CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: January 20, 2009

RE: Resolution Rescinding Certification of the Oak to Ninth Project Environmental Impact Report (EIR) Per Resolution No. 79981 C.M.S., Approving the Revisions to the Analysis in the Oak to Ninth Project EIR, Re-Certifying the Oak to Ninth Project EIR as Revised, and Readopting the CEQA Findings and Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program as Revised.

SUMMARY

On June 20, 2006 and July 18, 2006, the City Council and Oakland Redevelopment Agency approved the Oak to Ninth Project. Three court challenges to the approvals were filed. The first two lawsuits primarily alleged that the City and Agency's approval of the Project violated the California Environmental Quality Act (CEQA). The third lawsuit alleged that the City improperly refused to certify for the ballot a referendum petition requesting the electorate to set aside the approval of the Development Agreement.

The challengers in the third case dismissed their lawsuit prior to a court decision on the merits of their claims.

With respect to the CEQA claims, on November 16, 2007, January 28, 2008, and February 27, 2008, the Superior Court issued rulings, which upheld the Environmental Impact Report (EIR) except with respect to: (1) analysis of certain "cumulative impacts" (i.e., impacts of the project in 2025 when combined with other past, present, and reasonably foreseeable future development) and (2) geology and seismic impacts (i.e., earthquake-related impacts). The Court ordered that the resolution certifying the EIR be vacated and suspended all other project approvals pending revisions to the EIR (*"Revisions"*) and further order of the Court.

Staff is returning to the City Council without another meeting before the Planning Commission on this Project. The Superior Court ordered the vacation and rescission of the City Council's 2006 certification of the 2005 Oak to Ninth EIR, and also ordered that the approvals for the Project be suspended. The City has prepared revisions to the EIR and the Council may consider whether to re-certify the EIR pursuant to the Court's decision. Per Oakland Municipal Code §17.158.220(F), the City Council retains jurisdiction regarding whether the EIR, as revised, should be re-certified. Further, there is no decision for the Planning Commission to consider. The approvals were suspended, not rescinded, and there is no requirement that the Planning Commission revisit the prior approvals.

The City Council is requested to (1) consider the revisions to the EIR, which have been made in response to the Court Order, Judgment and Writ, as discussed in the attached document and (2) approve the proposed Resolution, which rescinds certification of the Oak to Ninth Project EIR, adopted June 20, 2006 per Resolution No. 79981 C.M.S., (3) approve the revisions to the analysis in the Oak to Ninth Project EIR, (4) recertify the Oak to Ninth Project EIR as Revised, and (5) readopt the CEQA Findings and Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program pursuant to the Court Order, Judgment and Writ.

Upon re-certification, the City will return to the Court for a determination that the EIR revisions cure the defects found by the Court. If the Court finds the revisions to be sufficient, it should terminate the suspension of the other project approvals, which would reinstate the City's approval of the Project.

FISCAL IMPACT

There are no fiscal impacts associated with the re-certification of the Environmental Impact Report for the Oak to Ninth Project.

BACKGROUND

Project Description

The Oak to Ninth Project proposed by Oakland Harbor Partners, LLC and approved by the City and Agency on June 20, 2006 and July 18, 2006, would redevelop approximately 64.2 acres bound by the Embarcadero Roadway (parallel to Interstate 880), the Oakland Estuary, Estuary Park, and Brooklyn Basin.

The Project includes the construction of approximately 3,100 residential dwelling units (of which 465 will be affordable), approximately 200,000 square feet of ground floor retail/commercial space, and 31.89 acres of parks and open spaces. Two marinas will be renovated and expanded to accommodate 170 boat slips. Approximately 160,000 square feet of the 180,000 square foot Ninth Avenue Terminal building will be demolished and converted to park and other uses consistent with the Tidelands Trust. A continuous public pedestrian trail and bicycle facility, a segment of the Bay Trail, will be constructed along the project's waterfront (excluding parcels not owned by the City/Port of Oakland or the project sponsor). The majority of existing uses and structures on the project site would be removed or demolished.

Environmental Analysis

The City published a Draft EIR for the Project on August 31, 2005. A Final EIR was published on February 1, 2006. An addendum to the EIR was published on June 7, 2006. On March 15, 2006, the Oakland Planning Commission certified the EIR (which includes the Draft EIR, the Final EIR, and the Addendum) and took actions approving, or recommending approval of, various resolutions and ordinances related to the approval of the project. On June 20, 2006 and July 18, 2006, the City Council and Redevelopment Agency adopted a number of Resolutions

and Ordinances approving the Project, including Resolution No. 79981 C.M.S. certifying the EIR.

After the Court ruled that the EIR was deficient in certain respects and held invalid the resolution certifying the EIR, the City prepared Revisions to the EIR, specifically entitled, *"Revisions to the Analysis in the Oak to Ninth Project EIR (SCH No. 2004062013) Prepared to Comply with the Alameda County Superior Court Order in Case No. RG06-280345 and Case No. RG06-280471"* published October 1, 2008 (refer to Attachment A). This document was published for a 45-day public review period extending from October 1, 2008 to November 17, 2008. Nineteen comment letters were received during this time period.

Although the *Revisions to the Analysis* specifically focused on the issues identified by the Court, the public comments received covered a wider variety of topics. The Response to Comments document addresses all issues raised both in the individual response to comments and in the "Master Responses." Master Responses were prepared to address common topics in order to reduce repetition in the responses provided to the individual comment letters. Common topics included those pertaining to the project merits or project approvals; environmental issues outside the scope of the court order; the traffic analysis; and the review process for the *Revisions to the Analysis.* The individual comment letters, and the responses to these comments, are included as Attachment B to this staff report.

KEY ISSUES AND IMPACTS

In the case of Coalition of Advocates for Lake Merritt v. City of Oakland and Oakland Heritage Alliance v. City of Oakland (Case Nos. RG06280471 and RG06280345), the Superior Court held that the Environmental Impact Report (consisting of the Draft EIR, the Final EIR, and the Addendum to the EIR), prepared and certified by the City of Oakland and the Oakland Redevelopment Agency in 2006 for the Oak to Ninth Avenue Project, failed to comply with CEQA because:

(1) Aspects of the cumulative impact analysis (impacts of the project in 2025 when combined with other past, present, and reasonably foreseeable future development) were insufficient, including:

(a) The land use, plans and policies section and the population, housing and employment section did not include a sufficient cumulative impact analysis; and

(b) The cumulative impact analyses for geology and seismicity, noise from traffic, hazardous materials, biological resources, visual quality, public services and recreation facilities, and utilities did not sufficiently consider the impact of the project when added to other closely related past and present projects; and

(c) The traffic analysis relied on an improper ratio theory to evaluate cumulative impacts;

(2) The seismic risk mitigation findings and measures were not supported by sufficient analysis or substantial evidence.

The Court upheld all other aspects of the EIR. Consequently, the Revisions to the EIR modifies the EIR only with respect to the analysis found deficient by the Court. Accordingly, the Revisions to the EIR relies upon the extensive relevant information and analysis included within and referenced in the original EIR documentation.

REVISIONS TO THE ANALYSIS IN THE OAK TO NINTH PROJECT EIR

The following summarizes key aspects of the Revisions to the EIR and sets forth the impact statements and mitigation measures that have been added or revised as a result of the additional analysis.

A. Land Use, Plan, and Policies

The Revisions to the EIR document includes a more thorough and detailed discussion of other closely related past, present, and reasonably foreseeable projects. Refer to Attachment A, pages II.A-1 to II.A-7.

The Revisions to the EIR concludes that the Project, combined with other closely related past, present, and reasonably foreseeable projects in 2025, would not result in a significant adverse land use/plans and policies cumulative impact. No mitigation measures are necessary. The following impact statement is added to the EIR:

Impact A.5: The proposed project, when combined with other closely related past, present, and reasonably foreseeable future development in the vicinity, would not result in a significant adverse cumulative land use/plans and policies impact. (Cumulative Impact: Less than Significant)

Mitigation: None Required

B. Transportation, Circulation, and Parking

The EIR originally included a significance criterion for determining that a project has a considerable contribution to a cumulative intersection impact in 2025 based on whether the project would contribute five percent or more to the cumulative traffic increase. The Court found that the use of this criterion violated CEQA. The Revisions to the EIR reconsiders the cumulative traffic impact analysis, using six significance criteria related to traffic impacts to determine if the project would have a considerable contribution to those intersections forecast to operate at unacceptable levels in the 2025 scenario, without using the five percent criterion. The revised analysis applies these criteria to 17 intersections which are expected to operate at unacceptable levels in the 2025 scenario when impacts of the Project are added to those of other projects. A list of the study intersections is provided in Attachment A, pages II.B-2 and II.B-3.

Table II-B-2 presents post mitigation conditions at the intersections that are analyzed. Refer to Attachment A, pages II.B-1 to II.B-17.

To summarize key findings of the revised analysis (which is the new B.3 Analysis and applies to intersections labeled B.3a through B.3q):

(1) Mitigation Measures will reduce the cumulative impact to less than significance at nine intersections, which would operate at acceptable levels as mitigated. These intersections are:

b) Embarcadero and Broadway (PM Peak House); Study Intersection #3
f) West Grand Avenue and Harrison Street (AM Peak House); Study Intersection #27
i) Lakeshore Avenue and Lake Park Avenue (PM Peak Hour); Study Intersection #35
j) Embarcadero and 5th Avenue (PM Peak Hour); Study Intersection #36
k) Embarcadero and I-880 Northbound Off-Ramp (PM Peak Hour); Study Intersection #37
m) 5th Avenue and 7th/8th Streets (PM Peak Hour); Study Intersection #40
o) Foothill Boulevard and 14th Avenue (Westbound) (AM Peak Hour); Study Intersection #49
p) Foothill Boulevard and 14th Avenue (Eastbound) (PM Peak Hour); Study Intersection #50
q) 16th Street and 23rd Avenue (PM Peak Hour); Study Intersection #52

(2) Mitigation Measures would reduce the cumulative impacts to less than significant, if implemented, at three intersections, but the decision to implement is another agency's (e.g., Caltrans or the City of Alameda). Because of the uncertainty in implementing the mitigation measures, however, the impacts are considered Significant and Unavoidable. These three intersections are:

a) Atlantic Avenue/Webster Street (AM Peak Hour); Study Intersection #1
d) 5th Street and Oak Street (PM Peak Hour); Study Intersection #9
l) Embarcadero and I-880 Southbound On-Ramp (PM Peak Hour); Study Intersection #38

(3) Mitigation Measures would reduce the contribution of the Project to a less than significant level, but the intersection would still operate at unacceptable levels. These two intersections are:

g) Lakeshore Boulevard/Foothill Boulevard (AM Peak Hour); Study Intersection #30
n) 14th Avenue/7th/12th Streets (PM Peak Hour); Study Intersection #41

(4) There are no feasible mitigation measures for three intersections (e.g., because it is not feasible to widen the Webster Tube). These three intersections are:

c) 5th Street/Broadway (PM Peak Hour); Study Intersection #5
e) 6th Street/Jackson Street (AM and PM Peak Hours); Study Intersection #12
h) Lakeshore Boulevard/MacArthur Boulevard (PM Peak Hour); Study Intersection #34

The Revisions to the EIR adds the following impact statement:

Impact B.3: Traffic generated by buildout of the project would contribute to cumulatively significant impacts at local intersections in the project vicinity in 2025. (Significant Impact at the intersections described under Impacts B.3a through B.3q.)

Mitigation: See Mitigation Measures B.3a through B.3q.

F. Geology, Soils, and Seismicity

The Court found that the EIR did not provide a sufficient analysis to support the finding that the seismic hazards would be mitigated to a less than significant level. Additionally, the Court found that the EIR did not include a sufficient analysis of the cumulative geology, soils, and seismicity impacts of the project when added to other closely related past and present projects.

The Revisions to the EIR includes a more thorough analysis. Refer to Attachment A, pages II.F-1 through II.F-19. For example, the EIR identified two potentially significant impacts related to seismic hazards:

Impact F.1: In the event of a major earthquake in the region, seismic ground shaking could potentially injure people and cause collapse or structural damage to proposed structures. (Potentially Significant)

Impact F.2: In the event of a major earthquake in the region, seismic ground shaking could potentially expose people and property to liquefaction and earthquake-induced settlement. (Potentially Significant)

The Revisions to the EIR includes a detailed analysis of the applicable California Building Codes and other state and local laws, which will mitigate the impacts. In addition, the mitigation measures for the above two impacts have been revised to include more specific mitigation methods. Considering the rigorous investigation process required under the engineering standard of care, compliance with state laws and local ordinances, and regulatory agency technical reviews, the mitigation measures presented in F.1 and F.2 will reduce the risk of seismic hazards and ensure that impacts associated with development in the Oak to Ninth Project area would remain less than significant. Refer to Attachment A, *Revisions to the Analysis*, pages II.F-15 and II.F-16 for the complete text of Mitigation Measure F.1 and Mitigation Measure F.2.

The discussion regarding cumulative effects has also been expanded. In summary, the regulations discussed in this section mandate that all past, present and future projects comply with local and state codes and applicable permitting requirements, which would ensure against the Project and other development from resulting in a significant impact.

Revised for clarity in response to the Court Order, the EIR impact statement is modified as follows. New text is underlined.

Impact F.8: The development proposed as part of the project, when combined with other closely related past, present and reasonably foreseeable development in the vicinity, would not result in significant cumulative impacts with respect to geology, soils or seismicity. (Cumulative Impact: Less than Significant)

Mitigation: None Required

G. Noise

The Revisions to the EIR includes a detailed analysis of the cumulative traffic noise impacts of the Project when added to other closely related past, present and reasonably foreseeable future projects. Refer to Attachment A, pages II.G-1 through II.G-3.

In summary, the Project, combined with closely related past, present, and reasonably foreseeable projects would not result in a significant traffic noise cumulative impact. No mitigation measures are necessary.

The EIR impact statement is modified for clarity in response to the Court Order as follows. New text is underlined; deleted text is shown as ~~strikethrough.~~

Impact G.5: The proposed project, when combined with other closely related past, present and reasonably foreseeable ~~together with anticipated~~ future development in the vicinity ~~Oakland, would not result in a significant adverse cumulative traffic noise impact. could result in long-term traffic increases that could cumulatively increase noise levels.~~ (Cumulative Impact: Less than Significant)

Mitigation: None Required

H. Hazardous Materials

The Revisions to the EIR includes a detailed analysis of the cumulative hazardous materials impacts of the Project in 2025 when added to other closely related past, present and reasonably foreseeable future projects. Refer to Attachment A, pages II.H-1 through II.H-8.

In summary, no significant adverse cumulative impact associated with hazardous materials would result from the Project in combination with other past, present, or reasonably foreseeable future projects. The Project would involve large-scale remediation activities that would substantially improve the environmental conditions on the site as well as for the adjacent Estuary. The remediation activities associated with closely related past, present, and reasonably foreseeable future development in the project area will improve the human and environmental health in the project area. Thus, the Project's remediation activities would combine with other past, present and reasonable foreseeable future remediation activities to result in a considerable beneficial impact for human and environmental health.

The EIR impact statement is modified for clarity in response to the Court Order as follows. New text is underlined; deleted text is shown as ~~strikeout~~.

Impact H.7: ~~Development proposed as part of the~~ The project, when combined with other closely related past, present, and reasonably foreseeable development in the vicinity, would not result in cumulative hazardous materials impacts. (Cumulative Impact: Less than Significant)

Mitigation: None Required

I. Biological Resources/Wetlands

The Revisions to the EIR includes a detailed analysis of the biological resources/wetlands impacts of the Project in 2025 when added to other closely related past, present and reasonably foreseeable future projects. Refer to Attachment A, pages II.I-1 through II.I-10.

In summary, the regulations discussed in this section mandate all past, present and future projects to comply with local, state, and federal laws, policies and applicable permitting requirements, which would preclude the project and other development from resulting in a significant impact. In addition, compliance with each of these regulations is a condition of project approval. Thus, the Project, in combination with other past, present, and reasonably foreseeable future projects, would have a less than significant cumulative impact to biological resources (i.e., sensitive natural communities [rare or endangered plant] or animal community) or wetland, particularly considering the positive effects of past and present projects to natural plant or animal communities or wetlands at Lake Merritt and Lake Merritt Channel, the Oakland Estuary, and central San Francisco Bay.

The EIR impact statement is modified for clarity in response to the Court Order as follows. New text is underlined; deleted text is shown as ~~strikeout~~.

Impact I.8: The proposed project, when combined with other closely related past, present and reasonably ~~Construction activity and new development resulting from the project, in conjunction with other~~ foreseeable development in the vicinity, would not result in significant adverse cumulative impacts on biological resources/wetlands. ~~city and along its shoreline, could result in impacts on wetlands, other waters of the U.S., and special status species.~~ (Cumulative Impact: Less than Significant)

Mitigation: None Required

J. Population, Housing, and Employment

The Revisions to the EIR includes a detailed analysis of the population, housing and employment impacts of the Project in 2025 when added to closely related past, present and reasonably foreseeable future projects. Refer to Attachment A, pages II.J-1 through II.J-5.

In summary, the Project combined with past, present and reasonably foreseeable future projects would not result in any significant adverse cumulative impacts to population, housing and employment. The impact is less than significant.

The following impact statement is added to the EIR in response to the Court Order as follows:

Impact J.6: The proposed project, when combined with other closely related past, present, and reasonably foreseeable development in the vicinity, would not result in a significant adverse cumulative population, housing, and employment impact. (Cumulative Impact: Less than Significant)

Mitigation: None Required

K. Visual Quality and Shadow

The Revisions to the EIR includes a detailed analysis of visual quality and shadow impacts of the Project in 2025 when added to other closely related past, present and reasonably foreseeable future projects. Refer to Attachment A, pages II.K-1 to II.K-6.

In summary, the Project, combined with closely related past, present, and reasonably foreseeable projects would not result in a significant visual quality or shadows cumulative impact.

The following impact statement is added to the EIR for clarity in response to the Court Order:

Impact K.5: The project when combined with other closely related past, present and reasonably foreseeable future projects in the project area would not result in a significant cumulative impact. (Cumulative Impact: Less than Significant)

Mitigation: None Required

L. Public Services and Recreational Facilities

The Revisions to the EIR includes a detailed analysis of public service and recreational facility impacts of the Project in 2025 when added to other closely related past, present and reasonably foreseeable future projects. Refer to Attachment A, pages II.L-1 to II.L-7

In summary, the Project, combined with closely related past, present, and reasonably foreseeable projects would not result in a significant public services or recreational facilities impact.

The following EIR impact statement is modified for clarity in response to the Court Order as follows. New text is underlined; deleted text is shown as ~~strikeout~~.

Impact L.6: ~~The increased population and density resulting from the project, in conjunction with population and density of other~~ The proposed project, when combined with other closely related past, present and reasonably foreseeable future development in

the vicinity ~~city~~, would not result in a significant adverse cumulative ~~increase in the demand for~~ public services and recreation impact; no new or physically altered facilities will be required or result in substantial or accelerated physical deterioration of existing parks and recreational facilities ~~parks. However, the project's contribution to such impacts would not be cumulative considerable.~~ (Cumulative Impact: Less than Significant)

Mitigation: None Required

M. Utilities and Service Systems

The Revisions to the EIR includes a detailed analysis of utilities and service systems impacts of the Project when added to other closely related past, present and reasonably foreseeable future projects. Refer to Attachment A, pages II.M-1 to II.M-11.

In summary, the Project, combined with closely related past, present, and reasonably foreseeable projects would not result in a significant utilities and service systems cumulative impact.

The following EIR impact statement is maintained for this response to the Court Order.

Impact M.6: The proposed project, when combined with other closely related past, present, and reasonably foreseeable future development in the vicinity, would not result in a significant adverse cumulative utilities and services systems impact. (Cumulative Impact: Less than Significant)

Mitigation: None Required

CEQA FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS AND MITIGATION MONITORING AND REPORTING PROGRAM

The Court determined that the City's approval of the CEQA Findings and Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program, must be set aside because the EIR was not sufficient. Now that the City has prepared Revisions to the EIR, which demonstrate that there are no significant impacts which were not previously disclosed, staff recommends the re-adoption of the CEQA Findings and Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program, with minor revisions as appropriate to reflect revisions in the Revisions to the EIR. Refer to Exhibits A and B to the Resolution included in this staff report.

NON PROJECT-RELATED ISSUES

Several issues were raised during the public comment period that were not directly related to the Oak to Ninth development project or the specific analysis ordered by the Court. These issues are summarized below.

Future Use of the Hanlon Lead

Adjacent to the Oak to Ninth Project is a drill track commonly known as the Hanlon Lead that runs along the Embarcadero from 5th Avenue to East 7th Street in the Kennedy Tract. Caltrans is currently considering eliminating the portion of the Hanlon Lead from 5th Avenue to 16th Avenue as part of the seismic retrofit of the I-880 Overpass. It has been suggested that the removal or elimination of the Hanlon Lead is also connected to the construction of the Oak to Ninth Project. That suggestion is in error. The mitigation measures for the Oak to Ninth Project include widening of the Embarcadero along the project frontage and adjacent to the Hanlon Lead. The implementation of the mitigation measures would not cause the removal, modification or elimination of, or other effect to, the Hanlon Lead. Moreover, the mitigation measures may be implemented irrespective of whether Caltrans proceeds with its project. Refer to Attachment C for more information about the seismic retrofit project and the Hanlon Lead.

Re-use of the Ninth Avenue Terminal

On July 18, 2006 the City Council approved the Oak to Ninth Project with a condition that allowed Oakland Harbor Partners (OHP) to demolish all but 20,000 square feet of the 180,000 s.f. Ninth Avenue Terminal Shed Building (Terminal Building) unless a viable proposal to reuse between 40,000 s.f. and 90,000 s.f. of the 1930s portion of the structure is approved by the City Council within one year. The Condition of Approval (#25) also specified a process for soliciting reuse proposals and allowed a one year timeframe for a decision on a project.

A proposal was received from the Ninth Avenue Terminal Partners (NATP) that includes a winemaking center (including the aging of wine), tasting room, waterfront restaurant, and a water-oriented recreation retail facility within 90,000 s.f. of the Terminal Building. The City Council considered the proposal at a meeting on June 5, 2007 and concluded that the proposal potentially had merit, but that there was not enough information to make a final determination about whether the proposal was economically feasible. The Council granted an extension of time to allow NATP to continue the financial feasibility analysis and other studies needed to make a final determination about the proposal.

NATP has submitted the information requested for consideration by the Council. Staff continues to have questions about the proposal, specifically establishing an appropriate market-rate lease rent, as required by the State Lands Commission for tidelands trust properties, and the costs of the seismic upgrades and building renovations.

NATP also hired an independent appraiser to determine the value of the property. The information provided is not considered adequate by the City's Real Estate Division and differs substantially from the City's estimate; therefore, the estimates for an appropriate market-rate lease rent are still in dispute, and the proposal has yet to be shown to be feasible.

Another issue of concern to the City is the seismic upgrades that are needed to the building and the wharf and piers. NATP contends that no upgrades need to be made to the piers. Staff is concerned, however, that because The City will eventually own the building, including the wharf

and piers, we do not want a structure that is potentially unsafe. OHP will be making seismic upgrades to the remainder of the 9th Avenue piers to support the public park and staff believes that the piers under the 9th Avenue Terminal Shed Building should be seismically upgraded as well.

The City requested a cost estimate of the seismic upgrades to the building, wharf and piers, as well as the renovations in NATP's proposal, to determine a more accurate cost of these improvements. Architectural Dimensions prepared an estimate of the project's costs, including both the hard costs and the soft costs, so that the City could compare the costs against NATP's estimates (see Attachment D). Architectural Dimensions estimated the costs to be $38.9 million; NATP's estimated costs are $4.1 million. Staff believes that NATP's costs are underestimated for the proposed project and the proposal has yet to be shown to be feasible.

Given the information received to date, staff does not believe that NATP has demonstrated financial feasibility for the proposed project. Therefore, there are no changes to the previous findings regarding the financial feasibility of the 9th Avenue Terminal.

Staff is still discussing the proposal with NATP and will be returning to the City Council shortly with a recommendation about financial feasibility of the proposed Vintner's Hall.

