



AGENDA REPORT

TO: Steven Falk
Interim City Administrator

FROM: William A. Gilchrist, Director
Planning & Building
Department

SUBJECT: Brooklyn Basin Marina Expansion
Project

DATE: March 27, 2023

Interim City Administrator Approval

Date: Apr 13, 2023

RECOMMENDATION

Staff Recommends That The City Council Review The Planning Commission's Recommendation, Conduct A Public Hearing, And Upon Conclusion, Adopt The Following Resolutions And Ordinances:

1. A Resolution certifying the Brooklyn Basin Marina Expansion Project Supplemental Environmental Impact Report (SEIR) and making certain findings concerning environmental impacts, mitigation measures, and alternatives, and adopting a Mitigation Monitoring and Reporting Program (MMRP), all in accordance with the California Environmental Quality Act;
2. A Resolution approving text amendment to the General Plan Estuary Policy Plan to increase the maximum average density in the Estuary Policy Plan Planned Waterfront Development-4 (PWD-4) land use designation in connection with the Brooklyn Basin (formerly Oak-to Ninth Avenue Mixed Use Development) Project; And Making Appropriate California Environmental Quality Act Findings;
3. An Ordinance approving zoning text amendment to increase the maximum average density and modify the parking requirements in the Oak to Ninth (D-OTN) Zone; And Making Appropriate California Environmental Quality Act Findings;
4. An Ordinance authorizing the City Administrator to execute a Third Amendment to the Development Agreement for the Brooklyn Basin (formerly the Oak-To-Ninth Avenue Mixed Use Development) Project between the City of Oakland (City) and Zarsion-OHP I, LLC; And Making Appropriate California Environmental Quality Act Findings; and

CED Committee
April 25, 2023

5. A Resolution revising the Preliminary Development Plan (PDP) for the Brooklyn Basin (Formerly the Oak-to-Ninth Mixed Use Development) Project; And Making Appropriate California Environmental Quality Act Findings.

EXECUTIVE SUMMARY

In January 2018, Zarsion-OHP 1, LLC., referred to as “Project Applicant” or “Developer”, filed an application for modifications (Project Modifications) to the approved Brooklyn Basin Project - an approved, 3,100-unit mixed-use residential project located on the Oakland Estuary (Approved Project). The plans for the Project Modifications are attached hereto at **Attachment 6a**. Multiple components of the Approved Project have been completed; other components are under construction. With respect to the unconstructed components, the Project Modifications include changes to the residential density, parking ratios, location of tower elements, a new public small-craft water launch for a planned water taxi and some minor changes to the implementation of off-site traffic improvements. The proposed Project Modifications require a General Plan Amendment, Zoning Code Amendment, a third amendment to the existing Development Agreement (Third DA Amendment), revision to the Planned Unit Development (PUD) permit, and environmental analysis in the form of a certified Environmental Impact Report (EIR). See **Attachments 1-6**.

The key changes to the approved project would be to allow an increase in residential density by 600 units for a project site total of up to 3,700 units, and a reduction in required parking ratios to 0.75 spaces per residential unit. There will also be a small-craft water launch for a planned water taxi. The larger marina expansion that was first proposed has been removed from the Project. The Project Applicant has committed to a substantial package of community benefits as part of the Third DA Amendment, including \$9 million dollars for affordable housing in the nearby neighborhoods of Chinatown, Eastlake and San Antonio, additional funding for job training, and additional local hire goals.

On January 11, 2023, the Oakland Planning Commission unanimously approved a recommendation to be forwarded to the City Council to approve the proposed Project Modifications along with the associated resolutions and ordinances required to accommodate the requested modifications to the Brooklyn Basin Project. The staff report from the January 11, 2023, Planning Commission hearing is provided as **Attachment 7** hereto as reference.

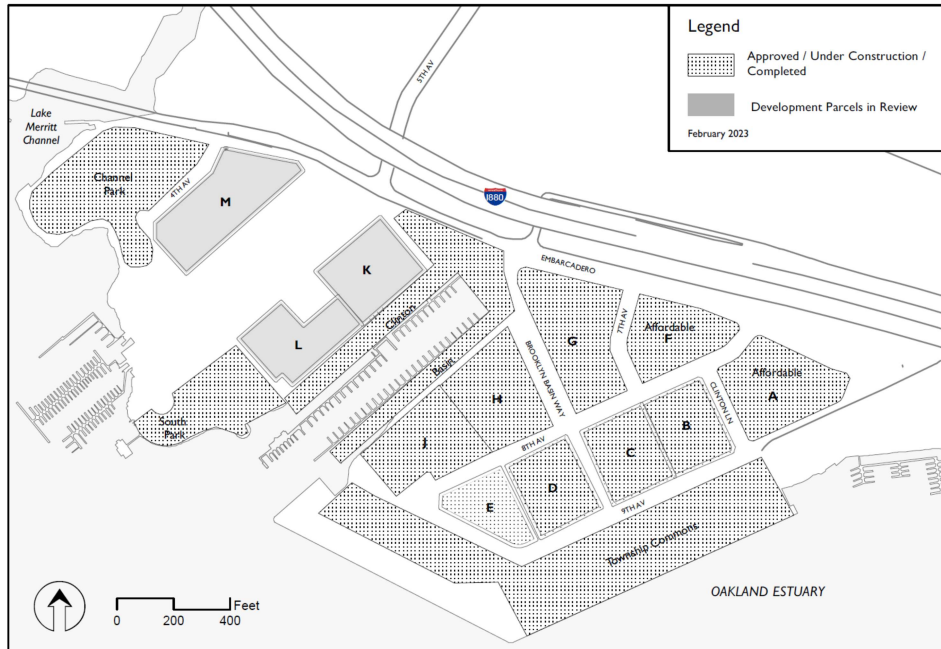
BACKGROUND / LEGISLATIVE HISTORY

Approved Brooklyn Basin Project

The Brooklyn Basin Project, formerly known as the Oak-to-Ninth Avenue Project, is an approved development that is currently under construction along the Oakland Estuary (Approved Project). The Approved Project includes up to 3,100 dwelling units (including 465 affordable housing units), 200,000 square feet of commercial uses, new streets, improvements to the existing marina, and approximately 30 acres of new City parks.

