staff reports, public testimony, and all other documents and evidence in the public record on the Project and the appeal;

The Council of the City of Oakland does ordain as follows:

**SECTION 1.** The City of Oakland's Zoning Map is hereby amended by rezoning the land in the areas shown on the map attached as Attachment A and incorporated herein by reference as follows:

FROM CURRENT ZONING: M-40 and S-2/S-4

TO: Planned Waterfront Zoning District-4, (PWD-4)  
Open Space-Region Serving Park, (OS-RSP), and  
Civic Center/Design Review Combining Zone, (S-2/S-4)

**SECTION 2.** This Ordinance is based in part on the findings set for the above, the CEQA Findings and Statement of Overriding Considerations Related to Approval of the Oak to Ninth Project, Mitigation Monitoring and Reporting Program, Conditions of Approval, and General Findings Related to Approval of the Oak to Ninth Project attached as Exhibits A-D and incorporated by this reference.

**SECTION 3.** The Planning Director is directed to change the Zoning Map pursuant to Chapter 17.144 of the Oakland Municipal Code to conform to the rezoning referenced in Section 1.

IN COUNCIL, OAKLAND CALIFORNIA, \_\_\_\_\_, 2006

PASSED BY THE FOLLOWING VOTE:

AYES

NOES

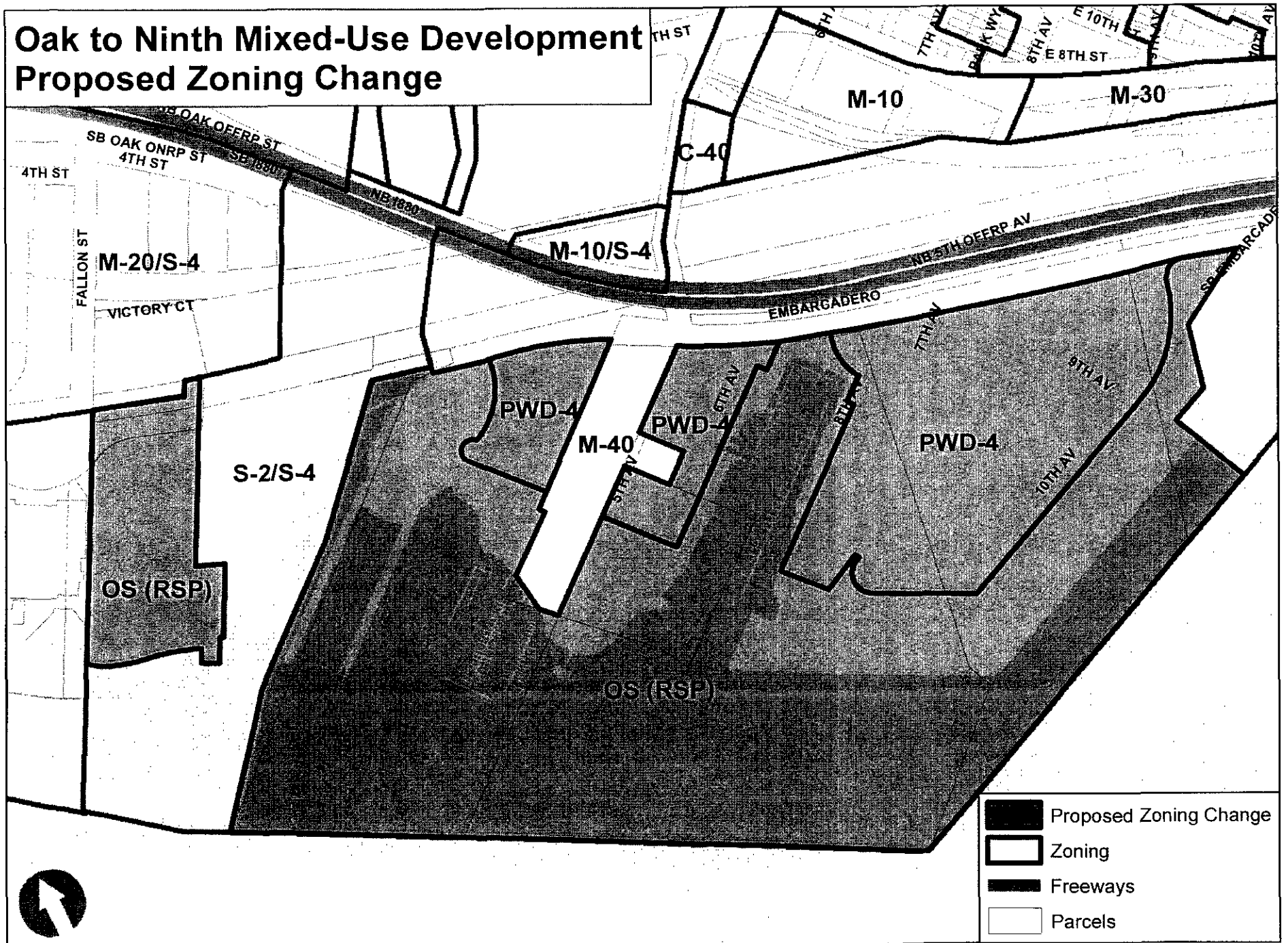
ABSENT

ABSTENTION

ATTEST: \_\_\_\_\_

City Clerk and Clerk of the Council  
of the City of Oakland California

# Oak to Ninth Mixed-Use Development Proposed Zoning Change



## OAKLAND CITY COUNCIL

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**AN ORDINANCE REZONING PROPERTY IN THE OAK TO NINTH AVENUE MIXED USE DEVELOPMENT PROJECT SITE FROM HEAVY INDUSTRIAL (M-40) TO THE PLANNED WATERFRONT ZONING DISTRICT (PWD-4) AND OPEN SPACE-REGION SERVING PARK (OS-RSP), AND FROM CIVIC CENTER/DESIGN REVIEW COMBINING ZONE (S-2/S-4) TO THE PLANNED WATERFRONT ZONING DISTRICT (PWD-4) AND OPEN SPACE-REGION SERVING PARK (OS-RSP) WITH THE EXCEPTION OF THE JACK LONDON AQUATIC CENTER WHICH WILL REMAIN S-2/S-4**

**WHEREAS**, on May 28, 2004, in accordance with the California Environmental Quality Act ("CEQA"), City staff issued a Notice of Preparation stating the City's intent to prepare an Environmental Impact Report ("EIR") for the Oak to Ninth Avenue Mixed Use Development Project; and

**WHEREAS**, as part of the proposed Project, the applicant requested a rezoning of the portion of the Project site zoned M-40 and S-2/S-4 to PWD-4, OS-RSP, and S-2/S-4 to allow for a residential, commercial, and open space mixed use development on the Project site; and

**WHEREAS**, on September 1, 2005, the Draft EIR for the Project, SCH #2004062013, was released by the City for a 54-day public review and comment period and on September 28, 2005, October 12, 2005, and October 17, 2005, respectively, the Planning Commission, the Parks and Recreation Advisory Commission, and the Landmarks Preservation Advisory Board held public hearings to provide the public with additional opportunities to comment on the DEIR; and

**WHEREAS**, on December 3, 2005, the Planning Commission conducted a site visit to the Project site; and

**WHEREAS**, on February 1, 2006, the City released the Final EIR for the Project and on June 9, 2006 the City published an addendum to the Final EIR; and

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**WHEREAS**, the notice required by the Oakland Municipal Code section 17.144.060 has been given.

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**WHEREAS**, the City Council and the Oakland Redevelopment Agency held a public hearing on June 20, 2006, which was noticed in accordance with legal requirements; and

**WHEREAS**, the appellants and all other interested parties were given the opportunity to participate in the public hearing through oral testimony and the submittal of written comments; and

**WHEREAS**, on June 20, 2006, the City Council fully reviewed, considered, and evaluated the Project EIR, all of the staff reports prepared for the Project including the attachments to the staff reports, public testimony, and all other documents and evidence in the public record on the Project and the appeal;

The Council of the City of Oakland does ordain as follows:

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**SECTION 2.** This Ordinance is based in part on the findings set for the above, the CEQA Findings and Statement of Overriding Considerations Related to Approval of the Oak to Ninth Project, Mitigation Monitoring and Reporting Program, Conditions of Approval, and General Findings Related to Approval of the Oak to Ninth Project attached as Exhibits A-D and incorporated by this reference.

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IN COUNCIL, OAKLAND CALIFORNIA, \_\_\_\_\_, 2006

PASSED BY THE FOLLOWING VOTE:

AYES

NOES

ABSENT

ABSTENTION

ATTEST: \_\_\_\_\_

City Clerk and Clerk of the Council  
of the City of Oakland California

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**Attachment A**

**Existing Zoning Map  
Proposed Zoning Map**



**AN ORDINANCE REZONING PROPERTY IN THE OAK TO NINTH AVENUE MIXED USE DEVELOPMENT PROJECT SITE FROM HEAVY INDUSTRIAL (M-40) TO THE PLANNED WATERFRONT ZONING DISTRICT (PWD-4) AND OPEN SPACE-REGION SERVING PARK (OS-RSP), AND FROM CIVIC CENTER/DESIGN REVIEW COMBINING ZONE (S-2/S-4) TO ~~THE PLANNED WATERFRONT ZONING DISTRICT (PWD-4)~~ AND OPEN SPACE-REGION SERVING PARK (OS-RSP) EXCEPT FOR THE JACK LONDON AQUATIC CENTER WHICH WILL REMAIN S-2/S-4**

## NOTICE AND DIGEST

This Ordinance rezones property in the Oak to Ninth Avenue Mixed Use Development Project site from M-40 to PWD-4 and OS-RSP, and from S-2/S-4 to ~~PWD-4 and OS-RSP~~ and S-2/S-4

## **EXHIBIT A TO ALL APPROVAL DOCUMENTS**

### **CEQA FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE OAK TO NINTH AVENUE MIXED USE DEVELOPMENT PROJECT**

**City Council Hearing**

**June 20, 2006**

#### **I. INTRODUCTION**

1. These California Environmental Quality Act (Pub. Res. Code § § 21000 et seq., "CEQA") findings are adopted by the City of Oakland as lead agency, and the Oakland Redevelopment Agency as a responsible agency for the Oak to Ninth Avenue Mixed Use Development Project ("the Project"). These findings pertain to Environmental Impact Report SCH #2004062013 prepared for the Project.

2. These CEQA findings are Exhibit A and are incorporated by reference into each and every ordinance and resolution approving the Project. Exhibit B is the Mitigation Monitoring and Reporting Program (MMRP). Exhibit C contains conditions of approval. Exhibit D contains general findings regarding the Project approvals, including compliance with the Municipal Code and consistency with the General Plan. All Exhibits are incorporated by reference into each other and into the ordinance or resolution to which the Exhibit is attached.

3. The statements, findings, determinations, and other actions set forth in this Exhibit are based on the substantial evidence contained the entire record before the City. References to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the findings.

#### **II. THE PROJECT**

4. The Oak to Ninth Avenue Project is a mixed use development on approximately 64.2 acres located along the Oakland Estuary. The Project referred to in these findings is the Project as approved by the Oakland City Council on June 20, 2006. The Project includes up to 3,100 residential units, approximately 200,000 square feet of commercial space, a minimum of 3,950 parking spaces, 32.329.9 acres of parks and public open space, two renovated marinas, shoreline improvements, new roads, improvements to the Embarcadero along the Project site, and other necessary infrastructure and improvements. The existing buildings on the Project site will be demolished with the exception of a portion of the Ninth Avenue Terminal building and the Jack London Aquatic Center. The trees located on the Project site will be removed. The Project also includes General Plan amendments, Redevelopment Plan amendments, a new zoning district to accommodate the Project and amendments to the zoning map.

