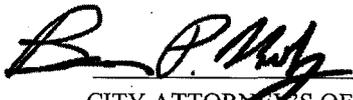


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OFFICE OF THE CITY CLERK  
OAKLAND

APPROVED AS TO FORM AND LEGALITY

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

RESOLUTION NO. 89707 C.M.S.

**A RESOLUTION CERTIFYING THE BROOKLYN BASIN MARINA EXPANSION PROJECT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT AND MAKING CERTAIN FINDINGS CONCERNING ENVIRONMENTAL IMPACTS, MITIGATION MEASURES, AND ALTERNATIVES, AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM, ALL IN ACCORDANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

**WHEREAS**, the City of Oakland (“City”) has previously approved a development now known as the Brooklyn Basin (and formerly known as the Oak-to-Ninth Avenue Mixed Use Development) Project on approximately 64.2 acres of land area (and 7.95 acres of water surface area) along the Oakland Estuary, which included up to 3,100 residential units, up to approximately 200,000 square feet (“sf”) of commercial space, a minimum of 3,534 parking spaces, approximately 31 acres of open space, two renovated marinas entailing dredging activities of approximately 20,000 cubic yards of material and up to 167 boat slips, as well as shoreline improvements, new roads, and other infrastructure and improvements (the “Approved Project”);

**WHEREAS**, the Approved Project was analyzed under the certified 2009 Brooklyn Basin Environmental Impact Report (“2009 EIR”), which is comprised of the following documents: Oak to Ninth Avenue Project Draft EIR, August 2005; Oak to Ninth Avenue Project, 2006 Addendum #1 to the Certified Environmental Impact Report, June 7, 2006; Oak to Ninth Avenue Project Final EIR, August 2006; Revisions to the Analysis in the Oak to Ninth Project EIR (SCH. No. 2004062013) Prepared to Comply with the Alameda County Superior Court Order Case No. RG06-280345 and Case No. RG06-280471, November 2008; Oak to Ninth Avenue Project Responses to Comments on the Revisions, December 2008; and City of Oakland Resolution No. 81769 C.M.S., approved January 20, 2009;

**WHEREAS**, because the 2009 EIR analyzing the Approved Project has been certified, further environmental review for modifications to the Approved Project is prohibited unless any of the events specified in Public Resources Code section 21166, as further clarified by California Environmental Quality Act (“CEQA”) Guidelines sections 15162 and 15163, has occurred;

**WHEREAS**, in January 2018, ZARSION-OHP I, LLC (“Developer”) submitted applications to modify the Approved Project (the “Project Modifications”), as set forth in the January 11, 2023 Planning Commission Staff Report;

**WHEREAS**, pursuant to CEQA and the CEQA Guidelines, the City determined that a Supplemental Environmental Impact Report (“SEIR”) would be prepared for the Project Modifications;

**WHEREAS**, on September 21, 2018, in accordance with CEQA, City staff issued a Notice of Preparation (“NOP”) stating the City's intent to prepare a SEIR for the Project Modifications;

**WHEREAS**, on June 11, 2021, in accordance with CEQA, City staff circulated the Draft SEIR for a 60-day public comment period ending on August 10, 2021;

**WHEREAS**, following circulation of the Draft SEIR, and in response to comments received during the public process, the Developer elected to pursue revised modifications to the Approved Project (“Revised Project Modifications”), as set forth in the January 11, 2023 Planning Commission Staff Report and the Staff Report before the City Council, which Revised Project Modifications were encompassed within the analysis of the Draft SEIR;

**WHEREAS**, the City received written and oral comments on the Draft SEIR to which the City prepared responses to comments and, where necessary, made minor clarifications to the Draft SEIR;

**WHEREAS**, on December 29, 2022, the responses to comments, changes to the Draft SEIR, and additional information, including updates to the Draft SEIR analysis to address the Revised Project Modifications, were published in a Response to Comments/Final SEIR (“Final SEIR”) in accordance with CEQA;

**WHEREAS**, on January 11, 2023, the City Planning Commission, after conducting a duly noticed public hearing, and hearing all qualified and interested persons and receiving and considering all relevant evidence, recommended that the City Council certify the SEIR and approve the Revised Project Modifications; and

**WHEREAS**, on May 2, 2023, the City Council, conducted a duly noticed public hearing, heard all qualified and interested persons, and received and considered all relevant evidence on the SEIR and the Revised Project Modifications.

**NOW, THEREFORE, BE IT RESOLVED**, that the recitals set forth above are true and correct and are an integral part of this Resolution.

**FURTHER RESOLVED**, in accordance with Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163, the City examined whether the Revised Project Modifications would result in “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 Revised Project Modifications would be required. Staff published a Notice of Preparation (NOP) of an EIR on September 21, 2018.

As further set forth in this Resolution and the attached findings, the SEIR 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 Revised Project Modifications or the Draft SEIR that 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 Modifications. 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 the SEIR is not required.

**FURTHER RESOLVED**, that the City Council certifies that the SEIR has been completed in compliance with CEQA.

**FURTHER RESOLVED**, that the City Council certifies that the SEIR is adequate to support approval of the Revised Project Modifications and all actions in connection with the approval of the Revised Project Modifications, as well as each component and phase of the Revised Project Modifications, any variant described in the SEIR, and any minor modifications described in the SEIR, and that the SEIR is adequate for each entitlement or approval, and any future discretionary approvals, required for construction and operation of the Revised Project Modifications.

**FURTHER RESOLVED**, that the City Council, as the final decision-making body for the lead agency, has independently reviewed and considered the information contained in the record and the SEIR prior to certifying the SEIR and approving the Revised Project Modifications and/or any aspect thereof.

**FURTHER RESOLVED**, that this Resolution, and the SEIR Certification described above, is based, in part, on the findings set forth above, the CEQA Findings related to approval of the Revised Project Modifications, including those as to impacts, mitigation measures, and project alternatives, attached hereto as **Exhibit A**, and incorporated by this reference, as well as the "General Findings" related to approval of the Revised Project Modifications, and the other resolutions and ordinances related to the Revised Project Modifications, each incorporated by this reference.

**FURTHER RESOLVED**, that the CEQA Findings and Mitigation Monitoring and Reporting Program ("SCAMMRP") referenced in the abovementioned CEQA Findings, is adopted by the City Council, which SCAMMRP is determined to satisfy the requirements of CEQA.

**FURTHER RESOLVED**, that City Staff is directed to cause to be filed a Notice of Determination ("NOD") for the SEIR with the appropriate agencies.

**FURTHER RESOLVED**, that City staff is directed to undertake the clerical task of amending Exhibit A, if necessary, to conform to this Resolution.