SUSTAINABLE OPPORTUNITIES

The Oak to Ninth Mixed Use Development Project includes many economic, environmental and social equity benefits for the City of Oakland and the region.

Economic: There are many economic benefits of the Project to the local economy. The housing proposed in the project will be available to a range of income levels including very low, low, moderate, and above-moderate income families. The tax increment generated by the project can be used for projects within the Central City East Redevelopment Plan Area. Jobs for residents may be available during construction, within the commercial businesses associated with the development; and with the maintenance of the parks, open space and landscaping areas within the project.

Environmental: The Project area has been used for industrial purposes for many years. The soils reports indicate that much of the soil on the site is contaminated. The project sponsors are remediating the soil to the standards required by the California State Department of Toxic Substance Control and the Regional Water Quality Control Board. The Project also provides public access to the waterfront which has been restricted for years by industrial businesses operating on the waterfront. Completion of a significant segment of the Bay Trail is a major environmental contribution to Oakland the all cities surrounding the San Francisco Bay.

Social Equity: The 3,100 residential units will include a variety of multifamily housing types affordable to people at a range of incomes. The proposed parks, open space areas, and the Bay Trail are considered regional facilities and accessible to any members of the public who want to

use them. Retail and commercial opportunities will be available to both existing nearby residents and the new community population.

DISABILITY AND SENIOR CITIZEN ACCESS

The Oak to Ninth Mixed Use Development Project includes approximately 32 acres of parks and open space with passive recreational opportunities appropriate for senior citizens and people with disabilities. The internal circulation system of the proposed development, as well as a significant portion of the San Francisco Bay Trail, is designed to focus on pedestrian and bicycle activities. The proposed public amenities within the project will be constructed to standards that can accommodate senior citizens and people with disabilities.

RECOMMENDATION(S) AND RATIONALE

Staff recommends that the City Council:

(1) Approve the Resolution Rescinding Certification of the Oak to Ninth Project Environmental Impact Report (EIR) Per Resolution No. 79981 C.M.S.,

(2) Approve the Revisions to the Analysis in the Oak to Ninth Project EIR,

(3) Re-certify the Oak to Ninth Project EIR as Revised, and

(4) Readopt the CEQA Findings and Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program as Revised.

The Revisions to the Analysis in the EIR demonstrates that there are no significant impacts which were not previously disclosed. Upon re-certification of the Final EIR, the City will return to the Court for a determination that the EIR revisions cure the defects found by the Court. If the Court finds the revisions to be sufficient, it should terminate the suspension of the other project approvals, which would reinstate the City's approval of the Project.

ACTION REQUESTED OF THE CITY COUNCIL

That the City Council (1) consider the revisions to the EIR, which have been made in response to the Court Order, Judgment and Writ, as discussed in the attached document and (2) approve the proposed Resolution, which rescinds certification of the Oak to Ninth Project EIR and the adoption of CEQA Findings and Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program per Resolution No. 79981 C.M.S., approves the revisions to the analysis in the Oak to Ninth Project EIR, Re-certifies the Oak to Ninth Project EIR as Revised, and Readopts the CEQA Findings and Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program as revised. Upon re-certification, the City will return to the Court for a determination that the EIR revisions cure the defects found by the Court. If the Court finds the revisions to be sufficient, it should terminate the suspension of the other project approvals, which would reinstate the City's approval of the Project.

Respectfully submitted,

Dan Lindheim, Director
Community and Economic Development Agency

Reviewed by:
Eric Angstadt, Strategic Planning Manager

Prepared by:
Margaret Stanzione, Planner IV
Planning, Major Projects

APPROVED AND FORWARDED TO THE CITY COUNCIL:

Office of the City Administrator

ATTACHMENTS:

A. "Revisions to the Analysis in the Oak to Ninth Project EIR (SCH No. 2004062013) Prepared to Comply with the Alameda County Superior Court Order in Case No. RG06-280345 and Case No. RG06-280471" *(distributed previously)*. This document is also available at www.oaklandnet.com "Oak to Ninth Project"

B. Responses to Comments Received During the Public Review Period (October 1, 2008 to November 17, 2008). Also available at www.oaklandnet.com "Oak to Ninth Project"

Item: _____
City Council
January 20, 2008

C. Memo dated December 15, 2008 from Oakland Harbor Partners and Fehr and Peers regarding the Hanlin Lead Drill Track

D. Letter dated December 15, 2008 from Architectural Dimensions regarding the estimated costs of improvements to the 9th Avenue Terminal Building, Wharf, and Piers.

ATTACHMENT A

Revisions to the Analysis in the Oak to Ninth Project EIR (SCH No. 2004062013) Prepared to Comply with the Alameda County Superior Court Order in Case No. RG06-280345 and Case No. RG06-280471 (distributed previously), is available for viewing in the Office of the City Clerk and also available at www.oaklandnet.com "Oak to Ninth Project

ATTACHMENT B

Responses to Comments received during the Public Review Period (October 1, 2008 to November 17, 2008), is available for viewing in the Office of the City Clerk and also available at www.oaklandnet.com "Oak to Ninth Project

ATTACHMENT C

Memo dated December 15, 2008 from Oakland Harbor Partners and Fehr and Peers regarding the Hanlon Lead Drill Track

Oakland Harbor Partners

MEMORANDUM

To: City of Oakland

From: Patrick Van Ness, Oakland Harbor Partners
Sam Tabibnia, Fehr and Peers

Subject: Hanlon Lead

Date: December 15, 2008

This memorandum responds to concerns regarding future use of the drill track commonly known as the Hanlon Lead that runs along the Embarcadero from 5th Avenue to East 7th Street in the Kennedy Tract. Caltrans is currently considering eliminating the portion of Hanlon Lead from 5th Avenue to 16th Avenue as part of the seismic retrofit of the I-880 Overpass. It has been suggested that the removal or elimination of the Hanlon Lead is also connected to the construction of the Oak to 9th project. That suggestion is in error. The Oak to 9th project does not require the removal, modification or elimination of the Hanlon Lead[1]. The future of the Hanlon Lead is tied to what Caltrans decides to do in connection with the seismic retrofit of the I-880 Overpass. If Caltrans decides not to proceed with its seismic retrofit project, the Hanlen Lead would remain "as-is" in its existing location throughout the development of the Oak to 9th project.

To better understand the situation surrounding the Hanlon Lead, this memorandum discusses current conditions on Hanlon Lead and the surrounding areas, and describes the relationship between the Hanlon Lead and the proposed Oak to Ninth development as well as the Caltrans seismic retrofit of the I-880 Overpass.

Existing Conditions

The Hanlon Lead connects the industrial uses along the Oakland Estuary to the Union Pacific Main line that runs along Interstate 880. In addition to the Hanlon Lead, these industrial uses are also serviced from the south by a drill tract connected to the Union Pacific Main Line at Fruitvale Avenue. This drill tract runs along Fruitvale Avenue and turns down Glascock Street.

[1] Oak to Ninth Project Final Traffic Study, Fehr and Peers August 26, 2005

Based on data collected on a weekday in September 2004 for the *Oak to 9th Final Traffic Study*, no train activity was observed on Hanlon Lead between 7:00 AM and 6:00 PM. Freight service to the industrial users along the Oakland Estuary has been provided in the past via the drill track that runs along Fruitvale Avenue and down Glascock Street[2]. In 2002 trains servicing the Con Agra plant on East 7th Street used Glascock Street and the Fruitvale Avenue connection to the Pacific Union Main Line, but not the Hanlon Lead connection. Trains were scheduled to run three times a week on Glascock Street between 1:30 AM and 3:00 AM on Tuesday and Thursday and 12:00 PM on Friday[3]. Confirmation of the consistency of this schedule was not verified, however trains were observed on Glascock Street occasionally on Friday afternoons between 2003 and 2005[4]. Although train activity may fluctuate depending on the specific delivery needs of the users, there is no evidence that it will significantly increase in the future.

The existing train traffic on Glascock Street was disclosed to purchasers of homes in the Signature Properties' Estuary and Harborwalk projects[5] [6].

Planned Modifications

Caltrans is currently planning seismic upgrades to the I-880 overpass at Fifth Avenue. As part of the seismic upgrade the overpass is being widened to accommodate emergency vehicle access. This results in the need to relocate or remove the Hanlon Lead from 5th Avenue to 16th Avenue. Currently Caltrans has indicated it plans to remove the section of the Hanlon Lead adjacent to the seismic retrofit project. As a result, all train access for the industrial users along the Oakland Estuary from 16th Avenue to Fruitvale Avenue would be through the drill track at Fruitvale Avenue only. However, this would not affect the current deliveries to the Con Agra plant, which use the drill track at Fruitvale Avenue.

The Oak to 9th project is in the vicinity of the Seismic retrofit project and the Hanlon Lead. The development of the Oak to Ninth project would not require any physical or operational modifications to Hanlon Lead. Based on the analysis completed for the *Oak to Ninth EIR*, the current level of activity on Hanlon Lead would not result in any significant impacts on traffic operations on the surrounding roadway network. The mitigation measures for the project include widening of the Embarcadero along the project frontage and adjacent to the Hanlon Lead. The implementation of the mitigation measures would not require any modifications to the Hanlon Lead.

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[2] Iconco Site - Environmental Noise Assessment dated July 30, 2002 prepared by Charles M. Salter Associates, Inc. for Signature Properties, Inc.
[3] Iconco Site - Environmental Noise Assessment dated July 30, 2002 prepared by Charles M. Salter Associates, Inc. for Signature Properties, Inc.
[4] Signature Properties, Inc. staff.
[5] Section 5 of The Estuary Disclosures dated August 13, 2004.
[6] Section 5 of The Harborwalk Disclosures dated March 15, 2007

ATTACHMENT D

Letter dated December 15, 2008 from Architectural Dimensions regarding the estimated costs of improvements to the 9th Avenue Terminal Building, Wharf, and Piers

ARCHITECTURAL
DIMENSIONS

1600 S. Main Street, Suite 275
Walnut Creek, CA 94596-5341

www.archdim.com

James M. Heilbronner
Architect C 11531

December 15, 2008

Mr. Patrick Vanness
Signature Properties
4670 Willow Road, Suite 200
Pleasanton, CA 94588

Re: Ninth Avenue Terminal

Dear Patrick,

The intention of this paper is to put forth realistic development costs of project proposed by NATP, not its market feasibility. The evaluation is to provide realistic data about development costs which are clearly the basis for any development proforma.

Old, existing buildings can be deceiving to those who want to redevelop them. While there is obvious deferred maintenance to repair there are hidden code requirements, construction safety issues and financial requirements that drive redevelopment costs far more than fixing obvious building deficiencies. The last century has brought tremendous engineering knowledge and safety issues to the forefront of development making it easy for me to say that construction today is far more sophisticated than when the Ninth Avenue Terminal was constructed.

I have direct experience with two major historic reconstruction projects in the City of Oakland, both of which were constructed in the same time period as the Ninth Avenue Terminal. I was Architect of Record on both the Rotunda Building and the Fox Theater. Both buildings are historically registered buildings that were redeveloped to house new occupancies (some the same as original and some new). In both cases, the initial budgets for construction were not adequate for the reality of reconstruction to bring the buildings into conformance with current codes, construction processes and financial parameters of lenders.

The biggest single reason for both projects being short in their initial budgets was the assumption that old, existing improvements could remain in place to be reused. This turned out not to be the case due to (1) the deterioration of the old improvements were beyond the state of possible reuse (2) the Historic Building Code did not prevent the application of the current State Building Code on life safety issues, (3) current environmental and safety requirements to dispose of hazardous materials and (4) the infusion of contemporary building systems (such as mechanical, plumbing, electrical and fire protection) required large scale reconstruction of the building to accommodate them. In the end, both buildings were contemporized far beyond their initial redevelopment plans. The design of both buildings was a very complex marriage of old and new to yield completed projects that maintained historic fabric and infused contemporary building systems.

While the Historic Building Code (which allows lesser conformity to the Building Code) applied to both buildings but it was our experience that this code served very little to avoid compliance with the current Building Code which applies to all new construction. The City of Oakland was very conservative in its application of the Historic Building Code to allow old improvements to remain "as is". More importantly, the City required new life safety and handicap accessibility systems that were never part of the original buildings.

Registered historic buildings can invoke the Historic Building Code to allow protection of existing elements of a building; however, it is the developer/owner's responsibility to prove that all elements of a building are safe when applying contemporary environmental loads and forces to the building. It takes precise research with the Building and Fire Departments to understand the requirements of new life safety systems as they apply to the fabric of historic buildings. Our experience in Oakland leads us to believe that the redevelopment of the 9th Avenue Terminal Building will require contemporary, code-current life safety systems that impinge on and affect the historic fabric thus resulting in more costs, not less.

The Ninth Street Terminal (NAT) is about 80 years old. Visually the building is quite stout but it was constructed before the science of design and construction fully understood the reaction of buildings to nature's forces, such as wind and especially seismic events. While we have many tools to analyze old buildings and their ability to withstand nature, this science is not exact when put into action through the construction renovation process. No one can ever know for sure how any building will react to a seismic event, particularly an old one that is renovated. Equally important is the deterioration of the building's components due to exposure to nature, particularly, in this case, the pile foundation system.

Generally speaking, the State of California Building Code (CBC) stipulates structural upgrade of old buildings when there is a "use change" of the building as being proposed by NTAP. This stipulation specifically mentions the Building Official as the decision maker on this matter so the code has flexibility in determination of whether or not a building is structurally upgraded or to what extent it should be upgraded. NATP proposes to change the occupancy of the NAT from a WAREHOUSE use to RETAIL and ASSEMBLY uses. This proposal clearly triggers the code requirement for structural upgrade of the building and we feel very strongly that the City Building Department, based on our conversations with them, will require structural upgrades.

It is important to insert here the historic nature of the building and the application of the California State Historic Building Code (CHBC) which is different from the CBC. For redevelopment of the NAT the CHBC would most likely be invoked by any party doing the work. The intent of CHBC is to facilitate the preservation and continuing use of qualified historic buildings or properties while providing reasonable safety for the building occupants and access for persons with disabilities. In other words, the CHBC is more lenient than the CBC to allow reconstruction while minimizing destruction of old, historic building features. This leniency also pertains to the structural upgrade of the building. The CHBC allows less upgrading of old buildings to encourage preservation WHILE providing a reasonable level of structural safety for occupants. The CBHC's flexibility is a savior to preservation of old buildings HOWEVER, it is not necessarily a "free pass" to avoid upgrades all together. The CBHC states, *"The CHBC shall not be construed to allow the enforcing agency (the Building Department) to approve or permit a lower level of safety of structural design and construction than that which is reasonably equivalent to the regular code provisions in occupancies which are critical to the safety and welfare of the public at large including, BUT NOT LIMITED TO, public schools, hospitals...."*. The CBHC goes on to require a complete survey of historic building structures and evaluation of its conditions against requirements of the CBHC and, in some cases, the CBC.

In the end, the Building Official is the judge of the level of structural improvements to be made to a historic building and it is our opinion (based on doing similar projects with the City of Oakland) that the City will require a level of upgrades to the building consistent with the recommendations of NATP's structural engineer, Degenkolb and those of Rutherford & Chekene (Signature Properties' Engineer). In both cases the recommendations of the engineers are preliminary so they cannot yet be judged fully by the Building Department nor can they be accurately priced. It is clear, however, that the existing building has definite weaknesses that require remediation – the question is to what extent. The City's concern is primarily life safety, which the recommendations of both engineers' address, however, loss of property

are a different matter. Degenkolb's report conclusion states that, *"the building would demonstrate ADEQUATE performance during the design earthquake in accordance with the CBHC. This would provide an enhanced level of safety compared with that provided by the original building."* Rutherford & Chaney's preliminary recommendations for the building are based on providing *"a minimum life safety in the case of major earthquake".*

It is clear that both engineers are pointing to the CBHC as a guidance system for structural upgrade of the building to lessen the upgrade requirements. While this may ultimately be satisfactory to the City of Oakland it MAY NOT BE SATISFACTORY TO TODAY'S LENDERS. It seems to me that both engineers are clearly thinking of upgrade to a public safety level which would protect occupants during an earthquake. Neither, however, is considering a high degree of property protection which, again, will be a key consideration of any lender. At the very least, we see the recommendations of both engineers costing about $40 per sf, not including foundation work. This equates to approximately **$3,600,000.**

The above discussion about building structure DOES NOT INCLUDE THE FOUNDATION. A report prepared by Moffatt & Nichol, dated 2/5/04, for Signature Properties quite extensively studied the existing foundation system of the building and its adjoining wharf. The report concluded that, *"during a seismic event, the maximum pile displacement is about 14.5 inches. The resultant strain in the piles would cause significant damage to the existing piles."* Similarly the report finds that the adjoining wharf has lateral deficiencies that need further study and, most likely, retrofitting. Clearly more analysis is needed to determine the condition of the existing foundations and the best remediation approach. It is inconceivable that any structural retrofit solution for the building would ignore the foundation system. The foundation system is the essential ingredient to a building's seismic performance upon which everything else rests. Retooling the building (like the body of a car) makes no sense if the foundation (the frame of the car) isn't addressed. NTAP's structural engineer, Degenkolb suggests that some work be done to the existing piles under the building and the wharf but again, the recommendations are preliminary and not as detailed as outlined in the Moffatt and Nichol report.

The EPS report, dated May, 2006, addresses the cost of the foundation repairs and puts it at **$10,576,000** or $117.50 per sf of building area! This cost makes sense when you study the Moffat & Nichol report and suggested foundation repairs, however, this cost needs input from contractors that specialize in this type of work as consultants are usually weak in estimating. Regardless, there is a big component of work that should be done on the foundation systems if the building is going to be preserved. It makes no sense to retrofit the building shell and add tenant improvements based on an old, deteriorating foundation that is the most important element of structural stability. More importantly it is most likely that the City of Oakland will require reconstruction of the foundation to upgrade the building due to the occupancy change. My discussions to date with the Building Department regarding this matter very much point to reconstruction of both the building shell and the foundation.

As the building is very simple, architecturally speaking, I don't see any obtuse restoration requirements that would come into play in order to conform to Secretary of Interior Standards or local preservation requirements. With that said, I don't see any additional costs beyond my estimate unless the Building applies for NRHP or CRHR status and seeks tax credits. In this case there *could* be additional design requirements and there certainly would be additional soft costs to process the Project through the State Historic Preservation Office (SHPO) and the National Park Service (NPS).

With respect to costs of redevelopment I prepared a spreadsheet showing HARD COSTS (construction costs) and SOFT COSTS (consultants' and agencies' fees). I also based cost on union and prevailing wage rates. Under HARD COSTS there are 3 categories: SITE WORK; BUILDING SHELL; TENANT IMPROVEMENTS. I used program areas based on the latest Additional Feasibility Information from NATP, dated 9/12/08.

My cost estimate uses current construction costs applied to quantities of the original 90,000sf building. The costs are reasonably accurate in today's market place but can vary due to many factors once the project is seriously priced to formulate a construction contract. Regardless, the construction costs are quite high due to the unusual circumstances of reconstruction which is common for renovation projects. There are many aspects in reconstruction of an old building that are not required in new construction, such as demolition, hazmat abatement, reconconstruction of old components, such as windows and reconstruction in general to infuse new systems such as mechanical, plumbing and fire protection.

My total estimate for this project is **$40,300,366**, including contingency and inflation for a 24 month period. Of this amount, $10,800,000 is for foundation work alone, or 27% of the total Project ! This is clearly the odd cost that drives the entire project cost to $444/sf. While these numbers are high I can see that they could even be higher once a design is finally formulated. Reconstruction of the foundation under the existing building is no small feat from a limited number of contractors that can do such work.

In summary, this project needs to go further into research and engineering design to determine the real scope of work based on City criteria and applicable codes. This refined scope can then be priced out more accurately and inserted into a proforma. I believe that once all of the presiding agencies are brought into the loop one will discover a host of requirements that are not being considered by NATP. It is these requirements along with the building's constraints that drive costs more than anything. Putting the entire Ninth Avenue Terminal Building back into play as a new use will be a complex and costly project that, most likely, will not be financially viable without subsidies from sources like tax credits and grants.

Please call me if you have any questions or need further information.

Sincerely,

ARCHITECTURAL DIMENSIONS

James Heilbronner, President
Enclosure

cc: NAT02 Signature w/encls.

nat02/ e signature properties / 121508 jmh - vanness

NINTH AVE TERMINAL
COST ESTIMATE

12/15/08

	A	B	C	D	E
1	**HARD COSTS**				
2	**Assumes Union & Prevailing Wage**	**AD's Estimate**	**Area**	**Rate**	**Notes**
3					
4	**SITE WORK**				
5	Hardscape	400,000			Limited Area at Front Parking Lot
6	Landscape	100,000			Limited Area at Front Parking Lot
7	Underground Utilities	150,000			New Power and Gas Services
8	Site Lighting	85,000			Around Exterior of Building
9	**SUBTOTAL**	**735,000**			
10					
11	**BUILDING SHELL**				
12	Demolition	180,000	90000	2	General demolition
13	HazMat Abatement	630,000	90000	7	Hazmat Material Removal including Roofing
14	Accessibility Improvements	250,000		Fixed	Accessibility from Site to Building
15	Foundation Structural Work	10,800,000	90000	120	Additional Piers and Retrofit per Engineers' Reports
16	Shell Structural Work	3,600,000	90000	40	Building Shell
17	Cosmetic Concrete Wall Repair	320,000	6400	50	Spalled Exterior Wall Concrete
18	Miscellaneous Steel	512,000	6400	80	Ladders, Rails, Connections, Repair Canopies
19	Windows/Doors	336,000	5600	60	Repair Existing Steel Windows, New where required
20	ReGlazing & New Glass	175,000	3500	50	New Glass will be required due to Repair of Windows
21	Carpentry	270,000	90000	3	Miscellaneous support Carpentry throughout
22	New Roofing incl. Canopies	900,000	90000	10	New Roofing on All Roofs including new flashings
23	Painting Interior	224,000	64000	3.5	Encapsulation of existing lead paint surfaces
24	Painting Exterior	192,000	64000	3	Elastomeric Coading on Concrete walls, paint steel wind
25	Plumbing	720,000	90000	8	Rough Plumbing Systems to support tenant improvemer
26	Electrical	1,080,000	90000	12	New Service and Distribution Gear for Multiple Tenants
27	Fire Alarm	135,000	90000	1.5	New Fire Alarm per current code
28	Fire Sprinklers	720,000	180000	4	New Fire Sprinkler Distribution for New Use Requiremen
29	Mechanical	0			Part of Tenant Improvements
30	**SUBTOTAL**	**21,044,000**			
31					
32	**TENANT IMPROVEMENTS**				
33	Vintners Area	5,956,500	79420	75	Specific Tenants will Require tenant improvements
34	Restaurant and Café	1,064,000	3800	280	Specific Tenants will Require tenant improvements
35	Water Oriented Facility	675,000	6750	100	Specific Tenants will Require tenant improvements
36	**SUBTOTAL**	**7,695,500**			
37					
38	**SUMMARY OF HARD COSTS**				
39	**SUBTOTAL of all Hard Costs**	**29,474,500**			
40	GC's Costs	3,536,940			12% of Subtotal
41	**TOTAL HARD COSTS**		**33,011,440**		
42					
43	**SOFT COSTS**				
44					
45	Consultants	1,980,686			6% of Total Hard Costs
46	Agency Fees	990,343			3% of Total Hard Costs/Includes Utility Companies
47	**TOTAL SOFT COSTS**		**2,971,030**		
48					
49	**SUBTOTAL**		**35,982,470**		
50	Contingency		**3,598,247**		10% of Project Total
51	Inflation for 24 months at 1%/year		**359,825**		1% of Total Hard Costs
52	**GRAND TOTAL**			**$39,940,541**	**Equals $444 per sf on Total Building Area**
53					
54	**NOTES:**				
55	Does not include soft costs for processing project through SHPO and NPS approvals.				
56	Does not include FF&E of tenants				
57	Does not inlclude project financing costs				
58	Does not include developer fees and costs				
59	Does not include any second floor or mezzanine spaces				
60	Assumes that current site and roof drainage protocols can be maintained				

APPROVED AS TO FORM AND LEGALITY
H Lee
DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C. M. S.