At this time, over 500 dwelling units have been delivered (including 341 of the affordable units), Phase 1 streets are publicly accessible, and Township Commons Park (formerly known as Shoreline Park) is constructed and open to the public.

The City approved the Project in 2006 (including CMS 12756, CMS 12757, CMS 12758, CMS 12760) but faced litigation shortly thereafter. Litigation was resolved in 2009 (CMS 81769) and the Project proceeded forward. Since approval, the Project Applicant has sought final approvals for and/or constructed much of Phases 1 and 2, as shown in the figure below:



Brooklyn Basin Status

The following matrix summarizes the project delivery milestones for the Approved Project since initial entitlement in 2009:

**Summary of Approval and Implementation
 of Brooklyn Basin Project**

Milestone	Requirement	Status
Original Land Use Entitlements (DA, PUD/PDP, GPA, Rezone, EIR)	Amendment to the Oakland Municipal Code	Originally approved 7/18/2006; re-approved 1/2009 following CEQA challenge

Phase 1 Soil remediation (grading/surcharge permits)	EIR Mitigation Measure H, Prior to issuance of site development building permits	Activities completed 2014
Affordable Housing Developer Selection	DA Exhibit L, Section 4: proposal to City within one year of acquisition of Sites F, T and G	MidPen selected by Master Developer and approved by City Housing Department in 2015; affordable units complete and occupied
Phase 1 Final Map	TTM, DA	FM7621 Recorded May 2015
Phase 1 Infrastructure FDP and construction permits	Zoning regulations	Approved 2015; Complete
Township Commons Park FDP	DA and PUD	Approved December 2015, BCDC confirmation May 2016; park improvements are complete and open to public
Phase 2 Infrastructure FDP	Brooklyn Basin PUD	Approved 2017; Under construction; Delivery expected with delivery of Phase 2 vertical development
Parcel B Building Permits issued	PUD, FM7621	Approved September 2016, Received TCO July 2019 and approximately 20 percent leased/occupied
Parcel C FDP approved	PUD, FM7621	FDP approved August 2017. Construction started April 2019
Phase 2 Final Map	PUD, TTM7621	Recorded June 2017
Parcel F FDP approved	Brooklyn Basin PUD	FDP approved November 2017; Construction started December 2019
All Parks FDPs approved	Brooklyn Basin PUD	FDPs approved August 2017
Parcel G FDP approved	Brooklyn Basin PUD	FDP approved March 2019

Parcel A FDP approved	Brooklyn Basin PUD	FDP approved June 2019, Building permits submitted November 2019
Parcel J FDP approved	Brooklyn Basin PUD	FDP approved December 2019, building permits submitted December 2019
Parcel H FDP approved	Brooklyn Basin PUD	FDP approved March 2020
Parcel D FDP approved	Brooklyn Basin PUD	Approved March 2021
Parcel E FDP	Brooklyn Basin PUD	Approved 2022
Brooklyn Basin Marina Expansion Project (Currently Under Review before the City Council)	<ul style="list-style-type: none"> • Certification of SEIR • General Plan Amendment • Zoning Text Amendment • Development Agreement Amendment • PUD Amendment • Revisions to Conditions of Approval 	Unanimous recommendation for approval from the Planning Commission to the City Council – January 11, 2023

It should be noted that the Project Applicant will continue to deliver components of the Approved Project during consideration of the current Project Modifications application.

ANALYSIS AND POLICY ALTERNATIVES

The proposed project by the applicant, Zarsion-OHP 1, LLC., increases the residential capacity of the adopted Brooklyn Basin project by 20 percent, or 600 additional residential units. While the proposal does not include the direct addition of affordable units, the applicant agrees to pay any established impact fees. Additionally, the applicant agrees to amend the adopted Development Agreement to provide significant benefits to the City of Oakland, including the contribution of \$9 million toward delivery of affordable housing in Oakland, and increased support of local hire and training programs.

In summary, the proposed project would bring much needed housing to Oakland and support further delivery of affordable housing, consistent with the goals of the newly adopted General Plan Update Housing Element.

PROJECT DESCRIPTION

Project Modifications (September 2018, as presented to DRC in 2021)

The Project Applicant initially proposed revisions to the Approved Project to: (1) add 600 dwelling units (within the planned building siting and massing allowances) for a total of up to 3,700 units, (2) allow for a previously approved residential tower location to be relocated from Phase 2 to Phase 4 of the project, (3) reduce required parking to align with the current parking standards in some Oakland zoning districts, and (4) expand the marina facilities by 10 acres. The proposed Project Modifications also include a landing dock at the north end of Township Commons Park to accommodate a water taxi service that is already operating on the bay.

Revised Project Modifications (March 2022)

Following a virtual public hearing by the Design Review Committee (DRC) and public comment input at the September 2021 DRC, the Project Applicant presented revised the Project Modifications to the DRC in March 2022 as follows:

Tower Locations: Tower relocation from Phases 1 or 2 to Parcel M, only:

- Marina: Reduced the number of additional marina slips by 27 (from 158 additional slips to 131 additional slips), and revised siting of marina facilities as follows:
 - Relocated proposed marina between South Park and Clinton Basin further offshore of South Park. The intent of this revision was to protect the offshore wetland between South Park and Clinton Basin;
 - Reduced marinas (and slips) along Township Commons into marina clusters to preserve views of open water.