IN COUNCIL, OAKLAND, CALIFORNIA,

MAY 2 2023

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, ~~RAMACHANDRAN~~ RAMACHANDRAN, REID, AND  
PRESIDENT FORTUNATO BAS

NOES -

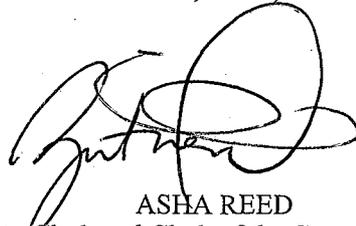
ABSENT -

ABSTENTION -

*1 Kaplan*

*-7*

ATTEST:



ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California

## EXHIBIT A

### Findings Made Pursuant to the California Environmental Quality Act (CEQA)

Certification of the SEIR and CEQA Findings for the Approval of the Brooklyn Basin Project

#### I. INTRODUCTION

1. These findings are made pursuant to the California Environmental Quality Act (“CEQA”) (Pub. Res. Code section 21000 et seq.) and the CEQA Guidelines (Cal. Code Regs. title 14, section 15000 et seq.) by the City of Oakland (“City”) City Council in connection with the Supplemental Environmental Impact Report (the “SEIR”) prepared for the Brooklyn Basin Marina Expansion Project (the “Project” or the “Revised Project Modifications”), SCH # 2004062013.

2. These CEQA findings are attached and incorporated by reference into each and every staff report, resolution, and ordinance associated with approval of the Project. The Conditions of Approval, which includes the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (“SCAMMRP”) are attached as Attachment A.

3. These findings are based on substantial evidence in the entire administrative record and references to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the findings.

#### II. PROJECT DESCRIPTION

4. In 2009, the City approved a mixed-use development, subdivided into five phases, on approximately 64.2 acres of land area (and 7.95 acres of water surface area) along the Oakland Estuary, which included up to 3,100 residential units, up to approximately 200,000 square feet (“sf”) of commercial space, a minimum of 3,534 parking spaces, approximately 31 acres of open space, two renovated marinas entailing dredging activities of approximately 20,000 cubic yards of material and up to 167 boat slips, as well as shoreline improvements, new roads, and other infrastructure and improvements (collectively, the “Approved Project”). The Approved Project was approved for development on 12 development parcels with building heights generally approved to range from 6 to 8 stories (up to 86 feet), with five high-rise tower elements of up to 24 stories (240 feet) on five parcels—A, H, J, K, and M. The Approved Project included a new General Plan designation of “Estuary Policy Plan Planned Waterfront Development 4” (“PWD-4”), new zoning district of “Planned Waterfront Zoning District 4” (“PWD-4”), and a Preliminary Development Plan (“PDP”) to establish specific regulations to facilitate the development of the integrated mixed-use project as well as a development agreement (“DA”) and other entitlements.

5. The Revised Project Modifications, which was analyzed within the SEIR, is a modification of the Approved Project analyzed under the 2009 EIR (discussed below). The Revised Project Modifications includes a residential density increase of up to 600 units (for a Project site total of up to 3,700 units), the potential relocation (and shift in timing of construction) of one of the five high-rise tower elements currently designated for either Parcel H or J (from Phase II) to Parcel M (to Phase IV)—potentially resulting in two towers on Parcel M, an update to the parking ratios applicable to the Project site to current zoning code requirements in other zoning

districts—which would reduce required parking spaces from 1.0 spaces per residential unit to 0.75 spaces per residential unit, and a publicly accessible dock for public access to launch small watercraft and which may accommodate an existing water taxi/shuttle service currently operating on the San Francisco Bay (the “Publicly Accessible Small Watercraft Launch Dock”). The Project site is materially the same as the Approved Project site in that it consists of the same approximately 64.2 acres of land area and only increases the water surface area of the Approved Project Site by approximately 3% (or approximately 0.25 acres).

6. The Project includes a General Plan text amendment, associated zoning code text amendment, and approved PDP amendment to increase the Project site’s allowable residential density and to make other changes to accommodate the Project (including an amendment to Conditions of Approval 18 and 19 regarding the signalization of Embarcadero and Oak Streets) as well as an amendment to the approved DA between the Project applicant and the City and other permits/approvals from the City required to implement the Project.

7. The Draft SEIR also presented and analyzed an expansion of the approved marina infrastructure and operations including increasing the number of boat slips by 158 (for a Project site total of up to 325 boat slips) and the addition of approximately 10 acres (or approximately 125%) of water surface area (for a Project site total of 17.95 acres of water surface area) to accommodate the expanded marina (collectively, the “Marina Expansion”) as well as the potential relocation of one high-rise tower element to Parcel L (“Potential Parcel L Tower Relocation”). Notwithstanding the Draft SEIR analysis, the Marina Expansion, other than the Publicly Accessible Small Watercraft Launch Dock, and the Potential Parcel L Tower Relocation were withdrawn from the Project proposal by the applicant. The Project including the Marina Expansion and the Potential Parcel L Tower Relocation is sometimes hereinafter referred to as the “Project Modifications.”

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

8. The Approved Project was analyzed under the certified 2009 Brooklyn Basin EIR (“2009 EIR”), which is comprised of the following documents: Oak to Ninth Avenue Project Draft EIR, August 2005; Oak to Ninth Avenue Project, 2006 Addendum #1 to the Certified Environmental Impact Report, June 7, 2006; Oak to Ninth Avenue Project Final EIR, August 2006; Revisions to the Analysis in the Oak to Ninth Project EIR (SCH. No. 2004062013) Prepared to Comply with the Alameda County Superior Court Order Case No. RG06-280345 and Case No. RG06-280471, November 2008; Oak to Ninth Avenue Project Responses to Comments on the Revisions, December 2008; and City of Oakland Resolution No. 81769 C.M.S., approved January 20, 2009.

9. Because the 2009 EIR analyzing the Approved Project has been certified, further environmental review for modifications to the Approved Project is required only as specified in Public Resources Code section 21166, as further clarified by CEQA Guidelines sections 15162 and 15163.

10. Pursuant to CEQA and the CEQA Guidelines, the City determined that a SEIR would be prepared for modifications to the Approved Project. On September 21, 2018, the City published a Notice of Preparation (“NOP”) to prepare an SEIR for modifications to the Approved

Project, which was circulated to responsible agencies and interested groups and individuals for review and comment. A copy of the NOP and the comments thereon are included in Appendix A of the Draft SEIR. To obtain comments on the scope of the SEIR, the City Planning Commission held Scoping Meetings on October 17, 2018 and November 7, 2018. The NOP review period ended on November 13, 2018.

11. As a result of an evaluation of the potential environmental impacts of the modifications to the Approved Project, review of the 2009 EIR, the consultation with City staff and other agencies, and review of the comments received as part of the scoping process, the following environmental topics are addressed in detail as separate sections of the Draft 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 Systems; Greenhouse Gas Emissions. Other environmental topics including: Agricultural and Forestry Resources, Mineral Resources, and Wildfires were determined not to be directly relevant to the Project Modifications.

12. The City prepared a Draft SEIR to analyze the Project Modifications' potential to have a significant impact on the environment. The Draft SEIR was circulated for a 60-day public review period (from June 11, 2021 through August 10, 2021), which exceeded the legally required 45-day comment period. The City Planning Commission held a duly noticed public hearing on July 21, 2021 to obtain comments on the Draft SEIR.

