

CITY OF OAKLAND
AGENDA REPORT

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

2006 JUL 18 5 PM 6:16

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development
DATE: July 18, 2006

RE: OAK TO NINTH MIXED USE DEVELOPMENT PROJECT

Joint City and Agency Action on (1) Adoption of an Agency Resolution Authorizing a Cooperation Agreement with the Oak to Ninth Community Benefits Coalition for the Oak to Ninth Project, and (2) Final Passage of (a) an Ordinance Adopting the Second Amendment to the Central City East Redevelopment Plan to revise the land use map; (b) an Ordinance Adopting an Amendment to the Central District Urban Renewal Plan to revise the land use map; (c) an Ordinance Adopting the Planned Waterfront Zoning District-4 (PWD-4) for the Oak to Ninth Mixed Use Development Project; (d) 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-4 (PWD-4) and Open Space-Regional Service Park (OS-RSP), and from Civic Center/Design Review Combining Zone (S-2/S-4) to Open Space-Regional Service Park (OS-RSP) with the exception of the Jack London Aquatic Center which will remain S-2/S-4; (e) an Ordinance Approving a Development Agreement between the City of Oakland, the Redevelopment Agency of the City of Oakland, and Oakland Harbor Partners, LLC, and Authorizing the City Administrator to Execute the Development Agreement on Behalf of the City for the Oak to Ninth Mixed Use Project located on approximately 64 acres bounded by Embarcadero Road, Fallon Street, Tenth Avenue, and the Estuary.

SUMMARY

At the June 20, 2006 Joint City Council/Redevelopment Agency public hearing for the Oak to Ninth Mixed Use Development project, the City Council denied the appeal of Arthur D. Levy, sustained the March 15, 2006 Planning Commission actions, approved the seven Resolutions for the project, and adopted the five Ordinances and completed the first reading of the Ordinances. The City Council made revisions to the project which requires changes to several of the approval documents. These changes, the documents that are amended and the final proposed language are discussed in this staff report.

Item _____
City Council
July 18, 2006

CITY COUNCIL CHANGES TO THE PROJECT AND APPROVAL DOCUMENTS

Amendments made by Councilmember Pat Kernighan

1. Ninth Avenue Terminal

To ensure that all options for re-use of the Ninth Avenue Terminal shed are considered, it was recommended that the City solicit adaptive reuse proposals through the Request for Proposals (RFP) process. The RFP process would begin in September 2006 and will be completed by June 2007. The following actions have been taken:

Condition of Approval 25.c. has been added to include an RFP process for the Ninth Avenue Terminal (see Attachment A, Conditions of Approval)

Section 4. of the Development Agreement

2. Cooperation Agreement between the City and the Oak to Ninth Community Benefits Coalition

A motion was approved for the Oakland Redevelopment Agency to enter into a Cooperation Agreement with the Oak to Ninth Community Benefits Coalition to provide for the development of 465 units of affordable housing as part of the Oak to Ninth Project. The Coalition supports development of the Oak to Ninth Project because it will provide substantial affordable housing in the City of Oakland, as well as other important community benefits. The Coalition and the Agency have agreed that it is in their mutual interests to resolve any concerns of the Coalition about the Oak to Ninth Project through cooperation and settlement, rather than through litigation.

As further specified in the Cooperation Agreement and Development Agreement, Exhibit L, the Agency shall ensure that all affordable housing units be provided at an Affordable Rent to households earning from 30 percent to 60 percent of Area Median Income for at least 55 years. In addition, the Agency shall ensure that not more than 25 percent of all affordable housing units are provided exclusively as senior housing. The Agency shall also ensure that no fewer than 30 percent of all affordable housing units are three-bedroom units, and no fewer than 20 percent of all the affordable housing units are two-bedroom units.

The Resolution and Cooperation Agreement with the Oak to Ninth Community Benefits Coalition is included with this staff report.

Amendments made by Councilmember Jane Brunner

3. Estuary Park and Parcel N

A motion was made to remove the proposed residential development behind Estuary Park and to relocate the 300 units proposed for Parcel N to other parcels within the development. The 300 units will be transferred to Parcels A through M and will be situated within the Central City East

Redevelopment Plan Area. Fifteen percent of the 300 units (45 units) will be designated for affordable housing to comply with the affordable housing obligations. Estuary Park will be expanded to the Embarcadero adding another 2.41 acres to the park and Parcel N will be rezoned to Open Space-Regional Serving Park. The developer will be responsible for site remediation on the existing Estuary Park and the expanded Estuary Park on Parcel N in the same manner as the rest of the open space in the project. Except for improvements that are required as Mitigation Measures under the Final EIR, the developer shall not be responsible for the construction of infrastructure improvements on or adjacent to Estuary Park or Parcel N. These improvements will be completed by the City with Measure DD funds upon the completion of the remediation.