#### **III. ENVIRONMENTAL REVIEW OF THE PROJECT**

5. Pursuant to CEQA, the CEQA Guidelines (Cal. Code Regs title 14, § § 15000 et seq.), and the Oakland Environmental Review Guidelines in Oakland Municipal Code Chapter 17.158, the City determined that an EIR would be prepared. The City issued a Notice of

Preparation, which was circulated to responsible agencies and interested groups and individuals for review and comment. A copy of the Notice of Preparation and comments received thereon are included in Appendices A and B of the Draft EIR.

6. A Draft EIR was prepared for the Project to analyze its environmental effects. The Draft EIR was circulated for public review and comment from September 1, 2005 to October 24, 2005. The Planning Commission, the Parks and Recreation Advisory Commission, and the Landmarks Preservation Advisory Board held public hearings on the Draft EIR on September 28, 2005, October 12, 2005 and October 17, 2005, respectively.

7. The City received written and oral comments on the Draft EIR. The City prepared responses that evaluated the comments on environmental issues and made any necessary additions and revisions to the Draft EIR. The comments, responses to the comments, changes to the Draft EIR, and additional information were published in a Final EIR on January 31, 2006. Certain comments were received after the close of the comment period and publication of the Final EIR and these comments were responded to in a document entitled "Additional Responses to Comments," which are incorporated into the Final EIR. The Planning Commission certified the EIR on March 15, 2006. Following the Planning Commission certification of the EIR, the City prepared an Addendum to the EIR to examine certain Project modifications and to address correspondence received since the publication of the Final EIR. The DEIR, the Final EIR, the Addendum and the appendices comprise the "EIR" referenced in these findings. An appeal of the Planning Commission's March 15, 2006 certification of the EIR, among other actions, was filed by Arthur Levy on behalf of certain individuals and groups. On June 20, 2006, the City Council denied the appeal and affirmed the certification of the EIR.

8. The EIR provides a project-level analysis of the environmental impacts of the Project and supports all levels of approval necessary to implement the Project.

#### **IV. THE RECORD**

9. The record upon which all findings and determination related to the Project are based includes the following:

- a. The EIR and all documents referenced in or relied upon by the EIR.
- b. All information (including written evidence and testimony) provided by City or Redevelopment Agency staff to the Planning Commission, the Landmarks Preservation Advisory Board, and the Parks and Recreation Advisory Commission relating to the EIR, the proposed approvals for the Project, the Project, and alternatives to the Project.
- c. All information (including written evidence and testimony) presented at any and all public hearings related to the EIR and the Project, and all information incorporated into reports presented to any of the public bodies that conducted hearings on the EIR or the Project.
- d. All applications, letters, testimony and hearing presentations provided by the project sponsor and their consultants to the City or the Redevelopment Agency in connection with the EIR or the Project.

e. For documentary and information purposes, all locally adopted land use plans and ordinances, including, without limitation, general plans, specific plans, redevelopment plans and related ordinances, together with any related environmental review documents, findings, mitigation monitoring programs and other documentation relevant to planned growth in the Project area.

f. The Mitigation Monitoring and Reporting Program for the Project.

g. All other documents comprising the record pursuant to Public Resources Code section 21167.6(e).

10. The Custodian of the documents and other materials that constitute the record of proceedings on which the City's decision is based is Claudia Cappio, Development Director, Community and Economic Development Agency, or designee. Such documents and other materials are located at 250 Frank Ogawa Plaza, Suite 3315, Oakland, California 94612.

## **V. CERTIFICATION OF THE EIR**

11. In accordance with CEQA and the CEQA Guidelines, the City certifies that the EIR has been completed in compliance with CEQA and was presented to the Planning Commission, the Oakland Redevelopment Agency, and the City Council. The City has reviewed and considered the information contained in the record and the EIR prior to certifying the EIR and approving or recommending approval of any aspect of the Project. Preparation of the EIR was overseen by the City and the conclusions and recommendations in the EIR represent the independent conclusions and recommendations of the City. By these findings, the City confirms and adopts the findings of the EIR as supplemented by these findings.

12. The City recognizes that the EIR may contain clerical errors and bases its determination on the substance of the information in the EIR.

13. The City certifies that the EIR is adequate to support the approval of the Project, each alternative in the EIR, and variations on the range of alternatives evaluated in the EIR, each component of these alternatives, and any minor modifications to the Project or the alternatives. The EIR is adequate for each entitlement or approval, and any future discretionary approvals, required for construction and operation of the Project. The EIR is adequate to support the Project as approved and the additional mitigation measures and conditions of approval imposed by the City Council at the June 20, 2006 hearing on the Project. In particular, the removal of development from Parcel N and reallocation of the units planned for the parcel throughout the remaining development parcels was analyzed in the EIR Addendum. Other conditions and mitigation measures imposed by the City Council will enhance the social, economic, and environmental benefits of the Project and will not have any adverse physical impacts.

## **VI. ABSENCE OF SIGNIFICANT NEW INFORMATION**

14. The City recognizes that the EIR incorporates information obtained and produced after the Draft EIR was completed, and that the EIR contains additions, clarifications, and modifications. The City has reviewed and considered the Final EIR, the EIR Addendum, and all of this information. The Final EIR and the Addendum do not add significant new information to

the Draft EIR that would require recirculation of the EIR under CEQA. The new information added to the EIR does not involve a new significant environmental impact, a substantial increase in the severity of an environmental impact, or a feasible mitigation measure considerably different from others previously analyzed that the project sponsor declines to adopt and that would clearly lessen the significant environmental impacts of the Project. No information indicates that the Draft EIR was inadequate or conclusory or that the public was deprived of a meaningful opportunity to review and comment on the Draft EIR.

15. Based on the above finding, the City finds that the changes and modifications made to the EIR after the Draft EIR was circulated for public review and comment do not individually or collectively constitute significant new information within the meaning of Public Resources Code section 21092.1 or CEQA Guidelines section 15088.5.

## **VII. MITIGATION MONITORING AND REPORTING PROGRAM**

16. Public Resources Code section 21081.6, CEQA Guidelines section 15097, and Oakland Administrative Code Chapter 17.158 require the City to adopt a monitoring or reporting program to ensure that the mitigation measures for Project identified in the EIR are implemented. The Mitigation Monitoring and Reporting Program ("MMRP") is included in Exhibit B and is adopted by the City. The MMRP satisfies the requirements of CEQA and the Oakland Municipal Code.

17. The mitigation measures set forth in the MMRP are specific and enforceable. As appropriate, some mitigation measures define performance standards to ensure no significant environmental impacts will result. The MMRP adequately describes implementation procedures, monitoring responsibility, reporting actions, compliance schedule, non-compliance sanctions, and verification of compliance in order to ensure that the Project complies with the adopted mitigation measures. The MMRP ensures that the mitigation measures are in place, as appropriate, throughout the life of the Project.

18. The mitigation measures contained in the MMRP will be imposed as enforceable conditions of approval on the individual development proposals to be approved by the City as the Projects are implemented. The City has adopted measures to substantially lessen or eliminate all significant effects where feasible.

19. The mitigation measures contained in the MMRP will not have new significant environmental impacts that were not analyzed in the EIR. In the event a mitigation measure recommended in the EIR has been inadvertently omitted from the MMRP, that mitigation measure is adopted and incorporated from the EIR into the MMRP by reference and adopted as part of the MMRP.

## **VIII. FINDINGS REGARDING ENVIRONMENTAL IMPACTS**

20. In accordance with Public Resources Code section 21081 and CEQA Guidelines sections 15091 and 15092, the City adopts the findings and conclusions regarding impacts and mitigation measures that are set forth in the EIR. These findings do not repeat the full discussions of environmental impacts contained in the EIR. The City ratifies, adopts, and incorporates the analysis, explanation, findings, responses to comments, and conclusions of the

EIR. The City adopts the reasoning of the EIR, staff reports, and presentations provided by the staff and the project sponsor as may be modified by this Resolution.

21. The City recognizes that the environmental analysis of the Project raises controversial environmental issues, and that a range of technical and scientific opinion exists with respect to those issues. The City has, through review of the evidence and analysis presented in the record, considered the full scope of the environmental issues presented. These findings are based on a full appraisal of all viewpoints expressed and evidence presented in the EIR and in the record, as well as other relevant information in the record of the proceedings for the Project.

22. Under Public Resources Code section 21081(a)(1) and CEQA Guidelines sections 15091 (a)(1) and 15092(b), and to the extent reflected in the EIR, the City finds that changes or alterations have been required in, or incorporated into, the Project that mitigate to a less than significant level or avoid the following potentially significant effects on the environment:

a. Land Use, Plans, Policies

(1) Impact A.1: The Project, located near the Fifth Avenue Point, may result in the physical division of an existing community. This impact will be mitigated through the imposition of Mitigation Measure A.1, which calls for design measures, access from the Point to the public areas of the Project, appropriate buffering, and design standards in the PWD regulations.

(2) Impact A.2: The Project will conflict with the existing land use classification and zoning. This impact will be mitigated through the imposition of Mitigation Measures A.2 (a) – (b), which call for amending the General Plan and adoption of the PWD zoning district.

(3) Impact A.3: The Project will result in a substantial change in the existing environment and existing land uses. This impact will be mitigated through the imposition of Mitigation Measures A.3 (a) – (b), which call for implementation of all EIR mitigation measures and the regulations of the new PWD zoning.

b. Transportation, Circulation, and Parking

(1) Impacts B.1, B.1a, and B.1d: Phase I of the Project will affect levels of service at the Embarcadero and Oak Street and Embarcadero and 5<sup>th</sup> Avenue intersections in 2010. These impacts will be mitigated through imposition of Mitigation Measures B.1 (a) and (d), which call for installation of traffic signals.

(2) Impacts B.2, B.2b, B.2f, B.2g, B.2i, B.2j, B.2k, B.2m, B.2n, B.2o, B.2p, B.2q: At build out the Project will affect levels of service at the following intersections in 2025: Broadway and Embarcadero, West Grand Avenue and Harrison Street, Lakeshore Avenue and Foothill Boulevard, Lakeshore Avenue and Lake Park Avenue, Embarcadero and Fifth Avenue, Embarcadero and I-880 Northbound Off-Ramp, 5<sup>th</sup> Avenue and 7<sup>th</sup>/8<sup>th</sup> Streets, 14<sup>th</sup> Avenue and 7<sup>th</sup>/12<sup>th</sup> Streets (southbound), Foothill Boulevard and 14<sup>th</sup> Avenue (westbound and eastbound), and 16<sup>th</sup> Street and 23<sup>rd</sup> Avenue. These impacts will be mitigated through imposition of Mitigation Measures B.2b, B.2f, B.2g, B.2i, B.2j, B.2k, B.2m, B.2n, B.2o, B.2p,

and B.2q, which call for installation of certain traffic signals, optimization of certain traffic signals, and widening the Embarcadero along the Project site frontage.

(3) Impacts B.3, B.3b, B.3h, B.3i, B.3j, B.3l, B.3n, B.3o: Project traffic will contribute to cumulative significant impacts at the following intersections in 2025: Embarcadero and Broadway, Lakeshore Avenue and Lake Park Avenue, Embarcadero and 5<sup>th</sup> Avenue, Embarcadero and I-880 Northbound Off-Ramp, 5<sup>th</sup> Avenue and 7<sup>th</sup>/8<sup>th</sup> Streets, Foothill Boulevard and 14<sup>th</sup> Avenue, and 16<sup>th</sup> street and 23<sup>rd</sup> Avenue. These impacts will be mitigated through imposition of Mitigation Measures B.3b, B.3h, B.3i, B.3j, B.3l, B.3n, and B.3o, which call for installation of certain traffic signals, optimization of certain traffic signals, and widening of the Embarcadero along the Project site frontage.

(4) Impact B.4: The Project will generate demand for alternative transportation service for the Project area. This impact will be mitigated through implementation of Mitigation Measures B.4a and b, which call for the Project site plan to include transit facilities and operation of a shuttle service.