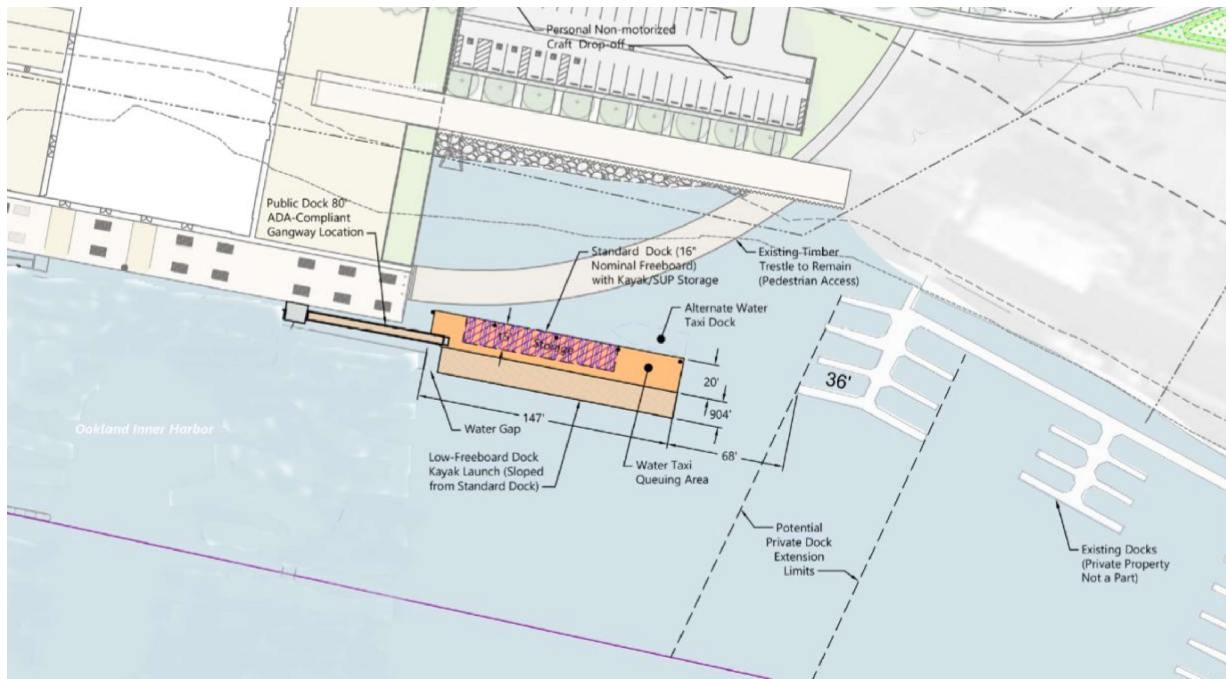
Further Revisions to Project Modifications (April 2022)

Following the public and DRC comments during the March 23, 2022 hearing, the Project Applicant further revised the application for Project Modifications to eliminate the proposed marina expansion, while maintaining the other components of the Project Modifications. No changes to the Approved Project's circulation and parking plan are proposed.

The following graphic depicts the evolution of proposed Brooklyn Basin tower locations from the 2009 Approved Project to the first DRC review in September 2021, to the revised March 2022 Project Modifications:



Evolution of Brooklyn Basin Tower Location Proposal



Proposed Water Launch and Water Taxi

Requested Entitlements

The following summarizes the requested entitlements needed for the Project Modifications.

General Plan Amendment (Oakland Planning Code Chapter 17.01).

The Project Modifications amend the Oakland Estuary Policy Plan, which is part of the General Plan, to permit an increase in the average residential density from 50 residential units per acre to 57.63 residential units per acre over the entire 64.2-acre planning area designated Planned Waterfront Development-4 (PWD-4).

Zoning Code Amendment (Oakland Planning Code Chapter 17.101B).

The Project Modifications also amend the Maximum Density Section of the Oak to Ninth District Zone (D-OTN), previously known as Planned Waterfront Zoning District (PWD-4), to permit up to 3,700 units at a maximum average density of 167 units over 22 developable acres and conform the Brooklyn Basin Off-street Parking and Loading Requirements consistent with the City's Zoning Code's downtown off-street parking provisions.

Preliminary Development Plan Amendment.

The Project Modifications also amend the Preliminary Development Plan (PDP) to increase the allowable number of residential units by 600, from the entitled 3,100 residential units to a maximum of 3,700 residential units, permit one additional residential tower, for a total of up to two towers sited on Parcel M, and the provision of a publicly accessible small watercraft launch.

The Conditions of Approval are amended to ensure required improvements can be delivered to meet current jurisdictional requirements. Specifically, the Project Applicant and City propose amending the Approved Project's Conditions of Approval (CoA) 18 and 19, as shown in **Attachment 6b** to this report. The amendments would allow for off-site improvements at the Oak and Embarcadero intersection that would achieve the intended level of safety of the original CoAs, while accommodating Union Pacific Railroad requirements and current land use configuration at the intersection (both of which were unforeseen at the time the Approved Project was entitled).

Development Agreement Third Amendment

Overview

On July 18, 2006, the City Council adopted Ordinance No. 12760 C.M.S., which authorized a Development Agreement for the development of the Approved Project. The Development Agreement approved in 2006 called for 3,100 housing units, over 200,000 square feet in retail space, 29.9 acres of parks and public open space, two renovated marinas and restoration of an existing wetland area. The original Development Agreement was subsequently assigned from the original developer to the current developer, Zarsion-OHP I, LLC (Developer), and administratively amended twice.

The proposed Third DA Amendment would allow an increase of 600 residential units above the 3,100 previously approved units (3,700 units in total) and would extend the term of the Development Agreement to add seven (7) additional years to the term for development of Phase III (Parcels K and L) and Phase IV (Parcel M), the final two phases of the project. Under the Third DA Amendment, Phases III and IV will include approximately 618 of the originally approved 3,100 residential units plus the requested 600 additional units, for a total of 1,218 residential units. The Third DA Amendment will extend the original term of the Development Agreement from May 19, 2031 to May 19, 2038 for the final phases (Phases III and IV).