The following documents have been amended to reflect these changes:

- **Estuary Policy Plan land use map** is amended to show all land northwest of the Lake Merritt Channel (Estuary Park) designated “Park” (see Attachment B)
- **Central District Urban Renewal Plan land use map** is amended to show all land on the Estuary Park “peninsula” up to Embarcadero Road designated “Park” (see Attachment C)
- The **zoning map** is amended to show the all land northwest of the Lake Merritt Channel designated OS-RSP, Open Space-Region Serving Park for Estuary Park and the expansion of Estuary Park. The existing S-2/S-4, Civic Center/Design Review Combining Zone designated to the Jack London Aquatic Center will remain. (see Attachment D)
- **Planned Waterfront Zoning District-4 (PWD-4)** is amended to reflect the removal of 300 residential units on Parcel N (changes discussed below with other changes to PWD-4)
- The **Vesting Tentative Subdivision Map** will be revised to show the changes made in the motions. As per Condition of Approval No. 4, the revised plans need to be conformed to the Council’s changes and submitted to the City within 120 days of project approval.
- The **Preliminary Development Plan** will be revised to show the changes made in the motions. As per Condition of Approval No. 4, the revised plans need to be conformed to the Council’s changes and submitted to the City within 120 days of project approval.
- The **Development Agreement and Exhibits** to the Development Agreement (see Attachment E)

4. Temporary Bay Trail

Rather than wait until after soil remediation and later phases of development were completed, the Council directed the developer to install a temporary bay trail alignment in areas where the developer has access approved by appropriate agencies earlier in the project. The bay trail segment proposed for Phases II and III will be installed as a temporary trail during Phase I. The following action has been taken:

The developer will install a temporary Bay Trail where it can reasonably be constructed before soil remediation in development Phases II, III, and IV. See new Condition of Approval No. 40a. (Attachment A) and Exhibit N of the Development Agreement.

5. Parking and Transportation Demand Plan (TDM)

A draft TDM plan has been prepared for the development project, “Oak to Ninth Project, transportation Demand Management Plan” and is included as Appendix A in the Final EIR. Condition of Approval No. 22 requires that the developer prepare a final TDM plan based on the recommendations in the draft TDM plan. The Council made several motions to ensure that the Final TDM plan be approved by the City Council and that the final TDM plan states that the parking on streets next to the parks, excluding the parking garages, shall permit two to four hours of free parking and that secure bicycle parking is included for residents (Councilmember Nadel’s motion). The following action has been taken:

Condition of Approval No. 22 has been amended to include the changes stated above. See Attachment A, Conditions of Approval, for the amended wording.

6. Changes to Planned Waterfront Zoning District-4

The Planned Waterfront Zoning District-4 sets forth the land uses, land use regulations, and property development standards for development within the Oak to Ninth project area. The removal of residential development from Parcel N requires changes to the density table and the height limit table in the zoning district. The transfer of these units will not require increases in the size of the footprints of the buildings proposed in the site plan. Parcels B, C, D and H will be able to absorb the additional units by increasing the maximum heights of the buildings on these parcels from 86 feet to 120 feet as discussed in the DEIR, pages III-8 to III-10. The transfer of these units to the remaining areas of the project were discussed in the EIR Addendum attached to the June 20, 2006 City Council Staff Report.

Other changes recommended include clarification of the design review process and ensuring that design review for the master sign plan be appealable to the City Council. The following changes made at the June 20, 2006 public hearing will be incorporated into the PWD-4 zoning text.

Design Review – Section 17. .070

The Director of City Planning shall refer the application to the Planning Commission.
The Planning Commission’s decision may be appealed to the City Council.

Maximum Residential Density – Section 17. .110

The Maximum Residential Density table is amended as follows:

- Net Developable Acres of Site Area – Changed from 25.28 to 22.18 acres
- Average Residential Density changed from 122 du/net acre to 140 du/net acre
- 300 dwelling units removed from Parcel N
- The required amount of affordable housing units for Parcels F and G increased from 420 to 465.