13. The City held additional hearings to obtain input on the modifications to the Approved Project. The hearings held were by the following advisory bodies: the Parks and Recreation Advisory Commission held a hearing to obtain input on the modifications to the Approved Project on September 8, 2021 and the Planning Commission Design Review Committee held two hearings to obtain input on the modifications to the Approved Project on September 20, 2021 and March 23, 2022

14. Following circulation of the Draft SEIR, the Project Applicant elected to pursue the Revised Project Modifications, which revised the originally proposed Project Modifications to remove the Marina Expansion, other than the Publicly Accessible Small Watercraft Launch Dock, and the Potential Parcel L Tower Relocation.

15. The City received written and oral comments on the Draft SEIR. The City prepared responses to comments and, where necessary, made minor clarifications to the Draft SEIR. The responses to comments, changes to the Draft SEIR, and additional information, including updates to the Draft SEIR analysis to address the Revised Project Modifications, were published in a Response to Comments/Final SEIR ("Final SEIR") on December 30, 2022. The Draft SEIR, Final SEIR, and all appendices thereto constitute the "SEIR" referenced in these findings. The Final SEIR was made available on December 30, 2022, twelve (12) days before the duly noticed January 11, 2023 Planning Commission public hearing. The Notice of Availability and Release of the Final SEIR was distributed to those state and local agencies who commented on the NOP and Draft SEIR, posted at the Project site, mailed to property owners within 300 feet of the Project site, and mailed/emailed to individuals who have requested to specifically be notified of official City actions on the Project. Copies of the Draft SEIR and Final SEIR were also made available or distributed

to those state and local agencies who commented on the Draft SEIR, City officials including the Planning Commission, and for public review at the City offices and City's website. Pursuant to CEQA Guidelines, responses to public agency comments on the Draft SEIR have been published and made available to all commenting agencies at least 10 days prior to the public hearing to consider certification of the SEIR. The City Council has had the opportunity to review all comments and responses thereto prior to consideration and certification of the SEIR and prior to taking any action on the Project.

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

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

- a. The SEIR and all documents referenced in or relied upon by the SEIR.
- b. All information (including written evidence and testimony) provided by City staff to the City Planning Commission, and/or City Council relating to the SEIR, the approvals, and the Project.
- c. All information (including written evidence and testimony) presented to the City Planning Commission and/or City Council by the environmental consultant and sub-consultants who prepared the SEIR or incorporated into reports presented to the City Planning Commission and/or City Council.
- d. All information (including written evidence and testimony) presented to the City from other public agencies relating to the Project and the SEIR.
- e. All final applications, letters, testimony and presentations presented by the Project sponsor and its consultants to the City in connection with the Project.
- f. All information (including written evidence and testimony) presented at any City public hearing or City workshop related to the Project and the SEIR.
- g. For documentary and information purposes, all City-adopted land use plans and ordinances, including without limitation the general plan, specific plans and ordinances, together with environmental review documents, findings, mitigation monitoring programs and other documentation relevant to planned growth in the Project area.
- h. The Standard Conditions of Approval for the Project and Mitigation Monitoring and Reporting Program ("SCAMMRP") for the Project.
- i. All other documents composing the record pursuant to Public Resources Code section 21167.6(e).

17. The custodian of the documents and other materials that constitute the record of the proceedings upon which the City's decisions are based is the Deputy Director of the Bureau of Planning, Community and Economic Development Agency, or his/her designee. Such documents and other materials are located at 250 Frank H. Ogawa Plaza, Suite 2214, Oakland, California, 94612.

#### **V. CERTIFICATION OF THE SEIR**

18. In accordance with CEQA and the CEQA Guidelines, the City Council, after receiving a recommendation from the Planning Commission, certifies that the SEIR has been completed in compliance with CEQA. The City Council has independently reviewed and

considered the information contained in the record and the SEIR prior to certifying the SEIR and approving the Project or any aspect thereof. By these findings, the City Council confirms, ratifies, and adopts the findings and conclusions of the SEIR as supplemented and modified by these findings. The SEIR and these findings represent the independent judgment and analysis of the City and the City Council.

19. The City Council recognizes that the SEIR may contain clerical errors. The City Council reviewed the entirety of the SEIR and bases its determination on the substance of the information it contains.

20. The City Council certifies that the SEIR is adequate to support approval of the Project and all actions in connection with the approval of the Project, as well as each component and phase of the Project, any variant of the Project described in the SEIR, and any minor modifications to the Project described in the SEIR. The SEIR is adequate for each entitlement or approval, and any future discretionary approvals, required for construction and operation of the Project.

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

21. The City Council recognizes that the Final SEIR incorporates information obtained and produced after the Draft SEIR was completed, and that the Final SEIR contains additions, clarifications, and modifications to the Draft SEIR. The City Council has reviewed and considered the Final SEIR and all of this information. The new information added to the SEIR, including updates to the Draft SEIR analysis and revised mitigation measures to address the Revised Project Modifications, does not involve a new significant environmental impact, a substantial increase in the severity of an environmental impact, or a feasible mitigation measure or alternative considerably different from others previously analyzed that the project sponsor declines to adopt and that would clearly lessen the significant environmental impacts of the Project. No information indicates that the Draft SEIR was inadequate or conclusory or that the public was deprived of a meaningful opportunity to review and comment on the Draft SEIR or the Project. Thus, recirculation of the Draft SEIR is not required.

22. The City Council finds that the changes and modifications made to the SEIR after the Draft SEIR was circulated for public review and comment do not individually or collectively constitute significant new information within the meaning of Public Resources Code section 21092.1 or CEQA Guidelines section 15088.5.

#### **VII. STANDARD CONDITIONS OF APPROVAL AND MITIGATION MONITORING AND REPORTING PROGRAM**

23. Public Resources Code section 21081.6 and CEQA Guidelines section 15097 require the City to adopt a monitoring or reporting program to ensure compliance with measures that mitigate or avoid significant effects on the environment during Project implementation. The Mitigation Monitoring and Reporting Program ("SCAMMRP") is attached and incorporated by reference into the Planning Commission staff report prepared for the approval of the Project, is included in the conditions of approval for the Project, and is adopted by the City Council. The SCAMMRP satisfies the requirements of CEQA.

24. The standard conditions of approval (“SCA”) set forth in the SCAMMRP are specific and enforceable and capable of being fully implemented by the efforts of the City of Oakland, the Project applicant, and/or other identified public agencies of responsibility. As appropriate, some SCA define performance standards to ensure that no significant environmental impacts will result. The SCAMMRP adequately describes monitoring responsibility, reporting actions, compliance schedule, non-compliance sanctions, and verification of compliance in order to ensure that the Project complies with the adopted SCA.

25. The mitigation measures set forth in the SCAMMRP are specific and enforceable and are capable of being fully implemented by the City of Oakland, the Project applicant, and/or other identified public agencies of responsibility. As appropriate, some mitigation measures define performance standards to ensure no significant environmental impacts will result. The SCAMMRP 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.