The proposed Third DA Amendment also includes several technical revisions to the previously approved Development Agreement for clarity and consistency with current City regulatory language. For example, it contains a technical clean-up of portions of the original Development Agreement pertaining to the formation of a Community Facilities District (CFD) and a Community Services District (CSD) to maintain and construct the parks, open space, landscaping, and other public improvements. The Third DA Amendment also revises definitions contained in the original Development Agreement to correct definitions that have become outdated over time.

The Third DA Amendment also replaces the following updated Exhibits: (a) Exhibit A (CEQA Documents) to add the new California Environmental Quality Act (CEQA) documents related to the Third DA Amendment; (b) Exhibit C (Phasing Schedule) that among other things allows the Developer to alternate the order of Phases III and IV; (c) Exhibit G (Approval Documents for the Oak to Ninth/Brooklyn Basin Mixed Use Development Project) to add approval documents related to the Third DA Amendment; (d) Exhibit J (Local Hiring and Construction Job Training Benefits) to include the additional benefits required by the Third DA Amendment; and (e) Exhibit O (Form of the Assumption Agreement) to add the agreed upon form approved transfers to certain exempt transferees permitted by the Development Agreement.

Summary of New Community Benefits

The Project Applicant has committed to a substantial bundle of community benefits as part of the Third DA Amendment:

- 1. Affordable Housing.** The Project Applicant will provide \$9,000,000 towards the preservation and acquisition of affordable housing in the nearby neighborhoods of Chinatown, Eastlake and San Antonio.
- 2. Local Hire.** The Third DA Amendment requires a new 20 percent local hire goal for the additional 600 units (192,000 job hours), inclusive of 6 percent apprentice hours already required in the original Development Agreement for the market rate units (the affordable units are subject to the City's full local hire, apprenticeship and contracting programs). In addition, the Third DA Amendment will proportionately increase the local hiring requirement already provided in the original Development Agreement for the 600 additional units.
- 3. Job Training Assistance.** The Project Applicant will provide an additional \$350,000 to the West Oakland Jobs Resource Center to provide job training to residents in the Eastlake/Chinatown, Fruitvale, and Lower San Antonio neighborhoods.

These community benefits are described in more detail below.

Further Discussion of Community Benefits

The affordable housing funds, local hire, and job training community benefits are described in more detail below.

Affordable Housing

Affordable Housing Funds. The Third DA Amendment will obligate the Project Applicant to provide funds for affordable housing (Affordable Housing Funds) in the amount of \$9,000,000, which is based on a contribution of \$15,000 per each of the 600 additional units. The Affordable Housing Funds shall be paid as follows: (a) \$4,000,000 shall be paid in cash on the date that is 18 months after the effective date of the Third DA Amendment, and (b) the balance shall be paid on a pro rata basis (\$8,333.33 per each of the 600 additional units) concurrently with payment of the City Development Fees paid upon issuance of the building permit for the construction of such 600 additional units. If less than 600 additional units are developed, the rest of the Affordable Housing Funds shall be due upon issuance of the building permit for construction of the last development site.

The purpose of the Affordable Housing Funds is to acquire and preserve or rehabilitate affordable housing within the Chinatown, Eastlake and San Antonio neighborhoods within certain parameters, including:

- at least 90 percent of the Affordable Housing Funds must be expended to acquire and preserve or rehabilitate existing rental housing units in the designated area; and
- the overhead costs and developer fees charged by such developers or organizations from Affordable Housing Funds may not exceed 10 percent for each project; and
- the acquisition and preservation or rehabilitation of mixed-use (residential and commercial uses) affordable housing projects shall be a permitted use of the Affordable Housing Funds, if the square footage of the commercial uses is not more than 35 percent of the aggregate of the residential and commercial square footage of such project.

This contribution of \$9,000,000 for affordable housing is in addition to the affordable housing impact fees the Developer will be required to pay for the additional 600 affordable units.

Affordable Housing Term Sheet. To implement the use of the Affordable Housing Funds, the Project Applicant, the City, and the Community Coalition (as defined below) negotiated the Brooklyn Basin Affordable Housing Fund Implementation Term Sheet, attached to this report as **Attachment 5** (the Affordable Housing Term Sheet). A community coalition was formed as part of the original Development Agreement process and in 2006, the City entered into a Cooperation Agreement with the Oak to Ninth Community Benefits Coalition concurrently with the original Development Agreement. At that time, the coalition was comprised of East Bay Asian Youth Center (EBAYC), Asian Pacific Environmental Network (APEN), Oakland Community Organizations, and Urban Strategies Council. However, more recently only APEN and EBAYC have been active in the discussions and are jointly referred to as the “Community Coalition.”

The Affordable Housing Term Sheet describes a process by which the Oakland Community Land Trust, a California nonprofit public benefit corporation (OakCLT), in partnership with the Community Coalition, will receive and use the Affordable Housing Funds to acquire and preserve affordable housing in the Chinatown, Eastlake and San Antonio neighborhoods. Incorporated as a 501(c)(3) nonprofit organization in 2009, OakCLT has more than a decade of experience expanding and preserving housing for communities of color and low-income residents in Oakland.

Key elements of the Affordable Housing Term Sheet include:

- The Community Coalition and OakCLT will enter into an agreement pursuant to the Affordable Housing Term Sheet;
- The Affordable Housing Funds will be deposited into an escrow account subject to an escrow agreement between the City, the Community Coalition and the escrow holder regarding release of the funds to OakCLT;
- OakCLT will use the funds consistent with the purposes outlined in the Third DA Amendment and the Affordable Housing Term Sheet to acquire and preserve affordable housing in the designated areas;
- If OakCLT does not use of the Affordable Housing Funds in a timely manner, or uses the funds for purposes other than the intended purpose, the funds will revert the City's Affordable Housing Trust Fund;
- City contracting requirements are required for any project funded in whole or in part by the Affordable Housing Funds, including the Local and Small Local Business Enterprise Program, Living Wage Ordinance, Equal Benefits Ordinance, Local Employment Program for construction employment, and the Apprenticeship Program for construction employment; and
- OakCLT will be required to provide annual written reports on the use of the Affordable Housing Funds to the City and the Community Coalition, each of which shall have the right to audit OakCLT's use of the funds.

