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Oakland City Attorney's Office

OFFICE OF THE CITY CLERK  
2008 MAR 20 PM 2:38

**OAKLAND CITY COUNCIL**

Resolution No. 81180 C.M.S.

Introduced by Councilmember \_\_\_\_\_

**RESOLUTION DENYING THE APPEAL AND UPHOLDING THE CITY PLANNING COMMISSION'S CERTIFICATION OF THE ENVIRONMENTAL IMPACT REPORT FOR THE CITY OF OAKLAND TRUST FOR CLEAN WATER, SAFE PARKS BOND MEASURE (MEASURE DD) IMPLEMENTATION PROJECT (FOR CASE NUMBER ER06-0017)**

**WHEREAS,** the City of Oakland approved in June 2002 the \$198,250,000 Oakland Trust for Clean Water, Safe Parks bond measure (Measure DD) that authorized funding for physical improvements to existing parks; acquisition of land for new parks; development of new parks and recreation facilities; clean water measures; restoration and rehabilitation of recreation buildings; and implementation of creek and waterway protection and restoration activities; and

**WHEREAS,** the potential environmental impacts that could result from implementation of Measure DD activities, ways in which such effects might feasibly be mitigated, and a reasonable range of alternatives to the project which reduce or avoid adverse effects, were identified in a Draft Environmental Impact Report (EIR) prepared pursuant to the California Environmental Quality Act (CEQA); and

**WHEREAS,** the Draft EIR was circulated in July 2007 to interested parties for an extended public review comment period; and

**WHEREAS,** the Oakland City Planning Commission held a public hearing on September 5, 2007 to receive public testimony on the Draft EIR; and

**WHEREAS,** a Final Environmental Impact Report (FEIR) that responds to comments received on the Draft EIR and clarifies information contained in the Draft EIR was circulated to interested parties in January 2008; and

**WHEREAS**, the Oakland City Planning Commission held a public hearing on February 13, 2008 to consider certification of the EIR, and after receiving public testimony, certified the EIR; and

**WHEREAS**, on February 25, 2008 an appeal of the City Planning Commission's certification of the EIR and a statement setting forth the basis for the appeal was received; and

**WHEREAS**, the City Council has independently reviewed the EIR and the administrative record; and

**WHEREAS**, the City Council hereby independently adopts and affirms as its own findings and determinations (i) the Planning Commission as set forth in the Planning Commission's staff report of February 13, 2008, attached as Exhibit A; (ii) the April 1, 2008 City Council Agenda Report (attached as Exhibit B); and (iii) in addition hereby finds based on the FEIR and all other evidence in the administrative record that (1) the FEIR has been completed in compliance with CEQA; (2) the FEIR was presented to the City Council as the decision-making body of the City as Lead Agency and that the City Council reviewed and considered the information contained in the FEIR prior to approving the project; and (3) the FEIR reflects the City's independent judgment and analysis; and

**WHEREAS**, after giving due notice to the Appellants and all interested parties, the Appeal came before the City Council for public hearing on April 1, 2008; and

**WHEREAS**, the Appellants and all interested parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

**WHEREAS**, the public hearing on the Appeal was closed by the City Council on April 1, 2008;

**Now, Therefore, Be It**

**RESOLVED**, That, the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the EIR that is the subject of this Appeal, the Planning Commission's decision, and the Appeal, hereby independently finds and determines that the Appellant has **not** shown, by reliance on evidence already contained in the record before the City Planning Commission and City Planning Commission decision on February 13, 2008 was made in error, that there was an abuse of discretion by the Planning Commission or that the Commission's decision was not supported by substantial evidence in the record based on the February 13, 2008 Staff Report to the City Planning Commission (attached as Exhibit "A") and the April 1, 2008 City Council Agenda Report (attached as Exhibit "B") hereby incorporated by referenced as if fully set forth herein. Accordingly, the Appeal is denied, the Planning Commission's certification is upheld, each of which is hereby separately and independently adopted by this Council in full; and be it

**FURTHER RESOLVED**, That, in addition, the City Council, based on an independent review of the FEIR and the administrative record as a whole, finds and determines that FEIR and this Resolution comply with the California Environmental Quality Act (CEQA) of 1970, as prescribed by the Secretary of Resources, and the City of Oakland's environmental review requirements, have been satisfied; and be it

**FURTHER RESOLVED**, That the record before this Council relating to this item includes, without limitation, the following:

- a. The notice of Appeal and all accompanying statements and materials.
- b. The FEIR and all documents referenced in or relied upon by the FEIR.
- c. All information (including written evidence and testimony) provided by City staff to the Planning Commission relating to the FEIR, the approvals, and the Project.
- d. All information (including written evidence and testimony) presented to the Planning Commission by the environmental consultant and subconsultants who prepared the FEIR or incorporated into reports presented to the Planning Commission.
- e. All information (including written evidence and testimony) presented to the City from other public agencies relating to the Measure DD Project or the FEIR.
- f. All final applications, letters, testimony and presentations presented by the project sponsor and its consultants to the City in connection with the Project.
- g. All final information (including written evidence and testimony) presented at any City public hearing or City workshop related to the Project and the FEIR.
- h. For documentary and information purposes, all City-adopted land use plans and ordinances, including without limitation general plans, specific plans and ordinances, together with environmental review documents, findings, mitigation monitoring programs and other documentation relevant to planned growth in the area.
- i. The draft Mitigation Monitoring and Reporting Program (attached to Planning Commission staff report, February 13, 2008) for the Project, which will be finalized and adopted in connection with project approvals in accordance with CEQA.
- j. All other documents composing the record pursuant to Public Resources Code section 21167.6(e); and be it

**FURTHER RESOLVED:** That, the custodians and locations of the documents or other materials that constitute the record of proceedings upon which the City Council's decision is based are respectively: (a) Community and Economic Development Agency, Planning Department, 250 Frank H. Ogawa Plaza, 3<sup>rd</sup> Floor, Suite 3315, Oakland, CA; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1<sup>st</sup> Floor, Oakland, CA; and be it

**FURTHER RESOLVED:** That, the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, APR 1 2008

**PASSED BY THE FOLLOWING VOTE:**

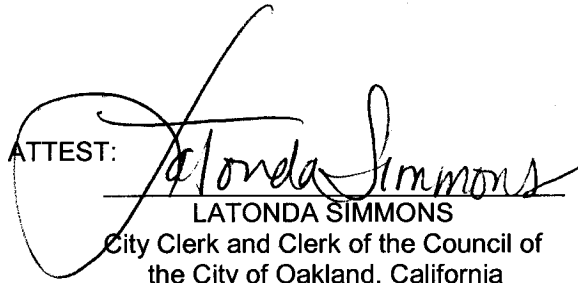
AYES - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN, REID, AND  
PRESIDENT DE LA FUENTE - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:

  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California

**Exhibit A**

February 13, 2008 City Planning Commission Report

3

**Location:** Citywide

**Proposal:** Certification of the Final Environmental Impact Report (FEIR) for implementation of Measure DD projects generally described as:

- Lake Merritt and Lake Merritt Channel Improvements
- Oakland Waterfront Trail and Access Improvements
- East and North Oakland Recreational Facilities
- City-wide Creeks Restoration and Preservation

**Applicant:** City of Oakland

**Contact Person/Phone Number:** Joel Peter (510) 238-7276

**Owner:** City of Oakland

**Case File Number:** ER06-0017

**Planning Permits Required:** Planning Permits include but are not limited to: Design Review and Conditional Use Permits; Tree Removal, Grading Permits, Creek Permits, and Encroachment Permits may also be required for distinct Measure DD activities.

**General Plan:** Measure DD projects are proposed throughout the City and hence are governed by multiple General Plan designations

**Zoning:** Measure DD projects are proposed throughout the City and hence are governed by multiple zoning designations

**Environmental Determination:** A Draft Environmental Impact Report (DEIR) for the Measure DD Project was prepared to address potentially significant environmental impacts in the following environmental categories: Land Use, Planning Policy, Transportation, Circulation and Parking, Air Quality, Noise, Biological Resources, Cultural Resources, Hydrology and Water Quality, Geology, Soils and Seismicity, Hazards and Hazardous Materials, Public Services and Recreation, Utilities and Infrastructure, Aesthetic Resources.

**Historic Status:** Municipal Boat House, Studio One Art Center, Lake Merritt Pergola, East 18<sup>th</sup> Street Pier, and other historic facilities to be determined through the Environmental Impact Report analysis process.

**Service Delivery District:** Districts 1-7 and Metro Downtown (Citywide)

**City Council District:** Districts 1-7 (Citywide)

**Status:** The DEIR was published for an extended public review period that started July 20, 2007 and was to conclude on September 10, 2007. Because September 10 was a City of Oakland holiday and City offices were closed, public comments were accepted until September 11, 2007. A Final EIR which responds to comments received on the Draft EIR has been prepared.

**Action to be Taken:** Receive public and Commission comments on the Final EIR and Certify the Final EIR

**Finality of Decision:** The Commission's decision may be appealed to the Oakland City Council within 10 days of the Commission's action.

**For Further Information:** Contact case planner **Elois A. Thornton** at (510) 238-6284 or by email at [eathornton@oaklandnet.com](mailto:eathornton@oaklandnet.com)

**SUMMARY & BACKGROUND**

Measure DD is a municipal bond measure passed by Oakland voters in November 2002 that authorizes the City to issue bonds for activities that provide improved or new recreational opportunities and improve water quality at Lake Merritt and creeks located throughout the city. The areas affected by Measure DD projects are generally illustrated below:

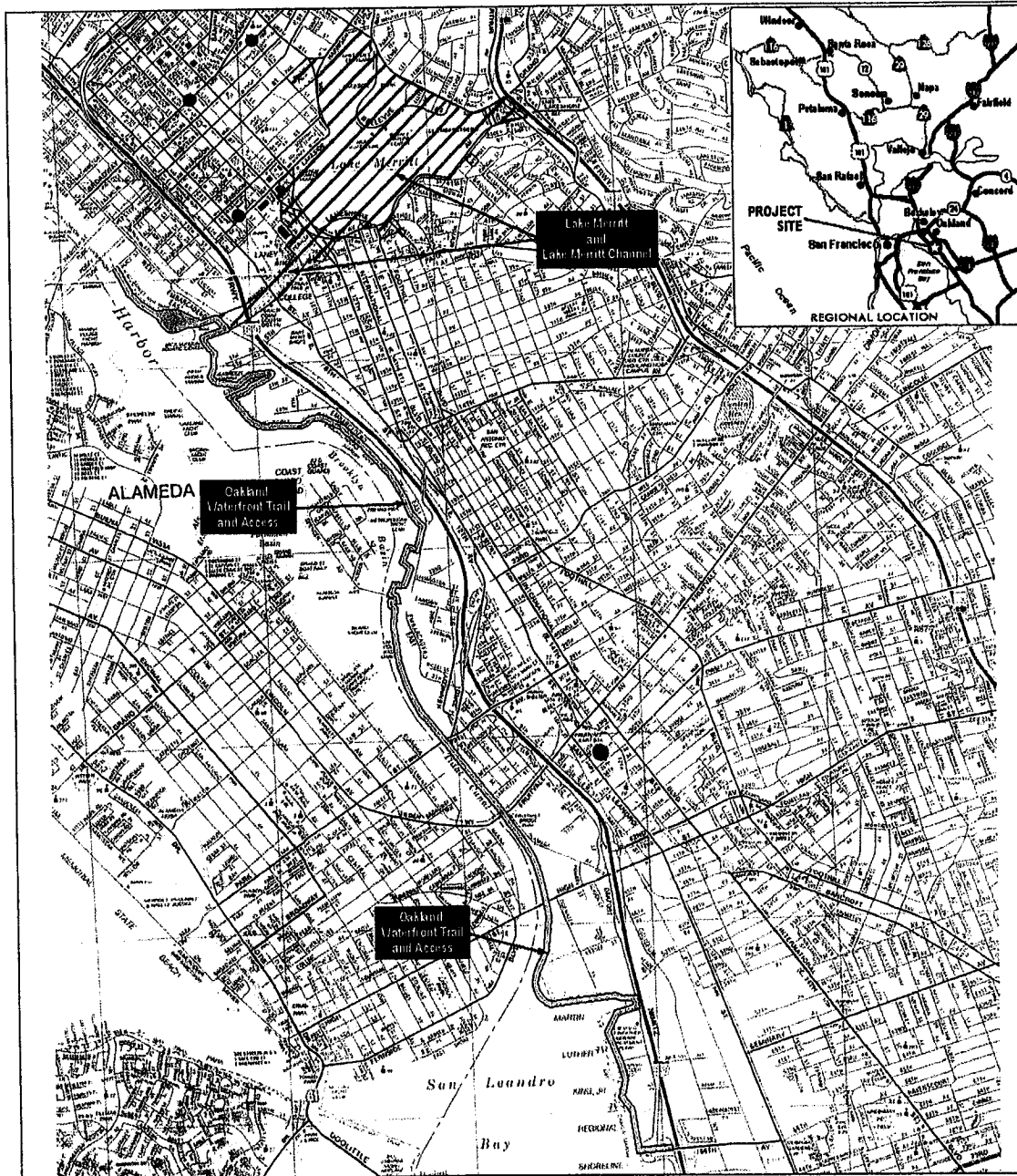
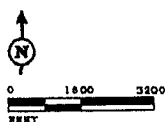


FIGURE I-1

LSA



LEGEND

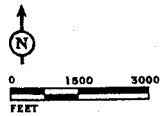
-  LAKE MERRITT AND LAKE MERRITT CHANNEL (GROUP 1)
-  OAKLAND WATERFRONT TRAIL AND ACCESS (GROUP 2)

Oakland Measure DD  
 Project Vicinity Map  
 Groups 1 and 2



FIGURE I-2

LSA



LEGEND  
PROJECT SITES (GROUP 3)

Oakland Measure DD  
Project Vicinity Map  
Group 3

SOURCE: CSAA; LSA ASSOCIATES, INC., 2007.  
I:\RA\0606 measure dd\figures\EIR\Fig\_I2.ai (7/17/07)

**Case File:** ER06-0017  
**Applicant:** City of Oakland  
**Location:** Citywide  
**Zone:** Multiple Zones (Citywide Project)



In June 2002, prior to the passage of Measure DD, the City analyzed the Measure's potential environmental effects in an Initial Study that relied upon previous environmental documents prepared by the City. These documents included the Oakland General Plan Open Space, Conservation and Recreation (OSCAR) Element Mitigated Negative Declaration, the General Plan Land Use and Transportation Element (LUTE) Environmental Impact Report (EIR), the Estuary Policy Plan EIR, and the Coliseum Redevelopment Plan Area EIR. Based on this analysis, the City found that all potentially significant effects would be avoided or mitigated by mitigation measures required by previously prepared environmental documents. As a result, because none of the circumstances calling for preparation of a subsequent or supplemental EIR were present, the City prepared an Addendum to the previous environmental documents.