26. The City Council will adopt and impose the feasible SCAs and mitigation measures as set forth in the SCAMMRP as enforceable conditions of approval. All potentially significant impacts will remain at a less than significant level, or be reduced to a less than significant level, through the implementation of SCAMMRP.

27. The SCAs and mitigation measures incorporated into and imposed upon the Project approval will not themselves have new significant environmental impacts or cause a substantial increase in the severity of a previously identified significant environmental impact that were not analyzed in the SEIR. In the event a SCA or mitigation measure recommended in the SEIR has been inadvertently omitted from the conditions of approval or the SCAMMRP, that mitigation measure is adopted and incorporated from the SEIR into the SCAMMRP by reference and adopted as a condition of approval.

## **VIII. FINDINGS REGARDING IMPACTS**

28. In accordance with Public Resources Code section 21081 and CEQA Guidelines sections 15091 and 15092, the City Council adopts the findings and conclusions regarding impacts, SCA and mitigation measures that are set forth in the SEIR and summarized in the SCAMMRP. These findings do not repeat the full discussions of environmental impacts, mitigation measures, SCA, and related explanations contained in the SEIR. The City Council ratifies, adopts, and incorporates, as though fully set forth, the analysis, explanation, findings, responses to comments and conclusions of the SEIR. The City Council adopts the reasoning of the SEIR, staff reports, and presentations provided by City staff and the Project sponsor as may be modified by these findings.

29. The City Council recognizes that the environmental analysis of the Project raises debatable environmental issues, and that a range of technical and scientific opinion exists with respect to those issues. The City Council acknowledges that there are differing and potentially conflicting expert and other opinions regarding the Project. The City Council has, through review of the evidence and analysis presented in the record, acquired a better understanding of the breadth

of this technical and scientific opinion and of the full scope of the environmental issues presented. In turn, this understanding has enabled the City Council to make fully informed, thoroughly considered decisions after taking account of the various viewpoints on these important issues and reviewing the record. These findings are based on a full appraisal of all viewpoints expressed in the SEIR and in the record, as well as other relevant information in the record of the proceedings for the Project.

30. The City Council finds, based on the SEIR and the record of proceedings, and due to the Project site's location in an existing urbanized setting, that there are no significant impacts with respect to the following environmental topics: Agricultural and Forestry Resources, Mineral Resources, and Wildfires. No further findings are required for these environmental topics.

31. The City Council finds, based on the SEIR and the record of proceedings, that the following environmental impacts of the Project are less than significant and require no mitigation: Impact LU-3; Impact LU-4; Impact Trans-2; Impact Trans-3; Impact Trans-4; Impact AQ-1; Impact AQ-2; Impact AQ-3; Impact AQ-4; Impact AQ-5; Impact AQ-6; HYD-2; Impact HYD-3; Impact CUL-1; Impact CUL-2; Impact GEO-1; Impact GEO-2; Impact GEO-3; Impact GEO-4; Impact NOI-1; Impact NOI-2; Impact NOI-3; Impact NOI-5; Impact NOI-6; Impact HAZ-1; Impact HAZ-2; Impact HAZ-3; Impact HAZ-4; Impact HAZ-5; Impact HAZ-6; Impact BIO-6; Impact BIO-7; Impact POP-1; Impact POP-2; Impact POP-3; Impact AES-1; Impact AES-2; Impact AES-4; Impact AES-6; Impact PS-1; Impact PS-2; Impact PS-3; Impact PS-4; Impact PS-5; Impact PS-6; Impact PS-7; Impact UTL-1; Impact UTL-3; Impact UTL-5; and GHG-1. These environmental impacts are covered throughout Chapters IV.A (Land Use, Plans, and Policies); IV.B (Transportation and Circulation); IV.C (Air Quality); IV.D (Hydrology and Water Quality); IV.E (Cultural Resources and Tribal Cultural Resources); IV.F (Geology and Soils); IV.G (Noise); IV.H (Hazards and Hazardous Materials); IV.I (Biological Resources); IV.J (Population and Housing); IV.K (Aesthetics, Shadow, and Wind); IV.L (Public Services and Recreation); IV.M (Utilities and Service Systems); IV.N (Greenhouse Gas Emissions) of the Draft SEIR as supplemented by Chapter II of the Final SEIR and were determined to have less than significant impact without mitigation for the reasons detailed in the SEIR, hereby incorporated by reference as if fully set forth herein. No further findings are required for these environmental impacts.

32. The City Council finds, based on the SEIR and the record of proceedings, that the following potentially significant environmental impacts of the Project will, through mitigation measures incorporated into and imposed upon the Project, be mitigated to a less than significant level: Impact LU-1; Impact LU-2; Impact LU-5; Impact HYD-5; Impact HYD-6; Impact BIO-2; Impact BIO-3; Impact BIO-4; Impact BIO-5; and Impact BIO-8. Further findings for these environmental impacts are provided below.

33. The City Council finds, based on the SEIR and the record of proceedings, that the following potentially significant environmental impacts of the Project will, through SCAs incorporated into and imposed upon the Project, be mitigated to a less than significant level: Impact Trans-1; Impact HYD-1; Impact HYD-4; Impact HYD-6; Impact CUL-3; Impact CUL-4; Impact NOI-4; Impact BIO-1; Impact AES-3; Impact AES-5; Impact AES-7; Impact UTL-2; Impact UTL-4; Impact UTL-6; and Impact GHG-2. Further findings for these environmental impacts are provided below.

34. The City Council finds, based on the SEIR and the record of proceedings, that NO significant and unavoidable environmental impacts would result from the Project. The City Council finds that NO Statement of Overriding Considerations is necessary since there are NO significant and unavoidable environmental impacts.

#### **IX. FINDINGS FOR POTENTIALLY SIGNIFICANT BUT MITIGATABLE TO LESS THAN SIGNIFICANT IMPACTS**

35. 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 SEIR, the SCAMMRP, and the City's Standard Conditions of Approval (SCA or SCAs), the City Council finds that changes or alterations have been required in, or incorporated into, the components of the Project that mitigate or avoid potentially significant effects on the environment. The following potentially significant impacts will be reduced to a less than significant level through the implementation of Project mitigation measures, or where indicated, through the implementation of SCAs (which are incorporated into and an integral part of the SCAMMRP):