RESOLUTION RESCINDING CERTIFICATION OF THE OAK TO NINTH PROJECT ENVIRONMENTAL IMPACT REPORT (EIR) PER RESOLUTION No. 79981 C.M.S., APPROVING REVISIONS TO THE ANALYSIS IN THE OAK TO NINTH PROJECT EIR, RECERTIFYING THE OAK TO NINTH PROJECT EIR AS REVISED, AND READOPTING THE CEQA FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS AND MITIGATION MONITORING AND REPORTING PROGRAM AS REVISED

WHEREAS, on June 20, 2006 and July 18, 2006, the City Council and the Oakland Redevelopment Agency held public meetings hearings on the Oak to Ninth Avenue Mixed Use Development Project (the Project) and considered certification of the Environmental Impact Report, SCH No. 2004062013, consisting of the Draft EIR, the Final EIR, and the Addendum to the EIR (the EIR) for the Project, various approvals for the Project, and an appeal of the Planning Commission's certification of the EIR and recommendations and approval actions with respect to the Project; and

WHEREAS, on June 20, 2006 and July 18, 2006, the City Council and the Oakland Redevelopment Agency took the following actions with respect to the approval of the Project: (1) approved Resolution 79981 C.M.S. denying an administrative appeal of the Planning Commission actions and certifying the EIR; (2) approved Resolution 79982 C.M.S. amending the General Plan Estuary Policy Plan; (3) approved Resolution 2006-0045 C.M.S. regarding amending the Central City East Redevelopment Plan; (4) adopted Ordinance 12756 amending the Central City East Redevelopment Plan; (5) approved Resolution 2006-0046 C.M.S. regarding amending the Central District Urban Renewal Plan; (6) adopted Ordinance 12757 C.M.S. amending the Central District Urban Renewal Plan; (7) adopted Ordinance 12758 C.M.S. the Planned Waterfront Zoning District-4 (PWD-4); (8) adopted Ordinance 12759 C.M.S. rezoning property in the Project site; (9) approved Resolution 79984 C.M.S. for the vesting tentative map; (10) approved Resolution 79984 C.M.S. for the preliminary development plan and design guidelines; (11) approved Resolution 2006-0047 C.M.S. authorizing the development agreement; (12) adopted Ordinance 12760 C.M.S. approving a development agreement; (13) approved Resolution 2006-0060 C.M.S. authorizing a cooperation agreement; (14) adopted Exhibits A through D to the approval documents, consisting of the CEQA Findings and Statement of Overriding Considerations, the Mitigation Monitoring and Reporting Program, Conditions of Approval, and General Findings; and

WHEREAS, following the City's certification of the EIR and approval of the Project two lawsuits were filed in Alameda County Superior Court (the Court) challenging, among other claims, the City's certification of the EIR, Case No. RG06-280345, Oakland Heritage Alliance v.

City of Oakland et al., and Case No. RG06-280471, Coalition of Advocates for Lake Merritt v. City of Oakland et al.; and

WHEREAS, on November 16, 2007, the Court filed an Order, thereafter modified by an Order dated January 28, 2008, in Case Nos. RG06-280345 and RG06-280471 granting in part and denying in part the petitions writs of mandate and directing that a judgment and peremptory writ of mandate shall issue (the Court Order); and

WHEREAS, the Court Order found the EIR deficient with respect to portions of the environmental analysis and did not declare invalid any other aspects of the City or Agency actions with respect to their consideration of the Project or the administrative appeal from the Planning Commission actions and recommendations with respect thereto; and

WHEREAS, on February 27, 2008, the Court entered a Judgment and issued a Peremptory Writ of Mandate in Case No. RG06-280345 (Oakland Heritage Alliance v. City of Oakland) commanding the City of Oakland, the Oakland City Council and the Oakland Redevelopment Agency (a) to vacate and set aside its Resolution Certifying the Final EIR for the Oak to Ninth Mixed Use Redevelopment Project and adopting CEQA Findings and Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program (No. 79981 C.M.S) and (b) to suspend all of the other Project approvals listed above pending further order of the Court, and directing that the matter be remanded to the City for further action as set forth in the Court Order; and

WHEREAS, the Court has neither entered a judgment nor issued a writ in Case No. RG06-280471 (Coalition of Advocates for Lake Merritt v. City of Oakland); and

WHEREAS, in response to the Court Order and the Judgment and Peremptory Writ of Mandate, on September 30, 2008 the City published a Notice of Availability of a document entitled "REVISIONS TO THE ANALYSIS IN THE OAK TO NINTH PROJECT EIR (SCH NO. 2004062013) PREPARED TO COMPLY WITH THE ALAMEDA COUNTY SUPERIOR COURT ORDER IN CASE NO. RG06-280345 AND CASE NO. RG06-280471" (Revisions to the EIR); and

WHEREAS, the City circulated the Revisions to the EIR for public review and comment from September 30, 2008 through November 17, 2008; and

WHEREAS, the City received written comments on the Revisions to the EIR and prepared written responses to the comments received during the public review period; and

WHEREAS, on January 20, 2009, the City Council held a public hearing to consider rescinding its certification of the EIR and adoption of the CEQA Findings and Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program per Resolution No. 79981 C.M.S. as commanded by the Court, approving the Revisions to the EIR, recertifying the EIR as revised, and readopting the CEQA Findings and Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program, which was noticed in accordance with legal requirements; and

WHEREAS, on January 20, 2009, the City Council fully reviewed, considered, and independently evaluated the Revisions to the EIR, the Response to Comments, the staff report and attachments thereto, the public testimony, and all other documents and evidence in the public record on the Project, the EIR, and the Revisions to the EIR; now, therefore, be it

RESOLVED: That in compliance with the Judgment and Peremptory Writ of Mandate the City Council rescinds Resolution No. 79981 C.M.S. to the extent that it certified the EIR and approved the CEQA Findings and Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program which relied thereon; and be it

FURTHER RESOLVED: That the City Council finds the Revisions to the EIR is adequate, accurate, and complete in accordance with CEQA and the CEQA Guidelines and complies with the Court Order and that the Response to Comments contains no significant modifications to the Revisions to the EIR; and be it

FURTHER RESOLVED: That the City Council finds that the Revisions to the EIR and Response to Comments identify no new significant impacts beyond those significant impacts identified in the EIR, no increase in the severity of a significant impact identified in the EIR, and no new mitigation measures considerably different from the mitigation measures contained in the EIR that the project sponsor declines to adopt and that would lessen the significant effects of the Project; and be it

FURTHER RESOLVED: That the City Council finds that the Revisions to the EIR and the Response to Comments represent the independent analysis and conclusions of the City and the City confirms, adopts, and approves the analysis and conclusions in the Revisions to the EIR and Response to Comments; and be it

FURTHER RESOLVED: That the City Council recertifies the EIR as revised by the Revisions to the EIR and Response to Comments, as in compliance with CEQA and the CEQA Guidelines and the Court Order; and be it

FURTHER RESOLVED: That the City Council readopts Exhibit A, the CEQA Findings and Statement of Overriding Considerations for the Project with the following revisions, attached hereto, to reflect the Revisions to the EIR and to correct clerical errors; and be it

FURTHER RESOLVED: That the City Council readopts Exhibit B, the Mitigation and Monitoring Reporting Program for the Project as revised by the Revisions to the EIR, attached hereto. The Revisions to the EIR contains clarifying revisions to Mitigation Measures F.1 and F.2 and the City Council incorporates those revisions into the Mitigation Monitoring and Reporting Program; and be it

FURTHER RESOLVED: That the City Council finds that the EIR, the Revisions to the EIR, the Response to Comments, the CEQA Findings and Statement of Overriding Considerations and the Mitigation and Monitoring Reporting Program may contain clerical errors and bases its decision on the substance of the information in these documents; and be it

FURTHER RESOLVED: That, based on the findings herein and the previous Project approvals, no further action is necessary on the administrative appeal of the Planning Commission's actions with respect to the Project.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20_____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION –

ATTEST:_____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A TO ALL APPROVAL DOCUMENTS

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

City Council Hearing

January 20, 2009

I. INTRODUCTION

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

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

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

II. THE PROJECT

4. The Oak to Ninth Avenue Project is a mixed use development on approximately 64.2 acres located along the Oakland Estuary. The Project referred to in these findings is the Project as approved by the Oakland City Council and the Oakland Redevelopment Agency on June 20, 2006 and July 18, 2006. The Project includes up to 3,100 residential units, approximately 200,000 square feet of commercial space, a minimum of 3,950 parking spaces, 32 acres of parks and public open space, two renovated marinas, shoreline improvements, new roads, improvements to the Embarcadero along the Project site, and other necessary infrastructure and improvements. The existing buildings on the Project site will be demolished with the exception of a portion of the Ninth Avenue Terminal building and the Jack London Aquatic Center. The trees located on the Project site will be removed. The Project also includes General Plan amendments, Redevelopment Plan amendments, a new zoning district to accommodate the Project and amendments to the zoning map.

III. ENVIRONMENTAL REVIEW OF THE PROJECT

5. Pursuant to CEQA, the CEQA Guidelines (Cal. Code Regs title 14, § § 15000 et seq.), and the Oakland Environmental Review Guidelines in Oakland Municipal Code Chapter 17.158, the City determined that an EIR would be prepared. The City issued a Notice of Preparation, which was circulated to responsible agencies and interested groups and individuals for review and comment. A copy of the Notice of Preparation and comments received thereon are included in Appendices A and B of the Draft EIR.

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

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

8. [Intentionally Left Blank]

9. Following the City Council's certification of the EIR and approval of the Project, two lawsuits were filed in Alameda County Superior Court (the Court) challenging, among other claims, the City's certification of the EIR in Case No. RG06-280345, Oakland Heritage Alliance v. City of Oakland et al., and Case No RG06-280471, Coalition of Advocates for Lake Merritt v. City of Oakland et al. On November 16, 2007, the Court filed an Order, thereafter modified by an Order dated January 28, 2008, in these cases granting in part and denying in part the petitions for writs of mandate and directing that a judgment and peremptory writ of mandate shall issue (the Court Order). On February 27, 2008, the Court entered a Judgment and issued a Peremptory Writ of Mandate in Case No. RG06-280345 commanding the City, the City Council and the Redevelopment Agency to (a) vacate and set aside the Resolution Certifying the Final EIR for the Project and adopting CEQA Findings and Statement of Overriding Considerations and the Mitigation Monitoring and Reporting Program (Resolution No. 79981 C.M.S.) and (b) suspend all of the other Project approvals pending further order of the Court, and directing that the matter be remanded to the City for further action as set forth in the Court Order.

10. In response to the Court Order and the Judgment and Peremptory Writ, on September 30, 2008 the City published a Notice of Availability of a document entitled "Revisions to the Analysis in the Oak to Ninth Project EIR (SCH No. 2004062013) Prepared to Comply with the Alameda County Superior Court Order in Case No. RG06-280345 and Case No. RG06-280471" (Revisions).

11. The City circulated the Revisions for public review and comment from October 1, 2008 through November 17, 2008. The City received written comments on the Revisions, prepared written responses to the comments received, and on December 19, 2008 published and made available for public review the Response to Comments.

12. On January 20, 2009, the City Council held a public hearing and (a) rescinded Resolution No. 79881 C.M.S. to the extent that it certified the EIR, approved the CEQA Findings and Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Program; (b) recertified the EIR as revised and readopted the CEQA Findings and Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program, as revised. All references to the EIR and Mitigation Monitoring and Reporting Program herein refer to those documents as revised.

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

IV. THE RECORD

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

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

b. All information (including written evidence and testimony) provided by City or Redevelopment Agency staff to the Planning Commission, the Landmarks Preservation Advisory Board, and the Parks and Recreation Advisory Commission relating to the EIR, the proposed approvals for the Project, the Project, and alternatives to the Project.

c. All information (including written evidence and testimony) presented at any and all public hearings related to the EIR and the Project, and all information incorporated into reports presented to any of the public bodies that conducted hearings on the EIR or the Project.

d. All applications, letters, testimony and hearing presentations provided by the project sponsor and their consultants to the City or the Redevelopment Agency in connection with the EIR or the Project.

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

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

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

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

V. CERTIFICATION OF THE EIR

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

17. The City recognizes that the EIR, these Findings, and the Mitigation Monitoring and Reporting Program may contain clerical errors and bases its determination on the substance of the information in the EIR.

18. The City certifies that the EIR is adequate to support the approval of the Project, each alternative in the EIR, and variations on the range of alternatives evaluated in the EIR, each component of these alternatives, and any minor modifications to the Project or the alternatives. The EIR is adequate for each entitlement or approval, and any future discretionary approvals, required for construction and operation of the Project. The EIR is adequate to support the Project as approved and the additional mitigation measures and conditions of approval imposed by the City Council and the Redevelopment Agency at the June 20, 2006 and July 18, 2006 hearings on the Project. In particular, the removal of development from Parcel N and reallocation of the units planned for the parcel throughout the remaining development parcels was analyzed in the EIR Addendum. Other conditions and mitigation measures imposed by the City Council will enhance the social, economic, and environmental benefits of the Project and will not have any adverse physical impacts.

VI. ABSENCE OF SIGNIFICANT NEW INFORMATION

19. The City recognizes that the EIR incorporates information obtained and produced after the Draft EIR was completed, and that the EIR contains additions, clarifications, and modifications. The City has reviewed and considered the Final EIR, the EIR Addendum, the Revisions, and all of this information. The Final EIR, the Addendum, and the Revisions do not add significant new information to the Draft EIR that would require recirculation of the EIR under CEQA. The new information added to the EIR does not involve a new significant environmental impact, a substantial increase in the severity of an environmental impact, or a feasible mitigation measure considerably different from others previously analyzed that the

project sponsor declines to adopt and that would clearly lessen the significant environmental impacts of the Project. No information indicates that the Draft EIR was inadequate or conclusory or that the public was deprived of a meaningful opportunity to review and comment on the Draft EIR.

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

VII. MITIGATION MONITORING AND REPORTING PROGRAM

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

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

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

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

VIII. FINDINGS REGARDING ENVIRONMENTAL IMPACTS

25. In accordance with Public Resources Code section 21081, including, but not limited to, the specific requirements of 21081(a)(1), 21081(a)(2), and 21081(a)(3), and CEQA Guidelines sections 15091 and 15092, the City adopts the findings and conclusions regarding impacts and mitigation measures that are set forth in the EIR. To avoid duplication and redundancy, these findings do not repeat the full discussions of environmental impacts, findings, mitigation measures, explanations of and conclusions with respect to the effectiveness of the mitigation measures in avoiding or reducing the impacts contained in the EIR. Instead, the City ratifies, adopts, and incorporates by reference the analysis, explanation, findings, responses to

comments, and conclusions of the EIR and relies upon them, and other evidence in the record, as substantial evidence supporting these findings. The City adopts the reasoning of the EIR, staff reports, and presentations provided by the staff and the project sponsor as may be modified by this Resolution and relies upon them, and other evidence in the record, as substantial evidence supporting these finding.

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

27. Under Public Resources Code section 21081(a)(1) and CEQA Guidelines sections 15091 (a)(1) and 15092(b), and to the extent reflected in the EIR, the City finds that changes or alterations have been required in, or incorporated into, the Project that mitigate to a less than significant level or avoid the following potentially significant effects on the environment. The City does not repeat this finding for each impact and mitigation measure identified below because this initial overarching finding for all the impacts and mitigation measures covered by this paragraph no. 27 obviates the need for such repetition. As noted above in paragraph no. 25, in making these findings the City adopts, ratifies, and incorporates by reference all of the information, explanation, reasoning, and analysis contained in the EIR and other evidence in the record. The full text of the mitigation measures referred to in this paragraph are contained in the Mitigation Monitoring and Reporting Program and the City relies on the full text of the Mitigation Measures and requirements of the Mitigation Monitoring and Reporting Program in making these findings.

a. Land Use, Plans, Policies

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

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

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

b. Transportation, Circulation, and Parking

(1) Impacts B.1, B.1a, and B.1d: Phase I of the Project will affect levels of service at the Embarcadero and Oak Street and Embarcadero and 5th Avenue intersections in 2010. These impacts will be mitigated through imposition of Mitigation Measures B.1 (a) and (d), which call for installation of traffic signals at these unsignalized intersections. After implementation of these mitigation measures, the intersections will operate at acceptable levels of service in the AM and PM peak hours.

(2) Impacts B.2, B.2b, B.2f, B.2g, B.2i, B.2j, B.2k, B.2m, B.2n, B.2o, B.2p, B.2q: At build out, the Project will affect levels of service at the following intersections in 2025:

Broadway and Embarcadero (Impact B.2b), which will be mitigated through the imposition of Mitigation Measure B.2b, which calls for installation of a traffic signal at this unsignalized intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in both the AM and PM peak hours.

West Grand Avenue and Harrison Street (Impact B.2f), which will be mitigated through the imposition of Mitigation Measure B.2f, which calls for optimizing the signal timing for the AM period at this intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in both the AM and PM peak hours.

Lakeshore Avenue and Foothill Boulevard (Impact B.2g), which will be mitigated through the imposition of Mitigation Measure B.2g, which calls for optimizing the signal timing for the AM period at this intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM peak hour.

Lakeshore Avenue and Lake Park Avenue (Impact B.2i), which will be mitigated through the imposition of Mitigation Measure B.2i, which calls for optimizing the signal timing for the PM period at this intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

Embarcadero and 5th Avenue (Impact B.2j), which will be mitigated through the imposition of Mitigation Measure B.2j, which calls for widening the Embarcadero roadway along the project site frontage. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

Embarcadero and I-880 Northbound Off-Ramp (Impact B.2k), which will be mitigated through the imposition of Mitigation Measure B.2k, which calls for widening the Embarcadero roadway along the project site frontage. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

5th Avenue and 7th/8th Streets (Impact B.2m), which will be mitigated through the imposition of Mitigation Measure B.2m, which calls for optimizing the

signal timing for the PM period at this intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

14th Avenue and 7th/12th Streets (southbound) (Impact B.2n), which will be mitigated through the imposition of Mitigation Measure B.2n, which calls for optimizing the signal timing for the PM period at this intersection. After implementation of this mitigation, the average delay at the intersection will be less than under the No Project condition, thus mitigating the project impact.

Foothill Boulevard and 14th Avenue (westbound) (Impact B.2o), which will be mitigated through the imposition of Mitigation Measure B.2o, which calls for optimizing the signal timing for the AM period at this intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

Foothill Boulevard and 14th Avenue (eastbound) (Impact B.2p), which will be mitigated through the imposition of Mitigation Measure B.2p, which calls for optimizing the signal timing for the AM period at this intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

16th Street and 23rd Avenue (Impact B.2q),which will be mitigated through the imposition of Mitigation Measure B.2q, which calls for optimizing the signal timing for the PM period at this intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

(3) Impacts B.3, B.3b, B.3f, B.3g, B.3i, B.3j, B.3k, B.3m, B.3n, B.3o, B.3p, B.3q: Project traffic will contribute to significant cumulative impacts at the following intersections in 2025:

Embarcadero and Broadway (Impact B.3b), which will be mitigated through the imposition of Mitigation Measure B.3b, which calls for installation of a traffic signal at this unsignalized intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in both the AM and PM peak hours.

West Grand Avenue and Harrison Street (Impact B.3f), which will be mitigated through the imposition of Mitigation Measure B.3f, which calls for optimizing the signal timing for the AM peak period at this intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

Lakeshore and Foothill Boulevard (Impact B.3g), which will be mitigated through the imposition of Mitigation Measure B.3g, which calls for optimizing the signal timing for the AM peak period at this intersection. After implementation of this mitigation, the average delay at the intersection will be less than under the 2025 Without Project condition, thus mitigating the project's contribution to this impact to less than cumulatively considerable.

Lakeshore Avenue and Lake Park Avenue (Impact B.3i), which will be mitigated through the imposition of Mitigation Measure B.3i, which calls for optimizing the signal timing for the PM period at this intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

Embarcadero and 5th Avenue (Impact B.3j), which will be mitigated through the imposition of Mitigation Measure B.3j, which calls for widening the Embarcadero roadway along the project site frontage. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

Embarcadero and I-880 Northbound Off-Ramp (Impact B.3k), which will be mitigated through the imposition of Mitigation Measure B.3k, which calls for widening the Embarcadero roadway along the project site frontage. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

5th Avenue and 7th/8th Streets (Impact B.3m), which will be mitigated through the imposition of Mitigation Measure B.3m, which calls for optimizing the signal timing for the PM period at this intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

14th Avenue and 7th/East 12th Streets (southbound) (Impact B.3n, which will be mitigated through the imposition of Mitigation Measure B.3n, which calls for optimizing the signal timing for the PM peak period at this intersection. After implementation of this mitigation, the average delay at the intersection will be less than under the 2025 Without Project condition, thus mitigating the project's contribution to this impact to less than cumulatively considerable.

Foothill Boulevard and 14th Avenue (Westbound) (Impact B.3o), which will be mitigated through the imposition of Mitigation Measure B.3o, which calls for optimizing the signal timing for the AM period at this intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

Foothill Boulevard and 14th Avenue (Eastbound) (Impact B.3p), which will be mitigated through the imposition of Mitigation Measure B.3p, which calls for optimizing the signal timing for the AM period at this intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

16th Street and 23rd Avenue (Impact B.3q), which will be mitigated through the imposition of Mitigation Measure B.3q, which calls for optimizing the signal timing for the PM period at this intersection. After implementation of this mitigation, the intersection will operate at an acceptable level of service in the AM and PM peak hours.

(4) Impact B.4: The Project will generate demand for alternative transportation service for the Project area. This impact will be mitigated through implementation

of Mitigation Measures B.4a and b, which call for the Project site plan to be revised to include transit facilities and operation of a shuttle service.

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

(6) Impact B.10: The Project construction will temporarily affect traffic, parking, and pedestrian conditions. This impact will be mitigated through implementation of Mitigation Measure B.10, which calls for implementation of a construction traffic management plan, including comprehensive traffic control measures, notification procedures, location of staging areas, identification of haul routes, construction fencing, trash removal, complaint procedures, monitoring of surface street damage, and coordination with BART.

c. Air Quality and Meteorological Conditions

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

d. Hydrology and Water Quality

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

(2) Impact D.2: The Project construction dredging activities could adversely affect aquatic organisms and water quality. This impact will be mitigated through implementation of Mitigation Measure D.2, which calls for compliance with all water quality certification requirements, a Section 404 permit, and approval, by the Dredged Material Management Office.

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

(4) Impact D.6: The Project could deplete groundwater supplies or interfere with groundwater recharge and cause contamination of surface water. This impact will

be mitigated through implementation of Mitigation Measure D.6, which calls for compliance with NPDES requirements for dewatering activities.

e. Cultural Resources

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

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

f. Geology, Soils and Seismicity

(1) Impact F.1: The Project could be subject to the effects of a major earthquake causing structure collapse or damage. This impact will be mitigated through implementation of Mitigation Measure F.1 (as revised in the *Revisions*), which calls for site specific, design level geotechnical investigations by a registered geotechnical engineer including an analysis of expected ground motion from known active faults, a determination of structural design requirements to ensure that structures can withstand ground accelerations expected from known active faults, and a determination of the final design parameters for walls, foundations, slabs, utilities, roadways, parking lots, sidewalks, and other improvements, review and approval by a registered geotechnical engineer, incorporation of all mitigations from the site specific investigations into the final design, compliance with all Code requirements, review by a third-party registered engineer, and approval by the City of Oakland Building Services Division.

(2) Impact F.2: The Project could be exposed to liquefaction and settlement in the event of a major earthquake. This impact will be mitigated through implementation of Mitigation Measure F.2 (as revised in the *Revisions*), which calls for site specific, design level geotechnical investigations for each building site by a registered geotechnical engineer to include engineering requirements for mitigating liquefiable soils using proven methods generally accepted by registered engineers; compliance with CGS Geology Guidelines related to liquefaction; all project plans for foundation design, earthwork, and site preparation must incorporate the mitigations from the site specific studies; incorporation of mitigation from the site specific studies into the structural plans and compliance of the structural plans with all Code requirements; review and approval of each site specific study by the City's geotechnical engineer and the review of all project plans for compliance with the applicable geotechnical investigation and applicable Code requirements by the City Building Services Division.