(5) Impact B.7: The Project will increase the potential for conflicts among different traffic streams. This impact will be mitigated through implementation of Mitigation Measure B.7, which calls for changes in the Project site plan to reconfigure certain intersections, install certain traffic signals, design pedestrian facilities to comply with ADA standards, maintain or reconstruct the fence along the Embarcadero adjacent to the Project site to limit access to the railroad tracks, and install warning signage at the crossing along 5<sup>th</sup> Avenue.

(6) Impact B.10: The Project construction will temporarily affect traffic, parking, and pedestrian conditions. This impact will be mitigated through implementation of Mitigation Measure B.10, which calls for implementation of a construction traffic management plan.

c. Air Quality and Meteorological Conditions

(1) Impact C.1: Project construction activities will generate short-term emissions of criteria pollutants. This impact will be mitigated through implementation of Mitigation Measures C.1a and b, which call for implementation of the BAAQMD's basic and enhanced control measures, control measures for a site located near sensitive receptors, and compliance with regulations covering the demolition and removal of asbestos.

d. Hydrology and Water Quality

(1) Impact D.1: The Project construction activities could generate loose and erodible soils that, if not properly managed, could have adverse impacts on water quality. This impact will be mitigated through implementation of Mitigation Measure D.1, which calls for compliance with all NPDES requirements, RWQCB General Construction Permit requirements and all City regulations, including the Creek Protection Permit.

(2) Impact D.2: The Project construction dredging activities could adversely affect aquatic organisms and water quality. This impact will be mitigated through implementation of Mitigation Measure D.2, which calls for compliance with all water quality

certification requirements, a Section 404 permit, and approval, by the Dredged Material Management Office.

(3) Impact D.5: Establishment and maintenance of new landscaping and lawns may result in adverse water quality impacts. This impact will be mitigated through implementation of Mitigation Measure D.5, which calls for preparation of a landscape management plan.

(4) Impact D.6: The Project could deplete groundwater supplies or interfere with groundwater recharge and cause contamination of surface water. This impact will be mitigated through implementation of Mitigation Measure D.6, which calls for compliance with NPDES requirements for dewatering activities.

e. Cultural Resources

(1) Impact E.1: Construction of the Project could adversely affect unknown cultural resources at the site. This impact will be mitigated through implementation of Mitigation Measures E.1a through E.1d, which call for an archival resource evaluation and additional measures based on the results of this evaluation, training of construction personnel, provisions for historical or unique archaeological resources accidentally discovered during construction, and provisions for the discovery of human skeletal remains.

(2) Impact E.2: Project construction could adversely affect unidentified paleontological resources at the site. This impact will be mitigated through implementation of Mitigation Measure E.2, which calls for a paleontologist to document and assess the discovery and prepare an excavation plan for approval by the City.

f. Geology, Soils and Seismicity

(1) Impact F.1: The Project could be subject to the effects of a major earthquake causing structure collapse or damage. This impact will be mitigated through implementation of Mitigation Measure F.1, which calls for site specific, design level geotechnical investigations, review and approval by a registered geotechnical engineer, incorporation of all recommendations into the final design and approval by the City of Oakland Building Services Division.

(2) Impact F.2: The Project could be exposed to liquefaction and settlement in the event of a major earthquake. This impact will be mitigated through implementation of Mitigation Measure F.2, which calls for site specific, design level geotechnical investigations for each building site to address and require the incorporation into the Project design, methods for safeguarding against liquefaction and settlement.

(3) Impact F.3: Development at the Project site could be subject to settlement. This impact will be mitigated through implementation of Mitigation Measure F.3, which calls for the preparation of site specific geotechnical investigation and reports that will include engineering techniques for mitigating the effects of settlement and for construction activities and design criteria to comply with all applicable codes and regulations.



(4) **Impact F.4:** Development of the Project may include the use of dredged material as fill which would be subject to settlement and subsidence. This impact will be mitigated through implementation of Mitigation Measure F.4, which calls for consolidation and stabilization of dredged material use for fill, geotechnical investigations and reports, appropriate permits, and limitations on the use of dredged material as fill to open space areas.

(5) **Impact F.5:** The Project construction activities could result in loosening and exposure and potentially the loss of topsoil and could expose shoreline area to erosion and the loss of topsoil. This impact will be mitigated through implementation of Mitigation Measure F.5, which calls for compliance with NPDES requirements, RWQCB General Construction Permit requirements and all City regulations, including Creek Protection Permits.

g. **Noise**

(1) **Impact G.2:** Noise generated by the Project operations could exceed City standards and disturb Project occupants and nearby residents. This impact will be mitigated through implementation of Mitigation Measure G.2, which calls for incorporating certain design features related to shielding building equipment and the location of truck delivery areas.

(2) **Impact G.3:** The Project will locate new residential uses in a noise environment that is above the General Plan Noise Element "normally acceptable" level. This impact will be mitigated through implementation of Mitigation Measures G.3a and b, which call for compliance with the requirements of Title 24 to achieve an interior noise level of less than 45 dBA and notice to future residents regarding railroad crossing noise.

h. **Hazardous Materials**

(1) **Impact H.1:** During remediation, demolition and construction activities, workers, the public, and the environment may be exposed to adverse conditions related to hazardous materials handling. This impact will be mitigated through implementation of Mitigation Measures H.1a through e, which call for preparation of a soil and groundwater clean up plan, compliance with all applicable OSHA regulations, compliance with all local and state protocols for the handling, storage and transport of any hazardous or potentially hazardous waste, proper classification of soils for offsite disposal, sampling of soil for reuse or disposal, containment and proper treatment or disposal of groundwater generated during construction activities, and preparation and approval of a Sampling and Analysis Plan for dredging.

(2) **Impact H.2:** During demolition and construction, hazardous building components could expose workers, the public and the environment to adverse conditions related to hazardous materials handling. This impact will be mitigated through imposition of Mitigation Measures H.2a through d, which call for a pre-demolition ACM survey, preparation and implementation of an asbestos abatement plan, preparation and implementation of a lead-based paint abatement plan, a pre-demolition PCB survey and abatement of known or suspected PCBs prior to demolition and construction activities, and proper removal any UST and remediation of any leaks from the UST.

(3) Impact H.3: Hazardous materials used during construction could be released into the environment. This impact will be mitigated through implementation of Mitigation Measure H.3, which calls for the use of construction best management practices to minimize the potential negative effects to groundwater and soils.

i. Biological Resources/Wetlands

(1) Impact I.2: The Project could result in substantial adverse effect on jurisdictional wetlands or waters of the U.S. This impact will be mitigated through implementation of Mitigation Measures I.2a through e, which call for preparation of a Corps-verified wetland delineation, avoidance of wetlands, implementation of BMPs, protection of the existing wetlands restoration project, obtaining any necessary regulatory permits and Agency approvals including Section 404/Section 10 permits, Section 401 Water Quality Certification, and a BCDC permit, and compensatory mitigation as may be required by the Corps, RWQCB or BCDC.

(2) Impact I.3: The Project construction activities could have a substantial adverse effect on fisheries resources in the Oakland inner harbor. This impact will be mitigated through implementation of Mitigation Measure 1.3, which calls for implementation of certain mitigation called for in the Long Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region.

(3) Impact I.4: The Project construction activities could have an adverse effect on nesting habitat for breeding raptors and passerine birds. This impact will be mitigated through the implementation of Mitigation Measure I.4a and b, which call for construction timing considerations and preconstruction surveys and avoidance of nesting raptors and birds.

(4) Impact I.5: The Project could have a substantial adverse effect on special-status nesting roosting bats. This impact will be mitigated through pre-demolition building surveys, postponement of demolition if nursery sites are discovered, relocation of roosting bats, and creation of bat roosting structures.

23. Under Public Resources Code section 21081 and CEQA Guidelines section 156091 and 15092, and Chapter 17.158 of the Municipal Code, the City determines that the following significant effects on the environment, as reflected in the EIR, are unavoidable and are acceptable due to the overriding considerations described below.

a. Traffic, Circulation, and Parking

(1) Impacts B.1b: Phase I of the Project will affect the intersections of 5<sup>th</sup> Street and Broadway. No feasible mitigations measures are available to reduce this impact to a less than significant level because of the constrained capacity of the Webster Tube, which cannot be widened.

(2) Impact B.1c: Phase I of the Project will affect the intersection 6<sup>th</sup> and Jackson Streets at the I-880 Northbound On-Ramp. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.1c, which calls for

optimization of the traffic signal at this intersection. The implementation of this Mitigation Measure, however, is uncertain because it requires the approval of Caltrans. Although implementation of the measure may be possible and the impact avoided, because the approval of Caltrans is uncertain, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level.

(3) Impact B.1e: Phase I of the Project will affect the intersection Embarcadero and I-880 Northbound Off-Ramp – 6<sup>th</sup> Avenue. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.1e, which calls for installation of a traffic signal at this intersection. The implementation of this Mitigation Measure, however, is uncertain because it requires the approval of Caltrans. Although implementation of the measure may be possible and the impact avoided, because the approval of Caltrans is uncertain, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level.

(4) Impact B.2a: Buildout of the Project will affect the intersection of Atlantic Avenue and Webster Street. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.2a, which calls for payment of a fair share fee for certain improvements at this intersection. The implementation of this Mitigation Measure, however, is uncertain because it requires the approval of, and implementation by, the City of Alameda. Although implementation of the measure may be possible and the impact avoided, because its approval and implementation is uncertain, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level.

(5) Impact B.2c: Buildout of the Project will affect the intersection of 5<sup>th</sup> Street and Broadway. No feasible mitigation measures are available to reduce this impact to a less than significant level because of the constrained capacity of the Webster Tube, which cannot be widened.

(6) Impact B.2d: Buildout of the Project will affect the intersection 5<sup>th</sup> and Oak Streets at the I-880 Southbound On-Ramp. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.2d, which calls for optimization of the traffic signal at this intersection. The implementation of this Mitigation Measure, however, is uncertain because it requires the approval of Caltrans. Although implementation of the measure may be possible and the impact avoided, because the approval of Caltrans is uncertain, the City finds that this impact is significant and unavoidable.

(7) Impact B.2e: Buildout of the Project will affect the intersection of 6<sup>th</sup> and Jackson Street at I-880 Northbound On-Ramp. No feasible mitigation measures are available to reduce this impact to a less than significant level because of the constrained right-of-

way, which prevents the addition of turn lanes or other similar physical improvements at this intersection.

(8) Impact B.2h: Buildout of the Project will affect the intersection of Lakeshore Avenue and MacArthur Boulevard. No feasible mitigation measures are available to reduce this impact to a less than significant level because of the constrained right-of-way, which prevents the addition of turn lanes or other similar physical improvements at this intersection.

(9) Impact B.2i: Buildout of the Project will affect the intersection of Embarcadero and I-880 Southbound On-Ramp. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.2I, which calls for installation of a traffic signal at this intersection. The implementation of this Mitigation Measure, however, is uncertain because it requires the approval of Caltrans. Although implementation of the measure may be possible and the impact avoided, because the approval of Caltrans is uncertain, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level.

(10) Impact B.3a: Buildout of the Project will contribute to the cumulative conditions at the intersection of Atlantic Avenue and Webster Street. This impact could be reduced, although not to a less than significant level, with implementation of Mitigation Measure B.3a. Implementation of the Mitigation Measure is uncertain because it requires the approval of the City of Alameda. The City further finds that if Alameda approves this measure, the impact will be reduced to a less than significant level.

(11) Impact B.3c: Buildout of the Project will contribute to the cumulative conditions at the intersection of 5<sup>th</sup> Street and Broadway. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of the constrained capacity of the Webster Tube, which cannot be widened.

(12) Impact B.3d: Buildout of the Project will contribute to the cumulative conditions at the intersection of 5<sup>th</sup> and Oak streets at the I-880 southbound On-Ramp. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.2d, which calls for optimization of the traffic signal at this intersection. The implementation of this Mitigation Measure, however, is uncertain because it requires the approval of Caltrans. Although implementation of the measure may be possible and the impact avoided, because the approval of Caltrans is uncertain, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level.