Local Hire

Local Hiring. The Third DA Amendment will proportionately increase the local hiring requirement provided in the original Development Agreement for the 600 additional units. For more detail see Exhibit J to the Third DA Amendment included in **Attachment 4**.

New Local Hire Goals. The Third DA Amendment will also require a new, good faith Local Hire Goal, to create a number of Qualified 2022 Construction Hours equal to 20 percent of the construction hours for each parcel, subject to a project-wide maximum of 192,000 hours. "Qualified 2022 Construction Hours" means all construction job hours, not just apprentice hours as in the existing local hiring program, as described in more detail in Exhibit J to the Third DA Amendment, included in **Attachment 4**.

Additional Funding for Job Training

The original Development Agreement required \$1,650,000 in job training assistance payment to the Youth Employment Partnership, Cypress/Mandela, Allen Temple Training Center, and Men

of Valor as well as other job training providers to be determined to serve residents in the Eastlake/Chinatown, Fruitvale and Lower San Antonio neighborhoods.

The Third DA Amendment requires the Developer to provide an additional \$350,000 funding for job training assistance; the Third DA Amendment requires the Developer to provide \$350,000 for the West Oakland Jobs Resource Center to provide job training for residents in the Eastlake/Chinatown, Fruitvale, and Lower San Antonio neighborhoods. It also adds the Rising Sun Center for Opportunity to the list of programs eligible for the original job training funds.

For more detail see Exhibit J to the Third DA Amendment included in **Attachment 4**.

Impact Fees

In addition to the fees that were required in the original Development Agreement, the Third DA Amendment requires payment of Affordable Housing Impact Fees imposed pursuant to Oakland Municipal Code Chapter 15.72 and Transportation and Capital Improvements Impact Fees imposed pursuant to Oakland Municipal Code Chapter 15.74 with respect to the 600 additional units. The Development Agreement for the original 3,100 units was executed prior to the adoption of the Affordable Housing Impact Fees, and the market rate units were not originally subject to those fees.

GENERAL PLAN ANALYSIS

The Brooklyn Basin Project site is located in the Planned Waterfront Development-4 (PWD-4) Estuary Policy Plan (EPP) land use designation (the Estuary Policy Plan is the applicable General Plan Land Use Element for the area that includes Brooklyn Basin). The intent of the PWD-4 land use designation is to “provide for the transition of underutilized industrial land to public parks and open space, commercial/retail, multifamily residential, cultural and civic uses. Improve public access to the waterfront by providing additional public parks and open space areas and a waterfront trail.” In terms of desired character, future development should “create a new mixed-use residential, commercial/retail, recreational neighborhood in the areas south of the Embarcadero. New parks and open space areas will provide public access to the Estuary and will continue the series of waterfront parks and the San Francisco Bay Trail. Civic and cultural uses may be incorporated into the development. Two existing marinas will be renovated to enhance boating and marine-related uses in the area.”

The maximum allowed intensity is currently 50 residential units per gross acre over the entire 64.2-acre planning area included in the PWD-4 land use classification, and approximately 200,000 square feet of commercial development.

The proposed increase in residential units requires that the Estuary Policy Plan be amended to permit a higher density of residential units than currently allowed in this zoning district. The applicant is proposing to increase the density in the PWD-4 land use classification from 50 to 57.63 dwelling units per gross acre. With these amendments, the Project’s applicable General Plan designation would permit an increase in the total number of units allowed on the Project site

from 3,100 to a total of 3,700 units (an approximately 19 percent increase from the currently allowed residential units).

Policy A3 of the General Plan Land Use and Transportation Element (LUTE) states that the City may amend its General Plan, if deemed to be in the public interest, up to four times per year per mandatory element, subject to specific findings including: a) how the amendment advances General Plan implementation; b) how it is consistent with the policies in the LUTE; c) any inconsistencies that would need to be reconciled; and d) examination of citywide impacts to determine if the amendment is contrary to achievement of citywide goals. The Amendment to the PWD-4 residential density standard is consistent with and will further advance the Oakland General Plan including the Estuary Policy Plan.

ZONING ANALYSIS

The Project Site is located within the Oak to Ninth Zoning District (D-OTN Zone). The intent of the D-OTN Zone is to provide mid-rise and high-rise housing opportunities together with ground-floor retail and commercial uses. Future development is to be set back from the waterfront and address compatibility between residential and nonresidential uses and reflect a variety of housing and business types. The D-OTN Zone incorporates, by reference, regulations from the site's former zoning designation as Planned Waterfront District-4 (PWD-4). The D-OTN zoning regulations currently allow for development of up to 3,100 residential units; the proposed Zoning Amendment would allow for up to 3,700 residential units and reduce parking requirements, to coincide with the proposed changes to the project and align with the City's goals of increasing delivery of housing and reducing reliance on automobiles (and associated parking) for transportation.

ZONING AND DESIGN RELATED ISSUES

The Project Modifications include four groups of physical changes to the planned project: the addition of 600 units within the approved project envelope, the relocation of a tower from Phase 2 to Parcel M (potentially increasing density of towers in Phase 4), a reduction in the number of required parking spaces and the addition of a water taxi docking facility and publicly accessible water launch at the northeastern waterfront along Township Commons Park. Relocation of a tower would intensify towers in the northwest portion of Brooklyn Basin, near Channel Park and the Embarcadero, and adjacent to the Lands of Silveira property (commonly referred to as the "Fifth Avenue community" and located northwest of Fifth Avenue).

Zoning Amendment

The Project Modifications require Zoning Code text amendments to increase the permissible residential density and alter the parking requirements to match the downtown off-street parking provisions. To approve these amendments, the City needs to consider whether the proposed changes to the zoning are in the public interest.