- a. Impact LU-1 finds that the 2009 EIR concluded that the Approved Project through the implementation of 2009 EIR Mitigation Measure A.1, which includes specific design standards and buffering to effectively reduce the potentially significant impact with respect to the physical division of an existing community, would reduce this impact to a less than significant level; and that because the Project would not include changes to the building envelope or land use character of the Approved Project and would still be subject to 2009 EIR Mitigation Measure A.1, the conclusion regarding this LU-1 impact is substantially the same as that identified in the 2009 EIR under Impact A.1 as mitigated by 2009 Mitigation Measure A.1. Impact LU-1 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, "changed circumstances," or "new information," pursuant to CEQA Guidelines section 15162. The City finds that with the Project's continued implementation of 2009 EIR Mitigation Measure A.1, the potential for adverse Project impacts associated with physical division of an existing community would be reduced to a less than significant level.
- b. Impact LU-2 finds that the 2009 EIR concluded that the Approved Project through the implementation of 2009 EIR Mitigation Measure A.3a and 2009 EIR Mitigation Measure A.3b, which include new specific zoning regulations and standards to specifically address the impacts resulting from the change in land use, would reduce this impact to a less than significant level; and that because the Project would not substantially change the land use character of the Approved Project and would still be subject to Mitigation Measure A.3a and Mitigation Measure A.3b, the conclusion regarding this LU-2 impact is substantially the same as that identified in the 2009 EIR under Impact A.3 as mitigated by 2009 Mitigation Measure A.3a and 2009 EIR Mitigation Measure A.3b. Impact LU-2 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, "changed circumstances," or "new

information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s continued implementation of 2009 EIR Mitigation Measure A.3a and 2009 EIR Mitigation Measure A.3b, the potential for adverse Project impacts associated with conflicting with adjacent and nearby land uses would be reduced to a less than significant level.

- c. Impact LU-5 finds that the 2009 EIR concluded that the Approved Project would not result in a significant cumulative impact with respect to land use, plans, and policies when considering the combined effect of the Approved Project with other past, present, and reasonably foreseeable future projects, through the implementation of 2009 EIR Mitigation Measure A.1, 2009 EIR Mitigation Measure A.3a, 2009 EIR Mitigation Measure A.3b, and 2009 EIR Mitigation Measure I.2b; and that because the Project would not substantially change the building envelope and land use character of the Approved Project, and that because past projects have been, and present and reasonably foreseeable future projects would be, subject to development guidance contained within the General Plan and other applicable land use plans to ensure land use compatibility, and that because the Project would still be subject to 2009 EIR Mitigation Measure A.1, 2009 EIR Mitigation Measure A.3a, 2009 EIR Mitigation Measure A.3b, and 2009 EIR Mitigation Measure I.2b, the conclusion regarding this LU-5 impact is substantially the same as that identified in the 2009 EIR under Impact A.5 as mitigated by 2009 EIR Mitigation Measure A.1, 2009 EIR Mitigation Measure A.3a, 2009 EIR Mitigation Measure A.3b, and 2009 EIR Mitigation Measure I.2b. Impact LU-5 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s continued implementation of 2009 EIR Mitigation Measure A.1, 2009 EIR Mitigation Measure A.3a, 2009 EIR Mitigation Measure A.3b, and 2009 EIR Mitigation Measure I.2b, the potential for a significant cumulative impact from the Project with respect to land uses, plans, and policies would be reduced to a less than significant level.
- d. Impact HYD-5 finds that the 2009 EIR concluded that the Approved Project through the implementation of 2009 EIR Mitigation Measure D.1, which includes compliance with all NPDES requirements, RWQCB Construction Permit requirements, and all City regulations and Creek Protection Permit requirements, would reduce this impact to a less than significant level; and that because the Project would operate within the same overall building envelope and site plan of the Approved Project where no traditional creeks occur and would still be subject to 2009 EIR Mitigation Measure D.1, the conclusion regarding this HYD-5 impact is substantially the same as that identified in the 2009 EIR under Impact D.1 as mitigated by 2009 Mitigation Measure D.1. Impact HYD-5 finds there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s continued implementation of 2009 EIR Mitigation Measure D.1,

the potential for adverse Project impacts associated with potential impact to creek flow would be reduced to a less than significant level.

- e. Impact HYD-6 finds that the 2009 EIR concluded that the Approved Project would not result in a significant cumulative impact with respect to hydrology and water quality when considering the combined effect of the Approved Project with other past, present, and reasonably foreseeable future projects, through the implementation of 2009 EIR Mitigation Measure D.1; and that because the Project would not substantially change the overall building envelope of the Approved Project, and that because cumulative projects would continue to be subject to the same regulatory requirements discussed for the Approved Project, and that because the Project would still be subject to 2009 EIR Mitigation Measure D.9 (as well as implement SCA HYD-1 and SCA HYD-2 discussed below), the conclusion regarding this HYD-6 impact is substantially the same as that identified in the 2009 EIR under Impact D.9 as mitigated by 2009 Mitigation Measure D.1. Impact HYD-6 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s continued implementation of 2009 EIR Mitigation Measure D.1 (and SCA HYD-1 and SCA HYD-2), the potential for a significant cumulative impact from the Project with respect to hydrology and water quality would be reduced to a less than significant level.
- f. Impact BIO-2 finds that the Project, due to the limited in-water construction activity associated with the Publicly Accessible Small Watercraft Launch Dock, could have a significant impact, either directly or through habitat modifications, on special-status aquatic species; however, this impact will be mitigated to a less than significant level through implementation of new Mitigation Measure BIO-2, which requires prior to the start of any in-water construction that would require pile driving, the Project applicant shall prepare a National Marine Fisheries Service-approved sound attenuation monitoring plan to protect fish and marine mammals, and the approved plan, including BMPs, shall be implemented during applicable construction. Impact BIO-2 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s implementation of new Mitigation Measure BIO-2, the potential for adverse Project impacts associated with potential impact to special-status aquatic species would be reduced to a less than significant level.
- g. Impact BIO-3 finds that the Project, due to the limited in-water construction activity associated with the Publicly Accessible Small Watercraft Launch Dock, could have a significant impact on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, or National Marine Fisheries Service; however, this impact will be mitigated to a less than significant level through implementation of new Mitigation Measure BIO-3, which requires prior to the start of any in-water construction the Project applicant to

conduct a National Marine Fisheries Service and California Department of Fish and Wildlife-approved eelgrass survey in the water construction area consistent with the measures described in the National Marine Fisheries Service's ("NMFS") October 2014 California Eelgrass Mitigation Policy and Implementation Guidelines (2014 CEMP), and approved mitigation consistent with NMFS 2014 guidance shall be implemented during construction, as necessary. Impact BIO-3 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, "changed circumstances," or "new information," pursuant to CEQA Guidelines section 15162. The City finds that with the Project's implementation of new Mitigation Measure BIO-3, the potential for adverse Project impacts associated with potential impact to habitat or other sensitive natural communities would be reduced to a less than significant level.