As more defined proposed project components have been identified since the 2002 Addendum, the City elected to prepare a Draft Environmental Impact Report (DEIR) to provide a more comprehensive environmental analysis for the Measure DD Implementation Project. Prepared pursuant to the California Environmental Quality Act (CEQA), the DEIR assessed potential environmental impacts that could result from implementation of Measure DD projects. The DEIR was distributed on July 20, 2007 for a 52-day public review and comment period that was to conclude on September 10, 2007. The standard 45-day minimum comment period specified by State law was extended to allow for additional public review opportunities after the Labor Day holiday in early September. In addition, because September 10 was a City of Oakland holiday and City offices were closed, public comments were accepted until September 11, 2007.

On September 5, 2007 prior to the closing of the comment period, the City Planning Commission held a public hearing to receive comments on the environmental analysis contained in the DEIR.

Staff has now prepared a Final EIR (FEIR) which includes responses to comments received during the public comment period, and is requesting that the Commission certify the FEIR finding that it adequately analyzes impacts associated with the Measure DD Project.

The only action currently requested from the Commission on this item is certification of the Final EIR. Specifically, the Commission is asked to determine whether the FEIR document complies with CEQA and provides adequate environmental information to the decision-makers, who will eventually consider specific Measure DD activities. Oakland Planning Code Section 17.158.340E requires that the Planning Commission be presented Final EIRs for certification. As described in Section 17.158.340E, certification of the EIR is separate and distinct from project approval and does not imply approval or endorsement of the project (or any components of the project) but instead indicates whether the FEIR document provides adequate environmental information to the decision-makers.

## MEASURE DD ENVIRONMENTAL IMPACT REPORT

### 1. Project Description

The \$198,250,000 Oakland Trust for Clean Water, Safe Parks bond measure (Measure DD) authorized funding for physical improvements to existing parks; acquisition of land for new parks; development of new parks and recreation facilities; clean water measures; restoration and rehabilitation of recreation buildings; and implementation of creek and waterway protection and restoration activities. It includes the following projects which are illustrated in Attachments A-D of this report:

- **Lake Merritt and Lake Merritt Channel Improvements** (described as “Group 1” activities in the DEIR) [see also Attachment A—Figure III-1 of the DEIR]
  - 12<sup>th</sup> Street Improvements
    - Replace the 12<sup>th</sup> Street culvert at Lake Merritt Channel with a bridge to increase tidal flow into and out of Lake Merritt
    - Reconfigure 12<sup>th</sup> Street, create a new 4-acre park, and connect these features to the Lake Merritt Channel
  - Lake Merritt Channel
    - Construct a bridge to replace the existing culvert at 10<sup>th</sup> Street
    - Redesign Channel at the Lake Merritt flood control station at 7<sup>th</sup> Street
    - Improve bike, pedestrian access, restore wetlands and make other Channel and shoreline improvements
  - Lakeshore Avenue, El Embarcadero, Pergola, and E. 18<sup>th</sup> Street Pier Improvements
    - Consolidate the El Embarcadero roadway to form a "Grand Lake green link"
    - Renovate Pergola
    - Renovate E. 18<sup>th</sup> Street Pier
    - Widen Lake Merritt Park paths and add bike lanes by reconfiguring perimeter streets (Oak Street, Harrison Street, Lakeside Drive and Lakeshore Avenue)
  - Lakeside Drive and Municipal Boathouse
    - Widen Lake Merritt Park paths and add bike lanes by reconfiguring perimeter streets (Oak Street, Harrison Street, Lakeside Drive and Lakeshore Avenue)
    - Renovate the Municipal Boathouse at 1520 Lakeside Drive and restore public use

- Snow Park and Lakeside-Harrison-20<sup>th</sup> Street Intersection
  - Expand Snow Park and redesign the Lakeside Drive-Harrison Street-20<sup>th</sup> Street intersection
- Bellevue Avenue Redesign, Children's Fairyland and the Sailboat House
  - Redesign Bellevue Avenue to improve circulation and to accommodate parking moved from the Sailboat House
  - Renovate Children's Fairyland
  - Renovate the Sailboat House and convert some of the adjacent parking lot to parkland
- Water Quality Control Measures and Other Improvements
  - Install stormwater filters, floating trash barriers, and aerating fountains, and implement other water quality improvements, including goose management elements
  - Repair or replace Lake Merritt retaining walls
  - Implement system-wide improvements including paths, irrigation, landscaping, furnishing, restrooms and signs around Lake Merritt
- **Oakland Waterfront Trail and Access Improvements** (described as "Group 2" activities in the DEIR) [see also Attachments B & C—Figures III-10a and III-10b of the DEIR]
  - Acquire land for conservation and remediation purposes
  - Remediate hazardous materials from contaminated soils
  - Provide continuous public access from Jack London Square to Martin Luther King Jr. Regional Shoreline
  - Construct an access/overlook area at 66<sup>th</sup> Avenue
  - Acquire and develop Estuary Park, Meadow Park and a new park in the area of the 9<sup>th</sup> Avenue Terminal
  - Complete Union Point Park

- **East and North Oakland Recreational Facilities** (described as “Group 3” activities in the DEIR)
  - Construct the East Oakland Sports Complex
  - Renovate and restore Studio One Art Center
- **City-wide Creeks Restoration, Preservation and Acquisition** (described as “Group 4” activities in the DEIR) [see also Attachment D—Figure I-3 of the DEIR]
  - Restore and rehabilitate creeks by creating natural meanders, regrading and stabilizing banks, removing failing structures, and landscaping with native plants
  - Acquire creekside properties to facilitate restoration and habitat preservation

## 2. Environmental Analysis

### a. Scope of Analysis

The DEIR analyzed impacts for a number of environmental topics:

- |   |                                   |
|---|-----------------------------------|
| - Land Use                                | - Planning Policy                 |
| - Transportation, Circulation and Parking | - Air Quality                     |
| - Noise                                   | - Biological Resources            |
| - Cultural Resources                      | - Hydrology and Water Quality     |
| - Geology, Soils and Seismicity           | - Hazards and Hazardous Materials |
| - Public Services and Recreation          | - Utilities and Infrastructure    |
| - Aesthetic Resources                     |                                   |

For each topic the DEIR describes the existing conditions, potential environmental impacts and their level of significance, and where necessary, recommends measures that mitigate the impacts as appropriate.

### b. Analysis Results

The results of the analysis are listed in Attachment E of this report. In summary the DEIR indicates that implementation of Measure DD activities would result in **less than significant impacts** (and thereby would not require mitigation measures) in these environmental areas:

- Planning Policy
- Air Quality
- Selected Noise Issues
- Geology, Soils and Seismicity
- Public Services and Recreation

- Utilities and Infrastructure and
- Aesthetic Resources

The DEIR indicates that Measure DD activities would produce **significant impacts that would be reduced to a less than significant level if mitigation measures were implemented**, in these environmental areas:

- Land Use
- Selected Transportation issues
- Biological Resources
- Cultural Resources
- Hydrology and Water Quality and
- Hazards and Hazardous Materials

Finally, the DEIR indicates that Measure DD activities would produce **significant and unavoidable impacts** as follows:

- The Santa Clara Avenue/Grand Avenue intersection and MacArthur Boulevard/Grand Avenue intersection would both degrade to Level of Service F (excessive delays) during the PM peak hour (generally a 1-hour period between 4:00p.m. and 6:00p.m.) [Note: This impact occurs in the year 2025 analysis.]
- The Lake Park/Lakeshore Avenues intersection would experience excessive delays during the AM peak hour (generally a 1-hour period between 7:00a.m. and 9:00a.m.) [Note: This impact occurs in the year 2025 analysis.]
- Another potentially significant and unavoidable impact may result from pile driving as that action would generate noise levels that exceed the City's long-term construction noise standards.

The DEIR also lists potential areas of controversy regarding the project (DEIR Chapter II) and identifies alternatives to the project and issues associated with said (DEIR Chapter V).

c. Responses to Comments

A 'Responses to Comments' document was distributed on January 25, 2008 and addresses comments submitted on the DEIR. Thirty-three comment letters and oral testimony from eight individuals were submitted during the DEIR comment period reflecting the DEIR's analysis of traffic and traffic safety, tree removal and related issues such as impacts on aesthetics and wildlife, public bus service, public access to the waterfront and waterfront trail development, creek preservation, fish and wildlife, tidal action, flood control, water service, wastewater and water conservation, bicycle and pedestrian safety in vicinity of rail facilities, boardwalk development near the bridges to Alameda, and other concerns. (A list of agencies,

organizations, and individuals who commented on the DEIR is included on page 3 of the Responses to Comments document.).

Where appropriate, the Responses to Comments document also indicates revisions to the DEIR made in response to comments and/or to amplify or clarify material originally contained in the DEIR. The text amendments are indicated on page 337 of the Responses to Comments document.

## **CEQA CERTIFICATION FINDINGS**

The Responses to Comments document, together with the Draft EIR, constitutes the Final EIR for the Measure DD Project. In certifying the FEIR the City, acting through its Planning Commission, must find that the FEIR has been prepared in compliance with CEQA, the State CEQA Guidelines, and the City's local Environmental Review Regulations and has been independently reviewed and considered by the Commission. A FEIR is legally adequate if the document complies with these requirements, and is accurate and includes an adequate discussion of potential adverse environmental effect, ways in which such effects might feasibly be mitigated, and a reasonable range of alternatives to the project which reduce or avoid adverse effects. The detailed CEQA certification findings for this project are included in Attachment F of this report.

## **SUBSEQUENT ACTIONS**

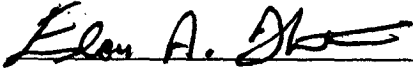
As previously indicated, the only action requested of the Commission at this time is certification of the FEIR. No Measure DD project approvals are requested. Once certified, it is anticipated that the FEIR will be used by decision-makers that include staff, the Planning Commission and the City Council in considering specific project approvals. Such decisions may include, among others, staff-level decisions, such as grant applications, grading, encroachment permits and other administrative decisions, as well as Planning Commission and/or City Council decisions on land use approvals for specific project components such as the proposed of the East Oakland Sports Complex which requires Design Review, a Major Conditional Use Permit and Planned Unit Development approval. The Complex is anticipated to be submitted for review in the Spring

Because there are no project approvals under consideration by the Commission at this time, a Mitigation Monitoring and Reporting Program (MMRP) detailing the package of mitigations identified in the Draft EIR as required to reduce adverse impacts, is not required to be adopted at this time; it will be presented to the entity responsible for the first discretionary action undertaken subsequent to certification of the FEIR. For informational purposes, however, a draft MMRP is included as Attachment G to this report for review and comment by the Commission and the public.

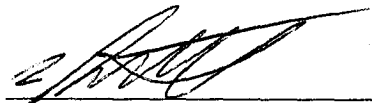
## STAFF RECOMMENDATION

Staff recommends that the Planning Commission adopt the CEQA Certification Findings for the Final Environmental Impact Report for the Measure DD Implementation Project.