(13) Impact B.3e: Buildout of the Project will contribute to the cumulative conditions at the intersection of 6<sup>th</sup> and Jackson Street at the I-880 Northbound On-Ramp. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of the constrained right-of-way at this location.

(14) Impact B.3f: Buildout of the Project will contribute to the cumulative conditions at the intersection of Lakeshore Avenue and Foothill Boulevard. This impact could be reduced, although not to a less than significant level, with the implementation of Mitigation Measure B.2g. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of the constrained right-of-way at this location.

(15) Impact B.3g: Buildout of the Project will contribute to the cumulative conditions at the intersection of Lakeshore Avenue and MacArthur Boulevard. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of the constrained right-of-way at this location.

(16) Impact B.3k: Buildout of the Project will contribute to the cumulative conditions at the intersection of Embarcadero and I-880 southbound On-Ramp. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.2I, which calls for installation of a traffic signal at this intersection. The implementation of this Mitigation Measure, however, is uncertain because it requires the approval of Caltrans. Although implementation of the measure may be possible and the impact avoided, because the approval of Caltrans is uncertain, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level.

(17) Impact B.3m: Buildout of the Project will contribute to the cumulative conditions at the intersection of 14<sup>th</sup> Avenue and 7<sup>th</sup>/<sub>E</sub> East 12<sup>th</sup> streets (Southbound). This impact could be reduced, although not to a less than significant level, with the implementation of Mitigation Measure B.2n. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of the constrained right-of-way at this location.

(18) Impact B.9: The Project will contribute to 2025 traffic conditions on regional and local roadways. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of constrained right-of-ways, the inherent difficulties in widening freeways, and the lack of a regional mitigation fee program.

b. Air Quality and Meteorological Conditions

(1) Impact C.7: The Project will contribute to cumulative regional air pollution. This impact could be reduced, although not to a less than significant level, with the implementation of Mitigation Measures C.7a through k, which call for implementation of certain rideshare, transit, shuttle, and bicycle and pedestrian measures. No feasible mitigation measures are available to reduce this impact to a less than significant level.

c. Cultural Resources

(1) Impact E.3: The Project will result in the substantial demolition of the Ninth Avenue Terminal. This impact could be reduced, but not to a less than significant level, through the implementation of Mitigation Measures E.3a and b, which call for

documentation of the historic resource and reuse and rehabilitation of the bulkhead building. No feasible alternatives are available to reduce this impact to a less than significant level for the reasons set forth below.

Additionally, the City will issue a Request for Proposals for the preservation of between 40,000 and 90,000 square feet of the Terminal Building pursuant to Condition of Approval 25.c. Even if a proposal is accepted by the City pursuant to Condition of Approval 25.5., the impact would remain significant and unavoidable.

(2) Impact E.4: The Project will substantially alter the wharf structure supporting the Ninth Avenue Terminal and surrounding areas. This impact could be reduced, but not to a less than significant level, through the implementation of Mitigation Measures E.3a and b, which call for documentation of the historic resource and reuse and rehabilitation of the bulkhead building. No feasible alternatives are available to reduce this impact to a less than significant level for the reasons set forth below.

(3) Impact E.5: Although the Project buildings have not been designed, the Project may not be architecturally compatible with the remaining bulkhead building and Project buildings will be located within 100 feet of the bulkhead building. No feasible alternatives are available to reduce this impact to a less than significant level for the reasons set forth below.

(4) Impact E.8: The Project will contribute to the cumulative loss of historic resources. This impact could be reduced, but not to a less than significant level, through implementation of Mitigation Measures E.8, which call for a historical exhibit in the bulkhead building and park design elements that reference the Terminal building's footprint and height. No feasible alternatives are available to reduce this impact to a less than significant level for the reasons set forth below.

b. Noise

(1) Impact G.1: The Project construction activities will generate noise levels above City standards and disturb noise-sensitive areas. This impact could be reduced, but not to a less than significant level, through implementation of Mitigation Measures G.1a through d, which call for limiting the hours of construction, use of best available noise control techniques, special provisions for the use of impact tools, noise control measures for stationary sources, limitations on the number of consecutive days that activities such as pile driving may occur, special attenuation provisions for pile driving or other extreme noise generating construction impacts, and procedures for tracking and responding to noise complaints from construction. No feasible mitigation measures are available to reduce this impact to a less than significant level.

(2) Impact G.4: The Project will locate noise sensitive uses in a noise environment where outdoor noise levels are above the General Plan's "normally acceptable" level. No feasible mitigation measures are available to reduce this impact to a less than significant level as set forth in the Draft EIR. No feasible alternatives are available to reduce

this impact to a less than significant level for the reasons set forth below and in Exhibit D, General Findings.

23. Under Public Resources Code section 21081, CEQA Guidelines section 15091 and 15092 and Chapter 17.158 of the Municipal Code, the City recognizes that some mitigation measures require action by, or cooperation from, other agencies. For each mitigation measure that requires the cooperation or action of another agency, the City finds that adoption and/or implementation of each of those mitigation measures can and should be adopted and/or implemented by that other agency.

#### **IV. FINDINGS REGARDING PROJECT ALTERNATIVES AND OPTIONS FOR REUSE OF THE NINTH AVENUE TERMINAL**

24. The City finds that specific economic, social, environmental, technological, legal or other considerations make infeasible the alternatives to the Project and justify approval of the Project despite remaining impacts, as more fully discussed in the Statement of Overriding Considerations below.

25. The City adopts the EIR's analysis and conclusions regarding the alternatives previously considered but rejected. The City adopts the EIR's analysis and conclusions with respect to all of the alternatives discussed as supplemented by the findings below.

26. The four potentially feasible alternatives analyzed in the EIR, represent a reasonable range of potentially feasible alternatives that reduce one or more significant impacts of the Project. These alternatives include the (1) No Project Alternative; (2) No Project Estuary Policy Plan Alternative; (3) Enhanced Open Space / Partial Ninth Avenue Terminal Preservation and Adaptive Reuse Alternative; and (4) Reduced Development / Ninth Avenue Terminal Preservation Alternative. As presented in the EIR, the alternatives were described and compared with each other and with the Project. The Reduced Development / Ninth Avenue Terminal Preservation Alternative was identified as the environmentally superior alternative. Additionally, the City examined a "Sub-alternative: Full Ninth Avenue Terminal Preservation and Adaptive Reuse." This is a stand-alone alternative for the Ninth Avenue Terminal that could be included in the Project or any of the development alternatives.

27. The City certifies that it has independently reviewed and considered the information on alternatives provided in the EIR and in the record. The EIR reflects the City's independent judgment as to alternatives. The City finds that the Project provides the best balance between the project sponsor's objectives, the City's goals and objectives, the Project's benefits as described below in the Statement of Overriding Considerations, and mitigation of environmental impacts to the extent feasible. The alternatives proposed and evaluated in the EIR are rejected for the reasons stated in the EIR and for the following reasons. Each individual reason presented below constitutes a separate and independent basis to reject the alternative as being infeasible, and, when the reasons are viewed collectively, provide an overall basis for rejecting the alternative as being infeasible.

28. The City has reviewed the three reports prepared by EPS and submitted by the project sponsor, including: (a) the "Oak to 9<sup>th</sup> Mixed Use Project Fiscal Impact Analysis" dated

July 29, 2005 and updated May, 2006 ("EPS Fiscal Analysis"); (b) the "Oak to 9<sup>th</sup> Mixed-Use Project Alternatives 1B, 2, and 3 Feasibility Analysis" dated January 31, 2006 ("EPS Alternatives Analysis"); and (c) the "Oak to 9<sup>th</sup> Mixed-Use Project Ninth Avenue Terminal Reuse Feasibility Analysis" dated February 21, 2006 ("EPS Terminal Reuse Feasibility Analysis"). After reviewing these EPS reports, the City has determined that the reports constitute credible, expert data, analysis, and evidence regarding the fiscal impacts and economic feasibility of the Project and the alternatives. The City has relied on the information, analysis, and conclusions in these EPS reports in its findings regarding the Project alternatives as more specifically set forth below.

29. No Project/No Development Alternative (Alternative 1): Under this alternative, none of the development proposed under the Project would occur. Without the Project, the site is likely to remain in its current state for the foreseeable future. Thus, none of the environmental impacts associated with the Project would occur. This alternative is rejected as infeasible for the following reasons: (a) This alternative would not attain any of the objectives of the Project; (b) It would not increase open space, parks, public access, and views to and along the Estuary as called for in the Estuary Policy Plan; (c) It would not improve existing open space and parks in the Estuary area as called for in the Estuary Policy Plan; (d) No improvement of the existing shoreline and marinas would occur and Clinton Basin Marina would remain functionally obsolete; (e) Uses that generate contamination and the potential for runoff into the Estuary would continue to operate on the site and pose a potential threat to the adjacent Estuary; (f) Comprehensive remediation of the site by the developer would not occur; (g) The alternative would not be consistent with the goals of the Redevelopment Plans and the Estuary Policy Plan to revitalize and redevelop these underused, blighted, industrial parcels and create an active, economically vibrant, publicly accessible waterfront area; (h) The local economy would lose the benefits of this Project, because additional retail spending by Project residents in the surrounding areas and the City would not occur; (i) The alternative would not provide the City with any of the fiscal benefits of the Project as documented in the EPS Fiscal Analysis, including revenues from property taxes, property transfer, sales taxes, utility user fees, motor vehicle fees, business license taxes, new household expenditures, redevelopment revenues including housing set-asides, and other various local taxes and fees; (j) Over 3,100 new housing opportunities would be lost; and (k) No new construction or permanent jobs would be created, which would further disadvantage the local job market and economy.

30. No Project/Estuary Policy Plan (Alternative 1B): Under this alternative, development would occur in accordance with the existing Estuary Policy Plan. This alternative would reduce certain of the Project's significant traffic and air quality impacts and would have the same significant unavoidable impacts on historic resources, because it includes the demolition of the Ninth Avenue Terminal and portions of the associated wharf to create a new large scale open space area. This alternative is rejected for the following reasons: (a) This alternative would not provide any new housing and would result in the loss of 3,100 new housing opportunities, thereby substantially reducing the City's ability to meet its housing goals; (b) Based on the EPS Alternatives Analysis, which examined the alternative's residual land value (i.e. a comparison of the cost of developing and operating the building prototype against the revenues and value that can be achieved for the uses at this site), this alternative is not financially feasible because the type and amount of development results in the costs of development exceeding revenues, thereby producing a negative IRR (internal rate of return); (c) The EPS



Alternatives Analysis found that this alternative produced an estimated net shortfall of \$257,267,076; (d) The EPS Alternatives Analysis found that conventional financing from lenders and investors would be very difficult to obtain given the substantial financial shortfall; (e) The EPS Alternatives Analysis determined that undertaking this alternative would require significant public subsidies or significant improvements in future market conditions; and (f) The EPS Alternatives Analysis determined that this alternative could not support the open space maintenance, security, management, and insurance costs associated with development of the site.