Maximum Residential Density

Density	Gross Acres	Net Developable Acres
Site Area	63.82	<u>22.18</u> 25.28 *
Number of Residential Units	3,100	3,100
Average Residential Density	50 du/gross acre	<u>140</u> 122 du/net acre

* net developable acres exclude 9.18 acres of roads

Development Parcels or Areas (Revised)

	A	B	C	D	E	F*	G*	H	J	K	L	M	N	Total
Net Acres	2.74	1.53	1.48	1.46	1.20	1.49	2.72	2.08	1.84	2.23	1.45	2.65	2.41	25.28
<u>Net Acres (revised)</u>	<u>2.38</u>	<u>1.53</u>	<u>1.48</u>	<u>1.46</u>	<u>1.20</u>	<u>1.75</u>	<u>2.72</u>	2.08	1.84	<u>1.69</u>	<u>1.45</u>	<u>2.60</u>	<u>0</u>	<u>22.18</u>
No. D.U.	365	160	160	160	100	160	280	350	295	300	160	310	300	3,100
<u>No. D.U. (revised)</u>	<u>407</u>	<u>175</u>	<u>175</u>	<u>175</u>	<u>131</u>	<u>165</u>	<u>300</u>	<u>375</u>	<u>339</u>	<u>322</u>	<u>146</u>	<u>390</u>	<u>0</u>	<u>3,100</u>
D.U./Net Acre	137	105	108	110	72	110	103	161	159	139	99	126	124	122
<u>D.U./Net Acre (revised)</u>	<u>171</u>	<u>114</u>	<u>118</u>	<u>120</u>	<u>108</u>	<u>94</u>	<u>110</u>	<u>180</u>	<u>184</u>	<u>190</u>	<u>101</u>	<u>292</u>	<u>0</u>	<u>140</u>

* These two parcels are designated for ~~465~~420 units of affordable housing. Refer to the Conditions of Approval for the project and the Development Agreement, Exhibit L, for the details of the affordable housing obligations.

Building Height – Section 17. .130

The Height Limit table is amended as follows:
Parcel N – remove 86 foot height limit

Master Sign Plan – Section 17. .190

Master Sign Plan. A master sign plan shall be submitted with each Final Development Plan to be approved by the Planning Commission~~Planning Director~~. The decision of the Planning Commission may be appealed to the City Council.

7. Changes to the Site Plan – Parcel M

The Preliminary Development Plan is being amended to conform to the Council-approved changes to Parcel M. To maximize views through the site from the Embarcadero, it was recommended that the northwest corner of Parcel M be pulled back to enable an expanded view of the Estuary.

The site plan is being amended to reflect this change. At the time of approval of the Final Development Plan, the developer may request to replace the loss of square footage at the southern boundary or southwest corner of Parcel M.

Amendments made by Councilmember Nancy Nadel

8. City's Integrated Pest Management Program

Compliance with the City's Integrated Pest Management Program has been added to the Development Agreement, Exhibit F, Park and Open Space Maintenance Standards.

9. Transportation Demand Management Plan – Secure Bicycle Parking for Residents

See No. 5 above regarding amendments to Condition of Approval No. 22.

The Mitigation Monitoring and Reporting Program is revised with the following amendment to Mitigation Measure C.7h (p. 24 of the MMRP):

C.7h: Provide secure, weather-protected bicycle parking for employees and residents.

10. Changes to the Development Agreement

Changes to the Development Agreement were proposed by Councilmember Brunner (various changes), proposed by Councilmember Nadel (CSD Board shall include a representative of the City), recommended in the staff report (i.e., hazardous materials), and requested by the developer

at the public hearing. The Development Agreement has been amended to reflect the approved changes.

Attachment E is a revised version of the Development Agreement. This redlined version shows only the changes that were approved at the June 20, 2006 Council meeting. The **Exhibits** to the Development Agreement are reprinted with the Council-approved revisions.

Revisions to the Exhibits include the following:

Exhibit C – Phasing Schedule

This exhibit is revised to show all changes associated with removal of development from Parcel N, redistribution of the 300 units, remediation work, on-site and off-site improvements, and the installation of the temporary Bay Trail. Estuary Park is identified as Phase 1A.