Prepared by:

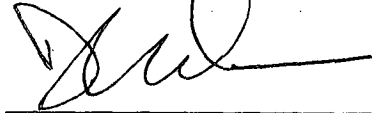


**ELOIS A. THORNTON**, Planner IV  
Community and Economic Development Agency



**ERIC ANGSTADT**, Strategic Planning Manager  
Community and Economic Development Agency

Approved for Forwarding to the City Planning Commission:



**DAN LINDHEIM**, Director  
Community and Economic Development Agency

### ATTACHMENTS:

- A. Figure III-1 Lake Merritt and Lake Merritt Channel Components
- B. Figure III-10a: Waterfront Trail North
- C. Figure III-10b: Waterfront Trail South
- D. Figure I-3: Oakland Creek Restoration, Preservation and Acquisition Sites
- E. Summary of Environmental Impacts
- F. CEQA Certification Findings
- G. Mitigation Monitoring and Reporting Program

### NOTE:

THE NOTICES OF AVAILABILITY OF THE DRAFT AND FINAL EIR DOCUMENTS, AND THE DRAFT AND FINAL EIR WERE PREVIOUSLY DISTRIBUTED. COPIES CAN BE OBTAINED AT CITY OF OAKLAND, COMMUNITY AND ECONOMIC DEVELOPMENT AGENCY, PLANNING DIVISION, 250 FRANK H. OGAWA PLAZA, SUITE 3315, OAKLAND, CA 94612 AND ON THE WEB AT:



<http://www.oaklandnet.com/government/ceda/revised/planningzoning/majorProjectsSection/environmentaldocuments.html>



LSA

FIGURE III-1

LEGEND

-  PROJECT AREA FOR LAKE MERRITT AND LAKE MERRITT CHANNEL GROUP
-  HIGH PRESSURE WATER LINE TO SUPPLY NEW FIRE HYDRANTS

NOTES:

1. LAKE MERRITT RETAINING WALL REPAIR AND OTHER SITE IMPROVEMENTS WOULD OCCUR AT VARIOUS LOCATIONS ON THE LAKE
2. LAKE MERRITT WATER QUALITY PROJECTS WOULD OCCUR AT VARIOUS LOCATIONS AROUND AND WITHIN THE LAKE AND ITS WATERSHED
3. A CENTRAL IRRIGATION CONTROL PROJECT WOULD BE INSTALLED AND LOCATED AT VARIOUS POINTS THROUGHOUT THE PROJECT AREA

Oakland Measure DD  
 Lake Merritt and Lake Merritt  
 Channel Components

SOURCE: GOOGLE EARTH; LSA ASSOCIATES, INC., 2006  
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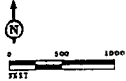


ATTACHMENT B





FIGURE III-10a

LSA



LEGEND

-  PROJECT AREA FOR WATERFRONT TRAIL GROUP
-  PORTION OF WATERFRONT TRAIL TO BE COMPLETED BY OTHERS

Oakland Measure DD  
Waterfront Trail North

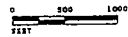
SOURCE: GOOGLE EARTH, LSA ASSOCIATES, INC., 2006  
HRA10606 measure dd figures\ER\Fig\_III10a.m (7/1/07)


ATTACHMENT C



FIGURE III-10b

LSA



 PROJECT AREA FOR WATERFRONT TRAIL GROUP

Oakland Measure DD  
Waterfront Trail South

SOURCE: GOOGLE EARTH; LSA ASSOCIATES, INC., 2006  
LSA 0606 measure dd figures III-10b ii (7/16/07)

ATTACHMENT D

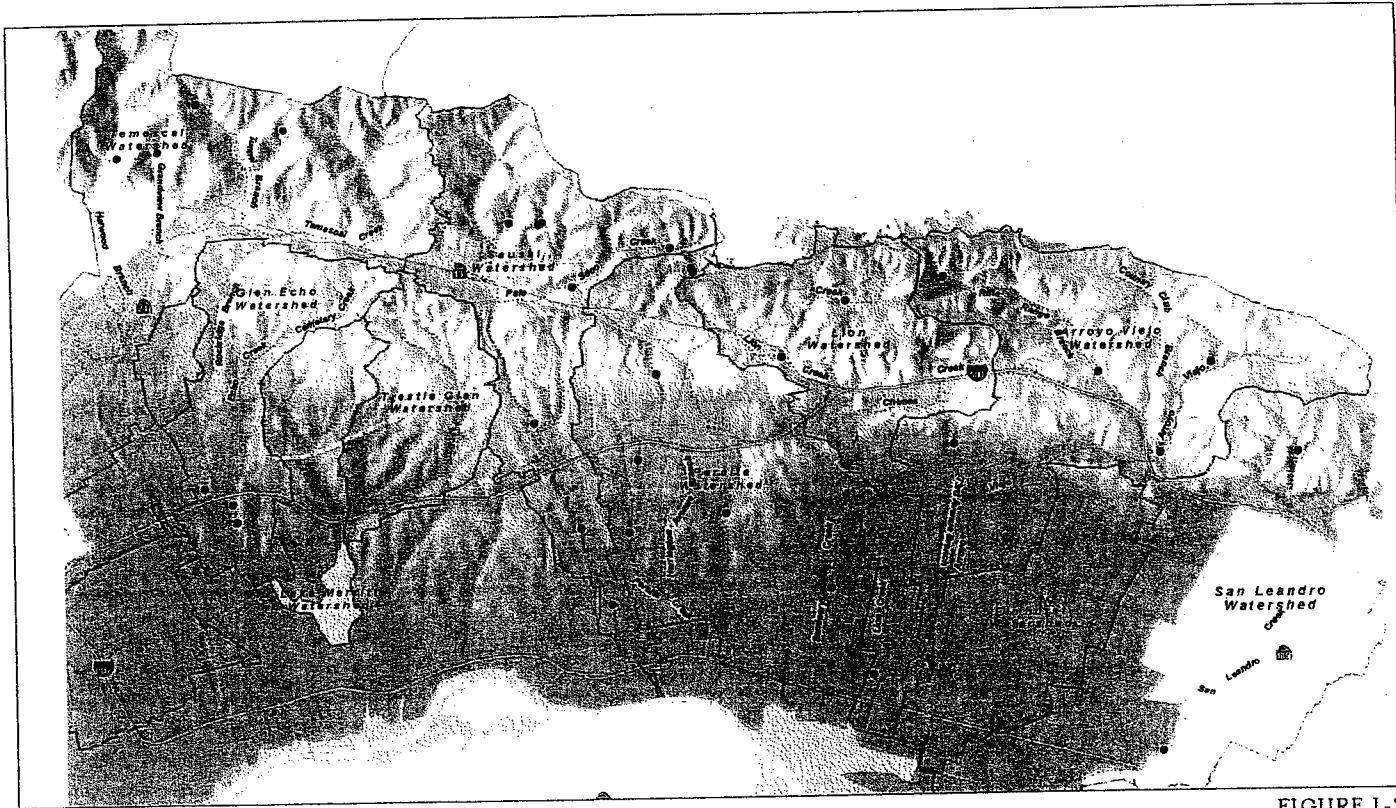
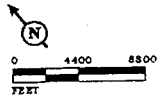


FIGURE I-3

LSA



- Restoration/Preservation/  
Acquisition Sites
- City Streets
- ~ Streams
- ⊕ Drainage Areas
- ⚡ Interstate
- US Highway
- State Highway
- ⊕ City Limits

Oakland Measure DD  
Project Vicinity Map  
Oakland Creek Restoration,  
Preservation and Acquisition Sites  
Group 4

SOURCE: JONES & STOKES  
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**ATTACHMENT E:**

**Measure DD DEIR: Summary of Impacts and Mitigation Measures**

Levels of Significance Key: SU = Significant and Unavoidable S = Significant LTS = Less-Than-Significant			
Environmental Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance With Mitigation
<b>A. Land Use</b>			
LAND-1 (Group 2): Installation of the Hanson Aggregate Trail Connection could result in a land use compatibility conflict.	S	LAND-1(Group 2): A steel canopy shall be designed by a registered professional engineer, the design shall be reviewed by a safety professional, and the canopy shall be installed by the City under the conveyor belt to protect pedestrians using the trail. The canopy shall be installed prior to the opening of this segment of the Waterfront Trail. Implementation of this mitigation measure would reduce Impact LAND-1 to a less-than-significant level. However, this measure is dependent upon the City successfully entering into an agreement with the property owner to construct the steel canopy. Because the mitigation measure is needed to prevent a safety hazard as well as a land use conflict, the City shall not construct the trail across the property without including the protective canopy in the project design while the conveyor is in operation on the site. Should the property owner decline to allow the City to construct the canopy, the City shall not construct the trail on the property and instead reroute it onto City streets until such time as the use of the conveyor ceases or the property owner agrees to allow the City to construct the canopy.	LTS
<b>B. Planning Policy</b>			
<i>There are no significant Planning Policy impacts.</i>			
<b>C. Transportation, Circulation and Parking</b>			
TRANS-1 (Group 1): For Existing Conditions Plus the Project, the Santa Clara Avenue/Grand Avenue intersection would degrade to LOS E during the PM peak hour.	S	TRANS-1(Group 1): The City shall optimize the signal timing at the Santa Clara Avenue/Grand Avenue intersection to improve traffic operations during the PM peak hour. Signal optimization is expected to improve the intersection to LOS D.	LTS
TRANS-2 (Group 1): For Existing Conditions Plus the Project, the average vehicle delay at the Lake Park Avenue/Lakeshore Avenue intersection would increase by 38.6 seconds during the AM peak hour to a LOS F.	S	TRANS-2 (Group 1): The City shall make the following modifications at the Lake Park Avenue/Lakeshore Avenue intersection to improve traffic operations: 1. Convert the center northbound lane on Lakeshore Avenue from a through movement to a left turning movement and provide split signal phasing for eastbound and westbound Lakeshore Avenue traffic movements; and 2. Optimize traffic signal timing. This mitigation measure would reduce the total intersection average vehicle delay by 51.6 seconds during the AM peak hour, although the intersection would remain at LOS E, as it is under the existing condition. After project mitigation, the intersection would operate at a total average vehicle delay that would be 13 seconds lower than the delay with no project and no mitigation.	LTS

Levels of Significance Key: SU = Significant and Unavoidable S = Significant LTS = Less-Than-Significant			
Environmental Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance With Mitigation
<p><u>TRANS-3 (Group 1)</u>: For Existing Conditions Plus the Project, the average vehicle delay at the MacArthur Boulevard/Lakeshore Avenue intersection would increase by 13.8 seconds during the PM peak hour where the LOS is rated F without the project.</p>	S	<p><u>TRANS-3 (Group 1)</u>: The City shall make the following modifications at the MacArthur Boulevard/Lakeshore Avenue intersection to improve traffic operations:</p> <ol style="list-style-type: none"> <li>1. Convert the combination left-through lane on eastbound MacArthur Boulevard to a through-only lane, resulting in one left-turn lane, two through lanes and one combination through-right turn lane;</li> <li>2. Convert the center southbound lane on Lakeshore Avenue from a through movement to a combined through-left turning movement and provide split signal phasing for Lakeshore Avenue traffic movements; and</li> <li>3. Optimize traffic signal timing.</li> </ol> <p>This mitigation measure would reduce the total intersection average vehicle delay by 39.3 seconds during the PM peak hour, and the intersection would operate at LOS E. After project mitigation, the intersection would operate at a total average vehicle delay that would be 25.5 seconds lower than the delay with no project and no mitigation.</p>	LTS
<p><u>TRANS-4 (Group 1)</u>: For Existing Conditions Plus the Project, the average vehicle delay at the 27<sup>th</sup> Street/Bay Place/Harrison Street intersection would increase by 4.6 seconds during the AM peak hour where the LOS is rated F without the project.</p>	S	<p><u>TRANS-4 (Group 1)</u>: The City shall optimize the signal timing at the 27<sup>th</sup> Street/Bay Place/Harrison Street intersection to reduce the total intersection average vehicle delay by 49.9 seconds during the AM peak hour. Although with mitigation the intersection would remain at LOS F, it would operate at a total average vehicle delay that would be 45.3 seconds lower than the delay with no project and no mitigation.</p>	LTS
<p><u>TRANS-5 (Group 1)</u>: Under Cumulative Plus Project Conditions, the Santa Clara Avenue/Grand Avenue intersection would degrade to LOS F during the PM peak hour.</p>	S	<p><u>TRANS-5 (Group 1)</u>: Implementation of Mitigation Measure TRANS-1 would optimize the signal timing at the Santa Clara Avenue/Grand Avenue intersection and improve traffic operations to LOS E (73.9 seconds average delay) during the PM peak hour for the project under cumulative conditions. No other feasible mitigation measures were identified at this intersection as further improvements would entail widening of the roadway and require acquisition of right of way. Widening would also have adverse impact on the pedestrian environment at this heavily used intersection. After mitigation, the cumulative impact would remain significant and unavoidable.</p>	SU

Levels of Significance Key: SU = Significant and Unavoidable		S = Significant	LTS = Less-Than-Significant
Environmental Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance With Mitigation
TRANS-6 (Group 1): Under the Cumulative Plus Project Conditions, the MacArthur Boulevard/Grand Avenue intersection would degrade to LOS F during the PM peak hour.	S	<p>TRANS-6 (Group 1): The City shall make the following modifications at the MacArthur Boulevard/Grand Avenue to improve traffic operations:</p> <ol style="list-style-type: none"> <li>1. Convert the center southbound lane on Grand Avenue from a through movement to a combined through-left turning movement and provide split phasing for northbound and southbound Grand Avenue traffic movements; and</li> <li>2. Optimize traffic signal timing for both AM and PM peak periods.</li> </ol> <p>The modifications at the MacArthur Boulevard/Grand Avenue intersection described above would reduce the delay from 120.2 seconds to 81.7 seconds under the Cumulative Plus Project Conditions, but the intersection would remain at LOS F during the PM peak hour. No other feasible mitigation measures were identified at this intersection as further improvements would entail widening of the roadway and require acquisition of right of way. Widening would also have adverse consequence for pedestrians. After mitigation, the cumulative impact of would remain significant and unavoidable.</p>	SU
TRANS-7 (Group 1): Under the Cumulative Plus Project Conditions, the Lake Park Avenue/Lakeshore Avenue intersection would degrade to LOS F during the AM peak hour.	S	<p>TRANS-7 (Group 1): The City shall implement Mitigation Measure TRANS-2 and make the following modifications at the Lake Park Avenue/Lakeshore Avenue intersection to improve traffic operations:</p> <ol style="list-style-type: none"> <li>1. Add a left-turn lane from the freeway off-ramp on the westbound Lake Park Avenue approach to the intersection; and</li> <li>2. Optimize traffic signal timing.</li> </ol> <p>The modification at the Lake Park Avenue/Lakeshore Avenue intersection described above would reduce the total intersection average vehicle delay by 115.3 seconds during the AM peak hour, although the intersection would operate at LOS E. After the project mitigation, the intersection would operate at a total average vehicle delay that would be 12.3 seconds lower than the delay under existing conditions with no project and no mitigation. Implementation of this mitigation measure would reduce the impact to a less-than-significant level. However, the City's ability to add the left-turn lane from the freeway ramp depends upon acquisition of right-of-way and an encroachment permit from Caltrans. Because the City cannot guarantee Caltrans' approval, the City is taking the conservative approach of considering this impact significant and unavoidable until sufficient right-of-way can be acquired and Caltrans approves an encroachment permit.</p>	SU