31. Enhanced Open Space / Partial Ninth Avenue Terminal Preservation and Adaptive Reuse Alternative (Alternative 2): Under the alternative, development would include 1,800 residential units, 95,000 square feet of commercial space, 40.6 acres of parks and open space, realignment of the Embarcadero to curve through the eastern portion of the site, and preservation and reuse of approximately 88,000 square feet of the Ninth Avenue Terminal building, consistent with the Tidelands Trust land use restrictions. This alternative would reduce certain of the Project's significant traffic impacts, would reduce, but not avoid, the significant unavoidable impacts to historic resources, would increase existing hazardous wind conditions in the open space areas, and otherwise would have impacts similar to the Project. This alternative is rejected for the following reasons: (a) This alternative would substantially reduce the number of new housing opportunities on the site, thereby impeding the City's ability to meet its housing goals; (b) The realignment of the Embarcadero would inappropriately place a major thoroughfare along a major new open space area and surrounding a new residential area causing land use conflicts and separating the new open space from the other uses on the site; (c) Based on the EPS Alternatives Analysis, which examined the alternative's residual land value (i.e. a comparison of the cost of developing and operating the building prototype against the revenues and value that can be achieved for the uses at this site), this alternative is not financially feasible because the type and amount of development results in the costs of development exceeding revenues, thereby producing a negative IRR (internal rate of return); (d) The EPS Alternatives Analysis found that this alternative produced a net estimated net shortfall of \$172,126,631; (e) The EPS Alternatives Analysis found that conventional financing from lenders and investors would be very difficult to obtain given the substantial financial shortfall; (f) The EPS Alternatives Analysis determined that undertaking this alternative would require significant public subsidies or significant improvements in future market conditions; and (g) The alternative would reduce the ability to provide a new public open space and access to the waterfront in the location of the Ninth Avenue Terminal as called for in the Estuary Policy Plan. Additionally, the conclusions regarding the infeasibility of reusing this portion of the Ninth Avenue Terminal as a stand-alone development are presented below.

32. Reduced Development / Ninth Avenue Terminal Preservation (Alternative 3): Under this alternative, development would include 540 residential units, 10,000 square feet of retail/restaurant use, 39.9 acres of parks and open space and it would preserve and reuse the Ninth Avenue Terminal. This is the environmentally superior alternative and would reduce most of the Project's significant unavoidable impacts, except for one traffic impact, the impact on the historic wharf structure, and the construction noise impact. This alternative would result in exposing the waterfront open space area to the existing hazardous wind conditions. This alternative is rejected for the following reasons: (a) The alternative would substantially reduce the number of new housing opportunities on the site, thereby impeding the City's ability to meet its housing goals; (b) Based on the EPS Alternatives Analysis, which examined the alternative's

residual land value (i.e. a comparison of the cost of developing and operating the building prototype against the revenues and value that can be achieved for this uses at this site), this alternative is not financially feasible because the type and amount of development results in the costs of development exceeding revenues, thereby producing a negative IRR (internal rate of return); (c) The EPS Alternatives Analysis found that this alternative produced an estimated net shortfall of \$308,132,863; (d) The EPS Alternatives Analysis found that conventional financing from lenders and investors would be very difficult to obtain given the substantial financial shortfall; (e) The EPS Alternatives Analysis determined that undertaking this alternative would require significant public subsidies or significant improvements in future market conditions; and (f) The alternative would reduce the ability to provide a new public open space and access to the waterfront in the location of the Ninth Avenue Terminal as called for in the Estuary Policy Plan. The infeasibility of reusing the Ninth Avenue Terminal as a stand-alone development is presented in the findings below.

33. Sub Alternative: Full Ninth Avenue Terminal Preservation and Adaptive Reuse: This sub-alternative would retain and reuse the Ninth Avenue Terminal and related wharf structure. This sub-alternative would avoid the significant impact to the Terminal. This sub-alternative is a stand-alone alternative for the Terminal and could be combined with the Project or any of the development alternatives. This alternative is rejected for the following reasons: (a) The alternative would preclude using the Terminal area for open space and park uses and would preclude new views of the waterfront from this location as called for in the Estuary Policy Plan; and (b) Reuse of the Terminal is financially infeasible as a stand-alone project for the reasons set forth below

34. In response to questions raised during the Planning Commission consideration of the Project and at the March 28, 2006 City Council hearing on the Project, three additional documents were prepared in connection with the feasibility of preserving the Terminal. First, the PFM Group reviewed the EPS reports and financial data from the project sponsors. (See the PFM Group memorandum to Dan Vanderpriem and Oakland Harbor Partners, dated June 1, 2006 and attached to the staff report). PFM found the following: (a) even adjusting cost and revenues to remove costs such as retrofitting the pier and landscaping the open area, none of the alternatives for preserving the Terminal, including the project, show a positive cash flow; (b) the amount of the annual losses of the alternatives increases with the increase in size and complexity of the alternatives; (c) the risk associated with the larger preservation alternatives are greater than those associated with the Project; (d) additional capital investment to eliminate loan debt service would reduce the Project to an infeasible rate of return; (e) the project sponsor's financial assumptions are reasonable given the long term nature of the Project and current financial conditions; and (f) the return on equity for the Project is in the lower quartile of the range of returns on equity for similar projects and the Project is a relatively high risk development.

Additionally, EPS prepared a report entitled "Subsidization of the Chelsea Piers and the Torpedo Factory Adaptive Reuse Projects" dated May 2006 (attached to the staff report). This report shows that both the Chelsea Piers and Torpedo Factory projects have required substantial public subsidies. Moreover, these projects are substantially different from the Ninth Avenue Terminal in terms of market dynamics, construction costs, economics and allowable uses. Consequently, the projects cannot feasibly serve as a model for preservation of the Terminal.

Finally, Novogradac & Company, certified public accountants, reviewed the potential impact of federal rehabilitation tax credits and federal new market tax credits on the economic feasibility of the Project in connection with preservation of the Terminal. Novogradac found that, even assuming best case conditions, the funding shortfall for the preservation alternatives ranges from \$19.6 million to \$28.9 million. Consequently, Novogradac concluded that "maintaining the Shed as is or reducing it down to the 1927 size of the building is not economically feasible with the use of federal Rehabilitation Tax Credits or New Market Tax Credits."

35. Options For Reusing the Ninth Avenue Terminal Building: The EPS Terminal Reuse Feasibility Analysis examined various proposed reuse scenarios for the Ninth Avenue Terminal as a stand-alone project, because the Terminal would be owned and operated by a governmental or other entity, not the project sponsor. The scenarios examined included the Project proposal to reuse the bulkhead building, the EIR alternative (Alternative 2) to reuse the 1920's portion of the Terminal, and five options proposed by a study prepared by students and submitted as a comment on the DEIR, entitled "The Ninth Avenue Terminal, A Feasibility Study For Adaptive Reuse." For the reuse scenarios, EPS compared the projected revenues to projected costs to determine if financial shortfalls would occur. Reuse costs were based on estimates provided by Rutherford and Chekene for the structural upgrades that would be needed and construction costs provided by Devcon Construction, Inc. The EPS findings are summarized as follows:

a. **Project Proposal:** The Project proposal for reuse of the bulkhead building has the greatest likelihood of the various alternatives and options evaluated to be fully occupied. Although this proposal results in a financial shortfall, it is the lowest shortfall of all the options and alternatives examined. This proposal is the most financially feasible of all the proposals studied.

b. **EIR Alternative 2:** Based on public comments, the EPS Terminal Reuse Feasibility Analysis examined the financial feasibility of a proposed set of uses that could be developed under EIR Alternative 2, including a visitor's/cultural/community center, the Philbrick Boat Works, other marine-related space, food concessions, boat and bike rentals and other commercial uses. EPS found that, although the market would support these uses, not all uses could be supported at the square footage proposed, thereby reducing the revenue potential of this proposal. Additionally, the EPS Terminal Reuse Feasibility Analysis determined that additional parking must be provided to adequately support the feasibility of this proposal. EPS concluded that this proposal would not be financially feasible, because it results in a shortfall of between \$22,049,302 to \$23,433,349.

c. **Student Study Option 1:** This option proposes to reuse the Terminal as a conference/special events center. EPS examined the site's ability to compete in the market for conference center services. Based on the EPS analysis, this alternative is economically infeasible for the following reasons: (1) Although the site is suitable for a stand-alone convention center, the lack of full-service hotel facilities within walking distance would make it difficult for the proposed convention center to compete with similar facilities in the area; (2) Convention facilities already exist nearby – the Oakland Convention Center and at two Jack London square hotels, the Jack London Inn and the Waterfront Plaza hotel; (3) Current utilization at the Oakland

Convention Center indicates that there is not excess demand to justify new facilities and any new facilities may adversely affect the Convention Center; (4) The financial difficulties of the recently-closed Henry J. Kaiser center illustrate the difficulties of running a stand-alone convention center; (5) Given the inadequate parking provided, the proposed uses would need to be reduced in order to accommodate the needed parking, thereby reducing leasable square footage and revenue; and (6) This option has an estimated financial shortfall of \$33,639,407.

d. Student Study Option 2: This option proposes a regional recreation center including a grocery store, sporting goods store, and cafes/restaurants. EPS examined the desirability of the site for grocery tenants and the location's ability to support a large recreation center. Based on the EPS analysis, this alternative is economically infeasible for the following reasons: (1) The waterfront does not offer a grocery tenant a competitive advantage; (2) This alternative does not provide ancillary retail uses and services that help attract supermarket customers; (3) It is uncertain whether the site can support a large recreation space because of the number of similar facilities in the region, including 30 recreation centers operated by the City of Oakland and the Bladium in the City of Alameda.

e. Student Study Option 3: This option includes a conference center, a theater/club, meeting rooms, retail and restaurant space. EPS examined the site's ability to compete in the market for conference center services, and the need for another conference center in the area. Based on the EPS analysis, this alternative is economically infeasible for the following reasons: (1) although the site is suitable for a stand-alone convention center, the lack of full-service hotel facilities within walking distance would make it difficult for the proposed convention center to compete with similar facilities in the area; (2) The suggested added uses, such as retail, community and performing arts spaces, would likely conflict with the convention space; (3) Convention facilities already exist nearby – the Oakland Convention Center and at two Jack London square hotels, the Jack London Inn and the Waterfront Plaza hotel; (4) Current utilization at the Oakland Convention Center indicates that there is not excess demand to justify new facilities and any new facilities may adversely affect the Convention Center; (5) This option would have an estimated financial shortfall of \$35,552,683.

f. Student Study Option 4: This option proposes a large public market, a maritime history center, a restaurant and a café. EPS examined the site's ability to support almost 31,000 square feet of public market use. Based on the EPS analysis, this alternative is economically infeasible for the following reasons: (1) The square footage dedicated to market stalls is unusually large for this type of facility; and, (2) Direct competition with Jack London Square's Harvest Hall would likely make it difficult to attract tenants.

g. Student Study Option 5: This option proposes artists' related uses and a café/restaurant. Based on the EPS analysis, this option is economically infeasible for the following reasons: (1) The spaces are quite large and there are likely a limited number of artists who could afford this type of space; (2) Discussions with operators suggest that affordable live-work artists' studios are highly desirable, but residential use is not permitted at the Terminal site, because the land is held in public trust; (3) Therefore, it is unlikely that the studio spaces would generate enough revenue to make this a viable project.

36. Condition of Approval No. 25.c.: Although the City finds, based on the administrative record, that it is not economically feasible to preserve the Terminal, it will provide the opportunity for an entity to provide an alternative funding source through the issuance of a Request for Proposals to preserve and reuse 40,000 to 90,000 square feet of the Terminal in accordance with Condition 25.c. The City will review and evaluate the responses to the Request for Proposals and make a determination regarding any options proposed by June 30, 2007. In the event that the City does not approve an alternate reuse option pursuant to the terms of Condition No. 25.c, the project sponsor will be required to preserve 20,000 square feet of the Terminal building, instead of the 15,000 square feet proposed under the Project. If the City approves an alternative reuse option, the Project will continue to result in a significant, unavoidable impact to an historic resource and the findings related to that impact are contained herein.

## **V. STATEMENT OF OVERRIDING CONSIDERATIONS**

37. The City finds that each of the specific economic, legal, social, technological, environmental, and other considerations described below and the benefits of the Project summarized below independently outweigh the remaining significant adverse impacts of the projects and is an overriding consideration independently warranting approval of the Project. The remaining significant adverse impacts are acceptable in light of each of these overriding considerations.

38. In furtherance of City goals and policies, the Project will revitalize the waterfront in this area of the Oakland Estuary and convert vacant and underused parcels into a productive, vibrant, cohesive, planned mixed-use community.