(3) Impact F.3: Development at the Project site could be subject to settlement. This impact will be mitigated through implementation of Mitigation Measure F.3,

which calls for the preparation of site specific geotechnical investigation and reports that will include accepted and appropriate engineering techniques (such as lightweight fill, geofoam, surcharging, wick drains, deep foundations, structural slabs, hinged slabs, flexible utility connections, and utility hangers) for mitigating the effects of settlement and for construction activities and design criteria to comply with all applicable codes and regulations.

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

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

g. Noise

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

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

h. Hazardous Materials

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

(2) Impact H.2: During demolition and construction, hazardous building components could expose workers, the public and the environment to adverse

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

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

i. Biological Resources/Wetlands

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

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

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

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

28. Under Public Resources Code section 21081(a)(2) and (3) and CEQA Guidelines section 156091 and 15092, and Chapter 17.158 of the Municipal Code, the City determines that the following significant effects on the environment, as reflected in the EIR, are unavoidable and

are acceptable due to the overriding considerations described below either because (a) the changes and alterations that could mitigate or avoid the significant impact are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency and the City cannot ensure that the mitigation measure will be implemented or (b) specific economic, legal, social, technological or other considerations, including the provision of employment opportunities for highly trained workers, make infeasible mitigation measures or alternatives identified by the EIR. As noted above in paragraph no. 25, in making these findings the City adopts, ratifies, and incorporates by reference all of the information, explanation, reasoning, and analysis contained in the EIR (which includes the Revisions) and other evidence in the record. The full text of the mitigation measures referred to in this paragraph are contained in the Mitigation Monitoring and Reporting Program and the City relies on the full text of the Mitigation Measures and requirements of the Mitigation Monitoring and Reporting Program in making these findings. Additionally, the findings below rely on the findings regarding the infeasibility of alternatives set forth herein.

a. Traffic, Circulation, and Parking

(1) Impact B.1b: Phase I of the Project will affect the intersections of 5th Street and Broadway. No feasible mitigations measures are available to reduce this impact to a less than significant level because of the constrained capacity of the Webster Tube, which cannot be widened. Pursuant to Section 21081(a)(3), specific considerations make mitigation measures and alternatives infeasible.

(2) Impact B.1c: Phase I of the Project will affect the intersection 6th and Jackson Streets at the I-880 Northbound On-Ramp. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.1c, which calls for optimization of the traffic signal at this intersection. Although the City has adopted this mitigation measure for the Project, its implementation is uncertain because it requires the approval of Caltrans. Consequently, the City finds this impact is significant and unavoidable. The City further finds if Caltrans approves this measure, the impact will be reduced to a less than significant level. Thus, pursuant to Section 21081(a)(2), the implementation of this mitigation and should be adopted by Caltrans. Further, pursuant to Section 21081(a)(3), specific considerations (e.g., approval and implementation required by Caltrans) make the mitigation measure infeasible and make alternatives infeasible.

(3) Impact B.1e: Phase I of the Project will affect the intersection Embarcadero and I-880 Northbound Off-Ramp – 6th Avenue. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.1e, which calls for installation of a traffic signal at this intersection. Although the City has adopted this mitigation measure for the Project, the implementation of this mitigation measure is uncertain because it requires the approval of Caltrans. Consequently, the City finds this impact is significant and unavoidable. The City further finds if Caltrans approves this measure, the impact will be reduced to a less than significant level. Thus, pursuant to Section 21081(a)(2), the implementation of this mitigation measure should be adopted by Caltrans. Further, pursuant to Section 21081(a)(3), specific considerations (e.g., approval and implementation required by Caltrans) make the mitigation measure infeasible and make alternatives infeasible.

(4) Impact B.2a: Buildout of the Project will affect the intersection of Atlantic Avenue and Webster Street. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.2a, which calls for payment of a fair share fee for certain improvements at this intersection. Although the City has adopted this mitigation measure for the Project, its implementation is uncertain because it requires the approval of, and implementation by, the City of Alameda. Consequently, the City finds that this impact is significant and unavoidable. The City further finds that if Alameda approves this measure, the impact will be reduced to a less than significant level. Thus, pursuant to Section 21081(a)(2), the implementation of this mitigation is the responsibility of another public agency and should be adopted by that agency. Further, pursuant to Section 21081(a)(3), specific considerations (e.g., approval and implementation required by the City of Alameda) make the mitigation measure infeasible and make alternatives infeasible.

(5) Impact B.2c: Buildout of the Project will affect the intersection of 5th Street and Broadway. No feasible mitigations measures are available to reduce this impact to a less than significant level because of the constrained capacity of the Webster Tube, which cannot be widened. Pursuant to Section 21081(a)(3), specific considerations make mitigation measures and alternatives infeasible.

(6) Impact B.2d: Buildout of the Project will affect the intersection of 5th and Oak Streets at the I-880 Southbound On-Ramp. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.2d, which calls for optimization of the traffic signal at this intersection. Although the City has adopted this mitigation measure for the Project, its implementation is uncertain because it requires the approval of, and implementation by, Caltrans. Consequently, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level. Thus, pursuant to Section 21081(a)(2), the implementation of this mitigation is the responsibility of another public agency and should be adopted by that agency. Further, pursuant to Section 21081(a)(3), specific considerations (e.g., approval and implementation required by Caltrans) make the mitigation measure infeasible and make alternatives infeasible.

(7) Impact B 2e: Buildout of the Project will affect the intersection of 6th and Jackson Street at I-880 Northbound On-Ramp. No feasible mitigation measures are available to reduce this impact to a less than significant level because of the constrained right-of-way, which prevents the addition of turn lanes or other similar physical improvements at this intersection. Thus, pursuant to Section 21081(a)(3), specific considerations (e.g., legal and technological constraints) make mitigation measures and alternatives infeasible.

(8) Impact B.2h: Buildout of the Project will affect the intersection of Lakeshore Avenue and MacArthur Boulevard. No feasible mitigation measures are available to reduce this impact to a less than significant level because of the constrained right-of-way, which prevents the addition of turn lanes or other similar physical improvements at this intersection. Pursuant to Section 21081(a)(3), specific considerations (e.g., legal and technological constraints) make mitigation measures and alternatives infeasible.

(9) Impact B.2l: Buildout of the Project will affect the intersection of Embarcadero and I-880 Southbound On-Ramp – 10th Avenue. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.2l, which calls for installation of a traffic signal at this intersection. Although the City has adopted this mitigation measure for the Project, its implementation is uncertain because it requires the approval of, and implementation by, Caltrans. Consequently, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level. Thus, pursuant to Section 21081(a)(2), the implementation of this mitigation is the responsibility of another public agency and should be adopted by that agency. Further, pursuant to Section 21081(a)(3), specific considerations (e.g., approval and implementation required by Caltrans) make the mitigation measure infeasible.

(10) Impact B.3a: Buildout of the Project will contribute to the cumulative conditions at the intersection of Atlantic Avenue and Webster Street. This impact could be reduced, although not to a less than significant level, with implementation of Mitigation Measure B.3a, which calls for the Project to pay its fair share of the cost of the intersection reconfiguration improvements proposed for this intersection by the City of Alameda. Although the City has adopted this mitigation measure for the Project, its implementation is uncertain because it requires the approval of, and implementation by, the City of Alameda. Consequently, the City finds that this impact is significant and unavoidable. The City further finds that if Alameda approves this measure, the impact or the project's contribution to the impact will be reduced to a less than significant level. Thus, pursuant to Section 21081(a)(2), the implementation of this mitigation is the responsibility of another public agency and should be adopted by that agency. Further, pursuant to Section 21081(a)(3), specific considerations (e.g., approval and implementation required by the City of Alameda) make the mitigation measure infeasible and make alternatives infeasible.

(11) Impact B.3c: Buildout of the Project will contribute to the cumulative conditions at the intersection of 5th Street and Broadway. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of the constrained capacity of the Webster Tube, which cannot be widened. Pursuant to Section 21081(a)(3), specific considerations (e.g., legal and technological constraints) make mitigation measures and alternatives infeasible.

(12) Impact B.3d: Buildout of the Project will contribute to the cumulative conditions at the intersection of 5th and Oak Streets at the I-880 southbound On-Ramp. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.2d, which calls for optimization of the traffic signal at this intersection. Although the City has adopted this mitigation measure for the Project, its implementation is uncertain because it requires the approval of, and implementation by, Caltrans. Consequently, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level. Thus, pursuant to Section 21081(a)(2), the implementation of this mitigation is the responsibility of another public agency and should be adopted by that agency. Further pursuant to Section 21081(a)(3), specific considerations (e.g., approval and implementation required by Caltrans) make the mitigation measure infeasible and make alternatives infeasible.

(13) Impact B.3e: Buildout of the Project will contribute to the cumulative conditions at the intersection of 6th and Jackson Street at the I-880 Northbound On-Ramp. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of the constrained right-of-way at this location. Pursuant to Section 21081(a)(3), specific considerations (e.g., legal and technological constraints) make mitigation measures and alternatives infeasible.

(14) Impact B.3h: Buildout of the Project will contribute to the cumulative conditions at the intersection of Lakeshore Avenue and MacArthur Boulevard. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of the constrained right-of-way at this location. Pursuant to Section 21081(a)(3), specific considerations (e.g., legal and technological constraints) make mitigation measures and alternatives infeasible.

(15) Impact B.3l: Buildout of the Project will contribute to the cumulative conditions at the intersection of Embarcadero and I-880 Southbound On-Ramp -10th Avenue. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.3l, which calls for installation of a traffic signal at this intersection. Although the City has adopted this mitigation measure for the Project, its implementation is uncertain because it requires the approval of, and implementation by, Caltrans. Consequently, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level. Thus, pursuant to Section 21081(a)(2), the implementation of this mitigation is the responsibility of another public agency and should be adopted by that agency. Further, pursuant to Section 21081(a)(3), specific considerations (e.g., approval and implementation required by Caltrans) make the mitigation measure infeasible and make alternatives infeasible.

(16) Impact B.9: The Project will contribute to 2025 traffic conditions on regional and local roadways. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of constrained right-of-ways, the inherent difficulties in widening freeways, and the lack of a regional mitigation fee program. Pursuant to Section 21081(a)(3), specific considerations (e.g., legal and technical constraints) make mitigation measures and alternatives infeasible.

b. Air Quality and Meteorological Conditions

(1) Impact C.7: The Project will contribute to cumulative regional air pollution. This impact could be reduced, although not to a less than significant level, with the implementation of Mitigation Measures C.7a through k, which call for implementation of certain rideshare, transit, shuttle, and bicycle and pedestrian measures. No feasible mitigation measures are available to reduce this impact to a less than significant level. Thus, pursuant to Section 21081(a)(3), specific considerations make mitigation measures and alternatives infeasible.

c. Cultural Resources

(1) Impact E.3: The Project will result in the substantial demolition of the Ninth Avenue Terminal. This impact could be reduced, but not to a less than significant level, through the implementation of Mitigation Measures E.3a and b, which call for documentation of the historic resource and reuse and rehabilitation of the bulkhead building. No feasible alternatives are available to reduce this impact to a less than significant level for the reasons set forth below. Thus, pursuant to Section 21081(a)(3), specific considerations make mitigation measures and alternatives infeasible.

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

(2) Impact E.4: The Project will substantially alter the wharf structure supporting the Ninth Avenue Terminal and surrounding areas. This impact could be reduced, but not to a less than significant level, through the implementation of Mitigation Measures E.3a and b, which call for documentation of the historic resource and reuse and rehabilitation of the bulkhead building. No feasible alternatives are available to reduce this impact to a less than significant level for the reasons set forth below. Thus, pursuant to Section 21081(a)(3), specific considerations make mitigation measures and alternatives infeasible.

(3) Impact E.5: Although the Project buildings have not been designed, the Project may not be architecturally compatible with the remaining bulkhead building and Project buildings will be located within 100 feet of the bulkhead building. No feasible alternatives are available to reduce this impact to a less than significant level for the reasons set forth below. Thus, pursuant to Section 21081(a)(3), specific considerations make mitigation measures and alternatives infeasible.

(4) Impact E.8: The Project will contribute to the cumulative loss of historic resources. This impact could be reduced, but not to a less than significant level, through implementation of Mitigation Measures E.8, which call for a historical exhibit in the bulkhead building and park design elements that reference the Terminal building's footprint and height. No feasible alternatives are available to reduce this impact to a less than significant level for the reasons set forth below. Thus, pursuant to Section 21081(a)(3), specific considerations make mitigation measures and alternatives infeasible.

b. Noise

(1) Impact G.1: The Project construction activities will generate noise levels above City standards and disturb noise-sensitive areas. This impact could be reduced, but not to a less than significant level, through implementation of Mitigation Measures G.1a through d, which call for limiting the hours of construction, use of best available noise control techniques, special provisions for the use of impact tools, noise control measures for stationary

sources, limitations on the number of consecutive days that activities such as pile driving may occur, special attenuation provisions for pile driving or other extreme noise generating construction impacts, and procedures for tracking and responding to noise complaints from construction. No feasible mitigation measures are available to reduce this impact to a less than significant level. Thus, pursuant to Section 21081(a)(3), specific considerations make mitigation measures and alternatives infeasible.

(2) Impact G.4: The Project will locate noise sensitive uses in a noise environment where outdoor noise levels are above the General Plan's "normally acceptable" level. No feasible mitigation measures are available to reduce this impact to a less than significant level as set forth in the Draft EIR. No feasible alternatives are available to reduce this impact to a less than significant level for the reasons set forth below and in Exhibit D, General Findings. Thus, pursuant to Section 21081(a)(3), specific considerations make mitigation measures and alternatives infeasible.

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

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

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

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

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

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

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

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

other safety codes. No economically viable use of the Terminal building is likely in its current state. Given these considerations, the City has determined that an economically feasible rehabilitation and reuse of some portion of the Terminal building and seismic upgrade of the wharf would best promote the health, safety, and welfare of the community by creating a code-compliant, active reuse of some portion of the Terminal building, without creating a burdensome economic liability for the City, thereby encouraging Oakland residents and visitors to visit the waterfront. This goal would not be achieved under this alternative.

36. No Project/Estuary Policy Plan (Alternative 1B): Under this alternative, development would occur in accordance with the existing Estuary Policy Plan. This alternative would reduce certain of the Project's significant traffic and air quality impacts and would have the same significant unavoidable impacts on historic resources, because it includes the demolition of the Ninth Avenue Terminal and portions of the associated wharf to create a new large scale open space area. This alternative is rejected for the following reasons: (a) This alternative would not provide any new housing and would result in the loss of 3,100 new housing opportunities, thereby substantially reducing the City's ability to meet its housing goals; (b) Based on the EPS Alternatives Analysis, which examined the alternative's residual land value (i.e. a comparison of the cost of developing and operating the building prototype against the revenues and value that can be achieved for the uses at this site), this alternative is not financially feasible because the type and amount of development results in the costs of development exceeding revenues, thereby producing a negative IRR (internal rate of return); (c) The EPS Alternatives Analysis found that this alternative produced an estimated net shortfall of $257,267,076; (d) The EPS Alternatives Analysis found that conventional financing from lenders and investors would be very difficult to obtain given the substantial financial shortfall; (e) The EPS Alternatives Analysis determined that undertaking this alternative would require significant public subsidies or significant improvements in future market conditions; and (f) The EPS Alternatives Analysis determined that this alternative could not support the open space maintenance, security, management, and insurance costs associated with development of the site.

37. Enhanced Open Space / Partial Ninth Avenue Terminal Preservation and Adaptive Reuse Alternative (Alternative 2): Under the alternative, development would include 1,800 residential units, 95,000 square fee of commercial space, 40.6 acres of parks and open space, realignment of the Embarcadero to curve through the eastern portion of the site, and preservation and reuse of approximately 88,000 square feet of the Ninth Avenue Terminal building, consistent with the Tidelands Trust land use restrictions. This alternative would reduce certain of the Project's significant traffic impacts, would reduce, but not avoid, the significant unavoidable impacts to historic resources, would increase existing hazardous wind conditions in the open space areas, and otherwise would have impacts similar to the Project. This alternative is rejected for the following reasons: (a) This alternative would substantially reduce the number of new housing opportunities on the site, thereby impeding the City's ability to meet its housing goals; (b) The realignment of the Embarcadero would inappropriately place a major thoroughfare along a major new open space area and surrounding a new residential area causing land use conflicts and separating the new open space from the other uses on the site; (c) Based the EPS Alternatives Analysis, which examined the alternative's residual land value (i.e. a comparison of the cost of developing and operating the building prototype against the revenues and value that can be achieved for the uses at this site), this alternative is not financially feasible because the type and amount of development results in the costs of development exceeding

revenues, thereby producing a negative IRR (internal rate of return); (d) The EPS Alternatives Analysis found that this alternative produced a net estimated net shortfall of $172,126,631; (d) The EPS Alternatives Analysis found that conventional financing from lenders and investors would be very difficult to obtain given the substantial financial shortfall; (f) The EPS Alternatives Analysis determined that undertaking this alternative would require significant public subsidies or significant improvements in future market conditions; and (g) The alternative would reduce the ability to provide a new public open space and access to the waterfront in the location of the Ninth Avenue Terminal as called for in the Estuary Policy Plan. Additionally, the conclusions regarding the infeasibility of reusing this portion of the Ninth Avenue Terminal as a stand-alone development are presented below.

38. Reduced Development / Ninth Avenue Terminal Preservation (Alternative 3): Under this alternative, development would include 540 residential units, 10,000 square feet of retail/restaurant use, 39.9 acres of parks and open space and it would preserve and reuse the Ninth Avenue Terminal. This is the environmentally superior alternative and would reduce most of the Project's significant unavoidable impacts, except for one traffic impact, the impact on the historic wharf structure, and the construction noise impact. This alternative would result in exposing the waterfront open space area to the existing hazardous wind conditions. This alternative is rejected for the following reasons: (a) The alternative would substantially reduce the number of new housing opportunities on the site, thereby impeding the City's ability to meet its housing goals; (b) Based the EPS Alternatives Analysis, which examined the alternative's residual land value (i.e. a comparison of the cost of developing and operating the building prototype against the revenues and value that can be achieved for this uses at this site), this alternative is not financially feasible because the type and amount of development results in the costs of development exceeding revenues, thereby producing a negative IRR (internal rate of return); (c) The EPS Alternatives Analysis found that this alternative produced an estimated net shortfall of $308,132,863; (d) The EPS Alternatives Analysis found that conventional financing from lenders and investors would be very difficult to obtain given the substantial financial shortfall; (e) The EPS Alternatives Analysis determined that undertaking this alternative would require significant public subsidies or significant improvements in future market conditions; and (f) The alternative would reduce the ability to provide a new public open space and access to the waterfront in the location of the Ninth Avenue Terminal as called for in the Estuary Policy Plan. The infeasibility of reusing the Ninth Avenue Terminal as a stand-alone development is presented in the findings below.

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

40. In response to questions raised during the Planning Commission consideration of the Project and at the March 28, 2006 City Council hearing on the Project, three additional

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

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

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

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

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

and alternatives examined. This proposal is the most financially feasible of all the proposals studied.

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

c. Student Study Option 1: This option proposes to reuse the Terminal as a conference/special events center. EPS examined the site's ability to compete in the market for conference center services. Based on the EPS analysis, this alternative is economically infeasible for the following reasons: (1) Although the site is suitable for a stand-alone convention center, the lack of full-service hotel facilities within walking distance would make it difficult for the proposed convention center to compete with similar facilities in the area; (2) Convention facilities already exist nearby – the Oakland Convention Center and at two Jack London square hotels, the Jack London Inn and the Waterfront Plaza hotel; (3) Current utilization at the Oakland Convention Center indicates that there is not excess demand to justify new facilities and any new facilities may adversely affect the Convention Center; (4) The financial difficulties of the recently-closed Henry J. Kaiser center illustrate the difficulties of running a stand-alone convention center; (5) Given the inadequate parking provided, the proposed uses would need to be reduced in order to accommodate the needed parking, thereby reducing leasable square footage and revenue; and (6) This option has an estimated financial shortfall of $33,639,407.

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

e. Student Study Option 3: This option includes a conference center, a theater/club, meeting rooms, retail and restaurant space. EPS examined the site's ability to compete in the market for conference center services, and the need for another conference center in the area. Based on the EPS analysis, this alternative is economically infeasible for the following reasons: (1) although the site is suitable for a stand-alone convention center, the lack of full-service hotel facilities within walking distance would make it difficult for the proposed convention center to compete with similar facilities in the area; (2) The suggested added uses, such as retail, community and performing arts spaces, would likely conflict with the convention

space; (3) Convention facilities already exist nearby – the Oakland Convention Center and at two Jack London square hotels, the Jack London Inn and the Waterfront Plaza hotel; (4) Current utilization at the Oakland Convention Center indicates that there is not excess demand to justify new facilities and any new facilities may adversely affect the Convention Center; (5) This option would have an estimated financial shortfall of $35,552,683.

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

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

42. Condition of Approval No. 25.c.: Although the City finds, based on the administrative record, that it is not economically feasible to preserve the Terminal, it is providing the opportunity for an entity to provide an alternative funding source by responding to a Request for Proposals to preserve and reuse 40,000 to 90,000 square feet of the Terminal in accordance with Condition 25.c. A proposal has been submitted by an entity entitled the Ninth Avenue Terminal Partners (NATP). The City has considered the feasibility of this proposal by reviewing the proposal as well as an analysis of the proposal by Architectural Dimensions, consultants to developers of the Oak to Ninth Project. To date, the NATP proposal has not been demonstrated to be feasible (due, e.g., to insufficient, unsubstantiated data and estimates, as explained in the Architectural Dimensions critique) and the City's previous infeasibility determinations remain valid. Notwithstanding the foregoing, after the completion of the City's review and evaluation of the NATP proposal, the City will make a determination regarding any options proposed. In the event that the City does not approve an alternate reuse option pursuant to the terms of Condition No. 25.c, the project sponsor will be required to preserve 20,000 square feet of the Terminal building, instead of the 15,000 square feet proposed under the Project. If the City approves an alternative reuse option, the Project will continue to result in a significant, unavoidable impact to an historic resource and the findings related to that impact are contained herein.

V. STATEMENT OF OVERRIDING CONSIDERATIONS

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

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

45. The Project will provide over 32 acres of public open space, parks, and pedestrian and bicycle trails in the waterfront area along the Oakland Estuary that will enhance and expand public access to this area in accordance with the goals and policies of the Estuary Policy Plan. The Bay Trail will be extended through the site. With these improvements, the Project will allow Oakland residents and other visitors to enjoy an area of the waterfront that has been inaccessible.

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

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

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

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

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

51. The Project will promote a jobs/housing balance by providing a mix of commercial and residential uses. The Project will include approximately 465 affordable housing units in accordance with the Development Agreement.