Levels of Significance Key: SU = Significant and Unavoidable      S = Significant      LTS = Less-Than-Significant			
Environmental Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance With Mitigation
TRANS-8 (Group 1): Under the Cumulative Plus Project Conditions, the 10 <sup>th</sup> Street/Oak Street intersection would degrade to LOS F during the AM peak hour.	S	TRANS-8 (Group 1): The City shall optimize the signal timing (modify the phase splits) at the 10 <sup>th</sup> Street/Oak Street intersection to improve traffic operations. Implementation of the recommended mitigation would improve the intersection to LOS D during the AM peak hour.	LTS
TRANS-9 (Group 1): Under the Cumulative Plus Project Conditions, the 7 <sup>th</sup> Street/Oak Street intersection would degrade to LOS F during the PM peak hour.	S	TRANS-9 (Group 1): The City shall optimize the signal timing (modify the phase splits) at the 7 <sup>th</sup> Street/Oak Street intersection to improve traffic operations. Implementation of the recommended mitigation would improve the intersection to LOS D during the PM peak hour.	LTS
<b>D. Air Quality</b>			
<i>There are no significant Air Quality impacts.</i>			
<b>E. Noise</b>			
NOISE-1 (Group 1): Pile driving would generate noise levels that exceed the City's long-term construction noise standards.	LTS/S	The City's Standard and Uniformly Applied Conditions of Approval would reduce the impacts to less-than-significant levels. However, not all noise-reducing measures may be feasible in all cases and, if not, the impact would be significant and unavoidable.	SU
<b>F. Biological Resources</b>			
BIO-1 (Group 2): Construction of an observation structure at the 66 <sup>th</sup> Avenue Gateway site may impact state or federally listed tidal marsh species.	S	<p>BIO-1a (Group 2): Ground disturbance in the vicinity of Damon Marsh shall be conducted only when high tides are not at their winter or summer extremes, to reduce the likelihood that tidal marsh rails and SMHM will be present in the construction footprint. Ground disturbance shall be avoided during the highest tides of June-July and December-January (± one week each month).</p> <p>BIO-1b (Group 2): Prior to ground disturbance, a qualified biologist experienced with SMHM exclusion procedures shall prepare a site-specific SMHM avoidance plan. At a minimum, the plan shall include (1) the installation of silt fencing around the entire portion of the work area (that is within 100 feet from the edge of the marsh) to exclude SMHM from entering, (2) the clearing of all ground vegetation within the fenced area, and (3) the relocation to Damon Marsh of any SMHM found during the vegetation removal effort. Construction work shall start as soon as possible (and no longer than one week) after vegetation has been cleared. All exclusion measures and initial ground disturbance activities shall be monitored by a biologist, who has the necessary state and federal permits to handle and relocate SMHM.</p>	LTS

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Environmental Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance With Mitigation
BIO-1 <i>Continued</i>		<b>BIO-1c (Group 2):</b> To avoid potential disturbance to nesting tidal marsh rails, construction of the observation structure shall be conducted during the non-breeding season (September 1 through January 31), unless prior surveys indicate that marsh habitat within 100 feet of the construction footprint is not part of an active rail breeding territory. Such surveys must be conducted in accordance with a project-specific survey protocol prepared in accordance with the USFWS and CDFG guidelines.	
<b>BIO-2 (Group 2):</b> Construction of the pile-supported boardwalks along the Waterfront Trail may impact fisheries resources within the Oakland Inner Harbor.	S	<b>BIO-2 (Group 2):</b> To avoid adverse impacts to Pacific herring, federally listed salmonids (chinook salmon, coho salmon, and steelhead), and EFH, pile driving shall occur within the June 1 to November 30 work window in accordance with NMFS guidelines. <sup>1</sup> Any pile driving occurring outside this period will require informal or formal consultation with the NMFS (for listed salmonids and EFH) and CDFG (for Pacific herring) prior to the Corps' issuance of a Section 404 permit for impacts to waters of the U.S.	LTS
<b>BIO-3 (Groups 1, 2, and 4):</b> Construction of some components within the Lake Merritt and Lake Merritt Channel, Waterfront Trail, and City-wide Creeks groups may impact waters of the U.S. and State.	S	<b>BIO-3a (Groups 1, 2, and 4):</b> All Measure DD-funded activities within jurisdictional waters shall first obtain authorization from the appropriate agencies (Corps, Water Board, CDFG, and BCDC). At a minimum, each activity will likely require a Section 404 Corps permit and Section 401 water quality certification from the Water Board. Creek restoration activities may also require a CDFG Lake or Streambed Alteration Agreement, depending on site-specific conditions. Construction of the fixed pier boardwalks along the Waterfront Trail will require BCDC approval since it proposes construction over and filling of Bay waters (i.e., concrete piers).	LTS

<sup>1</sup> National Marine Fisheries Service (NMFS). San Francisco Bay Project Impact Evaluation System (PIES) website.

<<http://mapping.orr.noaa.gov/website/portal/pies/faqs.html>> Accessed April 12, 2007.



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Environmental Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance With Mitigation
BIO-3 <i>Continued</i>		BIO-3b (Groups 1, 2, and 4): Impacts to jurisdictional wetlands shall be mitigated at a minimum replacement ratio of 1:1 (i.e., one acre created [and preserved] for every acre impacted). If feasible, replacement habitat shall be created/preserved in the same general area as the original impact. Off-site mitigation may be approved if the amount of required replacement habitat exceeds that which is available near a given impact site. A wetland mitigation and monitoring plan (MMP) shall be developed for each mitigation site, detailing the mitigation design, wetland planting design, adaptive management, maintenance and monitoring requirements, reporting requirements, and success criteria for the created wetland(s).	
BIO-4 (Group 1): The introduction of small boat traffic to the Lake Merritt Channel would result in increased disturbance levels to wintering migratory ducks and other waterbirds.	S	BIO-4 (Group 1): Small boat use of the Lake Merritt Channel shall be restricted to the non-wintering period of April–September, when waterbird abundance is low. During the closure period, booms shall be placed across the outlet to the Channel from Lake Merritt and at the 7 <sup>th</sup> Street dam to prevent boat access and signs shall be posted indicating that the Channel is closed to recreational users. This would reduce the impact to a less-than-significant level.	LTS
<b>G. Cultural Resources</b>			
CULT-1 (Group 1): Project activities within the Lake Merritt and Lake Merritt Channel group may impact subsurface prehistoric archaeological materials that may qualify as historical resources under CEQA.	S	CULT-1 (Group 1): A qualified archaeologist who meets the Secretary of the Interior’s Professional Qualifications Standards CFR 66, Appendix C, (48 FR 44738-9) and the certification requirements of the Register of Professional Archaeologists shall monitor initial project construction ground disturbing activities, such as trenching or excavating with a backhoe or bulldozer, in the 12th Street reconstruction area. The protocols for monitoring and data recovery outlined in the Archaeological Monitoring and Discovery Plan, 12th Street Reconstruction Project (AMDP) <sup>2</sup> shall be implemented. Monitoring shall continue as deemed necessary by the monitor based on the initial observations. If the monitor observes subsurface prehistoric archaeological materials during excavation, such as those associated with CA-ALA-5 or P-01-010694, the monitor shall ensure that appropriate actions are taken as described in the following paragraphs.	LTS

<sup>2</sup> William Self Associates, Inc., 2005:4-9. *Archaeological Monitoring and Discovery Plan, 12<sup>th</sup> Street Reconstruction Project*. William Self Associates, Inc., Orinda, California.

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Environmental Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance With Mitigation
CULT-1 <i>Continued</i>		<p>In the event that archaeological materials are identified (e.g., obsidian, heat-affected rock, faunal bone, and midden), the archaeologist will immediately notify the Construction Manager, who will temporarily stop construction to permit an examination of the find. Should the monitoring archaeologist determine that the cultural object or feature is significant (i.e., appears eligible for listing in the California Register of Historical Resources), a determination will be made as to the areal extent of the find, and the time required to mitigate (i.e., record and remove or collect all or part of) the discovery. Once the archaeological monitor has made a determination as to the time required to mitigate the find, and has sufficient supporting information, the monitor will take the following steps: 1) record, but not remove materials if non-cultural or non-significant, and allow work to progress, or 2) record and remove the isolated or limited cultural materials and permit work to progress.</p> <p>If the above steps do not apply (i.e., in those instances where the cultural materials are significant and not isolated or spatially limited), then the Construction Manager shall be notified and recovery of the materials shall occur. Diagnostic artifacts, as well as those classes of artifacts for which an adequate sample has not yet been recovered, shall be collected and bagged following photographing and recording of provenience. Mapping of deposits would be coordinated using existing engineering survey controls, and elevation accuracy will be maintained during the excavation to permit provenience controls for artifact recording. All information needed, including soil color or type, elevation, location, photographs, and sketch maps will be gathered as quickly as conditions permit to allow resumption of construction activities. All recovered cultural materials shall be cleaned as appropriate, preserved if necessary, bagged, and tagged or marked so as to permit its identification in an acceptable record system, and in accordance with recognized professional standards. All recovered cultural material shall be analyzed sufficiently to permit identification in accordance with recognized professional standards and submitted to a curation facility, as appropriate. A Final Monitoring Report shall be prepared, describing the results of monitoring, data recovery, and analysis.</p>	LTS

Levels of Significance Key: SU = Significant and Unavoidable		S = Significant	LTS = Less-Than-Significant
Environmental Impacts	Level of Significance Without Mitigation	Mitigation Measures	Level of Significance With Mitigation
CULT-2 (Group 4): Project activities associated with the City-wide Creeks group may impact historical resources.	S	<p>CULT-2 (Group 4): A preconstruction cultural resources study by a qualified person shall be done for the City-wide Creeks project sites, unless the proposed activities at the site would involve <i>minimal (or no)</i> ground disturbance, such as weeding, hand planting, sign placement, or pruning. For this non-intrusive or minimally intrusive work no mitigation would be needed. For all other work, the preconstruction study will be used to determine whether cultural resource(s) will be adversely affected by project activities and will ensure that, if a cultural resource(s) is present within a City-wide Creek restoration site, impacts to this resource will be avoided or mitigated.</p> <p>The first phase of the study will assess the prehistoric and historical sensitivity for each City-wide Creeks restoration site (or group of sites) and will review project plans to assess the potential for project activities to impact cultural resources at a creek restoration site. The study will include a literature review and a records search at the Northwest Information Center, Rohnert Park, and a site visit to determine the likelihood of recorded or surface-exposed cultural resources at a creek restoration site. A brief letter report shall be prepared for the City that includes the results of the background research and, based on the results of the background research, a determination of whether additional study for cultural resources at a given location will be necessary. If no cultural resources that would be disturbed by the project activities are identified in this phase, the City's Standard Conditions of Approval, which address accidental discoveries, shall be implemented and would reduce the impact to a less-than-significant level. If cultural resources that could be disturbed by the project activities are tentatively identified, additional study, construction monitoring, and mitigation, as appropriate, shall be performed.</p>	LTS

## ATTACHMENT F: CEQA Certification Findings

### I. INTRODUCTION

1. These findings are made pursuant to the California Environmental Quality Act (Pub. Res. Code section 21000 et seq; "CEQA") and the CEQA Guidelines (Cal. Code Regs. title 14, section 15000 et seq.) by the City of Oakland Planning Commission in connection with the Environmental Impact Report for the Measure DD Implementation Project ("the Project"), EIR SCH # 2006122048).

2. These findings are attached and incorporated by reference into the February 13, 2008 staff report. These findings are based on substantial evidence in the entire administrative record and references to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the findings.

### II. PROJECT DESCRIPTION

3. The Project, which is the subject of the EIR is the \$198,250,000 Oakland Trust for Clean Water, Safe Parks bond measure (Measure DD) authorized funding for physical improvements to existing parks; acquisition of land for new parks; development of new parks and recreation facilities; clean water measures; restoration and rehabilitation of recreation buildings; and implementation of creek and waterway protection and restoration activities.

### III. ENVIRONMENTAL REVIEW OF THE PROJECT

4. Pursuant to CEQA and the CEQA Guidelines, the City determined that an Environmental Impact Report (EIR) would be prepared for the Project. On December 8, 2006, the City issued a Notice of Preparation for the Draft EIR and a Scoping Session to receive input on the analysis to be included in the DEIR was held with the City Planning Commission on January 3, 2007. A copy of this Notice and the comments thereon are included in Appendix C of the Draft EIR.

5. A Draft EIR was prepared for the Project to analyze its environmental impacts. The Draft EIR was properly circulated for a 52-day public review period from July 20, 2007 to September 11, 2007, which exceeds the legally required 45-day comment period. The Planning Commission held a hearing on the Draft EIR on September 5, 2007.