Exhibit C-1 – Phasing Plan

This exhibit graphically shows the project being completed in four (4) phases rather than five (5), including Estuary Park as Phase 1A.

Exhibit F – Park and Open Space Maintenance Standards

Language has been added to the standards that requires open space maintenance to be in compliance with the City’s Integrated Pest Management Program.

Exhibit H – Preliminary Development Plan Site Plan

Revised to show development on Parcel N eliminated and Estuary Park expanded.

Exhibit J – Local Hiring and Construction Job Training Benefits

Revise with the following changes:

Section 1.h.: City staff shall present a report on Project compliance with this requirement to the City Council ~~annually~~ every 5 years during the term of the Agreement.

Section 1.a. (ii) [This change was inadvertently omitted by staff from the document before the City Council on June 20, 2006]: “Qualified Oakland Residents” are Oakland residents that (a) have not worked in the construction trades within the last five (5) years and have not completed an apprenticeship program; or (b) have worked in the construction trades within the last five (5) years but have not completed more than twenty five percent (25%) of an apprenticeship program.

Exhibit L – Affordable Housing

See Revised Exhibit L.

Exhibit M – Conditions of Approval and Mitigation Measures Applicable to Whole Project

11. Other Changes

EXHIBIT A – CEQA Findings and Statement of Overriding Considerations – minor changes have been redlined in order to conform the findings to the final action taken by the City Council (full document attached).

EXHIBIT B – Mitigation Monitoring and Reporting Program – no changes except those previously presented in this report under No. 9 – secured bicycle parking for residents (only changed pages attached).

EXHIBIT C – Conditions of Approval – no changes except those previously presented in this report under No. 1 (Ninth Avenue Terminal Building RFP) and No. 5 – final Transportation Demand Management Plan requiring approval by the City Council and street parking allowances (only changed pages attached).

EXHIBIT D – General Findings related to the Approval of the Oak to Ninth Mixed Use Development Project – minor changes have been redlined in order to conform the findings to the final action taken by the City Council (full document attached).

Final revisions to Development Agreement Exhibit D (Public Open Space Acquisition/Hazardous Materials and Exhibit N (Construction of Temporary Bay Trail, consistent with the City Council's June 20, 2006 direction, will likely be included in a supplemental staff report next week.

RECOMMENDATIONS AND RATIONALE

Staff recommends (1) approval of the Resolution approving the Cooperation Agreement, (2) Final Passage of the Ordinances listed below, (3) Approval of the revisions to the Conditions of Approval (Exhibit C), and (4) Approval of the revisions to the Mitigation Monitoring and Reporting Program (Exhibit B) for the Oak to Ninth Mixed Use Development Project.

ACTIONS REQUESTED BY THE CITY COUNCIL

1. Approve the Resolution authorizing a Cooperation Agreement with the Oak to Ninth Community Benefits Coalition for the Oak to Ninth Project

2. Final Passage of the Ordinance amending the Adopting the Second Amendment to the Central City East Redevelopment Plan to Revise Land Use Designations for the Oak to Ninth Project Site
3. Final Passage of the Ordinance Adopting an Amendment to the Central District Urban Renewal Plan to Revise Land Use Designations for the Oak to Ninth Project Site
4. Final Passage of the Ordinance Adopting the Planned Waterfront Zoning District-4 (PWD-4) for the Oak to Ninth Mixed Use Development Project
5. Final Passage of the 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-Regional Serving Park (OS-RSP) with the Exception of the Jack London Aquatic Center which will Remain S-2/S-4
6. Final Passage of the Ordinance Approving a Development Agreement between the City of Oakland, the Redevelopment Agency of the City of Oakland, and Oakland Harbor Partners, LLC, and Authorizing the City Administrator to Execute the Development Agreement on Behalf of the City

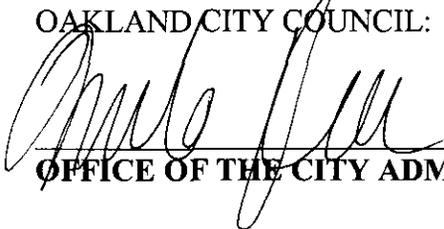
Respectfully submitted,



CLAUDIA CAPPIO
Director of Development, Building
Services, and the Oakland Army Base
Reuse Authority

Prepared by:
Margaret Stanzione, Major Projects
CEDA-Planning & Zoning

APPROVED AND FORWARDED TO THE
OAKLAND CITY COUNCIL:


OFFICE OF THE CITY ADMINISTRATOR

ATTACHMENTS

- A. Changes to Conditions of Approval (Exhibit C)
- B. Revised *Estuary Policy Plan* Land Use Map
- C. Revised Central District Urban Renewal Plan Land Use Map
- D. Revised Zoning Map
- E. Revised Development Agreement and only Exhibits that have been revised (C, C-1, E, F, G, H, I, J, L, M, N)

ATTACHMENT A

Changes Made to EXHIBIT C to All Approval Documents Conditions of Approval

1. New Condition of Approval 25.c. Relating to the RFP for the Ninth Avenue Terminal

c. Notwithstanding that the City has fully established in the record that preserving more of the Ninth Avenue Terminal Building is not economically feasible based on the whole of the financial obligations for the project and on the administrative record, the City shall institute an independent process to ascertain whether there are alternative funding sources, whether there is an entity interested in taking a greater financial risk than has been deemed acceptable given standard market conditions and rates of return and whether factors other than economic feasibility can be combined to provide for another set of uses for the preserved portion of the building. This process is in full recognition of the fact that the significant and unavoidable impacts of demolishing a substantial portion of the Ninth Avenue Terminal Building cannot be mitigated to a less than significant level and that the City is not in a position to subsidize the operation, maintenance or rehabilitation of this structure given current capital project needs and current approved budgets for Redevelopment and other funding sources.

The process shall include the following major steps and timeframes:

1) By September 15, 2006 the City shall issue a Request for Proposals soliciting projects, uses and funding sources for the preservation of the Ninth Avenue Terminal building in an amount greater than 40,000 square feet and no more than 90,000 square feet. The RFP shall indicate that uses must be Tidelands Trust consistent, that the building shall be preserved and rehabilitated consistent with the Secretary of Interior Standards, and that the City does not have the financial capacity to contribute to this effort.

2) Proposals shall be received by February 15, 2007, and reviewed and a report prepared for the City Council's consideration of the options available based on specific criteria, including trust consistent purposes, timing of implementation, funding sources, financial capacity, etc.

3) City council shall make a final determination regarding any option for the preservation of the Ninth Avenue Terminal building by June 30, 2007.

In the event the RFP does not result in the alternative re-use of a 40,000 to 90,000 square foot portion of the Terminal Shed building, the developer shall rehabilitate a 20,000 (rather than 15,000 originally proposed) square foot portion of the Terminal Shed building and the \$500,000 developer contribution to the general City-wide historic preservation efforts shall be dedicated to off-set the costs associated with the preservation of the additional 5,000 square feet.