39. The Project will provide over ~~3229~~ acres of public open space, parks, and pedestrian and bicycle trails in the waterfront area along the Oakland Estuary that will enhance and expand public access to this area in accordance with the goals and policies of the Estuary Policy Plan. The Bay Trail will be extended through the site. With these improvements, the Project will allow Oakland residents and other visitors to enjoy an area of the waterfront that has been inaccessible.

40. As documented in the EPS Fiscal Analysis, the Project will provide significant revenue benefits to the City from property taxes, property transfer taxes, sales taxes from residents, employees, and business to business transactions, use taxes, business license taxes, motor vehicle in lieu fees and other permit fees. At buildout, the Project will generate annual net fiscal revenues substantially in excess of costs. As such, the Project will assist the City in meeting and sustaining its future fiscal responsibilities.

41. The Project will provide substantial tax increment revenue to the City and the Redevelopment Agency, generating significant funds for affordable housing in Oakland and other non-housing plans and programs in the Central City East Redevelopment Plan area.

42. The Project will generate approximately 1,000 new employment opportunities and approximately 7,000 construction jobs over the course of the buildout of the Project. Pursuant to the terms of the Development Agreement, the Project will provide for local hiring and funding of local job training programs.

43. By increasing residential and employee populations in this area of the City, the Projects will stimulate the local economy by creating opportunities to support nearby existing local businesses and providing opportunities for new businesses.

44. The Project will provide much needed housing in a smart growth, infill development with a mix of uses convenient to downtown and transit facilities.

45. The Project will promote a jobs/housing balance by providing a mix of commercial and residential uses. The Project will include approximately ~~465420~~ affordable housing units in accordance with the Development Agreement.

46. The Project will provide a variety of housing types to accommodate a diverse range of households.

47. The Project will remediate and reuse contaminated property thereby enabling redevelopment of this site and enhancing public and environmental safety.

48. The uses in the Project will create a 24-hour population in this waterfront area adding to its attractiveness and vitality.

49. The Project will assist in the alleviation of *blighting conditions in the area*, thereby serving the goals and objectives of the Redevelopment Plans.

50. The Project will build two marinas providing opportunities for 175 slips.

51. The Project will renovate the Terminal bulkhead building to house a maritime museum and community center. Additionally, as a condition of project approval, the Project sponsor will contribute \$500,000 to the City for use in connection with historic preservation efforts.

# **EXHIBIT D TO ALL APPROVAL DOCUMENTS**

## **GENERAL FINDINGS**

### **RELATED TO THE APPROVAL OF THE OAK TO NINTH AVENUE MIXED USE DEVELOPMENT PROJECT**

#### **CITY COUNCIL HEARING**

**JUNE 20, 2006**

#### **I. INTRODUCTION**

1. These General Findings are adopted by the City of Oakland and the Redevelopment Agency of the City of Oakland for the Oak to Ninth Avenue Mixed Use Development Project ("Project"). These findings refer to the EIR prepared for the Project, SCH # 2004062013 and are based on that EIR. These findings are based on the entire record of the proceedings for the Project as identified in Exhibit A (CEQA Findings). References to specific reports and specific pages or documents are not intended to identify those sources as the exclusive basis for the finding. These findings pertain to the Project as modified and conditioned by the City Council on June 20, 2006.

2. These General Findings are attached as Exhibit D and incorporated by reference into several approval documents pertaining to the Project, including a resolution amending the General Plan, a resolution and ordinance amending the land use map for the Central City East Redevelopment Plan, a resolution and ordinance amending the land use map for the Central District Urban Renewal Plan Amendment, an ordinance adopting the new Planned Waterfront Zoning District, an ordinance amending the Zoning Map, a resolution approving a Vesting Tentative Subdivision Map, a resolution approving a Preliminary Development Plan, approval of Design Guidelines, approval of a resolution and ordinance for a Development Agreement and a resolution denying the appeal filed by Arthur Levy in connection with the actions of the Planning Commission pertaining to the project and certifying the EIR. These findings, in addition to all staff reports, ordinances, and resolutions prepared for these Project approvals, provide the relevant findings pursuant to the Oakland Municipal Code and applicable state law.

3. Attached to the approvals listed above are: (a) Exhibit A, which contains CEQA findings and a statement of overriding considerations for the Project; (b) Exhibit B, which is the Mitigation Monitoring and Reporting Program for the Project; (c) Exhibit C, which is the Conditions of Approval for the Project. All Exhibits are incorporated by reference into each other and into the approvals for the Project.

4. These findings are adopted after extensive review and consideration of all the written and oral testimony and evidence in the entire record for the Project, including all the material presented in the appeal of the Planning Commission's actions and the staff response to the appeal. The City has considered the advice and recommendations from the Landmarks Preservation Advisory Board, the Parks and Recreation Advisory Commission, the Planning

Director, and the Director of Redevelopment, Economic Development and Housing and Community Development.

## **II. GENERAL PLAN CONSISTENCY**

5. The Project is governed by the City of Oakland General Plan and the City must find that the Project approvals are consistent with the General Plan. In order to achieve consistency with the General Plan, the Project includes General Plan Amendments to the Estuary Policy Plan to allow the residential development, to create a new Planned Waterfront Development – 4 land use designation, and to clarify and update certain provisions of the Plan. The proposed General Plan Amendments are discussed in the staff reports presented to the City and the EIR. The City adopts the analysis, explanations, and conclusions contained in the EIR, staff reports, and presentations by the Project Sponsor with respect to the General Plan Amendments.

6. The General Plan Amendments approved for this Project will not cause any internal inconsistencies in the General Plan. The General Plan Amendments and the remainder of the General Plan comprise an integrated, internally consistent and compatible statement of policies for the City.

7. The Project is compatible with, and will not obstruct the objectives and policies of, the General Plan as amended by the Project approvals. The Mitigation Monitoring and Reporting Plan (Exhibit B) and the Conditions of Approval (Exhibit C) for the Project further ensure that the Project is compatible with the General Plan as amended.

8. The General Plan comprises many goals, objectives, policies, principles, programs, standards, proposals, and actions plans. The City recognizes that the General Plan necessarily contains competing elements and policies. In evaluating a project, the City determines whether, on balance, a project is consistent with the General Plan. In reaching its decision on the Project, the City has considered all applicable General Plan policies, the extent to which competing policies apply to the Project, and has made determinations in connection with the Project that balance these competing policies.

9. The City has evaluated the extent to which the Project achieves the objectives and policies in the General Plan, including, among others, the Land Use and Transportation Element, the Estuary Policy Plan, the Open Space, Conservation and Recreation Element, the Historic Preservation Element, the Safety Element, the Housing Element, the Noise Element, the Bicycle Master Plan, the Pedestrian Master Plan, and the Scenic Highways Element. The City adopts the analysis and conclusions regarding the Project's consistency with these General Plan Elements as set forth in the EIR (Draft EIR pp. IV.A-6 - IV.A-26) and the staff reports on the Project.

10. For the reasons stated in the EIR, in the staff reports presented to the City, in these findings, and in the CEQA findings, the City finds that the balance achieved by the Project among competing General Plan policies is acceptable and that the Project complies with all performance standards in the General Plan. The Project represents a reasonable accommodation of all applicable competing policies in the General Plan. The implementation of the Project will result in the fulfillment of several important General Plan policies, including investment in an



economically distressed area, the encouragement of infill development, meeting regional fair share of housing needs, and the creation of significant new and enhanced public open space on the Oakland Estuary.

11. This City also finds that the Project is consistent with the Historic Preservation Element ("HPE") goals and policies. The Ninth Avenue Terminal (including the wharf) is a historic structure and has received an Oakland Cultural Heritage Survey rating of "A," which renders it a Potentially Designated Historic Property (PDHP). The Project as approved will ~~proposes to retain and rehabilitate the approximately 20,000~~ ~~15,000-square feet~~ ~~foot~~ ~~bulkhead~~ ~~portion~~ of the building and demolish the remaining 155,000 ~~165,000~~-square feet of the building and a portion of the wharf. The public benefits of the proposed Project, as a whole, outweigh the benefit of retaining all of the original structure. The clean up of soil contamination, the development of a vital new mixed use neighborhood, and the creation of over 30 acres of park and open space are significant public benefits. Further, the characteristics and qualities that define the Ninth Avenue Terminal, including the wharf, can be honored and acknowledged through the rehabilitation and reuse of the preserved portion of the building through a continued sense of its prominent visual importance, its Beaux-Arts style, its location on the Estuary, the recognition of its importance as an intermodal transportation complex due to the proximity of water, rail and land and the less tangible qualities of the importance of the Port's place in Oakland history and its industrial past. The conditions and requirements approved as part of the Project will further assure that the preserved portion of the Ninth Avenue Terminal will be a viable entity capable of being sustained on an economically feasible basis through a business and management plan and full funding of the historic preservation work by the project sponsor.

12. The Project would demolish a substantial portion of the Ninth Avenue Terminal and the associated wharf, which does not fulfill those policies in the HPE calling for avoiding or minimizing adverse impacts to historic properties including, Policy 3.1. The City acknowledges, however, that the HPE policies also recognize that preservation concerns must be "reasonably balanced with other concerns." (HPE, Objective 2) The HPE states that for proposals adversely affecting historic properties, the City should "weigh the public benefit in preserving the property with such factors as the public benefit in approving the proposal, the proposal's design quality, and any hardship or difficulties preservation may impose on owners or users." (HPE, p. 2-13) Moreover, the HPE does not mandate the preservation of PDHPs. Instead, the HPE states that PDHPs "warrant consideration for possible preservation." (HPE, Policy 1.2) The text accompanying Policy 3.1 states that the City "will make all reasonable efforts to avoid or minimize adverse impacts to PDHPs." The Project balances competing needs and a significant investment will be made in restoring a portion of the building and reusing it for more complementary activities. In addition, the new Shoreline Park will be required to include commemorative elements relating to the historic building and its past use.

13. The City has considered these policies and statements in the HPE, and the testimony and other evidence in the record, which reflects controversy and differences of opinion regarding the preservation of the Ninth Avenue Terminal building and wharf. The City has determined that the Project proposal for demolition of a substantial portion of the Ninth Avenue Terminal building and wharf and preservation and reuse of the bulkhead appropriately balances the concern for preservation of PDHPs and the provision of new public waterfront open space that will substantially benefit the citizens of Oakland and the region. Moreover, the EPS

Alternatives Analysis and the EPS Terminal Reuse Feasibility Analysis (more fully referenced in the CEQA Findings, Exhibit A) document that it is not financially feasible to retain the building without substantial public assistance. The City adopts the analysis and conclusion contained in the EPS reports. The City has determined that it would not be prudent, given the multitude of competing City demands, to use City funds to subsidize the retention and reuse of additional portions of the building or the entire building and wharf. As of the time of Project approval, no other entity has offered to fill the financial gap associated with the retention and reuse of the building. The City's consideration of the EPS reports, which examined a range of alternatives for preserving and reusing the building, constitutes all reasonable efforts to examine the possibility of retaining the building and confirm that there are no feasible alternatives to the Project for retaining or reusing the Ninth Avenue Terminal building and wharf.

14. In response to questions raised during the Planning Commission consideration of the Project and at the March 28, 2006 City Council hearing on the Project, three additional documents were prepared in connection with the feasibility of preserving the Terminal. First, the PFM Group reviewed the EPS reports and financial data from the project sponsors. (See the PFM Group memorandum to Dan Vanderpriem and Oakland Harbor Partners, dated June 1, 2006 and attached to the staff report). PFM found the following: (a) even adjusting cost and revenues to remove costs such as retrofitting the pier and landscaping the open area, none of the alternatives for preserving the Terminal, including the project, show a positive cash flow; (b) the amount of the annual losses of the alternatives increases with the increase in size and complexity of the alternatives; (c) the risk associated with the larger preservation alternatives are greater than those associated with the Project; (d) additional capital investment to eliminate loan debt service would reduce the Project to an infeasible rate of return; (e) the project sponsor's financial assumptions are reasonable given the long term nature of the Project and current financial conditions; and (f) the return on equity for the Project is in the lower quartile of the range of returns on equity for similar projects and the Project is a relatively high risk development.