6. The City received written and oral comments on the Draft EIR. The City prepared responses to comments on environmental issues and made changes to the Draft EIR. The responses to comments, changes to the Draft EIR and additional information were published in a Response to Comments document on January 25, 2008. The Draft EIR, and Responses to

Comments document and all appendices thereto constitute the "FEIR" referenced in these findings.

#### IV. THE ADMINISTRATIVE RECORD

7. The record, upon which all findings and determinations related to the approval of the Project are based, includes the following:

a. The FEIR and all documents referenced in or relied upon by the FEIR.

b. All information (including written evidence and testimony) provided by City staff to the Planning Commission relating to the FEIR, the approvals, and the Project.

c. All information (including written evidence and testimony) presented to the Planning Commission by the environmental consultant and subconsultants who prepared the FEIR or incorporated into reports presented to the Planning Commission.

d. All information (including written evidence and testimony) presented to the City from other public agencies relating to the Measure DD Project or the FEIR.

e. All final applications, letters, testimony and presentations presented by the project sponsor and its consultants to the City in connection with the Project.

f. All final information (including written evidence and testimony) presented at any City public hearing or City workshop related to the Project and the FEIR.

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

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

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

8. The custodian of the documents and other materials that constitute the record of the proceedings upon which the City's decisions are based is Dan Lindheim, Development Director, Community and Economic Development Agency, or her designee. Such documents and other materials are located at 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, 94612.

## V. CERTIFICATION OF THE EIR

9. In accordance with CEQA, based on the FEIR and all other evidence in the administrative record, the Oakland Planning Commission certifies that the FEIR has been completed in compliance with CEQA. The Oakland Planning Commission has independently reviewed and considered the record and the FEIR prior to certifying the FEIR. By these findings, the Oakland Planning Commission confirms, ratifies, and adopts the findings and conclusions of the FEIR as supplemented and modified by these findings. The FEIR and these findings represent the independent judgment and analysis of the City and the Oakland Planning Commission.

10. The Oakland Planning Commission recognizes that the FEIR may contain clerical errors. The Oakland Planning Commission reviewed the entirety of the FEIR and bases its determination on the substance of the information it contains.

11. The Oakland Planning Commission certifies that the FEIR is adequate to support the approval of the project described in the FEIR, each component and phase of the Project described in the FEIR, any variant of the Project described in the FEIR, any minor modifications to the Project or variants described in the FEIR and the components of the Project.

## VI. ABSENCE OF SIGNIFICANT NEW INFORMATION

12. The Oakland Planning Commission recognizes that the Final EIR incorporates information obtained and produced after the Draft EIR was completed, and that the FEIR contains additions, clarifications, and modifications. The Oakland Planning Commission has reviewed and considered the Final EIR and all of this information. The Final EIR does not add significant new information to the Draft EIR that would require recirculation of the Draft EIR under CEQA. The new information added to the FEIR does not involve a new significant environmental impact, a substantial increase in the severity of an environmental impact, or a feasible mitigation measure or alternative 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. Thus, recirculation of the Draft EIR is not required.

13. The Oakland Planning Commission finds that the changes and modifications made to the Draft 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 the CEQA Guidelines section 15088.5.

## ATTACHMENT G

### DRAFT

#### Mitigation Monitoring and Reporting Program (MMRP) Measure DD Implementation Project

This Mitigation Monitoring and Reporting Program (MMRP) was formulated based on the findings of the Environmental Impact Report (EIR) prepared for the Measure DD Implementation Project in the City of Oakland. This MMRP is in compliance with Section 15097 of the *CEQA Guidelines*, which requires that the Lead Agency “adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects.” The MMRP lists mitigation measures recommended in the EIR and identifies mitigation monitoring requirements.

Each impact and mitigation measure is numbered according to the topical section to which it pertains in the EIR. As an example, Mitigation Measure LAND-1 is the first impact and mitigation measure identified in the EIR. The Project group to which the mitigation applies is indicated in parentheses following the name of the impact. Group 1 is the Lake Merritt and Lake Merritt Channel group, Group 2 is the Oakland Waterfront Trail and Access Improvements, Group 3 is the North and East Oakland Recreational Facilities and Group 4 is the City-wide Creeks Restoration, Preservation, and Acquisition group.

The impact and mitigation measure are followed by the names of the “Responsible Implementing Party(ies),” which identifies the party(ies) responsible for carrying out the required action, and the “Monitoring Party,” which identifies the party ultimately responsible for ensuring that the mitigation measure is implemented. The first column, “Action(s) and Implementation Timing,” identifies the specific actions to be taken and the time the mitigation measure should be initiated. “Action(s) by Monitor” outlines the steps for monitoring the action identified in the mitigation measure. The third column, entitled “Monitoring Timing,” states the time period within which or by which the monitor must ensure that the mitigation measure has been implemented. The last column will be used by the City to ensure that individual mitigation measures have been monitored.

**LAND-1 (Group 2): Installation of the Hanson Aggregate Trail Connection could result in a land use compatibility conflict.**

**Mitigation:** A steel canopy shall be designed by a registered professional engineer, the design shall be reviewed by a safety professional, and the canopy shall be installed by the City under the conveyor belt to protect pedestrians using the trail. The canopy shall be installed prior to the opening of this segment of the Waterfront Trail. Implementation of this mitigation measure would reduce Impact LAND-1 to a less-than-significant level. However, this measure is dependent upon the City successfully entering into an agreement with the property owner to construct the steel canopy. Because the mitigation measure is needed to prevent a safety hazard as well as a land use conflict, the City shall not construct the trail across the property without including the protective canopy in the project design while the conveyor is in operation on the site. Should the property owner decline to allow the City to construct the canopy, the City shall not construct the trail on the property and instead reroute it onto City streets until such time as the use of the conveyor ceases or the property owner agrees to allow the City to construct the canopy.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division and engineering and construction contractors

**Monitoring Party:** City of Oakland Project Delivery Division

Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
1. A protective steel canopy shall be designed by a registered professional engineer during the design phase and the specifications for the canopy shall be included in contract bid documents	1. Review and approve final design of canopy	1. Prior to issuing bid documents	Name:  Date:
2. Install and inspect steel canopy before trail is opened to public	2. Confirm that canopy construction is complete and to specification	2. Prior to allowing trail to open	Name:  Date:

**TRANS-1 (Group 1): For Existing Conditions Plus the Project, the Santa Clara Avenue/Grand Avenue intersection would degrade to LOS E during the PM peak hour.**



**Mitigation:** The City shall optimize the signal timing at the Santa Clara Avenue/Grand Avenue intersection to improve traffic operations during the PM peak hour.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division

**Monitoring Party:** City of Oakland Project Delivery Division

Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
Optimize signal timing at the Santa Clara Avenue/Grand Avenue intersection upon implementation of the El Embarcadero reconfiguration	Review the signal timing for the intersection and confirm that it has been optimized	Prior to filing the Notice of Completion with the County for modifications to El Embarcadero	<i>Name:</i>  <i>Date:</i>

**TRANS-2 (Group 1):** For Existing Conditions Plus the Project, the average vehicle delay at the Lake Park Avenue/Lakeshore Avenue intersection would increase by 38.6 seconds during the AM peak hour to a LOS F.

**Mitigation:** The City shall make the following modifications at the Lake Park Avenue/Lakeshore Avenue intersection to improve traffic operations:

- Convert the center northbound lane on Lakeshore Avenue from a through movement to a left turning movement and provide split signal phasing for eastbound and westbound Lakeshore Avenue traffic movements; and
- Optimize traffic signal timing.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division

**Monitoring Party:** City of Oakland Project Delivery Division

Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
1. The lane modifications shall be funded and included in the final design and contract bid documents for the reconfiguration of El Embarcadero	1. Confirm that specifications are included in the contract bid documents	1. Prior to issuing bid documents for the reconfiguration of El Embarcadero	<i>Name:</i>  <i>Date:</i>

2. Optimize signal timing at the Lake Park Avenue/Lakeshore Avenue intersection and provide split signal phasing on Lakeshore	2. Review the signal timing for the intersection and confirm that it has been optimized	2. Prior to filing the Notice of Completion with the County for the reconfiguration of El Embarcadero	Name:  Date:
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**TRANS-3 (Group 1):** For Existing Conditions Plus the Project, the average vehicle delay at the MacArthur Boulevard/Lakeshore Avenue intersection would increase by 13.8 seconds during the PM peak hour where the LOS is rated F without the project.

**Mitigation:** The City shall make the following modifications at the MacArthur Boulevard/Lakeshore Avenue intersection to improve traffic operations:

- Convert the combination left-through lane on eastbound MacArthur Boulevard to a through-only lane, resulting in one left-turn lane, two through lanes and one combination through-right turn lane;
- Convert the center southbound lane on Lakeshore Avenue from a through movement to a combined through-left turning movement and provide split signal phasing for Lakeshore Avenue traffic movements; and
- Optimize traffic signal timing.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division

**Monitoring Party:** City of Oakland Project Delivery Division

Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
1. The lane modifications on MacArthur Boulevard shall be funded and included in the final design and contract bid documents for the reconfiguration of El Embarcadero	1. Confirm that specifications are included in the contract bid documents	1. Prior to issuing bid documents for the reconfiguration of El Embarcadero	Name:  Date:

<p>2. The lane modifications on Lakeshore Avenue and the split signal phasing shall be funded and included in the final design and contract bid documents for the reconfiguration of El Embarcadero</p>	<p>2. Confirm that specifications are included in the contract bid documents</p>	<p>2. Prior to issuing bid documents for the reconfiguration of El Embarcadero</p>	<p>Name:</p>
			<p>Date:</p>
<p>3. Optimize signal timing at the MacArthur Boulevard/Lakeshore Avenue intersection</p>	<p>3. Review the signal timing for the intersection and confirm that it has been optimized</p>	<p>3. Prior to filing the Notice of Completion with the County for the reconfiguration of El Embarcadero</p>	<p>Name:</p>
			<p>Date:</p>

**TRANS-4 (Group 1):** For Existing Conditions Plus the Project the average vehicle delay at the 27<sup>th</sup> Street/Bay Place/Harrison Street intersection would increase by 4.6 seconds during the AM peak hour where the LOS is rated F without the project.

**Mitigation:** The City shall optimize the signal timing at the 27th Street/Bay Place/Harrison Street intersection to reduce the total intersection average vehicle delay by 49.9 seconds during the AM peak hour.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division

**Monitoring Party:** City of Oakland Project Delivery Division

Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
<p>Optimize signal timing at the 27<sup>th</sup> Street/Bay Place/Harrison Street intersection</p>	<p>Review the signal timing for the intersection and confirm that it has been optimized</p>	<p>Prior to filing the Notice of Completion with the County for improvements at 20<sup>th</sup> and Harrison Street</p>	<p>Name:</p>
			<p>Date:</p>

**TRANS-8 (Group 1):** Under the Cumulative Plus Project Conditions, the 10<sup>th</sup> Street/Oak Street intersection would degrade to LOS F during the AM peak hour.

**Mitigation:** The City shall optimize the signal timing (modify the phase splits) at the 10th Street/Oak Street intersection to improve traffic operations.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division

**Monitoring Party:** City of Oakland Project Delivery Division

<b>Action(s) and Implementation Timing:</b>	<b>Action(s) by Monitor:</b>	<b>Monitoring Timing</b>	<b>Verification of Compliance Name/Date</b>
Optimize signal timing at the 10 <sup>th</sup> Street/Oak Street intersection	Review the signal timing for the intersection and confirm that it has been optimized	Prior to filing the Notice of Completion with the County for the 12 <sup>th</sup> Street reconstruction	<i>Name:</i>  <i>Date:</i>

**TRANS-9 (Group 1):** Under the Cumulative Plus Project Conditions, the 7th Street/Oak Street intersection would degrade to LOS F during the PM peak hour.

**Mitigation:** The City shall optimize the signal timing (modify the phase splits) at the 7<sup>th</sup> Street/Oak Street intersection to improve traffic operations.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division

**Monitoring Party:** City of Oakland Project Delivery Division

<b>Action(s) and Implementation Timing:</b>	<b>Action(s) by Monitor:</b>	<b>Monitoring Timing</b>	<b>Verification of Compliance Name/Date</b>
Optimize signal timing at the 7 <sup>th</sup> Street/Oak Street intersection	Review the signal timing for the intersection and confirm that it has been optimized	Prior to filing the Notice of Completion with the County for the 12 <sup>th</sup> Street reconstruction	<i>Name:</i>  <i>Date:</i>

**BIO-1 (Group 2):** Construction of an observation structure at the 66th Avenue Gateway site may impact state or federally listed tidal marsh species.

**Mitigation:** BIO-1a (Group 2): Ground disturbance in the vicinity of Damon Marsh shall be conducted only when high tides are not at their winter or summer extremes, to reduce the likelihood that tidal marsh rails and SMHM will be present in the construction footprint. Ground disturbance shall be avoided during the highest tides of June–July and December–January (± one week each month).