The proposed zoning amendments allow the City to maximize multifamily housing by expanding density in an area the City has found appropriate for residential development and relaxing the parking requirements. In light of the state's housing crisis, which is particularly acute in the Bay Area, the public interest is best serviced by allowing additional units within the same development

envelope the City has already found appropriate in terms of bulk and height. Staff is supportive of the proposed parking amendment.

Planned Unit Development (PUD) Permit

The Project Modifications requires an amendment to a component of the adopted Planned Unit Development (PUD) to permit the construction of an additional 600 units and a publicly accessible small watercraft launch and to amend Conditions of Approval 18 and 19 regarding the signalization of Embarcadero and Oak Street. The amendments to the Approved Project's adopted PUD are appropriate with respect to the location, design and size of the proposed additional residential units and are thus consistent with the Estuary Policy Plan and applicable zoning.

The Project Modifications would increase the number of residential units permitted in the Brooklyn Basin planning area, providing additional residential opportunities in an area where the City desires sufficient residential density to create safe, livable communities. The Project Modifications would be contained within the same development envelope that the City approved in 2009 (see referenced legislation above) as part of the Approved Project and will be adequately served by existing or proposed facilities and services.

The Project Modifications will not require excessive earth moving or destroy desirable natural features, will not be visually obtrusive and will harmonize with surrounding areas and facilities, will not substantially harm major views for surrounding residents, and will provide sufficient buffering in the form of spatial separation, vegetation, topographic features, or other devices. Staff is supportive of the Project Modifications. The amendments to Conditions of Approval 18 and 19 of the Approved Project are appropriate because the previously required signalization of Embarcadero and Oak Street has currently become infeasible due to changed circumstances in the intersection configuration and requirements of an independent agency (CPUC). The City has determined that an in-lieu, fair share payment of the cost of the signalization is appropriate at this time.

Section 17.138.060 Factors for Consideration Determining Whether to Approve the Third DA Amendment

In reviewing an application for a development agreement, the City Planning Commission and the City Council shall give consideration to the status and adequacy of pertinent plans; any uncertainty or issues about the affected area which may suggest the retention of flexibility; the traffic, parking, public service, visual, and other impacts of the proposed development project upon abutting properties and the surrounding area; the provisions included, if any, for reservation, dedication, or improvement of land for public purposes or accessible to the public; the type and magnitude of the project's economic benefits to Oakland, and of its contribution if any toward a meeting of housing needs; and to any other comparable, relevant factor.

In reviewing the above list of Community Benefits in the context of the Project Modifications, it is staff's and the Planning Commission's recommendation that the Third DA Amendment should be approved by the City Council when weighing all of the relevant factors. The Project Applicant's substantial contributions to affordable housing, job training, and other community benefits will help

serve a substantial public need, while the Project Applicant also provides more housing units to the City with minimal impact on the City's environment as set forth in the SEIR.

KEY ISSUES AND IMPACTS

As described above, the Project Applicant has revised Project Modifications to address issues raised at the Design Review Committee hearing along with comments and concerns raised by City staff previously. Initially, staff was concerned about the increase in marina slips proposed in 2021, but the Project Applicant has responded by proposing a publicly accessible water launch and water taxi and retaining the "public" nature of the Township Commons Park. Staff supports the revised Project Modifications and the proposed design.

Public Access to Estuary

To promote direct access to the Estuary, the Project Modifications propose a publicly accessible dock for the launching of small watercraft (canoes, kayaks, and paddleboards). Access to the dock would be provided via an ADA-accessible gangway located near the 9th Avenue Terminal Building, with access provided from Township Commons Park.

Additionally, the Project Modifications accommodate an Oakland-based stop for an existing water taxi and small-scale ferry service, initially in a limited capacity, available to the residents of the Brooklyn Basin community and the public. This service is already operating in the Bay at other locations such as the Berkeley Marina and the Ferry Building in San Francisco and is proposed to provide an additional commute option, consistent with providing multi-modal transit opportunities, which is one of the overarching goals of Brooklyn Basin.

In providing expanded service to Brooklyn Basin, the water taxi service would operate during the early morning and late afternoon commute hours 1 or 2 days per week, with additional days added if demand increases. From Brooklyn Basin, the departure location would be from the publicly accessible dock, configured with the capability of accommodating water taxi on- and off- boarding of passengers. The water taxi is anticipated to provide service within the Estuary (for example to Alameda), to San Francisco Ferry building's Gate B and other locations within the Bay.

FISCAL IMPACT

The proposed amendment to the Development Agreement includes the provision of \$9,000,000 towards the preservation and acquisition of affordable housing. As explained above, the attached Affordable Housing Term Sheet describes a process by which OakCLT, in partnership with the Community Coalition, will receive and use the Affordable Housing Funds to acquire and preserve affordable housing in the Chinatown, Eastlake and San Antonio neighborhoods. While the affordable housing funds are not projected to come directly to the City, the Affordable Housing Term Sheet includes a provision that should the OakCLT not spend the funds in a timely manner or for the intended purpose, the funds will revert to the City's Affordable Housing Trust Fund. In that case, the funds would be deposited to Fund 1870 - Affordable Housing Trust Fund, Organization 89929 - Housing Development, Project Code TBD.

Additionally, the proposed 600 residential units would be subject to affordable housing and other impact fees (to which the currently approved residential units are not subject) - these funds will be due and payable as those 600 units start and complete construction, with revenue budgeted through the City's Budget process.

PUBLIC OUTREACH / INTEREST

The Project Modifications have been reviewed by the public at multiple public hearings, including Scoping Hearings for the EIR in October and November 2018, review by the Parks Recreation and Advisory Committee (PRAC) in September 2021, and two reviews by the Design Review Committee (DRC) on September 22, 2021, and again on March 23, 2022. In general, there has been public support for the additional housing units and accompanying benefits. Based on opposition to the previously proposed marina expansion, the project sponsor has withdrawn this component of the Project Modifications.