2. New Condition of Approval No. 40a. Relating to Temporary Bay Trail Alignment

Please refer to Exhibit N of the Development Agreement

3. Revised Condition of Approval No. 22 Relating to the Transportation Demand Management Plan

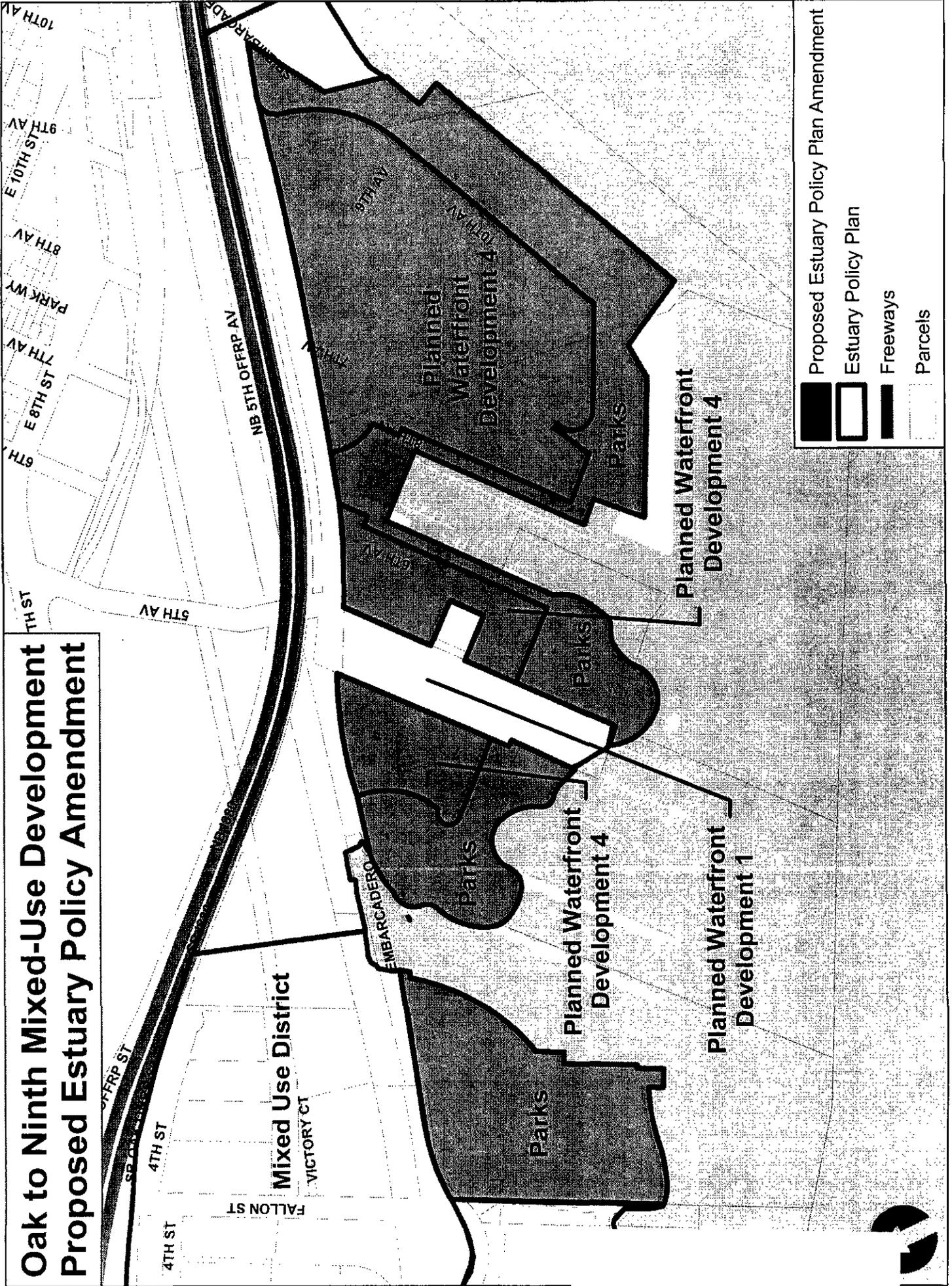
Transportation Demand Management

22. The Project Applicant shall prepare a transportation demand management plan, following the recommendations included in the report entitled "Oak to Ninth Project, Transportation Demand Management Plan" by Nelson/Nygaard, dated January 2005, as well as the applicable mitigation measures set forth in the EIR (MM B.4.a, B.4.b, C.7.a, C.7.b, C.7.c, C.7.d, C.7.e., C.7.f, C.7.g, C.7.h, C.7.i). The plan shall include a written commitment from AC Transit concerning bus service to the site and a shuttle operations plan serving the project area. An implementation schedule shall be included in the plan, including a specific commitment of financial participation for peak hour service, routing, schedule and phased implementation according to the threshold established for the issuance of occupancy permits for the transportation improvements phasing plan set forth in Condition of Approval No.18. ~~This plan shall be reviewed and approved by the Development Director.~~ The shuttle service shall become operative within six months of the occupancy of the 1,000th unit. Thereafter, the implementation and service increase required for the shuttle shall be in accordance with the approved schedule. At the Project Applicant's discretion and with the approval of the City, the shuttle program may be implemented through a provider such as AC Transit and may be coordinated with the service commitment required for the Jack London Square Development Project. In these events, the Project Applicant shall execute agreements with such providers or partners as part of the transportation demand management plan.