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division and construction contractor

**Monitoring Party:** City of Oakland Project Delivery Division

Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
1. Include specifications in the contract bid documents for the Damon Marsh that restrict ground disturbance to times outside the highest tides of winter and summer	1. Confirm that specifications are included in the contract bid documents	1. Prior to issuing bid documents	Name:  Date:
2. Implement plan and monitor site during construction	2. Visit construction site and verify that measures are being implemented	2. During construction	Name:  Date:

**Mitigation:** BIO-1b (Group 2): Prior to ground disturbance, a qualified biologist experienced with SMHM exclusion procedures shall prepare a site-specific SMHM avoidance plan. The plan shall be implemented during construction at each specific site. At a minimum, the plan shall include (1) the installation of silt fencing around the entire portion of the work area (that is within 100 feet from the edge of the marsh) to exclude SMHM from entering, (2) the clearing of all ground vegetation within the fenced area, and (3) the relocation to Damon Marsh of any SMHM found during the vegetation removal effort. Construction work shall start as soon as possible (and no longer than one week) after vegetation has been cleared. All exclusion measures and initial ground disturbance activities shall be monitored by a biologist, who has the necessary state and federal permits to handle and relocate SMHM.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division and construction contractor

**Monitoring Party:** City of Oakland Project Delivery Division

Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
1. Prepare Salt Marsh Harvest Mouse avoidance plan	1. Prepare avoidance plan and confirm that specifications are included in the contract bid documents	1. Prior to issuing bid documents	Name:  Date:
2. Implement plan and monitor site during construction	2. Visit construction site and verify that measures are being implemented	2. During construction	Name:  Date:

**Mitigation:** BIO-1c (Group 2): To avoid potential disturbance to nesting tidal marsh rails, construction of the observation structure shall be conducted during the non-breeding season (September 1 through January 31), unless prior surveys indicate that marsh habitat within 100 feet of the construction footprint is not part of an active rail breeding territory. Such surveys must be conducted in accordance with a project-specific survey protocol prepared in accordance with the USFWS and CDFG guidelines.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division and construction contractor

**Monitoring Party:** City of Oakland Project Delivery Division

Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
1. Include specifications in contract bid documents to limit construction of observation structure to non-breeding season for tidal marsh rails (September 1 through January 31)	1. Confirm that specifications are included in the contract bid documents	1. Prior to issuing bid documents	Name:  Date:
<i>Or</i>			
1. Conduct preconstruction surveys for rails in accordance with USFWS and CDFG guidelines and include specifications in contract bid documents to limit work to areas more than 100 feet from active rail breeding territory (i.e., outside exclusion area)	2. Visit construction site and verify that measures are being implemented	2. During construction	Name:  Date:
2. Implement construction in accordance with contract specifications for avoidance of tidal marsh rails			

**BIO-2 (Group 2): Construction of the pile-supported boardwalks along the Waterfront Trail may impact fisheries resources within the Oakland Inner Harbor.**

**Mitigation:** BIO-2 (Group 2): To avoid adverse impacts to Pacific herring, federally listed salmonids (chinook salmon, coho salmon, and steelhead), and EFH, pile driving shall occur within the June 1 to November 30 work window in accordance with NMFS guidelines.<sup>3</sup> Any pile driving occurring outside this period will require informal or formal consultation with the NMFS (for listed salmonids and EFH) and CDFG (for Pacific herring) prior to the Corps' issuance of a Section 404 permit for impacts to waters of the U.S.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division and construction contractor

**Monitoring Party:** City of Oakland Project Delivery Division

Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
1. Include specifications in contract bid documents that limit pile driving at Group 2 locations to the June 1 to November 30 work window in accordance with NMFS guidelines	1. Confirm that specifications are included in the contract bid documents	1. Prior to issuing bid documents	Name:  Date:
<i>Or</i>			
1. Conduct consultations with NMFS and CDFG as part of Section 404 permit process to obtain permission for pile driving outside of the work window			
2. Include specifications in contract bid documents in accordance with NMFS and CDFG requirements	2. Visit construction site and verify that measures are being implemented	2. During construction	Name:  Date:

**BIO-3 (Groups 1, 2, and 4):** Construction of some components within the Lake Merritt and Lake Merritt Channel, Waterfront Trail, and City-wide Creeks groups may impact waters of the U.S. and State.

<sup>3</sup> National Marine Fisheries Service (NMFS). San Francisco Bay Project Impact Evaluation System (PIES) website. <<http://mapping.orr.noaa.gov/website/portal/pies/faqs.html>> Accessed April 12, 2007.

**Mitigation:** BIO-3a (Groups 1, 2, and 4): All Measure DD-funded activities within jurisdictional waters shall first obtain authorization from the appropriate agencies (Corps, Water Board, CDFG, and BCDC). At a minimum, each activity will likely require a Section 404 Corps permit and Section 401 water quality certification from the Water Board. Creek restoration activities may also require a CDFG Lake or Streambed Alteration Agreement, depending on site-specific conditions. Construction of the fixed pier boardwalks along the Waterfront Trail will require BCDC approval since it proposes construction over and filling of Bay waters (i.e., concrete piers).

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division

**Monitoring Party:** City of Oakland Project Delivery Division

Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
1. Obtain Section 404 permit from the U.S. Corps of Engineers and Section 401 water quality certification from the Water Board prior to construction and include any requirements in contract bid documents	1. Confirm that permits have been obtained	1. Prior to issuing bid documents	Name:  Date:
2. Obtain BCDC permit and include any requirements in contract bid documents	2. Confirm that permits have been obtained	2. Prior to issuing bid documents	Name:  Date:

**Mitigation:** BIO-3b (Groups 1, 2, and 4): Impacts to jurisdictional wetlands shall be mitigated at a minimum replacement ratio of 1:1 (i.e., one acre created [and preserved] for every acre impacted). If feasible, replacement habitat shall be created/preserved in the same general area as the original impact. Off-site mitigation may be approved if the amount of required replacement habitat exceeds that which is available near a given impact site. A wetland mitigation and monitoring plan (MMP) shall be developed and implemented for each mitigation site, detailing the mitigation design, wetland planting design, adaptive management, maintenance and monitoring requirements, reporting requirements, and success criteria for the created wetland(s).

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division

**Monitoring Party:** City of Oakland Project Delivery Division



Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
1. Design project to replace jurisdictional wetlands at a minimum 1:1 replacement ratio	1. Confirm that construction plans comply with requirements of Mitigation Measure BIO-3b	1. Prior to issuing bid documents	Name:  Date:
2. Prepare and implement wetland mitigation and monitoring plan for each mitigation site	2. Visit mitigation site and verify that success criteria are being met	2. During project operation	Name:  Date:

**BIO-4 (Group 1): The introduction of small boat traffic to the Lake Merritt Channel would result in increased disturbance levels to wintering migratory ducks and other waterbirds.**

**Mitigation:** BIO-4 (Group 1): Small boat use of the Lake Merritt Channel shall be restricted to the non-wintering period of April–September, when waterbird abundance is low. During the closure period, booms shall be placed across the outlet to the Channel from Lake Merritt and at the 7<sup>th</sup> Street dam to prevent boat access and signs shall be posted indicating that the Channel is closed to recreational users. This would reduce the impact to a less-than-significant level.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division

**Monitoring Party:** City of Oakland Project Delivery Division

Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
Close Lake Merritt Channel to small boat traffic from October 1 through March 31 each year by placing booms across the Channel outlet from Lake Merritt and at the 7 <sup>th</sup> Street dam	Confirm that booms are in place by October 1 each year and inspect periodically (at least monthly) during the period from October 1 through March 31	During project operation	Name:  Date:

**CULT-1 (Group 1): Project activities within the Lake Merritt and Lake Merritt Channel group may impact subsurface prehistoric archaeological materials that may qualify as historical resources under CEQA.**

**Mitigation:** CULT-1 (Group 1): A qualified archaeologist who meets the Secretary of the Interior's Professional Qualifications Standards CFR 66, Appendix C, (48 FR 44738-9) and the certification requirements of the Register of Professional Archaeologists shall monitor initial project construction ground disturbing activities, such as trenching or excavating with a backhoe or bulldozer, in the 12<sup>th</sup> Street reconstruction area. The protocols for monitoring and data recovery outlined in the Archaeological Monitoring and Discovery Plan, 12<sup>th</sup> Street Reconstruction Project (AMDP)<sup>4</sup> shall be implemented. Monitoring shall continue as deemed necessary by the monitor based on the initial observations. If the monitor observes subsurface prehistoric archaeological materials during excavation, such as those associated with CA-ALA-5 or P-01-010694, the monitor shall ensure that appropriate actions are taken as described in the following paragraphs.

In the event that archaeological materials are identified (e.g., obsidian, heat-affected rock, faunal bone, and midden), the archaeologist will immediately notify the Construction Manager, who will temporarily stop construction to permit an examination of the find. Should the monitoring archaeologist determine that the cultural object or feature is significant (i.e., appears eligible for listing in the California Register of Historical Resources), a determination will be made as to the areal extent of the find, and the time required to mitigate (i.e., record and remove or collect all or part of) the discovery. Once the archaeological monitor has made a determination as to the time required to mitigate the find, and has sufficient supporting information, the monitor will take the following steps: 1) record, but not remove materials if non-cultural or non-significant, and allow work to progress, or 2) record and remove the isolated or limited cultural materials and permit work to progress.

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<sup>4</sup> William Self Associates, Inc., 2005:4-9. *Archaeological Monitoring and Discovery Plan, 12<sup>th</sup> Street Reconstruction Project*. William Self Associates, Inc., Orinda, California.

If the above steps do not apply (i.e., in those instances where the cultural materials are significant and not isolated or spatially limited), then the Construction Manager shall be notified and recovery of the materials shall occur. Diagnostic artifacts, as well as those classes of artifacts for which an adequate sample has not yet been recovered, shall be collected and bagged following photographing and recording of provenience. Mapping of deposits would be coordinated using existing engineering survey controls, and elevation accuracy will be maintained during the excavation to permit provenience controls for artifact recording. All information needed, including soil color or type, elevation, location, photographs, and sketch maps will be gathered as quickly as conditions permit to allow resumption of construction activities. All recovered cultural materials shall be cleaned as appropriate, preserved if necessary, bagged, and tagged or marked so as to permit its identification in an acceptable record system, and in accordance with recognized professional standards. All recovered cultural material shall be analyzed sufficiently to permit identification in accordance with recognized professional standards and submitted to a curation facility, as appropriate. A Final Monitoring Report shall be prepared, describing the results of monitoring, data recovery, and analysis.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division and construction contractor

**Monitoring Party:** City of Oakland Project Delivery Division

Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
1. Include requirements of the 12 <sup>th</sup> Street Reconstruction Project AMDP and Mitigation Measure CULT-1 in the contract bid documents for the 12 <sup>th</sup> Street Reconstruction Area	1. Confirm that specifications are included in the contract bid documents	1. Prior to issuing bid documents	Name:  Date:
2. Implement construction in accordance with plan requirements	2. Visit construction site and verify that measures are being implemented	2. During construction	Name:  Date:

**CULT-2 (Group 4):** Project activities associated with the City-wide Creeks group may impact historical resources.

**Mitigation:** CULT-2 (Group 4): A preconstruction cultural resources study by a qualified person shall be done for the City-wide Creeks project sites, unless the proposed activities at the site would involve minimal (or no) ground disturbance, such as weeding, hand planting, sign placement, or pruning. For this non-intrusive or minimally intrusive work no mitigation would be needed. For all other work, the preconstruction study will be used to determine whether cultural resource(s) will be adversely affected by project activities and will ensure that, if a cultural resource(s) is present within a City-wide Creek restoration site, impacts to this resource will be avoided or mitigated.

The first phase of the study will assess the prehistoric and historical sensitivity for each City-wide Creeks restoration site (or group of sites) and will review project plans to assess the potential for project activities to impact cultural resources at a creek restoration site. The study will include a literature review and a records search at the Northwest Information Center, Rohnert Park, and a site visit to determine the likelihood of recorded or surface-exposed cultural resources at a creek restoration site. A brief letter report shall be prepared for the City that includes the results of the background research and, based on the results of the background research, a determination of whether additional study for cultural resources at a given location will be necessary. If no cultural resources that would be disturbed by the project activities are identified in this phase, the City's Standard Conditions of Approval, which address accidental discoveries, shall be implemented and would reduce the impact to a less-than-significant level. If cultural resources that could be disturbed by the project activities are tentatively identified, additional study, construction monitoring, and mitigation, as appropriate, shall be performed.