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

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

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

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

56. The Project will build two marinas providing opportunities for 170 boat slips.

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

REVISED EXHIBIT B
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	*Mitigation Measures*	Level of Significance *after Mitigation*[1]	Condition of *Approval*	Monitoring *Responsibility*[2]	Monitoring Timeline
A. Land Use, Plans, and Policies					
A.1: The project would develop new and different uses and buildings immediately adjacent to and surrounding Fifth Avenue Point and may result in the physical division of an existing community. (PS)	**A.1:** The project applicant shall incorporate into the project site plan design elements that 1) address the relationship (setback, height and upper-story stepbacks, etc.) of new buildings located adjacent to Fifth Avenue Point to minimize the physical division of the outparcels from the existing Oak-to-Ninth District; 2) provide safe, direct, and well-designed pedestrian and bicycle access between the outparcels and the new public open spaces, trails, and marina uses on the project site; 3) provide appropriate landscaping and/or other feature(s) to provide appropriate buffering between the outparcels and the project site, where necessary and feasible. The proposed Planned Waterfront Zoning District (PWD-1) regulations discussed in Impact A.2 shall incorporate, as appropriate, specific design standards to address the aforementioned elements in areas abutting Fifth Avenue Point.	Less than Significant	44	City of Oakland Planning and Zoning Department	Prior to approval of Final Development Plans and specifications for the respective Development Parcel
A.2: The project would not be consistent with the current existing Estuary Plan land use classification and zoning districts for the project site. (PS)	**A.2a:** The project sponsor shall apply for and obtain City approval for a General Plan Amendment to the Planned Waterfront Development-1 land use classification in the Estuary Policy Plan to 1) include residential as a permitted land use, 2) incorporate the density, FAR, and the other land use and development standards (as appropriate to include in the	Less than Significant	44	Project Sponsor; City Planning and Zoning Department	Concurrent with Rezoning

[1] This column describes the Level of Significance resulting from the Project, together with imposition of all reasonably feasible mitigation measures. For purposes of this Mitigation Monitoring and Reporting Program, **"Less Than Significant"** means that, under Public Resources Code section 21081(a)(1) and CEQA Guidelines sections 15091(a)(1) and 15092(b)(2)(A), changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment. **"Significant and Unavoidable"** means that, under Public Resources Code section 21081(a)(3) and (b), and CEQA Guidelines sections 15091(a)(3), 15092(b)(2)(B) and 15093, no mitigation measures are available, or specific economic, legal, social, technological or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the EIR or elsewhere; these impacts are acceptable due to the overriding considerations being considered for adoption by the City. Under Public Resources Code section 21081(a)(2) and CEQA Guidelines section 15091(a)(2) and 15092(b)(2)(A), where all or part of the mitigation measures are within the responsibility and jurisdiction of another public agency (including situations which require the cooperation of another public agency), and such changes either have been adopted by the other agency or can and should be adopted by such other agency, these impacts are also identified as **"Significant and Unavoidable."**

[2] Compliance date, and inspection or field survey dates to be noted in this column by the responsible agency.

* The MMRP is revised to include text changes identified in the *Revisions to the Analysis in the Oak to Ninth Project EIR (SCH. No.2004062013) Prepared to Comply with the Alameda County Superior Court Order in Case No. RG06-280345 and Case No. RG06-280471*. The Revised MMRP incorporates all mitigation measures identified in the EIR and in the *Revisions* document.

REVISED EXHIBIT B (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
A. Land Use, Plans, and Policies (cont.)					
A.2 (cont.)	General Plan) outlined in the proposed Planned Water Development-1 Zone-1, and 3) explicitly state the intended treatment of the Ninth Avenue Terminal. If approved, the General Plan Amendment would eliminate the project's inconsistency with the Estuary Policy Plan.				
	A.2b: The project sponsor shall apply for and obtain City approval for an amendment to the Oakland Planning Code to add the "Planned Waterfront Zoning District" (PWD-1) and associated regulations, and to amend the Oakland General Plan and Zoning Map to apply the PWD-1 District to the geographic area of the project site. The project would be required to adhere to the PWD-1 District regulations, development standards, design guidelines, and other requirements, including allowable uses, requirements for open space, streets, building heights, maximum densities, maximum commercial space, and parking. If approved, the change in zoning from the existing industrial (M-40 Zone) and special (S-2/S-4 Zone) districts to the PWD-1 District would eliminate the project's inconsistencies with the existing zoning as well as any zoning inconsistency with the General Plan.		44	Project Sponsor; City Planning and Zoning Department	Concurrent with General Plan Amendment
A.3: The project would introduce new land uses, and residential densities, and large building masses, forms, and significant height to the project site. The project may likely increase noise, light and glare, and traffic and that may reduce or eliminate existing views from public vantage points. As a result, the project would result in a substantial change in existing environment and existing land uses. (PS)	**A.3a:** The project sponsor shall implement all mitigation measures identified throughout this EIR to address the significant physical impacts associated with the environmental changes that would occur as a result of the project, reducing each impact to less than significant, where feasible.	Less than Significant	44	City Planning and Zoning Department	Throughout implementation of the project

REVISED EXHIBIT B (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
A. Land Use, Plans, and Policies (cont.)					
A.3 (cont.)	**A.3b:** The project sponsor shall implement the specific regulations and standards of the proposed Planned Waterfront Zoning District (consistent with Mitigation Measures A.1 and A.2b), if approved. To specifically address the physical impacts resulting from the change in land use and environment in proximity to Fifth Avenue Point and adjacent residential development, the project shall adhere to the regulations and standards for allowable uses, open space, streets, setbacks, building heights and upper-story stepbacks, maximum densities, maximum commercial space, pedestrian and bicycle access, and landscaping and buffering.	Less than Significant	44	City Planning and Zoning Department	Throughout implementation of the project by administration of the adopted Design *Guidelines and the* design review process in the Development Agreement
B. Transportation, Circulation, and Parking					
B.1: Traffic generated by Phase 1 of the project would affect traffic levels of service at local intersections in the project vicinity in 2010.					
B.1a: Traffic generated by Phase 1 of the project would add more than ten vehicles to the *unsignalized intersection of Embarcadero and Oak Street*, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant. (PS)	**B.1a:** Install traffic signals at the unsignalized intersection of *Embarcadero and Oak Street*. The *signals shall have fixed-time controls* with permitted left-turn phasing, which would not require a separate left-turn arrow. Installation of traffic signals shall include the traffic signal equipment and optimization of signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. Traffic signal equipment shall include pedestrian signal heads (with adequate time for pedestrians to cross the streets). Signal installation shall meet City of Oakland and Caltrans design standards.	Less than Significant	18,19	Public Works Agency, City Traffic *Engineering* Department; Planning and Zoning Department	Completion according to the phasing *schedule set forth in* COA 19 pursuant to the adopted schematic Mastic Traffic Improvement Plan required by COA 18

REVISED EXHIBIT B (Continued)
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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.1b: The LOS F conditions at the signalized intersection of *5th Street and Broadway*, which would prevail during the PM peak hour under 2010 baseline conditions, would worsen *with the addition of traffic generated by Phase* 1 of the project. The project-generated increases in vehicle delay on a critical movement would exceed the four-second threshold of significance. (SU)	No feasible mitigation measures are available that would fully improve operations at *5th Street and Broadway* to acceptable levels. While improvements such as reconfiguring lanes on *Broadway and adding directional signage, as* discussed in the JLS EIR, would improve traffic flow conditions on some movements, downstream bottlenecks in the Webster Tube would continue to cause substantial backups and delay on 5th Street approaching Broadway, and the previously described unacceptable LOS F conditions would continue. The constrained capacity of the tube is an issue of multi-jurisdictional concern (solutions are being explored by the cities of Oakland and Alameda, Caltrans, and the Alameda County Congestion Management Agency), and no feasible measures to increase the tube's capacity have been identified to date (e.g., the tube cannot simply be widened as can a roadway).	**Significant and Unavoidable**			
B.1c: The signalized intersection of *6th and Jackson Streets at the I-880 Northbound On-Ramp* would degrade from LOS E to LOS F during the PM peak hour with the addition of traffic generated by Phase 1 of the project. (SU)	**B.1c:** Optimize the traffic signal timing at the signalized intersection of *6th and Jackson Streets at the I-880 Northbound On-Ramp.* Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.	This project impact would be **significant and unavoidable** because it is not certain that the measure could be implemented (because the City of Oakland, as lead agency, could not implement Measure B.1c without the approval of Caltrans. However, in the event that Mitigation Measure B.1c could be implemented, the impact would be less than significant.	18, 19	Public Works Agency, City Traffic Engineering Department; Caltrans	If encroachment permit is issued by Caltrans then the mitigation measure must be complete prior to the issuance of the Certificate of Occupancy for the 1,000th unit

REVISED EXHIBIT B (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.1d: Traffic generated by Phase 1 of the project would add more than ten vehicles to the unsignalized intersection of *Embarcadero and 5th Avenue*, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant during the PM peak hour. (PS)	**B.1d:** Install traffic signals at the unsignalized intersection of *Embarcadero and 5th Avenue.* The signals shall have fixed-time controls with permitted left-turn phasing, which would not require a separate left-turn arrow. Installation of traffic signals shall include the traffic signal equipment and optimization of signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. Traffic signal equipment shall include pedestrian signal heads (with adequate time for pedestrians to cross the streets). Signal installation shall meet City of Oakland and Caltrans design standards.	Less than Significant	18, 19	City Public Works Agency	Prior to the issuance of the Certificate of Occupancy for the 1,000th unit
B.1e: Traffic generated by Phase 1 of the project would add more than ten vehicles to the unsignalized intersection of *Embarcadero and I-880 Northbound Off-Ramp – 6th Avenue*, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant, during the PM peak hour. (SU)	**B.1e:** Install traffic signals at the unsignalized intersection of *Embarcadero and I-880 Northbound Off- Ramp – 6th Avenue.* Installation of traffic signals shall include the traffic signal equipment and optimization of signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. Traffic signal equipment shall include pedestrian signal heads (with adequate time for pedestrians to cross the streets). Signal installation shall meet City of Oakland and Caltrans design standards.	This project impact would be **significant and unavoidable** because it is not certain that the measure could be implemented because the City of Oakland, as lead agency, could not implement Measure B.1e without the approval of Caltrans. However, in the event that Mitigation Measure B.1e could be implemented, the impact would be less than significant.	18, 19	City Public Works Agency; Caltrans	If encroachment permit is issued by Caltrans then the mitigation measure must be complete prior to the issuance of the Certificate of Occupancy for the 1,000th unit
B.2: Traffic generated by buildout of the project would affect traffic levels of service at local intersections in the project vicinity in 2025.					

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.2a: The signalized intersection of *Atlantic Avenue and Webster Street* would degrade from LOS E to LOS F during the AM peak hour with the addition of traffic generated by *buildout of the project. (SU)*	**B.2a:** The project applicant shall pay its fair share contribution to the cost of improvements proposed by the City of Alameda at the signalized intersection of Atlantic Avenue and Webster *Street. Intersection reconfiguration would consist* of adding and restriping lanes to provide the *following lanes per approach:* • Webster Street (from Oakland) – 1 Left-turn lane, 2 Through lanes, and 1 Right-turn lane (non-channelized right turn) • Webster Street (to Oakland) – 2 Left-turn lanes, 1 Through lane, and 1 Through/Right-turn lane • Atlantic Avenue (towards Alameda Point) – 1 Left-turn lane, 1 Through lane, and 1 Through/Right-turn lane • Atlantic Avenue (away from Alameda Point) – 2 Left-turn lanes, 2 Through lanes, and 1 Right-turn lane This mitigation measure was identified by the City of Alameda as the required improvement to accommodate redevelopment of the former Naval Air Station. The project would contribute to the implementation of this mitigation measure through payment of a fair share cost of the improvement (to be determined). During the AM and PM peak hours, the project's contribution to the estimated growth in traffic between the existing and cumulative traffic volumes (including project traffic) would be 5 and 6 percent, respectively. The project applicant would pay this fair share amount to the City of Alameda, which would then be responsible for the implementation of this improvement.	This project impact would be **significant and unavoidable** because it is not certain that the *measure could be* implemented because the *City of Oakland, as lead* agency, could not implement Measure B.2a without the approval of the City of Alameda). However, in the event that Mitigation Measure B.2a could be implemented, the impact would be less than significant.		City of Oakland Planning and Zoning Department; Public Works Agency; and *the City of Alameda* Planning and Public *Works Department*	If the City of Alameda proceeds to implement traffic improvements at the *intersection of Atlantic* and Webster, the *project applicant shall* pay its fair share contribution towards the improvements prior to the issuance of the Certificate of Occupancy for the 3,100th unit or when the work is authorized and a bid is accepted by the City of Alameda.

REVISED EXHIBIT B (Continued)
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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.2b: Traffic generated by buildout of the project would add more than ten vehicles to the unsignalized intersection of *Embarcadero and Broadway*, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant during the PM peak hour. (PS)	**B.2b:** Install traffic signals at the unsignalized intersection of *Embarcadero and Broadway*. The signals shall have fixed-time controls with permitted left-turn phasing, which would not require a separate left-turn arrow. Installation of traffic signals shall include the traffic signal equipment and optimization of signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. Traffic signal equipment shall include pedestrian signal heads (with adequate time for pedestrians to cross the streets). Signal installation shall meet City of Oakland and Caltrans design standards.	Less than Significant	18, 19	City Public Works Agency; Planning and Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit
B.2c: The LOS F conditions at the signalized intersection of *5th Street and Broadway*, which would prevail during the PM peak hour under 2025 baseline conditions, would worsen with the addition of traffic generated by buildout of the project. The project-generated increases in vehicle delay would exceed the two-second threshold of significance. (SU)	No feasible mitigation measures are available that would fully improve its operations to acceptable levels. While improvements such as reconfiguring lanes on Broadway and adding directional signage, as discussed in the JLS EIR, would improve traffic flow conditions on some movements, downstream bottlenecks in the Webster Tube would continue to cause substantial backups and delay on 5th Street approaching Broadway, and the previously described unacceptable LOS F conditions would continue. The constrained capacity of the tube is an issue of multi-jurisdictional concern (solutions are being explored by the cities of Oakland and Alameda, Caltrans, and the Alameda County Congestion Management Agency), and no feasible measures to increase the tube's capacity have been identified to date (e.g., the tube cannot simply be widened as can a roadway).	**Significant and Unavoidable**			

REVISED EXHIBIT B (Continued)
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FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.2d: The signalized intersection of *5th and Oak Streets at the I-880 Southbound On-Ramp* would degrade from LOS E to LOS F during the PM peak hour with the addition of traffic generated by buildout of the project. (SU)	**B.2d:** Optimize the traffic signal timing for the PM peak period at the signalized intersection of *5th and Oak Streets at the I-880 Southbound On-Ramp*. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.	This project impact would be **significant and unavoidable** because it is not certain that the measure could be implemented because the City of Oakland, as lead agency, could not implement Measure B.2d without the approval of Caltrans. However, in the event that Mitigation Measure B.2d could be implemented, the impact would be less than significant.	18, 19	City Public Works Agency; Planning & Zoning Division; Caltrans	If encroachment permit is issued by Caltrans, then the mitigation measure must be complete prior to the issuance of the Certificate of Occupancy for the 1,000th unit
B.2e: The signalized intersection of *6th and Jackson Streets at the I-880 Northbound On-Ramp* would degrade from LOS E to LOS F during the AM peak hour with the addition of traffic generated by buildout of the project, and the LOS F conditions that, which would prevail during the PM peak hour under 2025 baseline conditions, would worsen (total intersection average vehicle delay would exceed the two-second threshold of significance) with the addition of traffic generated by buildout of the project. (SU)	No feasible mitigation measures are available. The 2010 analysis concluded that the impact from Phase 1 development could be mitigated through optimization of signal timing (see Mitigation Measure B.1c). However, with the additional growth in background traffic and the growth in project traffic that would occur from 2010 to 2025, this retiming could not fully mitigate the impact from Project Buildout. Given the constrained right-of-way at this location, the addition of turn lanes or other similar improvements would not be feasible.	**Significant and Unavoidable**		City Public Works Agency; Planning & Zoning Division; Caltrans	If encroachment permit is issued by Caltrans, then the mitigation measure must be complete prior to the issuance of the Certificate of Occupancy for the 1,000th unit
B.2f: The LOS F conditions at the signalized intersection of *West Grand Avenue and Harrison Street*, which would prevail during the AM peak hour under 2025 baseline conditions, would worsen (total intersection average vehicle delay would exceed the two-second threshold of significance) with the addition of traffic generated by buildout of the project. (PS)	**B.2f:** Optimize the traffic signal timing for the AM peak period at the signalized intersection of *West Grand Avenue and Harrison Street*. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.2g: The LOS E conditions at the signalized intersection of *Lakeshore Avenue and Foothill Boulevard*, which would prevail during the AM peak hour under 2025 baseline conditions, would worsen (an increase in the total intersection average vehicle delay of more than four seconds) with the addition of traffic generated by buildout of the project. (PS)	**B.2g:** Optimize the traffic signal timing for the AM peak period at the signalized intersection of *Lakeshore Avenue and Foothill Boulevard*. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit
B.2h: The LOS F conditions at the signalized intersection of *Lakeshore Avenue and MacArthur Boulevard*, which would prevail during the PM peak hour under 2025 baseline conditions, would worsen (an increase in the average vehicle delay for a critical movement of more than four seconds) with the addition of traffic generated by buildout of the project. (SU)	No feasible mitigation measures are available. Assessment of possible mitigation measures indicates that optimization of signal timing at this intersection would reduce average vehicle delays by about 15 seconds, but would not fully mitigate the project's impact. Other improvements, such as additional turn lanes, do not appear feasible given the constrained right-of-way at the intersection.	**Significant and Unavoidable**			
B.2i: The LOS E conditions at the signalized intersection of *Lakeshore Avenue and Lake Park Avenue*, which would prevail during the PM peak hour under 2025 baseline conditions, would worsen (an increase in the average vehicle delay for a critical movement of more than six seconds) with the addition of traffic generated by buildout of the project. (PS)	**B.2i:** Optimize the traffic signal timing for the PM peak period at the signalized intersection of *Lakeshore Avenue and Lake Park Avenue*. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit
B.2j: The LOS F conditions at the intersection of *Embarcadero and 5th Avenue*, which would prevail during the PM peak hour under 2025 baseline unsignalized conditions, would continue under traffic signal control (installed by 2010 [see Mitigation Measure B.1d]) with the addition of traffic generated by buildout of the project. (PS)	**B.2j:** Widen Embarcadero to provide two through travel lanes in each direction along the project site frontage (i.e., from north of 4th Avenue to 9th Avenue), with separate left-turn lanes provided at the intersections, and provide appropriate lane configurations on the streets that intersect Embarcadero within the above-cited limits.	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.2k: The intersection of *Embarcadero and I-880 Northbound Off-Ramp* (to be signalized by 2010 [see Mitigation Measure B.1e]) would degrade from LOS B to LOS F during the PM peak hour with the addition of traffic generated by buildout of the project. (PS)	**B.2k:** *Implement Mitigation Measure B.2j.*	*Less than Significant*	*18, 19*	*City Public Works* Agency; Planning & Zoning Division; Caltrans	*If encroachment* permit is issued by Caltrans, then the mitigation measure must be complete prior to the issuance of the Certificate of Occupancy for the 2,500th unit
B.2l: Traffic generated by buildout of the project would add more than ten vehicles to the unsignalized intersection of *Embarcadero and I-880 Southbound On-Ramp – 10th Avenue*, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant during the PM peak hour. (SU)	**B.2l:** Install traffic signals at the unsignalized intersection of Embarcadero and I-880 Southbound On- Ramp – 10th Avenue. Installation of traffic signals shall include the traffic signal equipment and optimization of signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. Traffic signal equipment shall include pedestrian signal heads (with adequate time for pedestrians to cross the streets). Prior to the installation of this traffic signal, a complete traffic signal warrant analysis would be conducted at this location to verify that this location meets MUTCD signal warrants, which include both daily and peak-hour volume, accidents, and pedestrian volumes. Signal installation shall meet City of Oakland and Caltrans design standards.	This project impact would be **significant and unavoidable** because it is not certain that the measure could be implemented because the City of Oakland, as lead agency, could not implement Measure B.2l without the approval of Caltrans. However, in the event that Mitigation Measure B.2l could be implemented, the impact would be less than significant.	18, 19	City Public Works Agency; Planning & Zoning Division; Caltrans	If encroachment permit is issued by Caltrans, then the mitigation measure must be complete prior to the issuance of the Certificate of Occupancy for the 2,500th unit
B.2m: The signalized intersection of *5th Avenue and 7th/8th Streets* would degrade from LOS D to LOS F during the PM peak hour with the addition of traffic generated by buildout of the project. (PS)	**B.2m:** Optimize the traffic signal timing for the PM peak period at the signalized intersection of 5th Avenue and 7th/8th Streets. Additionally, the westbound and eastbound (5th Avenue) approaches of the intersection would be restriped within the current paved approach, and on-street parking spaces adjacent to the intersection would be removed, to provide separate left-turn,	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit

REVISED EXHIBIT B (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.2m (cont.)	through, and through/right-turn lanes. Optimization of traffic signal timing shall include *determination of allocation of green time for each* intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.				
B.2n: The signalized intersection of *14th Avenue and 7th/12th Streets (Southbound)* would degrade from LOS E to LOS F during the PM peak hour with the addition of traffic generated by buildout of the project. (PS)	**B.2n:** Optimize the traffic signal timing for the PM peak period at the signalized intersection of *14th Avenue and 7th/12th Streets (Southbound).* Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit
B.2o: The signalized intersection of *Foothill Boulevard and 14th Avenue (Westbound)* would degrade from LOS D to LOS E during the AM peak hour with the addition of traffic generated by buildout of the project. (PS)	**B.2o:** Optimize the traffic signal timing for the AM peak period at the signalized intersection of *Foothill Boulevard and 14th Avenue (Westbound).* Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit
B.2p: The LOS F conditions at the signalized intersection of *Foothill Boulevard and 14th Avenue (Eastbound)*, which would prevail during the PM peak hour under 2025 baseline conditions, would worsen (total intersection average vehicle delay would exceed the two-second threshold of significance) with the addition of traffic generated by buildout of the *project. (PS)*	**B.2p:** Optimize the traffic signal timing for the AM peak period at the signalized intersection of *Foothill Boulevard and 14th Avenue (Eastbound).* Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of *adjacent intersections.*	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit

REVISED EXHIBIT B (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.2q: The LOS E conditions at the signalized intersection of *16th Street and 23rd Avenue*, which would prevail during the PM peak hour under 2025 baseline conditions, would worsen (an increase in the average vehicle delay for a critical movement of more than six seconds) with the addition of traffic generated by buildout of the project. (PS) **B.3:** Traffic generated by buildout of the project would contribute to cumulatively significant impacts at local intersections in the project vicinity in 2025.	**B.2q:** Optimize the traffic signal timing for the PM peak period at the signalized intersection of *16th Street and 23rd Avenue*. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit
B.3a: Traffic generated by buildout of the project under 2025 With Project Conditions would contribute to the cumulative traffic increases, causing the signalized intersection of *Atlantic Avenue and Webster Street* in Alameda to degrade from LOS E to LOS F during the AM peak hour. (SU)	**B.3a:** The project applicant shall pay its fair share contribution to the cost of improvements proposed by the City of Alameda at the signalized intersection of *Atlantic Avenue and Webster Street*. Intersection reconfiguration would consist of adding and restriping lanes to provide the following lanes per approach: • Webster Street (from Oakland) – 1 Left-turn lane, 2 Through lanes, and 1 Right-turn lane (non-channelized right turn) • Webster Street (to Oakland) – 2 Left-turn lanes, 1 Through lane, and 1 Through/Right-turn lane • Atlantic Avenue (towards Alameda Point) – 1 Left-turn lane, 1 Through lane, and 1 Through/Right-turn lane • Atlantic Avenue (away from Alameda Point) – 2 Left-turn lanes, 2 Through lanes, and 1 Right-turn lane	This cumulative impact would be **significant and unavoidable**, because it is not certain that the measure could be implemented because the City of Oakland, as lead agency, could not implement Measure B.3a without the approval of the City of Alameda. However, in the event that Mitigation Measure B.3a could be implemented, the project's contribution to the cumulative impact would be less than considerable.	19	City of Oakland Planning and Zoning; Public Works Agency; and the City of Alameda Planning and Public Works Department	If the City of Alameda proceeds to implement traffic improvements at the intersection of Atlantic and Webster, the project applicant shall pay its fair share contribution towards the improvements prior to the issuance of the Certificate of Occupancy for the 2,500th unit or when the work is authorized and a bid is accepted by the City of Alameda.