Additionally, EPS prepared a report entitled "Subsidization of the Chelsea Piers and the Torpedo Factory Adaptive Reuse Projects" dated May 2006 (attached to the staff report). This report shows that both the Chelsea Piers and Torpedo Factory projects have required substantial public subsidies. Moreover, these projects are substantially different from the Ninth Avenue Terminal in terms of market dynamics, construction costs, economics and allowable uses. Consequently, the projects cannot feasibly serve as a model for preservation of the Terminal.

Finally, Novogradac & Company, certified public accountants, reviewed the potential impact of federal rehabilitation tax credits and federal new market tax credits on the economic feasibility of the Project in connection with preservation of the Terminal. Novogradac found that, even assuming best case conditions, the funding shortfall for the preservation alternatives ranges from \$19.6 million to \$28.9 million. Consequently, Novogradac concluded that "maintaining the Shed as is or reducing it down to the 1927 size of the building is not economically feasible with the use of federal Rehabilitation Tax Credits or New Market Tax Credits."

15. As a condition of Project approval (Condition No. 25.c.) the City will provide the opportunity for an entity to provide an alternative funding source for preservation and reuse of the Terminal. Pursuant to Condition of Approval 25.c., the City will issue a Request for

Proposals for the preservation and reuse of 40,000 to 90,000 square feet of the Terminal. The City will review the proposals and make a determination regarding an alternative option by June 20, 2007.

16. The City finds that the Project complies with Policy 3.5 of the HPE in connection with the substantial alteration and demolition of the Ninth Avenue Terminal building and wharf. The Project's proposal to preserve the bulkhead portion of the Ninth Avenue Terminal and to provide significant new public open space in the area of the demolished portions of the building is a design that equally matches the importance of the current building. The Project's design proposal for the building's site is equal in quality to the existing building, because it will restore the bulkhead portion of the building and provide well-designed public open space that will restore accessibility to, and scenic vistas of, this portion of the Oakland Estuary waterfront. The proposed Project is compatible with the character of the neighborhood in that it will fulfill the City's plan to extend the public open space around the waterfront perimeter of the site thereby enhancing the significant public benefits of the local and regional open space provided on the Project site. The proposal for public open space in this location will allow greater public accessibility to and enjoyment of the Oakland Estuary than would complete or more extensive preservation of the Ninth Avenue Terminal. Thus, the City finds that the public benefits of the Project outweigh the benefit of additional preservation of the building or the wharf.

17. None of the other buildings on the Project site are historic, as confirmed by the evidence, analysis, and conclusions contained in the EIR, or subject to the provisions of the HPE.

18. With respect to the Noise Element, the Project site is located adjacent to the I-880 freeway and areas of the site closest to the freeway could experience high noise levels during peak traffic times. Noise measurements in the Project EIR reflect both ground level and higher elevations. Some locations on the Project would be in the "Clearly Unacceptable" noise environment category in the Noise Element. The General Plan does not prohibit development in this category. The statement that development "should not be undertaken" in the "Clearly Unacceptable" noise environment category is advisory, not a mandatory prohibition. The City has weighed the policies in the Noise Element in relation to other General Plan policies and has determined that the Project appropriately balances the competing policies of the General Plan. The provision of new housing including affordable housing, the environmental remediation of the site, the provision of significant new trails and open space, and the revitalization of this blighted site on the Estuary outweigh the noise environment concerns. Oakland is a highly urban environment with significant noise sources. The noise at the Embarcadero edge of the site is typical of a highly urban environment. Residential units must meet State mandated interior noise levels, thereby protecting residents inside their homes. The Oak to Ninth Avenue Design Guidelines call for landscaping and setbacks along the Embarcadero. Given that the highest noise readings in the Draft EIR (p. iv G-11-13) are at elevated levels and not ground level and that the majority of the site and open space areas are located away from the specific high noise locations, the Project appropriately balances competing General Plan policies.

### **III. PLANNED WATERFRONT ZONING DISTRICT (PWD-4) OAK TO NINTH MIXED USE DEVELOPMENT PROJECT AND OAK TO NINTH DESIGN GUIDELINES**

19. The Zoning Code amendments for the Project include the text attached to the Ordinance of the City of Oakland Adopting the Planned Waterfront Zoning District (PWD-4) Oak to Ninth Mixed Use Development Project and a Zoning Map amendment attached to the Ordinance of the City Oakland Rezoning of the Project site from M-40 to PWD-4 and Open Space-Region Serving Park and maintaining a portion of the existing S-2/S-4 zoning. The City adopts the analysis, explanation, and conclusions contained in the EIR, staff reports, and presentations by the Project Sponsor relating to the zoning district.

20. The City finds the rezoning of the Project site to PWD-4 and Open Space Region-Serving Park and maintaining the existing S-2/S-4 zoning is consistent with the General Plan and the proposed General Plan Amendment related to the Project as discussed above. The notice required by 17.144.060 has been given.

21. The Planned Waterfront Zoning District (PWD-4) is based on regulations from the existing Oakland Zoning Code and sets forth land use regulations, development standards and other requirements. The new zoning district is a comprehensive set of regulations for the Oak to Ninth site that will ensure the future development of the site in an orderly, functional, and high quality manner that will promote the General Plan and the general purposes of the City's zoning regulations. This zoning district will apply to the 64.2 acre Oak to Ninth Avenue Mixed Use Development site, consistent with the proposed land use designations and policies under the General Plan Amendments proposed as part of the Project.

22. The rezoning and adoption of the new zoning district will promote local and regional welfare by allowing residential, commercial and open space uses to be developed on a site that is currently under underutilized, largely vacant, and contaminated. The City has determined that this site is appropriate for high density housing given its size, location, topography, and other physical attributes. The Project's significant addition to the housing stock will assist the City in satisfying local and regional housing needs to a much greater degree that would the current zoning designations which are not appropriate for housing. The Project will provide a variety of housing types, including affordable housing, making the development accessible to a range of needs in the market. The new zoning district will allow the development of significant new waterfront open space and recreation in a pedestrian and bicycle oriented mixed use development with convenient access to public transit and freeways. Commercial development included in the development will serve local residents and visitors to the site. Additionally, this development will promote the public health, safety and welfare by remediating the site, encouraging economic development in this area of the City, providing economic and job opportunities for local businesses and residents, and providing significant revenues to the City and the Redevelopment Agency as documented in the EPS Fiscal Impact Analysis.

23. The Planned Waterfront District (PWD-4) will be compatible with the surrounding area. To the west of the Project site is the Jack London District, which contains a mix of uses including residential, commercial, retail, entertainment and water-oriented uses. To the east of the Project site is the Embarcadero Cove area, which contains commercial-

recreational and water-dependent uses. The Project land uses allowed under the new zoning district are compatible with, and will serve and enhance, these areas. The Project site is separated from the neighborhoods to the north by I-880 and the rail tracks. The new open space uses on the site will serve surrounding neighborhoods, thereby creating new connections between the Project site and nearby neighborhoods. Although the Fifth Avenue Point will be surrounded by the new development, the new zoning district contains a provision requiring appropriate buffer treatments between the new development and adjacent buildings. Additionally, the new public open space areas and the new commercial development will serve the Fifth Avenue Point tenants.

24. The Planned Waterfront District (PWD-4) allows a development that will improve roadways on the Project site, improve the Embarcadero along the Project site frontage, implement traffic mitigation measures as called for in the Mitigation Monitoring and Reporting Program, and provide new views of the waterfront from roads. The development permitted under the zoning will provide adequate parking for new uses, including the open space uses, and will promote the efficient use of the new parking through the implementation of the Transportation Demand Management Plan.

25. The Planned Waterfront District (PWD-4) includes provisions for the review and regulation of signs and requires that the preliminary development plan include major landscaping features. These requirements will enhance the appearance of this new urban neighborhood. Additionally, the development permitted in the new zoning district will enhance and preserve the Oakland Estuary along the Project edge through open space, trails, shoreline improvements, and protection of the existing wetland restoration area. With its extensive system of parks, promenades, quays, and plazas, the Project will extend and enliven the Oakland waterfront making it a destination of local and regional importance.

26. The Project also includes the Oak to Ninth Avenue Mixed Use Development Design Guidelines that, in conjunction with the requirements of the Planned Waterfront District (PWD-4), will ensure the excellent design of the overall Project and its individual elements. These Guidelines include the design principles, concepts, and guidelines that will transform the site into a vibrant mixed-use neighborhood. The Design Guidelines will ensure the development of an attractive urban environment on this currently underutilized, industrial site that will allow Oakland residents and visitors to live, work, shop and recreate on the site.

27. The development permitted under the Planned Waterfront District (PWD-4) will achieve an acceptable balance between historic preservation and open space General Plan policies by allowing the preservation of 20,000 square feet of the Ninth Avenue Terminal bulkhead building and removal of the remaining Ninth Avenue Terminal shed to allow new waterfront public open space and views. The development also will achieve an acceptable balance between noise and housing and economic General Plan policies by allowing a significant new neighborhood to be developed on an underutilized, blighted, and contaminated site.

28. The requirements contained in the Mitigation Monitoring and Reporting Program and the Conditions of Approval provide further assurance that the Project will be compatible with the surrounding neighborhood, and will promote the health, safety and welfare of the citizens of Oakland.

#### **IV. DEVELOPMENT AGREEMENT**

29. The Project Sponsor has requested approval of a Development Agreement in order to regulate this large-scale development Project and to provide both the City and the Project Sponsor with assurances that the Project could be successfully and completely built out over time. The Development Agreement contains all the information required by State Law and by the Oakland Municipal Code, including all information referenced in Chapter 17.138.

30. The notice required by Chapter 17.138 has been given.

31. The Development Agreement is consistent with the City's General Plan, including the Estuary Policy Plan as amended, in accordance with the findings set forth above. The City adopts the analysis, conclusions, and findings contained in the EIR, the staff reports, and the Project Sponsor presentations in support of the Development Agreement.

32. In reviewing and approving the Development Agreement, the City has considered the factors contained in Oakland Municipal Code section 17.138.060. Specifically, the City has determined that: (a) plans for development of the Project as reflected in the comprehensive elements of the preliminary development plan are adequate; (b) all issues concerning development of the site have been adequately planned for as reflected in the EIR, the Planned Waterfront District (PWD-4), the Design Guidelines, the vesting tentative subdivision map, and the preliminary development plan; (c) traffic, parking, public service, visual, and other impacts of the Project on abutting properties and the surrounding area have been adequately reviewed in the EIR and mitigated as necessary through the Mitigation Monitoring and Reporting Program and the Conditions of Approval; (d) the new public open space and improvements to the existing open space proposed as part of the Project will provide substantial public benefits; and (e) the Project will provide substantial economic benefits to the City's general fund, to the Redevelopment Agency, and to local residents and businesses through new construction and permanent employment, new business opportunities serving the Project and its residents, and new housing opportunities; (f) the Project will provide 3,100 new housing opportunities to meet the local and regional housing need and new affordable housing opportunities on site and through the substantial tax increment generated by the Project for the Redevelopment Agency.

#### **V. PRELIMINARY DEVELOPMENT PLAN**

33. The Project Sponsor has submitted a preliminary development plan in accordance with the proposed new Planned Waterfront Zoning District (PWD-4). The preliminary development plan contains all the required information. The plans have been reviewed by the City Engineer. The required notice has been provided. The City adopts the analysis, conclusions, and findings in the EIR, staff reports, and Project Sponsor presentations regarding the preliminary development plan.