If cultural resources that could be disturbed by the project activities are tentatively identified, a field survey shall be conducted to identify the cultural resources and an archaeological excavation shall be performed, as necessary, to determine whether archaeological deposits are present. The excavation phase may be conducted during the initial ground disturbing work at the site(s). If the excavation phase is conducted during the initial ground disturbing work, the monitoring protocols described in CULT-1 shall be followed. If no cultural resources are identified in this phase, the City's Standard Conditions of Approval, which address accidental discoveries, shall be implemented and would reduce the impact to a less-than-significant level. If cultural resources are identified, the cultural resources shall be preserved, mapped and otherwise documented as described in CULT-1. Implementation of these measures will reduce the impact to a less-than-significant level.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division and construction contractor

**Monitoring Party:** City of Oakland Project Delivery Division

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Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
1. Confirm that report has been prepared	1. Confirm that report has been prepared	1. Prior to issuing bid documents	Name:  Date:
2. Confirm that specifications are included in the contract bid documents	2. Confirm that specifications are included in the contract bid documents	2. Prior to issuing bid documents	
3. Visit construction site and verify that measures are being implemented	3. Visit construction site and verify that measures are being implemented	3. During construction	Name:  Date:

**HYD-1 (Groups 1 – 4): Existing groundwater well(s), that may be encountered and/or damaged by proposed project activities, could act as conduits for migration of pollutants to the underlying groundwater aquifer.**

**Mitigation:** HYD-1 (Groups 1 – 4): Any existing wells discovered during the implementation of Measure DD shall be either: 1) properly abandoned in compliance with the California Department of Water Resources California Well Standards and Alameda County Environmental Health Department requirements prior to final approval of the grading plan; or 2) inspected by a qualified professional to determine whether each well is properly sealed at the surface to prevent infiltration of water-borne contaminants into the well casing or surrounding gravel pack. The California Well Standards require an annular surface seal of at least 20 feet. If the wells are found not to comply with this requirement, the City shall retain a qualified well driller to install the required seal.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division and construction contractor

**Monitoring Party:** City of Oakland Project Delivery Division

Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
1. Include requirements to monitor for abandoned wells in the contract bid documents for the project	1. Confirm that specifications are included in the contract bid documents	1. Prior to issuing bid documents	Name:  Date:

2. Monitor during construction and report any findings to the City and the appropriate agency	2. Visit construction site and verify that measures are being implemented	2. During construction	<i>Name:</i>
			<i>Date:</i>

**HAZ-1 (Group 1): The Reconstruction of 12th Street would temporarily close a designated emergency evacuation route.**

**Mitigation:** HAZ-1 (Group 1): In advance of construction, the City shall prepare detour plans for the emergency evacuation route along 12<sup>th</sup> Street in accordance with the City’s Office of Emergency Services requirements. The plans shall be reviewed and approved by the Office of Emergency Services prior to the start of construction. The implementation of the plans during construction would ensure that alternative emergency evacuation routes are identified and available during project construction and would reduce the impact to a less-than-significant level.

**Responsible Implementing Party(ies):** City of Oakland Project Delivery Division and construction contractor

**Monitoring Party:** Office of Emergency Services and City of Oakland Project Delivery Division

Action(s) and Implementation Timing:	Action(s) by Monitor:	Monitoring Timing	Verification of Compliance Name/Date
1. Prepare detour and emergency evacuations plans for the 12 <sup>th</sup> Street corridor prior to construction and obtain approval of plans from the Office of Emergency Services	1. Review and approve plans	1. Prior to issuing bid documents	<i>Name:</i>  <i>Date:</i>
2. Include detour and emergency evacuation plans in the contract bid documents	2. Confirm that specifications are included in the contract bid documents	2. Prior to issuing bid documents	<i>Name:</i>  <i>Date:</i>
3. Implement construction in accordance with plan requirements	3. Visit construction site and verify that measures are being implemented	3. During construction	<i>Name:</i>  <i>Date:</i>

**Exhibit B**

April 1, 2008 City Council Agenda Report

# CITY OF OAKLAND

## AGENDA REPORT

TO: Office of the City Administrator  
ATTN: Deborah A. Edgerly  
FROM: Community and Economic Development Agency  
DATE: April 1, 2008

RE: **A Public Hearing and Adoption of a Resolution Denying the Appeal and Upholding the Certification of an Environmental Impact Report for the City of Oakland Trust for Clean Water, Safe Parks Bond Measure (Measure DD) Implementation Project (Case Number ER06-0017)**

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### SUMMARY

On February 13, 2008 the Oakland City Planning Commission certified the Environmental Impact Report for the Measure DD Implementation Project. On February 25, 2008, that certification was appealed by the following parties as individuals and/or representatives of the Friends of the Lake association: David E. Mix, Ken Pratt, Winslow Simons, John Wilson, Gloria Pieretti, and Alan Taylor. Pursuant to Section 2115 (c) of the California Environmental Quality Act (CEQA), the appeal must now be considered by the City's elected body, its City Council.

The Planning Commission's certification of the EIR is the only issue currently before the Council. There were no Measure DD activities under City Planning Commission consideration when the EIR was certified, and none are before the Council on this agenda.

In general, the appellants assert that "the EIR is insufficient and sorely inadequate in that it fails to 1) Identify or clarify the projects encompassed by the EIR; 2) it fails to identify potential, possible and obvious adverse environmental impacts; 3) fails to conduct any meaningful studies or analysis by which to make a comprehensive evaluation; 4) fails to identify ways to which significant effects of the project might be avoided or mitigated; and 5) the Planning Commission failed to make an independent review of the EIR, all as required by CEQA." Staff's responses to these and the appellants' more specific assertions are presented in this report, followed with a recommendation that the City Council deny the appeal and uphold the certification of the EIR for the Measure DD Implementation project.

The City Council received the Draft EIR during the public review period (July 20, 2007-September 10, 2007) and the Responses to Comments on January 25, 2008.<sup>1</sup> Together, these documents comprised the Final EIR that is the subject of this appeal.

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<sup>1</sup> These documents are also available on the City of Oakland Planning Department website at <http://www.oaklandnet.com/government/ceda/revised/planningzoning/majorProjectsSection/environmentaldocuments.html>



## **FISCAL IMPACT**

Measure DD is a municipal bond measure that was passed by Oakland voters in 2002. Measure DD authorizes the City to issue bonds that fund activities that provide improved or new recreational opportunities and improve water quality at Lake Merritt and creeks located throughout the city. Additional project funding comes from grants, some of which have pending deadlines and require that the Measure DD environmental determination be complete prior to securing the funds. The appeal of the EIR certification affects the status of the Measure DD EIR and can prevent the City from implementing various Measure DD projects.

## **BACKGROUND**

### **Measure DD Implementation Project**

Measure DD (officially entitled the Oakland Trust for Clean Water, Safe Parks bond measure) approved by Oakland voters in 2002, authorized \$198,250,000 in funding for physical improvements to existing parks; acquisition of land for new parks; development of new parks and recreation facilities; clean water measures; restoration and rehabilitation of recreation buildings; and implementation of creek and waterway protection and restoration activities. Measure DD projects are described in greater detail in the attached February 13, 2008 Planning Commission staff report.

### **CEQA Environmental Determination and Process**

In June 2002, prior to the passage of Measure DD, the City analyzed the Measure's potential environmental effects in an Initial Study that relied upon previous environmental documents prepared by the City. These documents included the Oakland General Plan Open Space, Conservation and Recreation (OSCAR) Element Mitigated Negative Declaration, the General Plan Land Use and Transportation Element (LUTE) Environmental Impact Report (EIR), the Estuary Policy Plan EIR, and the Coliseum Redevelopment Plan Area EIR. Based on this analysis, the City found that all potentially significant effects would be avoided or mitigated by mitigation measures required by previously prepared environmental documents. As a result, because none of the circumstances calling for preparation of a subsequent or supplemental EIR were present, the City prepared an Addendum to the previous environmental documents.

As more defined proposed project components have been identified since the 2002 Addendum, the City elected to prepare a Draft Environmental Impact Report (DEIR) to provide a more comprehensive environmental analysis for the Measure DD Implementation Project. Prepared

pursuant to the California Environmental Quality Act (CEQA), the DEIR assessed potential environmental impacts that could result from implementation of Measure DD projects. The DEIR was distributed on July 20, 2007 for a 52-day public review and comment period that was to conclude on September 10, 2007. The standard 45-day minimum comment period specified by State law was extended to allow for additional public review opportunities after the Labor Day holiday in early September. In addition, because September 10 was a City of Oakland holiday and City offices were closed, public comments were accepted until September 11, 2007.

On September 5, 2007, during the public comment period on the DEIR, the City Planning Commission held a public hearing to receive comments on the environmental analysis contained in the DEIR.

On January 25, 2008 the City issued a Response to Comments document that contained responses to comments received during the Draft EIR public comment period as well as clarifications of information contained in the DEIR, and which together constitute the Final EIR. On February 13, 2008 the City Planning Commission, after receiving public testimony, certified the FEIR finding that it adequately analyzes impacts associated with the Measure DD Project. On February 25, 2008 the certification was appealed by the following parties as individuals and/or as representatives of "Friends of the Lake:" David E. Mix, Ken Pratt, Winslow Simons, John Wilson, Gloria Pieretti, and Alan Taylor (see Attachment A—Appeal Application and Appellants' Supporting Evidence).

## KEY ISSUES AND IMPACTS

Because there were no Measure DD project approvals under consideration when the EIR was certified, the only issue on appeal is the validity of the certification. The appellants' letter is included as Attachment A. Their allegations are presented verbatim below in underlined text. A staff response in *italic font* follows each assertion.

1. "The EIR is insufficient and sorely inadequate in that it fails to, 1) identify or clarify the projects encompassed by the EIR, 2) it fails identify potential, possible and obvious adverse environmental impacts, 3) fails to conduct any meaningful studies or analysis by which to make a comprehensive evaluation, 4) fails to identify ways to which significant effects of the project might be avoided or mitigated and 5) the Planning Commission failed to make an independent review of the EIR, all as required by CEQA."

*Staff Response: The activities proposed as part of the Measure DD Implementation Project are described in detail in text and figures on pages 23–62 of the EIR's Project Description. Impacts of the project are identified and evaluated in Chapter IV of the EIR. Mitigation measures are recommended where significant effects were identified. Responses #5 and #11 below address the alleged absence of specific studies identified in the appeal. In accordance*

*with CEQA, the CEQA guidelines, and City requirements, the Planning Commission was provided copies of the Draft EIR and the Response to Comments document, which together constitute the Final EIR, and considered the environmental evaluation contained therein before certifying the document. The Planning Commission conducted an independent review and analysis, as reflected in its findings certifying the EIR and elsewhere in the administrative record.*

2. “The City has created a hodgepodge of environmental documents and studies and has failed to make clear the full extent of the EIR. Foremost, it has not clearly or sufficiently identified the project or individual projects under the EIR as required by CEQA.”

*Staff Response: The Measure DD project is described in text and figures on page 23–62 of the EIR’s Project Description. Responses #3 and #4 identify the environmental documents and studies associated with Measure DD implementation activities. As with many long-term, multi-phase projects, the City has made environmental determinations on previous Measure DD actions, based on the information available at the time of the relevant action. As explained in the cited sections of the Project Description and elsewhere throughout the record, this EIR encompasses the entirety of the Measure DD implementation project, providing the basis for future Measure DD actions by the City and other agencies.*

3. “The draft EIR in its introduction at page 1 and the summary at paragraph A (page 9) appears to make clear that the project or projects are all those segments to be implemented under Measure DD as group 1,2,3 and group 4. Yet, the staff report and other material indicate that other documents are to be relied upon for various projects or segments of the overall project. It is absolutely imperative to clarify whether these other documents (Oakland General Plan, OSCAR, LUTE EIR, Estuary Policy Plan EIR and the Coliseum Redevelopment EIR) are to be considered or relied on for implementation of the project or if the present EIR replaces, or supplants those documents.”

*Staff Response: The relationship of the EIR to the plans and environmental analyses cited in the appellants’ letter are discussed on pages 23–24 of the Project Description and in Section IV.B, Planning Policy, of the EIR. As noted at the top of page 24, the Measure DD Implementation Project EIR was prepared because more detailed information is now available and more defined proposed project components have been developed since completion of prior environmental documents (e.g., the 2002 Addendum and the Lake Merritt Channel Wetlands and Widening Project EIR). The Measure DD Implementation Project EIR will be relied upon for the implementation of Measure DD, which is described in the Project Description of the EIR and elsewhere in the record.*

4. “The same issue is presented in the Planning Commission certification of the Lake Merritt Channel Wetlands and Widening Project EIR (ER 050015, June 2002). There is no mention of this EIR in the staff report nor is it addressed in the subject EIR, neither was it addressed by the Planning Commission certification of this EIR. Without question, CEQA clearly requires that a project be identified, it is elementary. The contention is, the Planning Commission certified the EIR while the City is relying on other documents in the implementation of the projects.”

*Staff Response: The Lake Merritt Channel Wetlands and Widening Project EIR is identified on page 24 of the EIR. The findings of the Measure DD Implementation Project EIR are consistent with those of the Lake Merritt Channel Wetlands and Widening Project EIR. As noted above, the Measure DD Implementation Project EIR provides more detailed information about environmental impacts, mitigation measure and alternatives than was available at the time of the Lake Merritt Channel Wetlands and Widening EIR and will provide a basis for implementation of the activities addressed in the prior Channel Wetlands and Widening EIR.*

5. “Hydrology – The hydrology study is completely erroneous. It is based on a computer model - noted as MIKE 11 but not substantiated by any material facts. The City has refused to divulge or make available the data by which the model is comprised or by which the results are produced. (see letter by Lyle Oehler, December 18, 2007). See also comment letter by David Mix regarding this EIR and the previous channel EIR (June 2006) and Alameda County Flood Control comment letter (September 10, 2007, Bay Conservation Development Commission comment letter (August 27, 2007) and the Preliminary Design Study for the Lake Merritt Flood Control Facility (February 1966) by Brown and Caldwell.”