In addition, the Developer's community benefit commitment of \$9,000,000 for affordable housing was negotiated in close collaboration with the Community Coalition, which is comprised of several local, community-based organizations including EBAYC and APEN. The Community Coalition supports the proposal.

COORDINATION

The Bureau of Planning collaborated with number of city departments on the project including the City Attorney, Economic and Workforce Development, and an interdepartmental team for review of the project components and environmental analysis (including various divisions in the Public Works Department and OakDOT).

In particular, the negotiation and preparation of the Third DA Amendment and its community benefits was the result of extensive cross-departmental coordination. The effort was a partnership with the Economic and Workforce Development Department (EWDD) in close coordination with the City Attorney's Office, the Housing and Community Development Department (HCD), and the Department of Workplace and Employment Standards (DWES).

PAST PERFORMANCE, EVALUATION AND FOLLOW-UP

The Approved Project is subject to construction permits and a Development Agreement, both of which include regular inspections and routine compliance reviews. The Approved Project has been and is currently in compliance with all construction permits and with the terms of the Development Agreement.

SUSTAINABLE OPPORTUNITIES

Economic:

The Project Applicant proposes increasing the number of housing units at Brooklyn Basin by 600. Additionally, they have agreed to contribute \$9 million dollars towards the preservation and acquisition of affordable housing in the nearby neighborhoods of Chinatown, Eastlake and San Antonio. Both components of the project support Oakland's goals of delivering more housing, particularly affordable housing. In addition, the increase in residential development increases collection of impact fees and property taxes in Oakland.

Environmental:

The proposed project increases residential development in an urbanized area, well served by transit and employment opportunities, without resulting in any new or increases environmental impacts as noted in the environmental analysis.

Race & Equity:

While the Project Modifications specifically include development of additional market-rate residential units, the proposed amendment to the Development Agreement includes \$9 million towards delivery of affordable units in Oakland and increased local hire goals and funding for job training.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

In accordance with Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163, the City examined whether the proposed Project Modifications would be "substantial changes" that trigger the need for a major modification to the previously certified 2009 EIR due to a new significant impact or a substantial increase in the severity of previously identified significant impacts. An Initial Study was not prepared for the Project, as authorized under Section 15060(d) of the CEQA Guidelines. The City, as the Lead Agency, determined that a Supplemental Environmental Impact Report (SEIR) for the Project would be required. Staff published a Notice of Preparation (NOP) of an EIR on September 21, 2018.

As stated above, the "project" for CEQA purposes, as analyzed in the SEIR, consists of the proposed Project Modifications to the approved Brooklyn Basin Project (originally known as the Oak to Ninth Project). The City published the Draft Supplemental EIR in September 2020. Following a public comment period on the Draft SEIR, the environmental consultant prepared a Response to Comments/Final SEIR document that was published by the City on December 29, 2022. The Draft SEIR, together with the comments, responses to comments, and other information included in this Response to Comments document constitutes the Final SEIR, consistent with State CEQA Guidelines Section 15132.

The following environmental topics are addressed in detail in the SEIR:

- Land Use, Plans, and Policies
- Transportation and Circulation
- Air Quality
- Hydrology and Water Quality
- Cultural and Tribal Cultural Resources
- Geology and Soils
- Noise and Vibration
- Hazards and Hazardous Materials
- Biological Resources
- Population and Housing
- Aesthetics, Shadow, and Wind
- Public Services and Recreation
- Utilities and Service System
- Greenhouse Gas Emissions

No Potentially Significant Impacts Identified in the SEIR

The SEIR, at **Attachment 1**, did not identify any new or more severe potentially significant or significant and unavoidable impacts than analyzed in the previous Oak-to-Ninth Street Project EIR. None of the additional information provided in the Project Modifications or the Draft SEIR could result in changes to the environmental analysis in the Draft SEIR under CEQA. The City decided to include additional information in the Response to Comments document for informational purposes for the public and decision-makers for the project. Certain updates included in the Final SEIR address topics raised by the public that are comprehensively addressed in Chapter IV, Consolidated Responses, of the Final SEIR document. None of the new information is considered “significant new information” defined in State CEQA Guidelines Section 15088.5, and therefore recirculation of any part of this SEIR is not required.

Project Alternatives

Chapter 5 of the SEIR includes the analysis of three alternatives to the Proposed Project that meet the requirements of CEQA to include a reasonable range of alternatives to the Project that would feasibly attain most of the Project’s basic objectives and avoid or substantially lessen many of the Project’s significant environmental effects. The CEQA alternatives analyzed in Chapter 5 include:

Alternative 1, No Project: The No Project Alternative includes the existing conditions at the time the notice of preparation is published as well as the events or actions that would reasonably be expected to occur in the foreseeable future including the Approved Project. Development on the Project site would proceed under existing approvals and would be subject to the 2009 EIR mitigation measures.

Alternative 2, No Marina Expansion: Under this alternative, the marina would be developed according to existing approvals resulting in no more than 167 slips on the Project site. The Project site would not expand by approximately 10 acres of water surface and would not accommodate the expanded marina or a water taxi service. The Approved Project would be developed along with other components of the Project Modifications, including the proposed additional residential units, updated parking ratios for Phases III and IV, and proposed tower relocation from Phase II to either Phase III or IV.

Alternative 3, No Tower Relocation: Under this alternative, the proposed new tower locations on Parcels M and L would not be added to the Project Modifications, there would be no potential for two towers on Parcel M, and there would be no increase in building mass in Phase III or IV. The Approved Project would be developed along with all other components of the Project Modifications.

The set of selected alternatives above are considered to reflect a “reasonable range” of feasible alternatives in that they include reduced scenarios that lessen and/or avoid significant and less than significant effects of the Project Modifications.