- h. Impact BIO-4 finds that the Project could have a significant impact on jurisdictional wetlands or waters of the U.S. under the jurisdiction of the U.S. Army Corps of Engineers (USACE), waters of the State under the jurisdiction of the Regional Water Quality Control Board (RWQCB), and wetlands under the jurisdiction of BCDC; however, this impact will be mitigated to a less than significant level through implementation of 2009 EIR Mitigation Measure I.2c, 2009 EIR Mitigation Measure I.2d, and new Mitigation Measure BIO-4. 2009 EIR Mitigation Measure I.2c requires, prior to the start of construction activities for the Project, that the Project applicant obtain all required permit approvals from the USACE, the RWQCB, BCDC, and all other agencies with permitting responsibilities for construction activities within jurisdictional waters of other jurisdiction areas. 2009 EIR Mitigation Measure I.2d requires that the Project applicant implement standard Best Management Practices ("BMPs") to maintain water quality and control erosion and sedimentation during construction as well as to avoid impacts on water quality resulting from dredging activities within the San Francisco Bay. New Mitigation Measure BIO-4 requires that the Project applicant prepare and submit for approval to the City a mitigation and monitoring program for the Publicly Accessible Small Watercraft Launch Dock that outlines the mitigation obligations for temporary and permanent impacts to waters of the U.S. resulting from construction and/or operation of the Publicly Accessible Small Watercraft Launch Dock or requires that the Project applicant negotiate, with the applicable regulatory agencies, compensatory mitigation for temporary and permanent impacts to waters of the U.S. resulting from construction and/or operation of the Publicly Accessible Small Watercraft Launch Dock. Impact BIO-4 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, "changed circumstances," or "new information," pursuant to CEQA Guidelines section 15162. The City finds that with the Project's implementation of 2009 EIR Mitigation Measure I.2c, 2009 EIR Mitigation Measure I.2d, and new Mitigation Measure BIO-4, the potential for adverse Project impacts associated with impacts on jurisdictional wetlands or waters of the U.S., State, or BCDC would be reduced to a less than significant level.

- i. Impact BIO-5 finds that the 2009 EIR concluded that the Approved Project through the implementation of 2009 EIR Mitigation Measure I.3; which requires the Project applicant to 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”), would reduce this impact to a less than significant level; and that because the Project would not result in an additional impact to migratory wildlife corridors, and that because the Project would still be subject to 2009 EIR Mitigation Measure I.3, the conclusion regarding this BIO-5 impact is substantially the same as that identified in the 2009 EIR under Impact I.3 as mitigated by 2009 Mitigation Measure I.3. Impact BIO-5 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s continued implementation of 2009 EIR Mitigation Measure I.3, the potential for adverse Project impacts associated with impacts on migratory wildlife corridors would be reduced to a less than significant level.
- j. Impact BIO-8 finds that the Project could have a significant cumulative impact with respect to biological resources, including wetlands, other jurisdictional waters, and special-status species when considering the combined effect of the Project with other past, present, and reasonably foreseeable future projects; however, this impact will be mitigated to a less than significant level through implementation of new Mitigation Measure BIO-2, new Mitigation Measure BIO-3, new Mitigation Measure BIO-4, 2009 EIR Mitigation Measure I.2c, 2009 EIR Mitigation Measure I.2d, and 2009 EIR Mitigation Measure I.3, as described above. Impact BIO-8 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s implementation of new Mitigation Measure BIO-2, new Mitigation Measure BIO-3, and new Mitigation Measure BIO-4 as well as continued implementation of 2009 EIR Mitigation Measure I.2c, 2009 EIR Mitigation Measure I.2d, and 2009 EIR Mitigation Measure I.3, the potential for adverse Project impacts associated with potential for a significant cumulative impact from the Project with respect to biological resources, including wetlands, other jurisdictional waters, and special-status species would be reduced to a less than significant level.
- k. Other Impacts Requiring Implementation of the City’s Standard Conditions of Approval (SCA): The following impacts will be less than significant because of required implementation of the City’s SCA:
  - (1) Impact Trans-1 finds that the Project would not conflict with a plan, ordinance, or policy addressing the safety or performance of the circulation system, including transit, roadways, bicycle lanes, and pedestrian paths. (Criterion A.) The Project will implement SCA-TRANS-3, which requires a Project applicant to submit a Transportation and Parking Demand Management (TDM) Plan for review

and approval by the City to address issues for projects that generate 50 or more net new AM or PM peak-hour vehicle trips

(2) Impact HYD-1 finds that the Project would not violate water quality standards, result in erosion or siltation on- or offsite, contribute substantial runoff, and/or substantially degrade water quality. (Criteria A, C, F, and G). The Project will implement SCA HYD-2, which requires the Project applicant to obtain the necessary permit/approval, if required, from the Bay Conservation and Development Commission (BCDC) for work within BCDC's jurisdiction to address issues such as but not limited to shoreline public access and sea level rise; and to submit evidence of the permit/approval to the City and comply with all requirements and conditions of the permit/approval.

(3) Impact HYD-4 finds that the Project would not expose people or structures to a significant risk of loss, injury or death involving flooding. (Criteria H, I, J, and K). The Project will implement SCA HYD-1, which requires the Project to be designed to ensure that new structures within a 100-year flood zone do not interfere with the flow of water or increase flooding; and the Project to submit plans and hydrological calculations for City review and approval with the construction-related drawings that show finished site grades and floor elevations elevated above the base flood elevation ("BFE").

(4) Impact CUL-3 finds that the Project would not cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074. (Criterion E). The Project will implement SCA CUL-1, which, in accordance with CEQA Guidelines Section 15064.5, requires that should previously unidentified subsurface cultural resources be discovered during construction, the Project sponsor is required to cease work in the immediate area and an immediate evaluation of the find should be conducted by a qualified archaeologist or qualified paleontologist; and if the find is determined to be a significant resource, appropriate avoidance measures recommended by the consultant and approved by the City must be followed unless avoidance is determined unnecessary or infeasible by the City. Work may continue on other parts of the Project site while measures for the cultural resources are implemented. The Project will also implement SCA CUL-2, which requires the Project applicant, to either retain a qualified archaeologist to conduct a site-specific, intensive archaeological resources study for review and approval by the City prior to soil-disturbing activities occurring on the project site or to prepare a construction "ALERT" sheet developed by a qualified archaeologist for review and approval by the City prior to soil-disturbing activities occurring on the project site. The Project will also implement SCA CUL-3, which requires that in the event that human skeletal remains are uncovered at the project site during construction activities all work shall immediately halt and the project applicant shall notify the City and the Alameda County Coroner.

(5) Impact CUL-4 finds that the Project would not result in a significant cumulative impact with respect to historical resources, archaeological resources, human remains, and tribal cultural resources when considering the combined effect of the Project with other past, present, and reasonably foreseeable future projects. The Project will implement SCA CUL-1, SCA CUL-2, and SCA CUL-3, as described above.

(6) Impact NOI-4 finds that the Project would not expose persons to noise greater than the applicable California Noise Insulation Standards nor expose the project to community noise in conflict with the land use compatibility guidelines of the Oakland General Plan, nor expose persons to vibration that exceeds the criteria established by the FTA. (Criteria E, F, and H). The Project will implement SCA NOI-1, which requires the Project applicant to submit and implement a Noise Reduction Plan prepared by a qualified acoustical consultant for City review and approval that contains noise reduction measures to achieve an acceptable interior noise level during construction of the Project in accordance with the land use compatibility guidelines of the Noise Element of the Oakland General Plan.