34. The City finds that the preliminary development plan is in substantial conformance with the Planned Waterfront Zoning District (PWD-4), the Open Space-Region Serving Park (OS-RSP) zoning district, the Civic Center/Design Review (S-2/S-4) zoning regulations, the Oak to Ninth Mixed Use Development Design Guidelines, the Conditions of Approval, and the Mitigation Monitoring and Reporting Program. The proposed uses, the

location of the uses, the densities and square footages, building heights, set backs, open space, landscaping, parking, and other components of the preliminary development plan comply with the applicable regulations in a manner determined appropriate by the City.

35. Two permits, a tree removal permit and a special use/condition use permit, are required for the Project and these permits are a part of the preliminary development plan approvals. Thus, the City adopts the following findings with respect to the proposed tree removal permit and the special use/conditional use permit.

#### ***TREE REMOVAL PERMIT***

36. The Project Sponsor has applied to remove the trees on the Project site. Most of the Project site is paved area and developed with commercial, industrial, and storage-related structures. Vegetation on the site is minimal. Approximately six mature trees exist on site and several mature trees exist along the Embarcadero. Ornamental trees exist along Estuary Park. The EIR does not identify any trees on the site as significant or of any significant habitat value. Trees need to be removed in order to complete the remediation, to implement infrastructure and development improvements, and to implement a cohesive, attractive landscaping plan in connection with the new development. As shown in the landscape plan submitted with the preliminary development plan, the Project will provide extensive new trees throughout the Project site, including along new public streets and open spaces.

37. In accordance with Oakland Municipal Code section 12.36.050, the City finds that removal of the trees will promote the public health and safety by removing trees that could otherwise be damaged during demolition, site preparation, site remediation, and implementation of infrastructure and development. The tree removal and replacement of trees with a planned, coordinated landscape design will ensure that public views of the water are available. Additionally, the Project includes a professional landscape plan that would be compromised by the existing trees. The Project will comply with conditions of approval that relate to tree removal and replacement.

#### ***SPECIAL USE /CONDITIONAL USE PERMIT***

38. The public park and open space areas of the site will be zoned Open Space-Region Serving Park. Certain of the Project activities proposed for the park and open space areas require a special use/conditional use permit. Through the preliminary development plan submittal, the project sponsor has applied for a special use/conditional use permit for the uses proposed for the park and open space areas which, under the new PWD-4 zoning district, may be approved as part of the preliminary development plan.

39. The Project will include four major parks (~~32,329.48~~ acres) along the waterfront: an expansion of Estuary Park for a total of 10.688.27 acres; the new Channel Park, 5.97 acres; the new South Park 2.30 acres; and the new Shoreline Park, 9.74 acres. Most of the new parks and open space areas will not be programmed, except that a bocce ball court is proposed for Channel Park, a children's play area is proposed in South Park, a dog play area in Channel Park, and a waterfront trail is proposed throughout the parks and open space, all of which require a

minor conditional use permit pursuant to Oakland Municipal Code section 17.11.060 and section 17.135.030.

40. In accordance with Oakland Municipal Code chapter 17.135, the Park and Recreation Advisory Committee held a noticed, public hearing on February 8, 2006 to consider the Oak to Ninth Project, including the conditional use permit request. The notice required by Oakland Municipal Code section 17.135.030 has been given. The Director of City Planning will make a determination with respect to the minor conditional use permit.

41. The City has determined that the bocce ball court proposed for Channel Park, the children's play proposed for South Park, the dog play area in Channel Park, the waterfront trail, and the proposed parks and open space plan in general meet the general use permit criteria contained in Oakland Municipal Code section 17.134.050 in that:

a. The location, size, design, and operating characteristics of the proposed open space is compatible with abutting properties and surrounding neighborhoods based on the following: (1) the ~~23.120-7~~ acres of new open space would equate to over 4.1 acres of new local-serving parkland per 1,000 residents on the Project site, which exceeds the City's level of service standard of 4.0 acres. (General Plan Policy REC-3.1), thereby ensuring that the Project provides adequate open space to serve the Project without an impact on surrounding properties or neighborhoods; (2) the series of connected parks and open space proposed by the Project including the bocce ball courts, children's play area, and the dog play area, aided by the Bay Trail and other inter-neighborhood connectivity, will serve the new residents in the Project, serve and enhance the livability of nearby residential and mixed-use neighborhoods in the downtown, the San Antonio district, Lake Merritt and Jack London Square areas, and serve other visitors from Oakland ; (3) the parks and waterfront open spaces will provide a variety of recreational opportunities, including passive recreation, a playground, a dog play area, bocce ball courts, picnic areas, and gardens for project residents, nearby residents and the public at large; (4) the project will create new waterfront views and access where none currently exist and the activities proposed in the parks and open space will encourage use of these areas by residents from the surrounding neighborhoods; (5) the EIR discusses and proposes mitigation measures, which have been adopted by the City, to mitigate any adverse impacts of the Project on surrounding properties and neighborhoods.

b. The location, design and site planning of the proposed open space will be as attractive as the nature of the use and its location and setting warrant based on the following: (1) a mix of active and passive parks and open spaces would cover approximately ~~50%~~46% of the Project site along the waterfront edge, thereby highlighting the location of the site on the Oakland Estuary; (2) the Project Sponsor will be required to prepare and submit to the City a detailed landscape plan indicating specific type, size, and location of vegetation and details regarding the uses in the parks and open space as part of the final development plan approval; and (3) the Project will create new waterfront views and access where none currently exist and the proposed bocce ball court, children's playground, dog play area, and waterfront trail will attract users to these newly accessible views and open space areas.

c. The proposed project will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the



community or region based on the following: (1) the project would provide over ~~2320~~ acres of new, publicly accessible open space along the Oakland Estuary shoreline for a total of over ~~3229~~ acres of park and open space area on the site; (2) this new and enhanced waterfront open space will serve Project residents, residents from nearby neighborhoods, Oakland residents and will draw visitors from the region; (3) the bocce ball court, dog play area, waterfront trail, and children's playground will serve a broad range of users from the Project and the surrounding community by providing activities for adults and children that will enhance the recreational experience for those living on and visiting the site; and (4) the Project will complete a segment of the Bay Trail and connect to other areas along the Estuary, thereby forwarding the goal of OSCAR Policy OS-7.2 – to create an unbroken trail along the water's edge between Jack London Square and Martin Luther King, Jr. Regional Shoreline.

d. The proposal will conform to all applicable design review criteria because the Project Sponsor will be required to prepare and submit to the City a detailed landscape plan indicating specific type, size, and location of vegetation as part of the final development plan for each phase of development and these plans will be evaluated for compatibility with the adopted Design Guidelines for the Oak to Ninth Avenue Mixed Use Development Project.

e. The proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map that has been adopted by the City Council based on the following: (1) the findings regarding the Project's consistency with the General Plan set forth above; (2) the Project will exceed the General Plan standards for new parkland on the Project site; and 3) the Project will complete a segment of the Bay Trail and connect to other areas along the estuary, which forwards the goal of OSCAR Policy OS-7.2 – to create an unbroken trail along the water's edge between Jack London Square and Martin Luther King, Jr. Regional Shoreline.

## **VI. REDEVELOPMENT PLAN AMENDMENTS**

42. The Project is located in two Redevelopment Plan areas, the Central District Urban Renewal Plan area and the Central City East Redevelopment Plan area ( jointly referred to as "the Redevelopment Plans"). The City has previously documented the physical, economic and other blight in the Project area in connection with adoption of the Redevelopment Plans.

43. The Redevelopment Plans do not mandate a specific development program for the Project Area, deferring instead to the land uses allowed by the Oakland General Plan and Zoning Code. The Project proposes General Plan and Zoning Code amendments. In order to ensure that the Redevelopment Plans are consistent with the General Plan and Zoning Code as amended for the Project, the land use designations for the Oak to Ninth Project site in the Redevelopment Plans must be amended. The proposed amendments to the Redevelopment Plans are discussed in the staff reports presented to the City and the City adopts the analysis, conclusions and findings contained in these staff reports.

44. The amendments to the Redevelopment Plans have been submitted to the Planning Commission pursuant to Health and Safety Code section 33453. The Planning Commission has independently reviewed and considered the proposed amendments and has

recommended that the City Council and the Redevelopment Agency amend the Redevelopment Plans as proposed. The notice required by section 17.144.060 has been given.

45. The amendments to the Redevelopment Plans is desirable because they allow for creation of a residential, commercial, open space mixed use community that will eliminate the economic and physical blight on the Project site. The amendments will allow a development that will provide substantial economic benefits to the Redevelopment Agency and the City as documented in the EPS Fiscal Impact Analysis. Additionally, the Project will strengthen the economic base of the community through construction and permanent jobs, increased business opportunities, and increased opportunities for home ownership. In these ways, the Project and the proposed amendments to the Redevelopment Plans will foster redevelopment goals and objectives in this area.

46. The Project will also assist in fulfilling the affordable housing goals of the Central City East Redevelopment Plan. The Project includes approximately ~~465~~420 units of affordable housing in accordance with the terms of the affordable housing provision of the Development Agreement. Additionally, as documented in the EPS Fiscal Impact Analysis, the Project will generate substantial tax increment that will be used by the Agency for affordable housing.

## **VII. VESTING TENTATIVE SUBDIVISION MAP**

47. Pursuant to Title 16 of the Oakland Municipal Code, the City finds that the Vesting Tentative Map contains all of the information, and complies with the design and improvement standards, required by the Title 16.

48. Pursuant to section 16.08.030 of the Oakland Municipal Code, the City finds:

a. The Vesting Tentative Map, and the design and improvement of the proposed subdivision, is consistent with the goals and policies of the General Plan and the General Plan Amendments proposed as part of the Project as set forth above. The Vesting Tentative Map and the Project are discussed in the staff reports presented to the City and these reports include discussions of the Project's compliance with the General Plan. The City adopts the conclusions, analysis and explanations contained in the staff reports.

b. As demonstrated in the EIR prepared for the Project and in the staff reports related to the Project, the Project site is physically suitable for development. The Project site is located in a developed area, is currently used for industrial uses, and is served by roads and other infrastructure. No unusual physical conditions would prevent the development of the site.

c. The Project site is approximately 64.2 acres, which is suitable to accommodate the Project's proposed density and there are no physical conditions on the site that would render the site unsuitable for the proposed density.

d. The Project's design and proposed improvements will not cause substantial environmental damage or injure fish, wildlife, or their habitat given the imposition of the mitigation measures contained in the Mitigation Monitoring and Reporting Program.

e. The Project's design and type of improvements will provide residential, commercial, and open space uses with new roads and other appropriate infrastructure by redeveloping an underused industrial site, remediating environmental hazards on the site, and protecting the shoreline and the existing wetlands restoration on the site. In this way, the Project will improve the public health and safety. Implementation of the mitigation measures contained in the Mitigation Monitoring and Reporting Program will ensure that no serious public health or safety problems will occur from implementation of the Project.

f. Approval of the subdivision will not conflict with any easements acquired by the public at large for access through or use of the property within the proposed subdivision.

g. The design of the subdivision does not prevent feasible future passive or natural heating or cooling opportunities in the subdivision.

h. The Project will be served by the EBMUD's East Bayshore Recycled Water Project and recycled water is expected to be delivered to the Project area by 2009. If the recycled water becomes available to the Project site, the Project will comply with the City's recycled water ordinance.

49. Pursuant to Water Code section 10911(c), the City finds, based on the water supply assessment provided by EBMUD, including the EBMUD's Urban Water Management Plan and information in the entire record, that projected water supplies (including the supplemental water supply and drought management described by EBMUD in its water supply assessment) will be sufficient to satisfy the demand of the Project. The water supply assessment prepared for the Project meets the requirements of Government Code section 66473.7.

50. The Vesting Tentative Map meets all the applicable requirements of Oakland Municipal Code Chapter 16.16 and 16.20 in a manner determined appropriate by the City.