The SEIR concluded that the No Marina Expansion Alternative is considered the environmentally superior alternative as it would avoid and/or substantially reduce the potential for new Biological Resources impacts of the Project Modifications to the greatest extent compared to each of the other alternatives, and still meet some of the basic objectives of the Project Modifications.

Comments on the Draft SEIR

The public review and comment period for the Draft SEIR, began on June 11, 2021, and ended at 5:00 p.m. on August 10, 2021. In total, there were 44 comments received, including from public agencies (5), organizations (5), and members of the public (34), on the Draft SEIR during the comment period. The Final SEIR provides responses to all comments as well as to the 12 public speakers and the seven Commissioners at the Planning Commission held on July 21, 2021. All public noticing was conducted according to the requirements of CEQA and City of Oakland Municipal Code (OMC) Title 17 and is included in the public record for reference. Examples of recipients include neighboring properties, regulatory agencies such as BCDC, and community-based organizations such as the Measure DD Coalition.

CEQA requires the analysis of a proposed project’s potentially significant impacts on the environment. Specifically, “a significant effect on the environmental is defined as a substantial adverse change in the physical conditions which exist in the area affected by the proposed project (State CEQA Guidelines Section 15002(g)). Several comments received during the public comment period for the Draft SEIR raised concerns that are non-CEQA related, even as part of discussion of environmental topics. However, because the comments were submitted during the public review period for the Draft SEIR, they were addressed as part of the Response to Comments/Final SEIR document. Furthermore, since the project applicant proposed revisions after the Draft SEIR was published for public review and comment, the City received numerous public comments that address aspects of the Project Modifications that are no longer proposed and aspects of the Draft SEIR analysis that are no longer relevant. Many comments received on the Draft SEIR address topics that pertain to aspects of the Approved Project analyzed in the 2009 EIR, existing conditions, or other subjects that are outside the purview of the Draft SEIR or modifications thereto addressed in this document.

Consistent with CEQA guidance, the Draft SEIR is required to evaluate only the changes in the project, circumstances, or new information that could rise to new significant impacts or substantially more severe significant impacts than were analyzed in the 2009 EIR for the Approved Project. Therefore, the Draft SEIR analysis compares the Project Modification to the

Approved Project to determine if the modifications would create any new or substantially more severe impacts on the environment. Pursuant to the CEQA Guidelines, due to the limited scope of the analysis in the SEIR, the scope of the responses required on the Draft SEIR are similarly limited to portions of the Approved Project that are proposed for revision.

Publication and Distribution of the SEIR

The Draft SEIR was made available for public review on CEQAnet and the City's website (as noted below) on June 11, 2021. Response to Comments/Final SEIR document was made available for public review on December 29, 2022. The Notice of Availability for the Final SEIR was mailed to property owners within 300 feet of the Project site. Interested Parties and State and Local Agencies were also provided notice. At that time, consistent with the Executive Order N-80-20, rather than providing hard copy for viewing, the Final SEIR was uploaded to the State Clearinghouse CEQAnet portal (<https://ceqanet.opr.ca.gov/>).

The SEIR includes the Standard Conditions of Approval (SCA) and Mitigation Monitoring and Reporting Program (SCAMMRP) prepared for the Brooklyn Basin Marina Expansion Project, which was revised in the Response to Comments/Final SEIR (Revised Project Modifications). Some of the applicable mitigation measures are from the Brooklyn Basin Project Environmental Impact Report (2009 EIR) that the City certified on January 20, 2009.

The Final SEIR and its appendices may also be viewed or downloaded from the City's website at: [City of Oakland | Current Environmental Review \(CEQA/EIR\) Documents... \(oaklandca.gov\)](#)-- located under "Brooklyn Basin (formerly Oak-to-Ninth)" heading.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council adopt the following resolutions and ordinances:

1. A Resolution certifying the Brooklyn Basin Marina Expansion Project Supplemental Environmental Impact Report (SEIR) and making certain findings concerning environmental impacts, mitigation measures, and alternatives, and adopting a Mitigation Monitoring and Reporting Program (MMRP), all in accordance with the California Environmental Quality Act;
2. A Resolution approving text amendment to the General Plan Estuary Policy Plan to increase the maximum average density in the Estuary Policy Plan Planned Waterfront Development-4 (PWD-4) land use designation in connection with the Brooklyn Basin (formerly Oak-to Ninth Avenue Mixed Use Development) Project; and Making Appropriate California Environmental Quality Act Findings;
3. An Ordinance approving zoning text amendment to increase the maximum average density and modify the parking requirements in the Oak to Ninth (D-OTN) Zone; and Making Appropriate California Environmental Quality Act Findings;
4. An Ordinance authorizing the City Administrator to execute a Third Amendment to the Development Agreement for the Brooklyn Basin (formerly the Oak-To-Ninth Avenue Mixed

- Use Development) Project between the City of Oakland and Zarsion-OHP I, LLC; And Making Appropriate California Environmental Quality Act Findings; and
5. A Resolution revising the Preliminary Development Plan (PDP) for the Brooklyn Basin (Formerly the Oak-to-Ninth Mixed Use Development) Project; And Making Appropriate California Environmental Quality Act Findings.

For questions regarding this report, please contact Christopher Tan, Planner 4, at (510) 238-3079

Respectfully submitted,



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Attachments (7):

1. Brooklyn Basin Marina Expansion Project Supplemental Environmental Impact Report (Provided via Web Link below:)
 - a. [City of Oakland | Current Environmental Review \(CEQA/EIR\) Documents... \(oaklandca.gov\)](https://oaklandca.gov)-- located under "Brooklyn Basin (formerly Oak-to-Ninth)" heading.
2. Proposed General Plan Amendment
3. Proposed Zoning Text Amendment
4. Third Amendment to the Development Agreement
5. Affordable Housing Term Sheet
6. Proposed Revisions to:
 - a. Planned Unit Development
 - b. Conditions of Approval
7. Planning Commission Staff Report, dated January 11, 2023