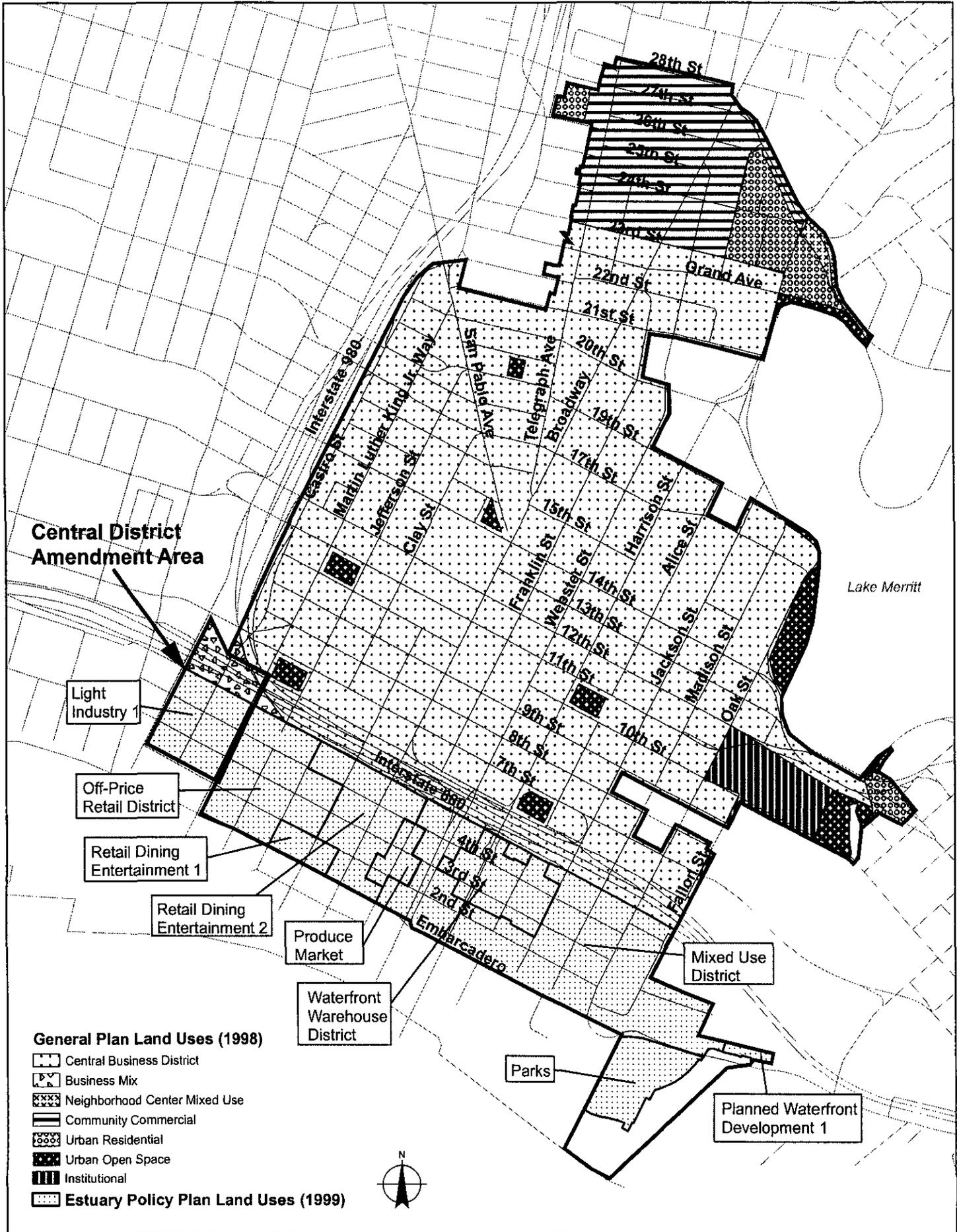
The final TDM plan shall specify that the management of on-street public parking shall be through time limits rather than charging for parking. The plan shall also include secure bicycle parking for residents.

The final TDM plan shall be reviewed by the Planning Commission and approved by the City Council. Each Final Development Plan submitted for individual development projects or phases shall demonstrate compliance with the approved TDM plan.

Oak to Ninth Mixed-Use Development Proposed Estuary Policy Amendment



**Central District Urban Renewal Plan
Exhibit 1
Land Use Plan Map**



**Central District
Amendment Area**

Light Industry 1

Off-Price
Retail District

Retail Dining
Entertainment 1

Retail Dining
Entertainment 2

Produce
Market

Waterfront
Warehouse
District

Parks

Mixed Use
District

Planned Waterfront
Development 1

General Plan Land Uses (1998)

-  Central Business District
-  Business Mix
-  Neighborhood Center Mixed Use
-  Community Commercial
-  Urban Residential
-  Urban Open Space
-  Institutional
-  Estuary Policy Plan Land Uses (1999)



Oak to Ninth Mixed-Use Development Proposed Zoning Change