(7) Impact BIO-1 finds that the Project would not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service. (Criterion A). The Project will implement SCA BIO-1, which requires the Project applicant to submit a Bird Collision Reduction Plan, including standard Best Management Practices (“BMPs”), for City review and approval to reduce potential bird collisions to the maximum feasible extent.

(8) Impact AES-3 finds that the Project would create a new source of light, but would not substantially or adversely affect day or nighttime views in the area. (Criterion D). The Project will implement SCA AES-1, which requires proposed new exterior lighting fixtures to be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.

(9) Impact AES-5 finds that the Project would require approval of a general plan amendment and rezoning, and would be consistent with the policies and regulations addressing the provision of adequate light to appropriate uses. (Criterion I). The Project will implement SCA AES-1, as described above.

(10) Impact AES-7 finds that the Project would not result in a significant cumulative impact with respect to scenic vistas, visual character, light sources, shadow, or wind when considering the combined effect of the Project with other past, present, and reasonably foreseeable future projects. The Project will implement SCA AES-1, as described above.

(11) Impact UTL-2 finds that the Project would not result in a determination by the wastewater treatment provider that it does not have adequate capacity to serve the projected demand in addition to the providers' existing commitments and would not exceed the wastewater treatment capacity of the San Francisco Bay Regional Water Quality Control Board (RWQCB). (Criteria A and D). The Project will implement SCA UTL-1, which requires the Project applicant to prepare a Sanitary Sewer Impact Analysis for review and approval by the City and to pay a Sanitary Sewer Impact Fee in the event the Impact Analysis indicates that the net increase in project wastewater flow exceeds City-projected increases in wastewater flow in the sanitary sewer system.

(12) Impact UTL-4 finds that the Project would be served by a landfill with sufficient permitted capacity to accommodate the Project Modifications' solid waste disposal needs and would not violate applicable federal, state, and local statutes and regulations related to solid waste. (Criteria E and F). The Project will implement SCA UTL-2, which requires the Project applicant submit project

drawings containing recycling collection and storage areas be submitted to the City for review and approval in compliance with the City of Oakland Recycling Space Allocation Ordinance (Chapter 17.118 of the Oakland Planning Code).

(13) Impact UTL-6 finds that the Project would not result in a significant cumulative impact with respect to utilities and service systems when considering the combined effect of the Project with other past, present, and reasonably foreseeable future projects. The Project will implement SCA UTL-1 and UTL-2, as described above

(14) Impact GHG-2 finds that the Project would not involve a land use development that fails to demonstrate consistency with the 2030 Equitable Climate Action Plan (ECAP). (Criterion A). The Project will implement SCA GHG-1, which requires the Project applicant to implement all physical measures in the ECAP Consistency Checklist that was submitted during the Planning entitlement phase into the design of the Project and shown on drawings submitted for construction-related permits.

**X. CHANGES TO 2009 EIR MITIGATION MEASURE B.1a AND APPROVED PRELIMINARY DEVELOPMENT PLAN CONDITIONS OF APPROVAL NUMBERS 18 AND 19.**

36. The 2009 EIR determined that the traffic generated by Phase 1 of the Approved Project could affect traffic levels of service (“LOS”) at the unsignalized intersection of Embarcadero and Oak Streets; however, this impact would be mitigated to a less than significant level through implementation of 2009 EIR Mitigation Measure B.1a, which required installation of traffic signals at the unsignalized intersection of Embarcadero and Oak Streets. This 2009 EIR Mitigation Measure B.1a was captured in Conditions of Approval numbers 18 and 19 of the preliminary development plan for the Approved Project by requiring such signalization to be completed no later than the issuance of a certificate of occupancy for the Approved Project’s 1,000th housing unit.

37. Senate Bill (“SB”) 743, which became effective on January 1, 2014, required that CEQA transportation analysis focus on the reduction of greenhouse gas emissions rather than on automobile delay and LOS, and ordered the Governor’s Office of Planning and Research (“OPR”) to develop revised CEQA Guidelines to determine the significance of transportation impacts resulting from projects. In December 2018, OPR certified and adopted CEQA Guideline Section 15064.3, which now states that vehicle miles traveled (“VMT”) is the most appropriate measure for assessing transportation impacts on the environment, and that a project’s effect on automobile delay (or LOS) shall not constitute a significant environmental impact. On September 21, 2016, the City Planning Commission updated Oakland’s CEQA Thresholds of Significance Guidelines aligning such with SB 743; and on July 1, 2020, CEQA Guidelines Section 15064.3 applied statewide.

38. The City Council finds that, because LOS is no longer considered a significant impact on the environment under CEQA and that given the changed circumstances since the certification of the 2009 EIR, including based on the actualized Project site conditions with Phase 1 of the Approved Project having undergone development, 2009 EIR Mitigation Measure B.1a (and the accordant requirements of Conditions of Approval numbers 18 and 19 of the Approved

Project) is no longer necessary to mitigate a potentially significant impact on the environment from the Project.

39. The City Council additionally finds that changed circumstances have made signalization of the intersection of Embarcadero and Oak Streets infeasible at this time. These changed circumstances include the installation of a new crosswalk, approved by the City, in said intersection was not contemplated at the time of certification of the 2009 EIR, the presence of which has led the California Public Utilities Commission ("CPUC") to reject the Approved Project's signalization plans and to require the removal of the crosswalk or a significant and costly redesign of said intersection not previously contemplated. The City Council finds that maintaining the approved crosswalk in the intersection is in the public interest to serve pedestrians and that the CPUC's additional requirements have made signalization of the intersection of Embarcadero and Oak Streets infeasible at this time.

40. The City Council finds that the Project Modifications do not result in any conflict with the City's plans regarding traffic safety and do not create any traffic hazards at this intersection. The City and the applicant nonetheless agree to amend the 2009 EIR Mitigation Measure B.1a and Conditions of Approval numbers 18 and 19 of the Approved Project to require that the Project make an in-lieu, fair share contribution of \$795,199.14 to be paid prior to the issuance of a certificate of occupancy for the Project site's 3,700th housing unit.

## **XI. FINDINGS REGARDING ALTERNATIVES**

41. In accordance with CEQA Guidelines section 15126.6, an EIR must describe a range of reasonable alternatives to the project, which would feasibly attain most of the basic objectives of the project, but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather, it must consider a reasonable range of potentially feasible alternatives that will foster informed decision-making and public participation.

42. The City Council certifies that it has independently reviewed and considered the information on alternatives provided in the SEIR and in the record. The SEIR reflects the City Council's independent judgment as to alternatives.

43. The SEIR analyzed the Project Modifications and three alternatives to the Project Modifications, which the City Council finds to constitute a reasonable range of feasible alternatives necessary to permit a reasoned choice, informed decision-making, and public participation. The City adopts the SEIR's analysis and conclusions eliminating analysis of an alternative site, given that the modifications are specific to the Approved Project site, from further consideration.