REVISED EXHIBIT B (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	*Mitigation Measures*	Level of Significance *after Mitigation*[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.3a (cont.)	This mitigation measure was identified by the City of Alameda as the required improvement to accommodate redevelopment of the former Naval Air Station. The project would contribute to the implementation of this mitigation measure through payment of a fair share cost of the improvement (to be determined). During the AM and PM peak hours, the project's contribution to the estimated growth in traffic between the existing and cumulative traffic volumes (including project traffic) would be 5 and 6 percent, respectively. The project applicant would pay this fair share amount to the City of Alameda, which would then be responsible for the implementation of this improvement. After implementation of this measure, the intersection would operate at LOS E in the AM peak hour, and at LOS D in the PM peak hour. LOS E is an unacceptable condition, but the average delay would be lower than under the 2025 Without Project Condition, and the project's contribution to the cumulative impact would be less than the threshold of significance established by the City of Oakland for determining whether the project's impact is cumulatively considerable.				
B.3b: Traffic generated by buildout of the project under 2025 With Project Conditions would add more than ten vehicles to the unsignalized intersection of *Embarcadero and Broadway* during the PM peak hour, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant during the PM peak hour. (PS)	**B.3b:** Install traffic signals at the unsignalized intersection of *Embarcadero and Broadway*. The signals shall have fixed-time controls with permitted left-turn phasing, which would not require a separate left-turn arrow. Installation of traffic signals shall include the traffic signal equipment and optimization of signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. Traffic signal equipment	Less than Significant		City Public Works Agency; Police Department	Prior to the issuance of the Certificate of Occupancy for the 1,000th unit.

REVISED EXHIBIT B (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.3b (cont.)	shall include pedestrian signal heads (with adequate time for pedestrians to cross the streets). Signal installation shall meet City of Oakland and Caltrans design standards. Prior to the installation of this traffic signal, a complete traffic signal warrant analysis would be conducted at this location to verify that this location meets MUTCD signal warrants, which include both *daily and peak-hour volume, accidents, and* pedestrian volumes. The Jack London Square Redevelopment Project EIR identified a number of improvements in the project study area that would be required to mitigate that project's traffic impacts, including installation of traffic signals at this intersection prior to occupancy of buildout of the Jack London Square project. However, the exact timing of implementation of this improvement has not been established. If the Jack London Square project were to install traffic signals at the intersection of *Embarcadero and Broadway prior to buildout of* the Oak to Ninth project, then the Oak to Ninth project applicant would pay a fair share contribution to the cost of this traffic signal. However, if development of the Jack London Square project were to lag behind, and the intersection of Embarcadero and Broadway was *unsignalized prior to buildout of the Oak to Ninth* project, then the Oak to Ninth project applicant would pay to install the traffic signals. After implementation of this measure, the intersection would operate at an acceptable LOS B or better in both the AM and PM peak hours.				

REVISED EXHIBIT B (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.3c: Traffic generated by buildout of the project under 2025 With Project Conditions would contribute to the LOS F conditions during the PM peak hour at the signalized intersection of *5th Street and Broadway*. The intersection would operate at LOS F during the PM peak hour under 2025 Without Project Conditions and the proposed project would result in an increase in the total intersection average vehicle delay of more than two seconds. (SU)	No feasible mitigation measures are available that would improve its operations to acceptable levels. While improvements such as reconfiguring lanes on Broadway and adding directional signage, as discussed in the Jack London Square Redevelopment Project EIR, would improve traffic flow conditions on some movements, downstream bottlenecks in the Webster Tube would continue to cause substantial backups and delay on 5th Street approaching Broadway, and the previously described unacceptable LOS F conditions would continue. The constrained capacity of the tube is an issue of multi-jurisdictional concern (solutions are being explored by the cities of Oakland and Alameda, Caltrans, and the Alameda County Congestion Management Agency), and no feasible measures to increase the tube's capacity have been identified to date.	**Significant and Unavoidable**			
B.3d: Traffic generated by buildout of the project under 2025 With Project Conditions would contribute to the cumulative traffic increases, causing the signalized intersection of *5th and Oak Streets at the I-880 Southbound On-Ramp* to degrade from LOS E to LOS F during the PM peak hour. (SU)	**B.3d:** Optimize the traffic signal timing at the signalized intersection of *5th and Oak Streets at the I-880 Southbound On-Ramp*. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. To ensure that signal timing optimization occurs, the project applicant shall pay for this measure. After implementation of this measure, the intersection would operate at an acceptable LOS E or better in both the AM and PM peak hours.	This cumulative impact would be **significant and unavoidable** because it is not certain that the measure could be implemented because the City of Oakland, as lead agency, could not implement Measure B.3d without the approval of Caltrans. However, in the event that Mitigation Measure B.3d could be implemented, the impact would be reduced to less than significant.	18, 19	City Public Works Agency; Planning & Zoning Division; Caltrans	If encroachment permit is issued by Caltrans, then the mitigation measure must be complete prior to the issuance of the Certificate of *Occupancy for the* 1,000th unit.

REVISED EXHIBIT B (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.3e: Traffic generated by buildout of the project under 2025 With Project Conditions would contribute to the cumulative traffic increases, causing the signalized intersection of *6th and Jackson Streets at the I-880 Northbound On-Ramp* to degrade from LOS E to LOS F during the AM peak hour, and would contribute to the LOS F conditions during the PM peak hour. The intersection would operate at LOS F during the PM peak hour under 2025 Without Project Conditions, and the proposed project would result in an increase of more than two seconds in the total intersection average vehicle delay. (SU)	No feasible mitigation measures are available. The 2010 analysis concluded that the impact from Phase 1 development could be mitigated through optimization of signal timing (see Mitigation Measure B.1c). However, with the additional growth in background traffic and the growth in project traffic that would occur from 2010 to 2025, this retiming could not mitigate the impact from Project Buildout to a less than significant level. Given the constrained right-of-way at this location, the addition of turn lanes or other similar improvements would not be feasible.	**Significant and Unavoidable**		City Public Works Agency; Planning & Zoning Division; Caltrans	If encroachment permit is issued by Caltrans, then the mitigation measure must be complete prior to the issuance of the Certificate of Occupancy for the 1,000th unit.
B.3f: Traffic generated by buildout of the project under 2025 With Project Conditions would contribute to the LOS F conditions during the AM peak hour at the signalized intersection of *West Grand Avenue and Harrison Street*. The intersection would operate at LOS F during the AM peak hour under 2025 Without Project Conditions, and the proposed project would result in an increase of more than two seconds in total intersection average vehicle delay. (PS)	**B.3f:** Optimize the traffic signal timing for the AM peak period at the signalized intersection of *West Grand Avenue and Harrison Street*. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. To ensure that signal timing optimization occurs, the project applicant shall pay for this measure. After implementation of this measure, the intersection would operate at an acceptable LOS D or better in both the AM and PM peak hours.	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit
B.3g: Traffic generated by buildout of the project under 2025 With Project Conditions would contribute to the LOS E conditions during the AM peak hour at the signalized intersection of *Lakeshore Avenue and Foothill Boulevard*. The intersection would operate at LOS E during the AM peak hour under 2025 Without Project Conditions, and the proposed project would result in an increase in the total intersection average vehicle delay of more than four seconds. (PS)	**B.3g:** Optimize the traffic signal timing for the AM peak period at the signalized intersection of *Lakeshore Avenue and Foothill Boulevard*. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit.

REVISED EXHIBIT B (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.3g (cont.)	To ensure that signal timing optimization occurs, the project applicant shall pay for this measure. After implementation of this measure, the intersection would operate at LOS E in the AM peak hour, which is an unacceptable condition, but the increase in average delay from the 2025 Without Project Condition would be less than the threshold of significance established by the City of Oakland for determining whether the project's impact is cumulatively considerable. Assessment of possible further mitigation measures (to achieve an acceptable LOS D or better condition) such as addition of a right-turn lane on Foothill Boulevard indicates that there is not sufficient right-of-way available for this additional lane at the intersection.				
B.3h: Traffic generated by buildout of the project under *2025 With Project Conditions* would contribute to the LOS F conditions during the PM peak hour at the signalized intersection of *Lakeshore Avenue and MacArthur Boulevard.* The intersection would operate at LOS F during the PM peak hour under 2025 Without Project Conditions and the proposed project would result in an increase in the average vehicle delay for a critical movement of more than four seconds. (SU)	No feasible mitigation measures are available. *Assessment of possible mitigation measures* indicates that optimization of signal timing at this intersection would reduce delays, but would not mitigate the impact. Other improvements (to achieve an acceptable LOS D or better condition), such as additional turn lanes, are not feasible because there is not sufficient right-of-way available for additional lanes at the intersection.	**Significant and *Unavoidable***			
B.3i: Traffic generated by buildout of the project under 2025 With Project Conditions would contribute to the LOS E conditions during the PM peak hour at the signalized intersection of *Lakeshore Avenue and Lake Park Avenue.* The intersection would operate at LOS E during the PM peak hour under 2025 Without Project Conditions, and the proposed project would result in an increase	**B.3i:** Optimize the traffic signal timing for the PM peak period at the signalized intersection of *Lakeshore Avenue and Lake Park Avenue.* Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections.	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit.

REVISED EXHIBIT B (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
in the average vehicle delay for a critical movement of more than six seconds. (PS)	To ensure that signal timing optimization occurs, the project applicant shall pay for this measure. After implementation of this measure, the intersection would operate at an acceptable LOS D or better in both the AM and PM peak hours.				
B.3j: Traffic generated by buildout of the project under 2025 With Project Conditions would contribute to the LOS F conditions during the PM peak hour at the intersection of *Embarcadero and 5th Avenue*. The intersection would operate at LOS F during the PM peak hour under 2025 Without Project Conditions, and those LOS F conditions would continue under traffic signal control (installed by Mitigation Measure B.1d, required for project impacts in 2010) with the addition of traffic generated by buildout of the project. (PS)	**B.3j:** Widen Embarcadero to provide two through travel lanes in each direction along the project site frontage (i.e., from north of 4th Avenue to 9th Avenue), with separate left-turn lanes provided at the intersections, and provide appropriate lane configurations on the streets that intersect Embarcadero within the above-cited limits. The project applicant shall pay for this measure. After implementation of this measure, the intersection would operate at an acceptable LOS D or better in both AM and PM peak hours.	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit.
B.3k: Traffic generated by buildout of the project under 2025 With Project Conditions would contribute to the LOS F conditions during the PM peak hour at the intersection of *Embarcadero and I-880 Northbound Off-Ramp*. The intersection would operate at LOS F during the PM peak hour under 2025 Without Project Conditions, and those LOS F conditions would continue under traffic signal control (installed by Mitigation Measure B.1e, required for project impacts in 2010) with the addition of traffic generated by buildout of the project. (PS)	**B.3k:** Widen Embarcadero to provide two through travel lanes in each direction along the project site frontage (i.e., from north of 4th Avenue to 9th Avenue), with separate left-turn lanes provided at the intersections, and provide appropriate lane configurations on the streets that intersect Embarcadero within the above-cited limits. The project applicant shall pay for this measure. After implementation of this measure, the intersection would operate at an acceptable LOS C or better in both AM and PM peak hours.	Less than Significant		City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit.

REVISED EXHIBIT B (Continued)
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FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.3l: Traffic generated by buildout of the project under 2025 With Project Conditions would add more than ten vehicles to the unsignalized intersection of *Embarcadero and I-880 Southbound On-Ramp – 10th Avenue*, and the peak-hour volumes would meet the Caltrans peak-hour traffic signal warrant during the PM peak hour. (SU)	**B.3l:** Install traffic signals at the unsignalized intersection of *Embarcadero and I-880 Southbound On- Ramp – 10th Avenue.* Installation of traffic signals shall include the traffic signal equipment and optimization of signal phasing and timing (i.e., allocation of green time for each intersection approach) in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. Traffic signal equipment shall include pedestrian signal heads (with adequate time for pedestrians to cross the streets). Signal installation shall meet City of Oakland and Caltrans design standards. To minimize the effects of queuing and "spill-backs" to adjacent intersections, coordination with signal phasing and timing of adjacent intersections shall include signal interconnects. Prior to the installation of this traffic signal, a complete traffic signal warrant analysis would be conducted at this location to verify that this location meets MUTCD signal warrants, which include both daily and peak-hour volume, accidents, and pedestrian volumes. The project applicant shall pay for this measure. After implementation of this measure, the intersection would operate at LOS B in both the AM and PM peak hours.	This cumulative impact would be **significant and unavoidable** because it is not certain that the measure could be implemented because the City of Oakland, as lead agency, could not implement Measure B.3l without the approval of Caltrans. However, in the event that Mitigation Measure B.3l could be implemented, the impact would be less than significant.	18, 19	City Public Works Agency; Planning & Zoning Division; Caltrans	If encroachment permit is issued by Caltrans, then the mitigation measure must be complete prior to the issuance of the Certificate of Occupancy for the 2,500th unit.
B.3m: Traffic generated by buildout of the project under 2025 With Project Conditions would contribute to the cumulative traffic increases, causing the signalized intersection of *5th Avenue and 7th/8th Streets* to degrade from LOS D to LOS F during the PM peak hour. (PS)	**B.3m:** Optimize the traffic signal timing for the PM peak period at the signalized intersection of *5th Avenue and 7th/8th Streets*. Additionally, the westbound and eastbound (5th Avenue) approaches of the intersection would be restriped within the current paved approach, and on-street parking spaces adjacent to the intersection would be removed, to provide separate left-turn,	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit.

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.3m (cont.)	through, and through/right-turn lanes. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. To ensure that signal timing optimization occurs, the project applicant shall pay for this measure. The City of Oakland, which has jurisdiction over this intersection, would be responsible for its implementation. After implementation of this measure, the intersection would operate at an acceptable LOS D or better in both the AM and PM peak hours.				
B.3n: Traffic generated by buildout of the project under 2025 With Project Conditions would contribute to the cumulative traffic increases, causing the signalized intersection of *14th Avenue and 7th/East 12th Streets (Southbound)* to degrade from LOS E to LOS F during the PM peak hour. (PS)	**B.3n:** Optimize the traffic signal timing for the PM peak period at the signalized intersection of *14th Avenue and 7th/12th Streets (Southbound).* Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. To ensure that signal timing optimization occurs, the project applicant shall pay for this measure. The City of Oakland, which has jurisdiction over this intersection, would be responsible for its implementation. After implementation of this measure, the intersection would operate at LOS E in the PM peak hour, which is an unacceptable condition, but the average delay would be lower than under the 2025 Without Project Condition, and the project's contribution to the cumulative impact would be less than the	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit

REVISED EXHIBIT B (Continued)
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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.3n (cont.)	threshold of significance established by the City of Oakland for determining whether the project's impact is cumulatively considerable. Assessment of possible further mitigation measures (to achieve an acceptable LOS D or better condition) such as addition of a right-turn lane, and conversion of the through/right lane to through movements only, on 14th Avenue indicates that there is not sufficient right-of-way available for this additional lane at the intersection.				
B.3o: Traffic generated by buildout of the project under 2025 With Project Conditions would contribute to the cumulative traffic increases, causing the signalized intersection of *Foothill Boulevard and 14th Avenue (Westbound) to* degrade from LOS D to LOS E during the AM peak hour. (PS)	**B.3o:** Optimize the traffic signal timing for the AM peak period at the signalized intersection of *Foothill Boulevard and 14th Avenue (Westbound)*. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. To ensure that signal timing optimization occurs, the project applicant shall pay for this measure. The City of Oakland, which has jurisdiction over this intersection, would be responsible for its implementation. After implementation of this measure, the intersection would operate at an acceptable LOS C in both the AM and PM peak hours.	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit.
B.3p: Traffic generated by buildout of the project under 2025 With Project Conditions would contribute to the LOS F conditions during the PM peak hour at the signalized intersection of *Foothill Boulevard and 14th Avenue (Eastbound)*. The intersection would	**B.3p:** Optimize the traffic signal timing for the AM peak period at the signalized intersection of *Foothill Boulevard and 14th Avenue (Eastbound)*. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit.

REVISED EXHIBIT B (Continued)
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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
operate at LOS F during the PM peak hour under 2025 Without Project Conditions, and the proposed project would result in an increase of more than two seconds in total intersection average vehicle delay. (PS)	traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. To ensure that signal timing optimization occurs, the project applicant shall pay for this measure. The City of Oakland, which has jurisdiction over this intersection, would be responsible for its implementation. After implementation of this measure, the intersection would operate at an acceptable LOS C in both the AM and PM peak hours.				
B.3q: Traffic generated by buildout of the project under 2025 With Project Conditions would contribute to the LOS E conditions during the PM peak hour at the signalized intersection of *16th Street and 23rd Avenue*. The intersection would operate at LOS E during the PM peak hour under 2025 Without Project Conditions; and the proposed project would result in an increase in the average vehicle delay for a critical movement of more than six seconds. (PS)	**B.3q:** Optimize the traffic signal timing for the PM peak period at the signalized intersection of *16th Street and 23rd Avenue*. Optimization of traffic signal timing shall include determination of allocation of green time for each intersection approach in tune with the relative traffic volumes on those approaches, and coordination with signal phasing and timing of adjacent intersections. To ensure that signal timing optimization occurs, the project applicant shall pay for this measure. The City of Oakland, which has jurisdiction over this intersection, would be responsible for its implementation. After implementation of this measure, the intersection would operate at an acceptable LOS C or better in both the AM and PM peak hours.	Less than Significant	18, 19	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 2,500th unit.
B.4: The project would generate demand for alternative transportation service for the area. (PS)	**B.4a:** The project applicant shall redesign the project site plan to include transit facilities, including bus turnouts on the Embarcadero at a minimum, to ensure that bus service could be accommodated if agreement with AC Transit were to be met to extend service to the project site. Additional facilities would include bus stops	Less than Significant	22	City Public Works Agency; Planning & Zoning Division	Prior to the issuance of the Certificate of Occupancy for the 1,000th unit.

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.4 (cont.)	within the project, or even a dedicated transit center at which public buses and/or private *shuttles could stop.*				
	B.4b: The project applicant shall operate a private shuttle service to complement AC Transit service that might be extended to the project site. The shuttle service shall run between the project site and nearby activity centers and transit nodes (e.g., Lake Merritt BART station) with an adequate number of shuttle stops located onsite, and shall operate on a frequency sufficient to attract use of the service by project residents and employees.	Less than Significant	22	City Planning and Zoning Department	Within six months following the issuance of a Certificate of Occupancy of the 1,000th residential dwelling on the project site; every two years thereafter until the Planning Director determines the shuttle service is no longer necessary
B.7: The project would increase the potential for conflicts among different traffic streams. (PS)	**B.7:** The project applicant shall redesign the site plan as follows: • Reconfigure the intersections of Embarcadero/7th Avenue and Embarcadero/9th Avenue intersection for right-in/right-out movements only (to ensure proper spacing between signalized intersections). • Install a traffic signal at the intersection of Embarcadero and 8th Avenue. • Install signal interconnect on Embarcadero between 5th and 10th Avenues to allow for coordination of traffic signals along Embarcadero (to minimize queuing [back-ups] on Embarcadero). • The design of pedestrian facilities including sidewalks, crosswalks, and curb ramps shall comply with ADA standards and other applicable legislation.	Less than Significant	18, 19	City Public Works Agency, Traffic Engineering Department, Planning & Zoning Division	To be incorporated into the schematic Master Traffic Improvement Plan as set forth in COA 18; to be implemented according to the phasing schedule in COA 19

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.7 (cont.)	• Maintain or reconstruct the fence along the Embarcadero that limits access to the railroad tracks adjacent to the project site. • Install additional bicycle and pedestrian warning signage at the existing at-grade crossing along 5th Avenue.				
B.9: The project would contribute to 2025 changes to traffic conditions on the regional and local roadways. (SU)	Direct mitigation of the project's significant impact on the freeway segment is not feasible. Factors that limit the mitigation of impacts include constrained right-of-way, no regional or local traffic impact fee mechanism to collect and disperse funds for roadways improvements, and the inherent difficulties with widening the freeways, such as the need to widen over crossings and structures adjacent to the freeway.	**Significant and Unavoidable**			
B.10: Project construction would temporarily affect traffic flow and circulation, parking, and pedestrian safety. (PS)	**B.10:** Prior to initiation of each phase of development, the project applicant and construction contractor shall meet with the Traffic Engineering and Parking Division of the Oakland Public Works Agency and other appropriate City of Oakland and non-City agencies (e.g., Caltrans) to determine traffic management strategies to reduce, to the maximum extent feasible, traffic congestion and the effects of parking demand by construction workers during construction of this project and other nearby projects that could be simultaneously under construction. The project applicant shall develop a construction management plan for review and approval by the City Traffic Engineering Division. The plan shall include at least the following items and requirements: • A set of comprehensive traffic control measures, including scheduling of major truck *trips and deliveries to avoid peak traffic hours*, detour signs if required, lane closure procedures, signs, cones for drivers, and	Less than Significant	37	City Public Works Agency, Traffic Engineering Department; Planning & Zoning Division	Prior to issuance of the first building permit for the respective development area; to be implemented throughout construction period for each development parcel

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
B. Transportation, Circulation, and Parking (cont.)					
B.10 (cont.)	designated construction access routes. In addition, the information shall include a construction staging plan for any right-of-way used on the Embarcadero, including sidewalk and lane intrusions and/or closures. • Notification procedures for adjacent property owners and public safety personnel regarding when major deliveries, detours, and lane closures will occur. • Location of construction staging areas for materials, equipment, and vehicles (must be located on the project site). • Identification of haul routes for movement of construction vehicles that would minimize impacts on vehicular and pedestrian traffic, circulation and safety; and provision for monitoring surface streets used for haul routes so that any damage and debris attributable to the haul trucks can be identified and corrected by the project applicant. • Temporary construction fences to contain debris and material and to secure the site. • Provisions for removal of trash generated by project construction activity. • A process for responding to, and tracking, complaints pertaining to construction activity, including identification of an onsite complaint manager. • Provisions for monitoring surface streets used for truck routes so that any damage and debris attributable to the trucks can be identified and corrected. • Provisions for coordination with BART to reduce, as needed, adverse effect on access to the Lake Merritt BART Station.				