*Staff Response: The hydraulic reports upon which the EIR analysis relied are available at the City of Oakland, Community and Economic Development Agency, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315. The letter cited by the appeal indicates that all memos and studies produced for the City as a result of the MIKE 11 modeling effort were provided to Mr. Mix in December 2007. Use of industry standard computer models such as MIKE 11 are accepted professional practice in evaluating hydraulics. As noted in Response to Comment B11-3, MIKE 11 is an industry standard software package commonly used for simulating flow and water level, water quality and sediment transport in rivers, flood plains, irrigation canals, reservoirs and other inland water bodies. The MIKE 11 software is not available to the City because it is protected proprietary information. Thus the City does not have, and accordingly, cannot provide others with, the code used to create the software. Although the software package itself is proprietary, information regarding the*

*software is available from a number of websites, including the United States Geological Survey (<http://smig.usgs.gov/SMIC>), which identifies it for use in estuaries, rivers and channel networks. For further explanation of the MIKE 11 software refer to Responses to Comments B11-3 through B11-5 of the Final EIR.*

*Responses to comments on the Draft EIR made by David Mix are found in Responses to Comments B10-1 through B10-4, B11-1 through B11-15, and B12-1 of the Final EIR.*

*Responses to comments on the Draft EIR made by the Alameda County Flood Control District are found in Responses to Comments A3-1 through A3-5 of the Final EIR. Specifically, refer to Response to Comment A3-2, which addresses a comment on the hydraulics of the Channel and the operation of the 7<sup>th</sup> Street Pump Station.*

*Responses to comments on the Draft EIR made by the Bay Conservation and Development Commission are found in Responses to Comments A2-1 through A2-8 of the Final EIR. Specifically, refer to Responses to Comments A2-2 and A2-7, which address comments on the hydraulics of the Channel and the operation of the 7<sup>th</sup> Street Pump Station.*

*The Preliminary Design Study for the Lake Merritt Flood Control Facility dated February 1966 was reviewed as part of the background research for the MIKE 11 modeling effort. It was determined that the 1966 study is not directly relevant to the current hydraulic characteristics of the Channel because the study was prepared before the 7<sup>th</sup> Street Pump Station, the primary flood control structure in the Channel, was constructed. The analysis in the EIR relied upon studies that describe and analyzed existing hydraulic conditions.*

6. “The City’s contention that the work to be done in the channel area will double the flow and greatly improve flushing of the lake is not based on fact nor does it meet the common sense test and defies logic. The work to be done is limited to the upper segment of the channel with no work to be done below the flood gates at 7<sup>th</sup> Street. It is clearly understood that some of the major restrictions are at the lower end (see URS Report). Understandably, that without a complete widening and removal of all restrictions including the BART tube all the way to the inner channel no change will occur in the flow. It is likened to expanding only one end of the straw while leaving the smaller end constricted—flow simply is not increased.

Added to this is the depth of the channel which can not be lowered due to the BART tube just above 7<sup>th</sup> Street lying just a couple inches below the low tide line which acts as a huge weir greatly restricting tidal flow.

Subsequently, the analysis and supposed environmental impacts are based on junk science and to say the least unreliable. The tinkering with the channel and floodgates in the absence of an actual and legitimate study based on real facts and flow calculations is very likely to cause severe flooding and soil erosion endangering people and property.”

*Staff Response: Although the appellants disagree with the City’s analysis, the record demonstrates sound technical support for the EIR’s analysis. Similar statements disputing the City’s analysis regarding Channel hydraulics and restrictions to flow were made on the Draft EIR. Refer to Responses to Comments B11-3 through B11-9 in the Final EIR. For example, refer to Response to Comment B11-5, which notes that the hydraulic analysis concludes that the EBMUD 84-inch interceptor and the BART tunnel are not the most critical elements to water flow in the Channel. Also, refer to Response to Comment B11-3 with regard to the software and technical aspects of the analysis.*

7. “Toxic Soils - The City clearly sidestepped the issue in its failure to gather soil samples and make the necessary tests. At page 289 of DEIR even where environmental concerns were identified, soil sampling was not performed (see Mix letter). This can only be construed as far less than adequate and certainly does not support a conclusion that an environmental impact does not exist or will surface with the planned extensive grading and construction in the area.”

*Staff Response: As noted in the Responses to Comments, the appellants are incorrect. As described at pages 287-292 of the EIR, a similar statement regarding toxics was made on the Draft EIR. Soil sampling was conducted as described on pages 288-289 of the EIR. Where historical evidence indicates that sampling and analysis of soils or other environmental media are warranted to determine if contamination is present, samples have been collected and analyzed or will be prior to construction in accordance with the City’s Standard Conditions of Approval 50 and 52 as stated on pages 303-305 of the Draft EIR. Also, refer to Response to Comment B11-10 in the Final EIR. For example, with respect to the citation at page 289 of the DEIR where “environmental concerns were identified” but soil sampling has not been performed, the appellants appear erroneously to conclude the identification of “environmental concerns” necessarily requires soil sampling prior to certification of an EIR. In reality, soil sampling would be required in accordance with the City’s Standard Conditions of Approval for Hazards and Hazardous Materials (described in Chapter IV.J of the DEIR), including without limitation Standard Condition of Approval 50 and 52, if the preliminary investigations required by those Conditions of Approval indicate sampling is warranted.*

*Implementation of these Conditions of Approval would require that, prior to issuance of a demolition, grading, building or similar permit the project sponsor must submit a Phase I*

*Environmental Site Assessment Report to the City's Fire Prevention Bureau, Hazardous Materials Unit and/or other appropriate agency. A Phase I Report identifies potential or existing environmental contamination issues of both the land as well as any physical improvements on the property. Phase I Reports do not include actual physical collection of physical samples; instead they reflect examination of potential soil contamination, groundwater quality, surface water quality and similar elements based on field examination, historical use of the property, public file record searches, and evaluation of neighboring properties that may indirectly put the subject site at risk of contamination. A Phase I Report is the first step in the environmental analysis process; if the Phase I Report reveals a possibility of site contamination, a Phase II Environmental Site Assessment may be conducted. The Phase II Report is a more detailed investigation that includes collection of soil samples, groundwater, building materials, chemical analysis of hazardous substances and other actions warranted by the findings of the Phase I Report. The Phase I and/or Phase II Reports as necessary, make recommendations for the specific remedial action that is required in consultation with appropriate State, Local or Federal regulatory bodies. Those recommendations are incorporated into the proposed project and must be complied with by the project sponsor, thereby ensuring that potential impacts are reduced to a less than significant level.*

8. “Marshlands - The creation of marshlands between Lake Merritt and 10<sup>th</sup> Street or the environmental impact thereof is not addressed at all in the DEIR. The anticipated extensive grading, vast soil removal, tree removal and major reconfiguration of the landscape is simply not dealt with in the study – the EIR is totally moot [sic] concerning this segment of the project.”

*Staff Response: The proposed Channel wetlands are described on page 35 and shown on Figure III-2 of the Draft EIR. Impacts associated with excavation activities and grading of the site, such as erosion and water quality effects, are addressed on page 263 of the EIR. Tree removals are described on pages 30 and 35 of the Project Description and potential impacts, such as those to biological resources and aesthetics, are discussed in Sections IV.F and IV.M of the Draft EIR and in Master Response M-1 of the Final EIR.*

9. “Parking Lots – Creating more parking lots or by shelving the plans to eliminate parking lots is a negative for the environment. Abandonment of the plans to reduce the Sailboat House parking lot and replace the asphalt with vegetation and lawn area will have an adverse environmental impact. The same holds true for the boathouse parking lot, end of Lake Shore parking lot, Kaiser Convention Center parking lot and dedicated street parking for the Boat House Restaurant. It is not money well spent and contrary to the

public benefit and it does not meet CEQA requirements in considering the environment at several levels.”

*Staff Response: The EIR fulfills CEQA requirements regarding the proposed parking lot modifications. Parking lot modifications that are part of the project are described on pages 30, 42, and 48 of the EIR. They are illustrated in Figures III-2, III-8, and III-9. The plans to reconfigure and to reduce the size of the Sailboat House parking lot are identified on page 48 of the Project Description and were considered in the EIR analysis.*

10. “Trees – This entire subject is well covered by the Friends of the Lake lawsuit and comment letter by Matt McFarland and others, we hereby set forth all the material pertaining thereto as part of this appeal. Of particular importance is the aesthetics value of the trees where the City has refused to recognize it as an adverse environmental impact. Not only the trees but all of the work involved under DD where the appearance is of vital importance to the public, especially the aesthetics of the Boat House Restaurant parking lot where the City has refused to consider it an environmental impact as required by CEQA.”

*Staff Response: Responses to comments on the Draft EIR made by Matt McFarland of the Law Offices of Brian Gaffney are found in Responses to Comments B3-1 through B3-27 of the Final EIR. Specifically, refer to Responses to Comments B3-3 and B3-9, which address comments on tree removals.*

*Tree removals are described on pages 30, 35, 41, 42, and 47 of the Project Description and potential impacts, such as those to biological resources and aesthetics, are discussed in Sections IV.F and IV.M and in Master Response M-1 of the Final EIR.*

*The Friends of the Lake litigation noted by appellants refers to a CEQA challenge against the City, filed in August 2006 by Friends of the Lake, members of which include one or more of the appellants. The lawsuit challenged, among other things, the City’s CEQA documentation for removal of trees around Lake Merritt. On October 10, 2007, the Superior Court of California, County of Alameda, upheld the permits and the City’s environmental determination. The petitioners of the lawsuit have filed an appeal, which has not yet been scheduled for hearing before the Court of Appeal. Although the Measure DD Implementation Project EIR that is the subject of this appeal includes an additional environmental review of the trees that are the subject of the lawsuit, the proceedings before the Court of Appeal should have no bearing on this appeal nor on further Measure DD actions in reliance on this EIR.*



11. “Traffic and Congestion – This aspect of the project, reducing the number of lanes on Lake Shore, Lakeside Drive, 12<sup>th</sup> Street, closing El Embarcadero, and eliminating right turn lanes (pork chops) and any other type of traffic diversion under the project, will have an adverse environmental impact related to all the typical elements of traffic congestion. For the most part the studies and reports relied on by the EIR are sorely inadequate. They are outdated, not applicable to the immediate area of concern, not factual and do not contain or rely on actual surveys or mechanical traffic counts.”

*Staff Response: Traffic count data were collected for use in the analysis within the past three years, some as recently as Spring 2007. The traffic analysis used standard methods as described in the Highway Capacity Manual and in accordance with the Alameda County Congestion Management Agency’s (CMA) Countywide Transportation Model. Changes to Lakeshore Avenue, Lakeside Drive, El Embarcadero, and other roadways in the project area are described on pages 27–51 of the Project Description and impacts are assessed in Section IV.C, Transportation, Circulation and Parking. Mitigation measures are recommended where significant effects were identified.*

12. “This appeal of the Planning Commission certification of the EIR is to encompass all aspects of Measure DD and the Draft EIR pertaining thereto. It is the appellants contention that the Planning Commission abused its authority and did not do an independent review and study of the document and foremost that the EIR is not an adequate and sufficient study or analysis of the projects to be implemented as required by CEQA.”

*Staff Response: The Planning Commission acted within its authority to certify the EIR. In accordance with CEQA, the CEQA guidelines, and City requirements, the Planning Commission was provided copies of the Draft EIR and the Response to Comments document, which together constitute the Final EIR, and independently considered the environmental evaluation contained therein before certifying the document. The certification included a finding that the Planning Commission independently reviewed the EIR and that the EIR reflects the Commission’s independent judgment.*

## **SUSTAINABLE OPPORTUNITIES**

The item before the Council is an appeal of the certification of the Measure DD EIR. Although specific action on the appeal does not directly result in sustainable opportunities, it will--should the appeal be denied and certification upheld--allow the City to proceed with specific Measure DD activities that collectively improve public recreational opportunities and water resources

throughout the City. This would in turn foster economic development, reduce environmental hazards, and make enhanced recreational facilities available throughout the Oakland community.

### **DISABILITY AND SENIOR CITIZEN ACCESS**

Certification of the Measure DD EIR will allow many planned facility improvement projects to proceed. These projects will conform to the Americans with Disabilities Act in all provisions to ensure equal access for disabled and senior citizens.

### **RECOMMENDATION(S) AND RATIONALE**

Staff recommends that the City Council uphold the Planning Commission's certification of the EIR, finding that the Measure DD EIR has been prepared in compliance with CEQA, the State CEQA Guidelines, and the City's local Environmental Review Regulations and has been independently reviewed and considered by the Council. An EIR is legally adequate if the document complies with these requirements, and is accurate and includes an adequate discussion of potential adverse environmental effect, ways in which such effects might feasibly be mitigated, and a reasonable range of alternatives to the project which reduce or avoid adverse effects. Staff believes these requirements have been met. The detailed CEQA certification findings for this project are included in the City Planning Commission's February 13, 2008 Staff Report (Attachment B of this report). Specifically, staff recommends the City Council adopt the findings of the Planning Commission report and the attached Resolution denying the appeal and upholding the Planning Commission's certification of the EIR for the Measure DD Implementation Project.

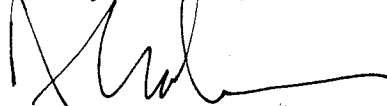
### **ALTERNATIVE CITY COUNCIL ACTION**

Should the City Council elect to support the appeal, the Planning Commission's certification would be invalidated and staff would revise the EIR in a manner that addressed the Council's concerns. Depending on the nature of the Council's concerns, staff would either resubmit the revised EIR to the Planning Commission or City Council for certification in accordance with CEQA's requirements.

**ACTION REQUESTED OF THE CITY COUNCIL**

Adopt the Resolution denying the appeal and upholding the Planning Commission's certification of the Measure DD Implementation Project EIR.

Respectfully submitted,

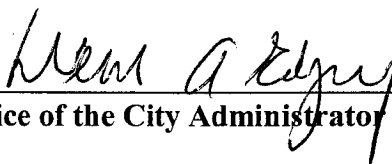


**DAN LINDHEIM, Director**

Community and Economic and Development Agency

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Strategic Planning

APPROVED AND FORWARDED TO THE  
CITY COUNCIL

  
**Office of the City Administrator**

**ATTACHMENTS**

- A. Appeal Application and Appellants' Supporting Evidence
- B. February 13, 2008 City Planning Commission Staff Report