44. The City Council finds that because there are no significant, unavoidable impacts of the Project, alternatives need not be rejected as infeasible. Nevertheless, in the interest of being conservative and providing information to the public and decision-makers, the City Council makes these further findings regarding alternatives.

45. The alternatives analyzed in the SEIR include: (1) Alternative 1—No Project; (2) Alternative 2—No Marina Expansion; and (3) Alternative 3—No Tower Relocation. As presented in the SEIR, the alternatives were described and compared with each other and with the Project Modifications.

46. The No Marina Expansion Alternative is considered the environmentally superior alternative, as even though the Project Modifications' environmental impacts would be less than significant, the No Marina Expansion Alternative would avoid and/or substantially reduce new biological resources impacts of the modifications to the Approved Project to the greatest extent compared to the Project Modifications and the other alternatives presented in the SEIR, and still meet some of the basic objectives outlined in the SEIR for the project modifications to the Approved Project.

47. The No Marina Expansion Alternative looks at the impacts on environmental effects by eliminating the expansion of the marina infrastructure and operation from the modifications to the Approved Project. Under this alternative, the marina would be developed according to existing approvals resulting in no more than 167 boat slips on the Project site, which site would remain the same as the Approved Project and would not expand by approximately 10 acres of water surface. The Publicly Accessible Small Watercraft Launch Dock would not be accommodated on the Project site. The Approved Project would be developed along with analyzed modifications thereto, including the proposed additional residential units, updated parking ratios, and proposed tower relocation. This alternative would reduce one or more of the already less than significant impacts of the Project Modifications, including impacts to biological resources as it would result in reduced impacts to marine mammal species in the vicinity of the Project site resulting from in-water construction noise, and reduced impacts to essential fish habitat area of particular concern resulting from in-water construction in an area potentially populated with eelgrass.

48. The Project is a moderate variant of the environmentally superior No Marina Expansion Alternative. The Marina Expansion (as defined in paragraph seven), and its substantial in-water construction activity (approximately 125% increase in existing water surface area for the Project site) is not part of the Project, but the Publicly Accessible Small Watercraft Launch Dock and its limited in-water construction activity (approximately 3% increase in existing water surface area for the Project site) is part of the Project. The City Council finds, based on the SEIR and the record of proceedings, that the Project's environmental impacts would meaningfully be the same as the No Marina Expansion Alternative for the following impact topics: (1) Land Use, Plans, and Policies; (2) Hydrology and Water Quality; (3) Cultural Resources; (4) Geology and Soils; (5) Noise; (6) Biological Resources; (6) Aesthetics, Shadow, and Wind; (7) Public Services and Recreation; (8) Greenhouse Gas Emissions; (9) Hazards and Hazardous Materials; and (10) Population and Housing. Furthermore, the Project would reduce, to a greater extent than the No Marina Expansion Alternative, environmental impacts for the following impact topics: (1) Transportation and Circulation—given that the accommodation of small watercraft and passenger loading and unloading to support the existing water taxi service would provide additional transit options for residents and, therefore, would result in a reduction of overall vehicle miles traveled; and accordingly (2) Air Quality. Furthermore, the Project would achieve more of the additional objectives outlined in the SEIR than the No Marina Expansion Alternative. The Project, in contrast to the No Marina Expansion Alternative, would achieve the objective to provide a landing dock

for water taxi service that includes features to accommodate passenger loading and unloading and that will support the multimodal transportation options (e.g., water taxi service, small watercraft) within the Project site for a more sustainable community.

49. The City Council finds, based on the SEIR and the record of proceedings, that the Project, and its elimination of much of the in-water construction activity, would have less environmental impact than the Project Modifications, No Project Alternative, and No Tower Relocation Alternative, for the same reasons that the No Marina Expansion Alternative is considered the environmentally superior alternative, as the Project would avoid and/or substantially reduce new biological resources impacts of the modifications to the Approved Project to the greatest extent compared to the Project Modifications, No Project Alternative, and No Tower Relocation Alternative. Because the Project applicant proposed the Project, which is environmentally superior to the No Project Alternative and No Tower Relocation Alternative, no further findings with respect to those are required in this section. Nonetheless, in addition, for the reasons given below, the City Council finds that specific economic, social, environmental, technological, legal, policy, or other considerations make infeasible the alternatives to the Project.

50. Alternative 1—No Project: CEQA requires a “No Project” alternative to be considered in the SEIR. The purpose of describing and analyzing a No Project alternative is to allow decision-makers to compare the impacts of approving modifications to the Approved Project with the impacts of not approving modifications to the Approved Project. Under the No Project Alternative, the proposed modifications to the Approved Project would not be adopted. The proposed additional residential units, updated parking ratios, and expanded marina infrastructure, including the Publicly Accessible Small Watercraft Launch Dock would not be constructed. The approved tower location would remain on Phase II and would not be relocated to Phase IV. Future development on the Project site would continue to be consistent with the Approved Project, and would proceed under existing approvals and continue to be subject to the 2009 EIR mitigation measures. Therefore, the impact conclusions with respect to all topic areas would remain precisely the same as described in the 2009 EIR for the Approved Project. This alternative is rejected as infeasible because while it would continue to meet the objectives of the Approved Project, it would not achieve any of the additional objectives outlined in the SEIR. This alternative, because there would be no modifications to the Approved Project, would not (1) utilize current building code standards and market demands to maximize housing and design efficient buildings; and (2) provide a publicly accessible dock public access to launch small watercraft and which may accommodate an existing water taxi/shuttle service currently operating on the San Francisco Bay and that will support the multimodal transportation options within Brooklyn Basin for a more sustainable community. Furthermore, as discussed above, the Project would avoid and/or substantially reduce new environmental impacts of the modifications to the Approved Project to a greater extent compared to the No Project alternative, and as such, this alternative is additionally rejected on those grounds.

51. Alternative 3—No Tower Relocation: The No Tower Relocation Alternative looks at the impacts on environmental effects by eliminating the new potential tower locations from the modifications to the Approved Project. The proposed new tower locations on Parcel M and on Parcel L would not be added to project approvals. There would be no potential for two towers on Parcel M, which would increase building mass in Phases III or IV and decrease building mass in Phase II. Under this alternative, the approved locations for high-rise tower elements of up to 24

stories (240 feet) would remain on Parcels A, H, J, K and M as analyzed in the 2009 EIR. The Approved Project would be developed along with other components of the Project Modifications, including the proposed additional residential units, updated parking ratios, and Marina Expansion, which would accommodate 158 additional boat slips and the Publicly Accessible Small Watercraft Launch on the Project site. This alternative is rejected as infeasible because it would fail to realize the original density of the Approved Project because the parcel on which the tower was to be located has been developed without a tower. The City supports maintaining, at least, the original density. Furthermore, as discussed above, the Project would avoid and/or substantially reduce new environmental impacts of the modifications to the Approved Project to a greater extent compared to the No Tower Relocation alternative, and as such, this alternative is additionally rejected on those grounds.

## **XII. SEVERABILITY**

52. If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.