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
C. Air Quality and Meteorological Conditions					
C.1: Activities associated with demolition, site preparation and construction would generate short-term emissions of criteria pollutants, including suspended and inhalable particulate matter and equipment exhaust emissions. (PS)	**C.1a:** During construction, the project sponsor shall require the construction contractor to implement the following measures required as part of BAAQMD's basic and enhanced dust control procedures required for sites larger than four acres (aggregate): Basic Control Measures – The following controls should be implemented at all construction sites: • Water all active construction areas at least twice daily. • Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard. • Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites. • Sweep daily (with water sweepers) all paved access roads, parking areas and staging area at construction sites. • Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets. Enhanced Control Measures – The following measures shall be implemented during project construction because the site is greater than four acres in area: • All "Basic" control measures listed above. • Hydroseed or apply (non-toxic) soil stabilizers to inactive construction areas (previously graded areas inactive for one month or more).	Less than Significant	37	City Building Services Department	Prior to issuance of the first demolition, grading or building permit in the respective development parcel; to be included as a standard part of all building and grading permit plans and specifications

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
C. Air Quality and Meteorological Conditions (cont.)					
C.1 (cont.)	• Enclose, cover, water twice daily or apply (non-toxic) soil stabilizers to exposed stockpiles (dirt, sand, etc.). • Limit traffic speeds on unpaved roads to 15 miles per hour. • Install sandbags or other erosion control measures to prevent silt runoff to public roadways. • Replant vegetation in disturbed areas as quickly as possible. The following control measures shall be implemented during project construction because the site is large in area and located near sensitive receptors: • Install wheel washers for all exiting trucks, or wash off the tires or tracks of all trucks and equipment leaving the site. • Install wind breaks, or plant trees/ vegetative wind breaks at windward side(s) of construction areas. • Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 miles per hour. • Limit the area subject to excavation, grading and other construction activity at any one time.				
	C.1b: Demolition and disposal of any asbestos containing building material would be in accordance with the procedures specified by Regulation 11, Rule 2 (Asbestos Demolition, Renovation and Manufacturing) of BAAQMD's regulations.	Less than Significant		City Building Services Department	Prior to issuance of the first demolition, grading or building permit in the respective development parcel for any applicable building or grading area meeting thresholds

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
C. Air Quality and Meteorological Conditions (cont.)					
C.7: The project together with anticipated future cumulative development in Oakland and the Bay Area in general would contribute to regional air pollution. (SU)	**C.7:** To reduce the significance of the operational impacts of the project, the project sponsor shall, as feasible and practical, implement a combination of the following mitigation measures:	With implementation of the above mitigation measures, the cumulative air quality impact would be **significant and unavoidable.** Based on the effectiveness of these measures as determined by the BAAQMD, the above mitigation measures would reduce the operational impacts of the project by reducing motor vehicle trips by the project by 15 to 20 percent (BAAQMD, 2004). However, no feasible mitigation is available to reduce the residual impact to a less than significant level.	22	City Public Works Agency, Planning & Zoning Division	A final Transportation Demand Management Plan (TDM) and subsequent addendums outlining the requirements necessary to reduce motor vehicle trips to the project will be submitted with Final Development Plans prepared for the first phase of the project and each subsequent phase; to be coordinated with Mitigation Measure B.4 requirements (shuttle operation).
	Rideshare Measures				
	C.7a: Encourage all tenants (commercial and residential) at the site to implement carpool/ vanpool programs (e.g., carpool, ride matching for employees, assistance with vanpool formation, provision of vanpool vehicles, guaranteed ride home program, etc.). Distribute information about the Alameda County Congestion Management Agency's Guaranteed Ride Home Program to tenants of the building to facilitate alternative transportation modes. As part of the program, a person who uses an alternate mode of travel, including transit or a carpool, is provided with free taxi service in the case of unexpected circumstances. These circumstances might include unscheduled overtime or a family illness or emergency.		22	City Public Works Agency, Planning & Zoning Division	See C.7 above for monitoring timeline

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
C. Air Quality and Meteorological Conditions (cont.)					
C.7 (cont.)	**C.7b:** Encourage commercial tenants to implement employee rideshare incentive programs providing cash payments or pre-paid fare media such as transit passes or coupons.		22	City Public Works Agency, City Planning& Zoning Division	See C.7 above for monitoring timeline
	Transit Measures				
	C.7c: Construct transit facilities, such as bus turnouts/bus bulbs, benches, shelters, etc., as determined appropriate by AC Transit, consistent with Transit Mitigation Measure B.4a.		22	City Public Works Agency, City Planning& Zoning Division	See C.7 above for monitoring timeline
	C.7d: Encourage commercial tenants to meet standard, minimum employee ridesharing requirements or to provide incentives to encourage employees to rideshare.		22	City Public Works Agency, City Planning& Zoning Division	See C.7 above for monitoring timeline
	C.7e: Encourage commercial tenants to implement a parking cash-out program for employees (e.g., non-driving employees receive transportation allowance equivalent to the value of subsidized parking).		22	City Public Works Agency, City Planning& Zoning Division	See C.7 above for monitoring timeline
	Shuttle Measures				
	C.7f: The project applicant shall operate a private shuttle service between the project site and nearby activity centers and transit nodes (e.g., Lake Merritt BART station) with an adequate number of shuttle stops located onsite, and on a frequency sufficient to attract use of the service by project residents and employees		22	City Public Works Agency, City Planning& Zoning Division	Within six months following the issuance of a Certificate of Occupancy for the 1,000th residential dwelling on the project site; every two years thereafter until the Planning Director determines the shuttle service is no longer necessary.

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
C. Air Quality and Meteorological Conditions (cont.)					
C.7 (cont.)	***Bicycle and Pedestrian Measures***				
	C.7g: Provide bicycle lanes and/or paths, connected to the community-wide network.		22	City Public Works Agency, City Planning& Zoning Division	See C.7 above for monitoring timeline; to be coordinated with implementation of Mitigation Monitoring B.4.
	C.7h: Provide secure, weather-protected bicycle parking for employees and residents.		22	City Public Works Agency, City Planning& Zoning Division	See C.7 above for monitoring timeline; to be coordinated with implementation of Mitigation Monitoring B.4.
	C.7i: Provide direct, safe, attractive pedestrian and bicycle access to transit stops and adjacent development.		22	City Public Works Agency, City Planning& Zoning Division	See C.7 above for monitoring timeline; to be coordinated with implementation of Mitigation Monitoring B.4.
	C.7j: Provide adequate street lighting within the street right of way immediately adjacent to and within the project site.		22	City Public Works Agency, City Planning& Zoning Division	See C.7 above for monitoring timeline; to be coordinated with implementation of Mitigation Monitoring B.4.
	C.7k: Provide secure short-term bicycle parking for retail customers and other non-commute trips.		22	City Public Works Agency, City Planning& Zoning Division	See C.7 above for monitoring timeline; to be coordinated with implementation of Mitigation Monitoring B.4.

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
D. Hydrology and Water Quality					
D.1: Project construction would involve activities (excavation, soil stockpiling, boring and pile driving, grading, and dredging, etc.) that would generate loose, erodable soils that, if not properly managed, could violate any water quality standards or waste discharge requirements; result in substantial erosion or siltation; create or constitute substantial polluted runoff; or otherwise substantially degrade water quality. (PS)	**D.1:** The project sponsor shall comply with all NPDES requirements, RWQCB General Construction Permit requirements, and all City regulations and Creek Protection Permits requirements.	Less than Significant	23	City Building Services Department; City Planning and Zoning Department	Prior to issuance of a grading permit for each phase of the project.
D.2: Project construction activities would include dredging in Clinton Basin, which could require disturbance, removal, and disposal of contaminated sediment that may result in adverse impacts to aquatic organisms and water quality. (PS)	**D.2:** The project sponsor shall obtain and comply with all water quality certification and requirements required for dredging activities, which shall include a Section 404 permit process pursuant to the Army Corps of Engineers (Corps) and pursuant to the oversight, permitting, and approval of the Dredged Material Management Office (DMMO).	Less than Significant	23	City Building Services Department; City Planning and Zoning Department	Prior to commencing marina construction in Clinton Basin as part of the permit review and approval process.
D.5: Site development under the project would involve new landscaping and open lawns. If not properly handled, chemicals used to establish and maintain landscaping and open lawn areas, such as pesticides and fertilizers, could flow into the waterways and result in water quality impacts to the Oakland Estuary, and eventually San Francisco Bay. (PS)	**D.5:** The project sponsor shall prepare a landscape management plan (LMP) for all public open spaces that includes, but is not necessarily limited to, a description of application, storage, and safety measures involving the use of pesticides and fertilizers. The LMP shall include but not be limited to the following: • Transportation and storage: Pesticides and fertilizers shall be transported and stored as per state and federal guidelines. They shall be stored in designated bermed areas onsite. • Pesticide Application: Pesticides and fertilizers shall be handled and applied according to the procedures set by the manufacturer. The LMP shall address methods to optimize and reduce the use of pesticides and fertilizers and present strategies to incorporate environmentally-safe (organic) pest and growth enhancement	Less than Significant	23	City Building Services Department; City Public Works Agency	Prior to approval of Final Development Plans; to be incorporated into the operation plans for both the Homeowner's Association (HOA) agreement and the Community Service/Facility District. (CSD/CFD).

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
D. Hydrology and Water Quality (cont.)					
D.5 (cont.)	materials. These strategies shall address eventually eliminating the use of chemicals such as diazinon that harm water quality. The RWQCB has found that the pesticides have a reasonable potential to cause or contribute to exceedances of water quality standards. Therefore, the NPDES permit requires the City of Oakland (as a permittee) to address pesticides. The project sponsor shall adhere to the Diazinon Pollutant Reduction Plan or the Pesticide Plan submitted by the ACCWP to the RWQCB. The goals of the Pesticide Plan and of its resulting implementing actions are to reduce or substitute pesticide use (especially diazinon use) with less toxic alternatives (ACCWP, 2003). • The Plan shall identify pesticide and fertilizer application schedules. • Container Disposal: The contractor shall dispose of empty containers carefully. The containers shall never be disposed at locations that would contaminate natural waterways. The LMP and its recommendations for use, control, and eventual reduction of nonorganic pesticide and fertilizer use shall be approved by the City prior to installing the landscape and shall be implemented throughout the life of the project.				
D.6: The project sponsor could deplete groundwater supplies or interfere with groundwater recharge and cause contamination of surface. (PS)	**D.6:** The project sponsor shall comply with NPDES permit requirements by the RWQCB for dewatering activities.	Less than Significant	23	City Building Services Department; City Public Works Agency	Prior to approval of Final Development Plans

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
E. Cultural Resources					
E.1: Construction of the project could cause substantial adverse changes to the significance of currently unknown cultural resources at the site, potentially including an archaeological resource pursuant to CEQA Guidelines Section 15064.5 or CEQA Section 21083.2(g), or the disturbance of any human remains, including those interred outside of formal cemeteries. (PS)	**E.1a:** An archival cultural resource evaluation shall be implemented prior to the start of construction or other ground-disturbing activities to identify whether historic or unique archaeological resources exist within the project site. The archival cultural resource evaluation, or "sensitivity study," shall be conducted by a cultural resource professional approved by the City and who meets the Secretary of the Interior's Professional Qualifications Standards for Prehistoric and Historical Archaeology. The purpose of the archival cultural resource evaluation is to: (1) identify documentation and studies to determine the presence and location of potentially significant archaeological deposits; (2) determine if such deposits meet the definition of a historical resource under CEQA Guidelines Section 15064.5 or a unique archaeological resource under CEQA Section 21083.2(g); (3) guide additional archaeological work, potentially including pre-construction subsurface archaeological investigation if warranted, to recover the information potential of such deposits; and (4) define an archaeological monitoring plan, if warranted. A pre-construction meeting shall occur with the cultural resource professional and the City regarding the findings of the evaluation, and shall include consultation with and considerations of the Department of Toxic Substances (DTSC), the Lead Agency for the environmental cleanup activities on the project site. If excavation is the only feasible means of data recovery, such excavation shall be in accord with the provisions of CEQA Guidelines Section 15126.4(b)(3)(C). Any additional archaeological work and or monitoring shall be pursuant to a plan approved by the City. If a pre-constructing testing program is deemed necessary by the qualified professional as a	Less than Significant	25, 37	City Planning & Zoning Division; City Building Services Department	Prior to the issuance of a building or grading permit for all development areas affected.

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Environmental Impact	*Mitigation Measures*	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
E. Cultural Resources E. Cultural Resources					
E.1 (cont.)	result of the archival study, it shall be guided by the archival study and shall use a combination of subsurface investigation methods (including backhoe trenching, augering, and archaeological excavation units, as appropriate). If monitoring of any areas during ground disturbing activates is determined to be required based on the results of the archival evaluation and the pre-construction testing, the monitoring will be conducted by a qualified cultural resources professional and the monitoring plan will include appropriate provisions for evaluating any archaeological deposits, consultation with the City, and any necessary data recovery program.				
	E.1b: Prior to the commencement of ground disturbing activities, all construction personnel shall receive environmental training from a cultural resource professional approved by the City and who meets the Secretary of the Interior's Professional Qualifications Standards for Prehistoric and Historical Archaeology. The purpose of the environmental training is to inform all construction personnel of the possibility of encountering historical resources. All construction personnel specifically involved in onsite activities that may uncover prehistoric resources shall be trained in the identification of prehistoric resources and immediate actions required if potential resources are found.	Less than Significant	25, 37	City Planning & Zoning Division; City Building Services Department	Prior to the issuance of a building or grading permit for all development parcels.
	E.1c: Pursuant to CEQA Guidelines 15064.5 (f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore, in the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the	Less than Significant	25, 37	City Planning & Zoning Division; City Building Services Department	To be incorporated in the plans and specification for all building and grading plans involving subsurface work and ground disturbing activities.

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
E. Cultural Resources (cont.)					
E.1 (cont.)	project proponent and/or lead agency shall consult with a qualified archaeologist to assess the significance of the find. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified archaeologist would meet to determine the appropriate avoidance measures or other appropriate mitigation, with the ultimate determination to be made by the City. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and a report prepared by the qualified archaeologist according to current professional standards.				
	E.1d: In the event that human skeletal remains are uncovered at the project site during construction or ground-breaking activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and follow the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.	Less than Significant	25, 37	City Planning & Zoning Division; City Building Services Department; Alameda County Coroner	To be incorporated in the plans and specification for all building and grading plans involving subsurface work and ground disturbing activities.

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
E. Cultural Resources (cont.)					
E.2: The project may adversely affect unidentified paleontological resources at the site. (PS)	*E.2: The project sponsor shall notify a qualified* paleontologist of unanticipated discoveries, who shall document the discovery as needed, evaluate the potential resource, and assess the significance of the find under the criteria set forth in Section 15064.5 of the CEQA Guidelines. In the event of an unanticipated discovery of a breas, true, and/or trace fossil during construction, excavations within 50 feet of the find shall be temporarily halted or diverted until the discovery is examined by a qualified paleontologist (per Society of Vertebrate Paleontology standards (SVP 2004)). The paleontologist shall notify the appropriate agencies to determine procedures that would be followed before construction is allowed to resume at the location of the find. If the City determines that avoidance is not feasible, the paleontologist shall prepare an excavation plan for mitigating the effect of the project on the qualities that make the resource important, and such plan shall be implemented. The paleontologist shall submit the excavation plan to the City for review and approval.	*Less than Significant*	*25, 37*	*City Planning &* Zoning Division; City Building Services Department	*To be incorporated in* the plans and specification for all building and grading plans involving subsurface work and ground disturbing activities.
E.3: The project would result in the substantial demolition of the Ninth Avenue Terminal, which is an historic resource as defined in CEQA Guidelines Section 15064.5. (SU)	**E.3a:** Photograph the affected historic resource through large-format, black and white photographs meeting the Photographic Specifications of the Historic American Building Survey (HABS). The documentary photographs would be archived locally at the Oakland History Room (OHR) of the Oakland Public Library along with a copy on archival paper of the Oakland Landmark and S-7 Preservation Combining Zone Application Form for the Ninth Avenue Terminal. Digital copies of the photographs would be forwarded to the Oakland Cultural Heritage Survey. Even with extensive documentation, however, the demolition of a substantial portion of the building would result in the permanent loss of the historic resource that is associated with Oakland's history.	**Significant and Unavoidable**	25, 37	City Planning & Zoning Division; City Building Services Department	Within 12 months of the effective date of the adoption of the conditions of approval for the Development Parcel that includes the Ninth Avenue Terminal, or prior to demolition activities on said Development Parcel

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
E. Cultural Resources (cont.)					
E.3 (cont.)	**E.3b:** Although the historic resource would no longer retain its historic significance, adaptive use and rehabilitation of the Bulkhead Building would comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties. The current concept depicts a design that appears to comply, although their conceptual nature precludes the ability to reach an informed conclusion. The project sponsor would be subject to submitting more detailed designs, including, but not limited to, proposed window treatments, materials palette, awnings, signage, and interior configurations for review. For the latter, particular attention would be paid to the significance of the interior's "Expansive, unimpeded space with exposed trusses," and the statement "A key feature of the transit shed is its expansive interior with exposed trusses." In addition, the first story of the existing office in the Bulkhead Building, *mentioned in Attachment 2 of the Oakland* Landmark and S-7 Preservation Combining Zone Application Form for the Ninth Avenue Terminal, would be retained and rehabilitated. The review should be conducted by a professional meeting the standards for Historic Architecture or Historic Preservation Planning as set forth in the Secretary of the Interior's Professional Qualification Standards, 1997 Proposed Changes (not adopted). The results of the review should be forwarded to the Secretary of the Landmarks Preservation Advisory Board, City of Oakland, for final approval.	**Significant and Unavoidable**	25	City Planning & Zoning Division; City Building Services Department	Prior to issuance of the demolition permit for the Ninth Avenue Terminal Building.
E.4: The project would substantially alter the wharf structure supporting the Ninth Avenue Terminal and surrounding areas, which is an historic resource, as defined in CEQA Guidelines Section 15064.5. (SU)	(See E.3a and E.3b.)	**Significant and Unavoidable**		City Planning & Zoning Division; City Building Services Department	See E.3a and E.3b, above.

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
E. Cultural Resources (cont.)					
*E.5: The project would construct a new mixed-*use, multi-story development within approximately 100 feet of the remaining Bulkhead Building which may not be architecturally compatible with this structure as a potential future Oakland City Landmark. (SU)		***Significant and*** **Unavoidable**			
E.8: The substantial demolition of the Ninth Avenue Terminal, in combination with the previous loss of the other two Oakland Municipal Terminals, would result in cumulative impacts to historic resources. (SU)	**E.8:** The project sponsor shall set aside a minimum of 200 square feet of floor area within the Bulkhead Building for an historical exhibit depicting the history of the Oakland Municipal Terminals. At a minimum, the exhibit would consist of the following: 1) Historic photographs of the Grove Street Terminal, Outer Harbor Terminal and Ninth Avenue Terminal. 2) Contemporary photographs of the Ninth Avenue Terminal taken as recommended in Mitigation Measure E.3a. 3) Examples of manifests, log books, invoices and other artifacts that may be in the possession of the Port of Oakland or private companies, if available. These may be reproductions. 4) Other displayable objects and narrative information. 5) An educative and documentary audio/visual history on the Oak to Ninth area and accessory areas as appropriate, including: a. Visual explanation of wharf design versus other types of pier design; b. Oral histories of people who worked at the building and/or other maritime industries in the area;	**Significant and Unavoidable**	25	City Planning & Zoning Division; City Building Services Department	No less than 90 days from the date of scheduled demolition, the applicant shall submit a specific proposal to implement this measure, including schematic design of the exhibit and the proposed media. This plan shall be reviewed and approved by the Planning Director prior to the issuance of the demolition permit and shall be implemented no later than the issuance of an occupancy permit for the 9th Avenue Terminal retrofit and reuse plan.

REVISED EXHIBIT B (Continued)
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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
E. Cultural Resources (cont.)					
E.8 (cont.)	c. Historic film clips. d. History of the development of the harbor; e. History of the development of the Port Board; f. PWA and WPA involvement at the Port; g. World War II uses; h. A visual film documentation of the existing warehouse/industrial character of the area, including views from the water to the City. i. Written transcripts on archival quality paper for any audio or visual exhibits prepared for this mitigation 6) The proposed park design, to be located where the Ninth Avenue Terminal demolition is proposed, should incorporate landscaping, sculptural elements, paths, lighting, etc. that conceptually reference the expanse of the building's footprint and height.				
F. Geology, Soils, and Seismicity					
F.1: In the event of a major earthquake in the region, seismic ground shaking could potentially injure people and cause collapse or structural damage to proposed structures. (PS)	**F.1:** Prior to the issuance of a building permit for any portion of the project site, the project sponsor shall: 1. Submit to the City Building Services Division a site-specific, design level geotechnical investigation prepared for each development parcel by a registered geotechnical engineer. The investigation shall comply with all applicable state and local code requirements and:	Less than Significant	24	City of Oakland Building Services Department	Prior to issuance of the first demolition, grading or building permit in the respective Development Parcel

REVISED EXHIBIT B (Continued)
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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
F. Geology, Soils, and Seismicity (cont.)					
F.1 (cont.)	a) Include an analysis of the expected ground motions at the site from known active faults using accepted methodologies; b) Determine structural design requirements *as prescribed by the most current version* of the California Building Code, including applicable City amendments, to ensure that structures can withstand ground accelerations expected from known active faults; c) Determine the final design parameters for walls, foundations, foundation slabs, utilities, roadways, parking lots, sidewalks, and other surrounding related improvements; 2. Project plans for foundation design, earthwork, and site preparation shall incorporate all of the mitigations in the site specific investigations. 3. The project structural engineer shall review the site specific investigations, provide any additional necessary mitigation to meet Building Code requirements, and incorporate all applicable mitigations from the investigation *in the structural design plans* and shall ensure that all structural plans for the project meet current Building Code requirements. 4. The City Building Services Division registered geotechnical engineer or third-party registered engineer retained to review the geotechnical reports shall review each site-specific geotechnical investigation, approve the final report, and require compliance with all geotechnical mitigations contained in the investigation in the plans submitted for the *grading, foundation, structural, infrastructure* and all other relevant construction permits.				

REVISED EXHIBIT B (Continued)
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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
F. Geology, Soils, and Seismicity (cont.)					
F.1 (cont.)	5. The City Building Services Division shall review all project plans for grading, foundations, structural, infrastructure and all other relevant construction permits to ensure compliance with the applicable geotechnical investigation and other applicable Code requirements.				
F.2: In the event of a major earthquake in the region, seismic ground shaking could potentially expose people and property to liquefaction and earthquake-induced settlement. (PS)	**F.2:** Prior to the issuance of a building permit for any portion of the project site, the project sponsor shall: 1. Submit to the City Building Services Division a site-specific, design level geotechnical investigation prepared for each building site by a registered geotechnical engineer. The investigation shall comply with all applicable state and local code requirements and: a) Provide site specific engineering requirements for mitigation of liquefiable *soils;* b) Specify liquefaction mitigations that shall use proven methods, generally accepted by registered engineers, to reduce the risk of liquefaction to a less than significant level such as: - subsurface soil improvement, - deep foundations extending below the liquefiable layers, - structural slabs designed to span across areas of non-support, - soil cover sufficiently thick over liquefaction soil to bridge liquefaction zones, - dynamic compaction, - compaction grouting,	Less than Significant	24	City of Oakland Building Services Department	Prior to issuance of the first demolition, grading or building permit in the respective Development Parcel; during the site specific geotechnical investigation

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
F. Geology, Soils, and Seismicity (cont.)					
F.2 (cont.)	- jet grouting, - *mitigation for liquefaction hazards* suggested in the California Geological Survey's Geology (CGS) Guidelines for Evaluating and Mitigating Seismic Hazards (CGS Special Publication 117, 1997) including edge containment structures (berms, dikes, sea walls, retaining structures, compacted soil zones), removal or treatment of liquefiable soils, modification of site geometry, lowering the groundwater table, in-situ ground densification, deep foundations, reinforced shallow foundations, and structural design that can withstand predicted displacements. 2. The geotechnical investigation shall evaluate these mitigations and identify the most effective and practicable mitigation methods for inclusion in the project plans. These identified mitigations shall be reviewed to ensure compliance with the CGS Geology Guidelines related to protection of the public safety from liquefaction. 3. Project plans for foundation design, earthwork, and site preparation shall incorporate all of the mitigations in the site specific investigations. 4. The project structural engineer shall review the site specific investigations, provide any additional necessary mitigation to meet Building Code requirements, and incorporate all applicable mitigations from the investigation in the structural design plans and shall ensure that all structural plans for the project meet current Building Code requirements.				

REVISED EXHIBIT B (*Continued*)
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FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
F. Geology, Soils, and Seismicity (cont.)					
F.2 (cont.)	5. The City Building Services Division registered geotechnical engineer shall review each site-specific geotechnical investigation, approve the final report, and require compliance with all geotechnical mitigations contained in the investigation in the plans submitted for the grading, foundation, structural, infrastructure and all other relevant construction permits. 6. The City Building Services Division shall *review all project plans for grading,* foundations, structural, infrastructure and all other relevant construction permits to ensure compliance with the applicable geotechnical investigation and other applicable Code requirements.				
F.3: *Development at the project site could be* subjected to settlement. (PS)	F.3: *As with standard geotechnical practices,* site specific geotechnical investigations and reports would be required in order to obtain permits from the City of Oakland. Such geotechnical investigations and reports prepared for the project site shall include generally accepted and appropriate engineering techniques for determining the susceptibility of the project site to settlement and reducing its effects. Where settlement and/or differential settlement is predicted, mitigation measures such as lightweight fill, geofoam, surcharging, wick drains, deep foundations, structural slabs, hinged slabs, flexible utility *connections, and utility hangers could be used.* These measures shall be evaluated and the most effective, feasible, and economical measures shall be recommended. Engineering recommendations shall be included in the project engineering and design plans. All construction activities and design criteria shall comply with applicable codes and requirements of the 1997 UBC with California additions (Title 22), and applicable City construction and grading ordinances.	Less than Significant	24	City of Oakland Building Services Department	Prior to issuance of the first demolition, grading or building permit in the respective Development Parcel; during the site specific geotechnical investigation

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
F. Geology, Soils, and Seismicity (cont.)					
F.4: Development at the project area may include use of dredged material as fill which would be subject to settlement and *subsidence.* (PS)	**F.4:** Any dredged material used for fill will have to undergo an appropriate process of consolidation and stabilization to render it suitable for the *support of engineered fill.* A *geotechnical* investigation and report will be required in order to obtain permits from the City of Oakland in addition to the Dredged Material Management Office permitting requirements. The geotechnical investigations and reports prepared for the project site shall include generally accepted and appropriate engineering techniques for determining the susceptibility of the project specific site to settlement and reducing its effects. Engineering recommendations shall be included in the project engineering and design plans. The use of dredged materials as fill shall be limited to open space areas.	Less than Significant	24	City of Oakland Building Services Department	Prior to issuance of the first demolition, grading or building permit in the respective Development Parcel; during the construction activities
F.5: Construction activities at the project area could loosen and expose surface soils. If this were to occur over the long term, exposed soils could erode by wind or rain causing potential loss of topsoil. In addition, shoreline areas exposed to wave action could be subject to erosion and loss of topsoil. (PS)	**F.5:** Consistent with Mitigation Measure D.1 (which addresses construction-related water quality impacts), the project sponsor shall comply with all applicable NPDES requirements, RWQCB General Construction Permit requirements, and all City regulations, including Creek Protection Permits, as detailed in Mitigation D.1.	Less than Significant	24	City Building Services Department; City Planning and Zoning Department	Prior to issuance of the first demolition, grading or building permit in the respective Development Parcel; during the construction activities
G. Noise					
G.1: Project construction activities would intermittently and temporarily generate noise levels above existing levels in the project vicinity. Project construction noise levels could exceed City of Oakland standards and cause disturbances in noise-sensitive areas, such as residential areas. (PS)	**G.1a:** The project applicant shall require construction contractors to limit standard construction activities as required by the City of Oakland Building Services Division. Such activities are generally limited to between 7:00 AM and 7:00 PM Monday through Friday, with pile driving and/or other extreme noise-generating activities (greater than 90 dBA) limited to between 8:00 AM and 4:00 PM Monday through Friday, with no extreme noise generating	**Significant and Unavoidable**	37	City Building Services Department	Prior to issuance of the first building permit for the respective Development Parcel; inspections during construction phase of Project.

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
G. Noise (cont.)					
G.1 (cont.)	activity permitted between 12:30 PM and 1:30 PM. No construction activities shall be allowed on weekends, except that interior construction shall be permitted after buildings are enclosed, without prior authorization of the Building Services Division, and no extreme noise-generating activities shall be allowed on weekends and holidays.				
	G.1b: To reduce daytime noise impacts due to construction, the project applicant shall require construction contractors to implement the following measures: • Equipment and trucks used for project construction shall use the best available noise control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically-attenuating shields or shrouds, wherever feasible). • Impact tools (e.g., jack hammers, pavement breakers, and rock drills) used for project construction shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed air exhaust from pneumatically powered tools. Where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used; this muffler can lower noise levels from the exhaust by up to about 10 dBA. External jackets on the tools themselves shall be used where feasible; this could achieve a reduction of 5 dBA. Quieter procedures, such as use of drills rather than impact tools, shall be used whenever feasible.	**Significant and Unavoidable**	37	City Building Services Department;	Prior to issuance of the first building permit for the respective Development Parcel; inspections during construction phase of Project.

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
G. Noise (cont.)					
G.1 (cont.)	• Stationary noise sources shall be located as far from adjacent receptors as possible, and they shall be muffled and enclosed within temporary sheds, incorporate insulation barriers, or other measures to the extent feasible. • If feasible, the noisiest phases of construction (*such as pile driving*) shall be limited to less than 10 days at a time to comply with the local noise ordinance.				
	G.1c: To further mitigate pile driving and/or other extreme noise-generating construction impacts, a set of site-specific noise attenuation measures shall be completed under the supervision of a qualified acoustical consultant. Prior to commencing construction, a plan for such measures shall be submitted for review and approval by the City of Oakland Building Services Division to ensure that maximum feasible noise attenuation will be achieved.	**Significant and Unavoidable**	37	City Building Services Department	Prior to any pile driving or other extreme noise generating activities on the site.
	G.1d: Prior to the issuance of each building permit, along with the submission of construction documents, the project applicant shall submit to the City Building Services Division a list of measures to respond to and track complaints pertaining to construction noise.	**Significant and Unavoidable**	37	City Building Services Department	Prior to issuance of the first building permit for the respective Development Parcel; inspections during construction phase of Project.
G.2: Noise from project-generated traffic and other operational noise sources, such as mechanical equipment and truck loading/unloading, could exceed City of Oakland Noise Ordinance standards and disturb project occupants and nearby residents. (PS)	**G.2:** The project applicant shall incorporate the following design features into the final site plans: • Building equipment (e.g., HVAC units) shall be located away from nearby residences, on building rooftops, and properly shielded within an enclosure that effectively blocks the line of sight of the source from receivers in order to meet City of Oakland Noise Ordinance standards.	Less than Significant	37	City Building Services Department; City Planning and Zoning Division	Prior to issuance of the first building permit for the respective Development Parcel

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
G. Noise (cont.)					
G.2 (cont.)	• Truck delivery areas shall be located as far from adjacent residences as possible. To the extent feasible, project buildings shall be located so that they block noise related to truck deliveries and waste collection from residential *or other sensitive receptors.*				
G.3: The project would locate noise-sensitive *multifamily residential uses in a noise* environment where noise levels are above what is considered "normally acceptable" according to the City of Oakland General Plan Noise Element. (PS)	**G.3a:** To comply with the requirements of Title 24 *and achieve an interior noise level of less than 45* dBA, noise reduction in the form of sound-rated assemblies (i.e., windows, exterior doors, and walls) shall be incorporated into project building design. Final recommendations for sound-rated assemblies will depend on the specific building designs and layout of buildings on the site and shall be determined during the design phase. (Oak to 9th Residential Development, Oakland, California, Environmental Noise Assessment by Charles M. Salter Associates, Inc., November 2002. Table 4 of the Salter Associates document lists conceptual window and wall Sound Transmission Class (STC) ratings for different noise environments and gives an estimate of the STC requirements needed to meet interior noise criteria.)	Less than Significant		City Building Services *Department*	Prior to issuance of *the first building* permit for the respective Development Parcel
	G.3b: Due to the proximity of the project to a railroad crossing, a written disclosure of railroad crossing noise, particularly usage of train horns and bells on warning devices during the daytime *and nighttime hours, shall be provided to* potential residents of the project	Less than Significant		City Planning and Zoning Department	Prior to issuance of the first certificate of occupancy for the project.
G.4: The project would locate noise-sensitive multifamily residential uses and public parks in a noise environment where noise levels are above what is considered "normally acceptable" according to the City of Oakland General Plan Noise Element. (PS)		**Significant and Unavoidable**			

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
H. Hazardous Materials					
H.1: Disturbance and release of contaminated soil during remediation, demolition and construction phases of the project, or transportation of excavated material, contaminated groundwater or dredged sediment could expose construction workers, the public, or the environment to adverse conditions related to hazardous materials handling. (PS)	***H.1a:*** *The applicant shall retain a qualified* environmental consulting firm to prepare a cleanup plan for the contaminated soil and groundwater which would be based on a comprehensive remedial investigation report for *the project area. This plan shall be approved by* the appropriate regulatory agencies which may include but not be limited to the DTSC and the RWQCB. The plan shall also include the preparation of a health and safety plan to protect the workers and the public during all remediation and construction activities proposed. Following agency approval of the plan, remediation and removal work shall be conducted according to all applicable OSHA worker safety regulations. Remediation activities at the site may include, without limitation, closure or removal of subsurface structures, excavation and disposal of contaminated materials, natural and enhanced bioremediation of soil and groundwater, restoration and improvement of shoreline structures, limited dredging of sediments, and institutional and engineering controls to prevent exposure to and migration of contaminated materials. Throughout the course of remediation and construction activities, the handling, *transport, and storage of any hazardous waste or* potentially hazardous waste shall be conducted appropriate to all local and state agency protocols.	*Less than Significant*		City Building Services Department; City Public Works Agency; State Dept. of Toxic Substances Control; Regional Water Quality Control Board	Prior to issuance of the first building permit in the respective Development Area and on-going during construction activities
	H.1b: *Prior* to offsite disposal, the project applicant shall adequately profile excavated soils to establish the proper classification of the soils for hazardous or non-hazardous waste disposal. The soils shall be handled, stored and transported according to all applicable regulations for the appropriate classification.	Less than Significant	37	City Building Services Department; City Public Works Agency	Prior to issuance of the first building permit in the respective Development Area and on-going during construction activities

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
H. Hazardous Materials (cont.)					
H.1 (cont.)	**H.1c:** Soil generated by construction activities *shall be stockpiled onsite and sampled prior to* reuse or disposal at an appropriate facility. Any reuse of soils shall be conducted by prior approval from the appropriate state oversight agency.	Less than Significant	37	City Building Services *Department; City* Public Works Agency	Prior to issuance of *the first building* permit in the respective Development Area and on-going during construction activities
	H.1d: Groundwater generated during construction dewatering shall be contained and transported offsite for disposal at an appropriate facility, or treated, if necessary, prior to discharge into the sanitary sewer to levels acceptable to the East Bay Municipal Utilities District.	Less than Significant	37	City Building Services Department; City Public Works Agency	Prior to issuance of the first building permit in the respective Development Area and on-going during construction activities
	H.1.e: Prior to dredging any materials from the Clinton Basin, the project applicant shall retain a qualified environmental consulting firm to prepare a Sampling and Analysis Plan (SAP) as described by the Corps of Engineers (PN 99-4). The SAP shall be approved by the Dredged Material Management Office (DMMO) and shall include a proposal for a disposal location and a disposal alternatives analysis. Following agency approval of the plan, sediment removal work shall be conducted in accordance with all applicable OSHA worker safety regulations. In addition, the handling, transport, and storage of any hazardous waste or potentially hazardous waste *shall be conducted consistent with all local and* state agency protocols.	Less than Significant	37	City Building Services Department; City Public Works Agency	Prior to issuance of the first building permit in the respective Development Area and on-going during construction activities
H.2: Disturbance and release of hazardous structural and building components (i.e. asbestos, lead, PCBs, USTs, and ASTs) during demolition and construction phases of the project or transport of these materials could expose construction workers, the public, or the environment to adverse conditions related to hazardous materials handling. (PS)	**H.2a:** A pre-demolition ACM survey shall be performed by a state-certified asbestos *consultant prior to demolition of any of the* structures located on the project site. The survey shall include sampling and analysis of suspected ACMs. Abatement of known or suspected ACMs shall occur prior to demolition or construction activities that would disturb those materials.	Less than Significant	37	City Building Services Department; City Public Works Agency	Prior to issuance of the first building permit in the respective Development Area and on-going during construction activities

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
H. Hazardous Materials (cont.)					
H.2 (cont.)	Pursuant to an asbestos abatement plan developed by a state-certified asbestos consultant and approved by the City, all ACMs shall be removed and appropriately disposed of by a state certified asbestos contractor.				
	H.2b: The project applicant shall implement a lead-based paint abatement plan, prepared by a qualified consultant, which shall include the following components: • A pre-demolition LBP survey for all structures proposed for demolition at the project site. The survey shall include sampling and identification of suspected materials containing LBP. • Development of an abatement specification plan which shall be based on survey work and detail proposed abatement work areas and procedures. • A site Health and Safety Plan. • Containment of all abatement work areas to prohibit offsite migration of paint chip debris. • Removal of all peeling and stratified lead-based paint on building surfaces and on non-building surfaces to the degree necessary to safely and properly complete demolition activities per the recommendations of the survey. The demolition contractor shall be identified as responsible for properly containing and disposing of intact lead-*based paint on all equipment to be cut and/or* removed during the demolition. • Appropriately remove paint chips by vacuum or other approved method. • Collection, segregation, and profiling waste for disposal determination. • Appropriate disposal of all hazardous and non-hazardous waste.	Less than Significant	37	City Building Services Department	Prior to issuance of the first building permit in the respective Development Area and on-going during construction activities; to be implemented in conjunction with Mitigation Measure C.1.B.

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
H. Hazardous Materials (cont.)					
H.2 (cont.)	**H.2c:** A pre-demolition PCB survey shall be performed prior to demolition of any of the structures located on the project site. The survey shall include sampling and identification of *suspected PCBs. Abatement of known or* suspected PCBs shall occur prior to demolition or construction activities that would disturb those materials. In the event that electrical equipment or other PCB-containing materials are identified prior to demolition activities they shall be removed, and shall be disposed of by a licensed transportation and disposal contractor at an appropriate hazardous waste facility.	Less than Significant	37	City Building Services Department; City Public Works Agency	Prior to issuance of the first building permit in the respective *Development Area* and on-going during construction activities
	H.2d: When known or previously unidentified USTs are encountered during construction, construction in the immediate area shall cease until the UST is removed with oversight from the City of Oakland Fire Department Hazardous Materials Unit or other applicable oversight agency. If there is any indication that the tank has leaked, then the lead agency shall direct any appropriate remediation measures. Removal of the UST shall include, to the extent deemed necessary by the lead agency, over-excavation and disposal of any impacted soil that may be associated with such tanks to a degree satisfactory to the oversight agency.	Less than Significant	37	City Building Services Department; City Public Works Agency	Prior to issuance of the first building permit in the respective Development Area and on-going during construction activities
H.3: Hazardous materials used onsite during construction activities (i.e., solvents) could be released to the environment through improper handling or storage. (PS)	**H.3:** The use of construction best management practices shall be implemented as part of construction to minimize the potential negative effects to groundwater and soils. These shall include the following: • Follow manufacturer's recommendations on use, storage and disposal of chemical products used in construction;	Less than Significant	37	City Building Services Department; City Public Works Agency	Prior to issuance of the first building permit in the respective Development Area and on-going during construction activities

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
H. Hazardous Materials (cont.)					
H.3 (cont.)	• Avoid overtopping construction equipment fuel gas tanks; • During routine maintenance of construction equipment, properly contain and remove grease and oils. • Properly dispose of discarded containers of fuels and other chemicals.				
I. Biological Resources / Wetlands					
I.2: Construction activities required for the project would result in a substantial adverse effect on potentially jurisdictional wetlands or waters of the U.S. under the jurisdiction of the Corps, waters of the state under the jurisdiction of the Regional Water Quality Control Board (RWQCB), and wetlands under the jurisdiction of BCDC jurisdiction. (PS)	**I.2a:** *Corps-Verified Wetland Delineation.* A preliminary identification of potentially jurisdictional areas was conducted in 2004 (LSA, 2004), and the project sponsor submitted the draft potentially jurisdictional wetland delineation to the Corps in July 2005. The project sponsor shall obtain Corps verification of the preliminary identification of jurisdictional areas prior to submitting permit applications. A verified wetland delineation would be required prior to the submittal of regulatory permit applications.	Less than Significant	37	City Planning and Development Department; City Building Permit Department; City Public Works Agency	Prior to project sponsor submittal of regulatory permit applications to Army Corps
	I.2b: *Wetland Avoidance.* Section 404 first requires that projects avoid or minimize adverse effects on jurisdictional waters to the extent practicable. To the extent feasible, the final project design shall minimize effects on wetlands and other waters in accordance with Section 404 of the Clean Water Act. Areas that are avoided shall be subject to Best Management Practices (BMPs), as described in Mitigation Measure I.2.d below. Such measures shall include installation of silt fencing, straw wattles or other appropriate erosion and sediment control methods or devices. Equipment used for the removal of debris and concrete rip-rap along the estuary edge will be operated from land using backhoes and cranes. Construction operations along	Less than Significant	37	City Planning and Development Department; City Building Permit Department; City Public Works Agency	Prior to approval of Final Development Plans; on-going during construction activities

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Environmental Impact	*Mitigation Measures*	*Level of Significance after Mitigation*[1]	*Condition of Approval*	*Monitoring Responsibility*[2]	*Monitoring Timeline*
I. Biological Resources / Wetlands (cont.)					
I.2 (cont.)	Clinton Basin and Shoreline Park shall be barge-mounted or shall involve water-based equipment such as scows, derrick barges and tugs. Additionally, the existing restoration project at the southwest end of Clinton Basin, implemented by the Port of Oakland, shall be protected during construction activities. The extent of this area shall be clearly marked by a qualified biologist prior to the start of any grading or construction activities and a buffer zone established. All construction personnel working in the vicinity of the restoration area shall be informed of its location and buffer zone.				
	I.2c: Obtain Regulatory Permits and other Agency Approvals. Prior to the start of construction activities for the project, the project applicant shall obtain all required permit approvals from the Corps, the RWQCB, BCDC, and all other agencies with permitting responsibilities for construction activities within jurisdictional waters of other jurisdiction areas. Permit approvals and certifications shall include, but not be limited to Section 404/Section 10 permits from the Corps, Section 401 Water Quality Certification from the RWQCB, and BCDC permit. *Section 404 / Section 10 Permits.* Permit approval from the Corps shall be obtained for the placement of dredge or fill material in waters of the U.S., if any within the interior of the project site, pursuant to Section 404 of the federal Clean Water Act. Construction along the estuary edge below MHW elevation will be considered dredging by the Corps and will require a Section 10 permit. In addition, dredging of Clinton Basin will also require a Section 10 permit.	Less than Significant	37	City Planning and Development Department; City Building Permit Department; City Public Works Agency	Prior to approval of Final Development Plans; on-going during construction activities for that part of the site adjacent to the shoreline or otherwise potentially affected applicable land and water areas (i.e., stormwater or construction runoff and erosion)

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Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
I. Biological Resources / Wetlands (cont.)					
I.2 (cont.)	*Section 401 Water Quality Certification.* Approval of Water Quality Certification (WQC) and/or Waste Discharge Requirements (WDRs) shall be obtained from the RWQCB for work within jurisdictional waters. Preparation of the Section 401 Water Quality Certification applications will require an application and supporting materials including construction techniques, areas of impact, and project schedule. *BCDC Permit.* Permit approval from BCDC placing solid material, pilings floating structures boat docks, or other fill and/or dredging or other extraction of material from the Bay and the 100-foot shoreline band inland from mean high tide line along the length of the project site. Activities would include dredging for rebuilding the marina in Clinton Basin, and replacing the 5th Avenue marina with a new marina that will contain approximately 170 boat slips. The proposed project will include the removal of approximately 33,780 square feet of solid Bay fill as part of the shoreline design and the placement of 74,110 square feet of solid Bay fill for the creation of a village green at Clinton Basin. The project also includes the removal of approximately 129,920 square feet of pile-supported fill with the removal of a portion of the Ninth Avenue Terminal wharf. Additionally, floating fill will be required to create the two proposed marinas. The project will be required to comply with all BCDC permit conditions that typically include requirements to construct, guarantee and maintain public access to the bay, specified construction methods to assure safety or to protect water quality, and mitigation requirements to offset the adverse environmental impacts the project.				

REVISED EXHIBIT B (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
I. Biological Resources / Wetlands (cont.)					
I.2 (cont.)	**I.2d:** *Best Management Practices (BMPs).* The project applicant shall implement standard BMPs to maintain water quality and control erosion and sedimentation during construction, as required by compliance with the General National Pollution Discharge Elimination System (NPDES) Permit for Construction Activities and established by Mitigation Measure D.1 to address impacts on water quality. Mitigation measures would include, but would not be limited to, installing silt fencing along the edges of the project site to protect estuarine waters, locating fueling stations located away from potential jurisdictional features, and isolating construction work areas from the identified jurisdictional features. The project applicant shall also implement, BMPs to avoid impacts onwater quality resulting from dredging activities within the Bay, and that as identified in the *Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region* (LTMS) (Corps, 2001). These BMPs include: silt fencing and gunderbooms or other appropriate methods for keeping dredged materials from leaving the project site.	Less than Significant	37	City Planning and Development Department; City Building Permit Department; City Public Works Agency	On-going during all construction activities on the project site
	I.2e: *Compensatory Mitigation.* The project applicant shall provide compensatory mitigation for temporary impacts to, and permanent loss of, waters of the U.S., including wetlands, as required by regulatory permits issued by the Corps, RWQCB, and BCDC. Measures shall include, but not be limited to 1) onsite mitigation through wetland creation or enhancement, 2) development of a Mitigation and Monitoring Plan, and 3) additional wetland creation or enhancement or offsite mitigation.	Less than Significant		City Public Works Agency; City Planning and Zoning Department	On-going during all construction activities on the project site

REVISED EXHIBIT B (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
I. Biological Resources / Wetlands (cont.)					
I.3: Construction activities required for the project could have a substantial adverse effect, either directly or through habitat modifications, on fisheries resources in the Oakland Inner Harbor. (PS)	**I.3a:** *Protection of Fish and Migrating Salmonids.* The project applicant shall implement measures for protection of salmonids and Pacific herring during dredging projects and for indirect impacts on the San Francisco Bay "Essential Fish Habitat" (EFH) that are identified in the Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region (LTMS) (Corps, 2001).	Less than Significant	37	City Public Works Agency; City Public Works Agency; City Planning and Zoning Department	On-going during all construction activities on the project site
I.4: Construction activities required for the project could have a substantial adverse effect, either directly or through habitat modifications, on nesting habitat for breeding raptors and passerine birds, including Cooper's hawk. (PS)	**I.4a:** *Timing of Construction.* To the extent feasible, construction activities shall be conducted outside the breeding season for birds and raptors (August 1-January 30) Trees and shrubs that could provide potential nesting habitat may be removed during this period to avoid future nesting within the project site.	Less than Significant	37	City Public Works Agency; City Planning and Zoning Department	Pre-construction survey performed and at designated points during all construction activities on the project site
	I.4b: *Preconstruction Surveys. If seasonal avoidance is infeasible, the following measures* shall be required to avoid potential adverse effects on nesting special-status raptors and other nesting birds: • A qualified wildlife biologist shall conduct preconstruction surveys of all potential nesting habitat within 500 feet of construction activities. Preconstruction surveys should occur no later than two weeks prior to the start of construction activities. • If active nests of raptors or other bird species are found during preconstruction surveys, a no-disturbance buffer zone shall be created around active nests during the breeding season or until a qualified biologist determines that all young have fledged. The size of these buffer zones and types of construction shall be determined in consultation with the CDFG and shall be based on existing noise and human disturbance levels at the project site.	*Less than Significant*	37	*City Public Works* Agency; City Planning and Zoning Department	*Pre-construction* survey performed and at designated points during all construction activities on the project site

REVISED EXHIBIT B (Continued)
MITIGATION MONITORING AND REPORTING PROGRAM
FOR THE OAK TO NINTH MIXED USE REDEVELOPMENT PROJECT

Environmental Impact	Mitigation Measures	Level of Significance after Mitigation[1]	Condition of Approval	Monitoring Responsibility[2]	Monitoring Timeline
I. Biological Resources / Wetlands (cont.)					
I.4 (cont.)	• If preconstruction surveys indicate that nests are inactive or potential habitat is unoccupied during the construction period, no further mitigation is required. Trees, shrubs, and buildings that have been determined to be unoccupied by special-status birds or that are located more than 500 feet from active nests may be removed.				
I.5: The project could have a substantial adverse effect, either directly or through habitat modifications, on special-status nesting and roosting bats. (PS)	**I.5:** Before demolition of abandoned or underused buildings on the project site, such as the Ninth Avenue Terminal building, a qualified biologist who is familiar with bat biology and who is able to recognize signs of bats using abandoned buildings shall conduct pre-demolition building surveys in order to adequately make a determination on the presence of bat nurseries. If abandoned or underused buildings slated for destruction are being used by bats as nursery sites, demolition shall be postponed until young are reared and able to forage on their own. This determination shall be made by a qualified biologist specializing in bat biology. If bats are found to be roosting in abandoned or underused buildings on the project site, the bats shall be actively relocated to a temporary roosting structure (preferably onsite) during demolition activities. In addition, permanent bat roosting structures ("bat boxes") shall be created in order to properly mitigate the effects of a loss of roosting structure. The design of the bat boxes shall conform to the specifications appropriate to the species of bats found on the project site and vicinity, and shall be approved by a qualified bat biologist knowledgeable in the design of bat boxes. The bat boxes shall conform to the architectural design of the project buildings to reduce the visibility and obtrusiveness of the boxes and to avoid vandalism or disturbance to bat colonies.	Less than Significant	37	City Public Works Agency; City Planning and Zoning Department	Pre-construction survey performed and at designated points during all construction activities on the project site