

# BROOKLYN BASIN MARINA EXPANSION PROJECT

## Final Supplemental Environmental Impact Report

Prepared for  
City of Oakland

December 2022



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City of Oakland

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180 Grand Avenue  
Suite 1050  
Oakland, CA 94612  
510.839.5066  
esassoc.com



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# CHAPTER I

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## Introduction

An Environmental Impact Report (EIR) is an informational document prepared by a Lead Agency (in this case, the City of Oakland) that contains environmental analysis for public review and for agency decision-makers to use in their consideration of development proposals. On June 11, 2021, the City of Oakland (City or Lead Agency), released a Draft Supplemental Environmental Impact Report (Draft SEIR) for public review for the Brooklyn Basin Marina Expansion Project (Project Modifications).<sup>1</sup> The Draft SEIR identifies the likely environmental consequences associated with implementation of the Project Modifications, and the Standard Conditions of Approval (SCAs) and mitigation measures that would reduce potentially significant impacts.

Pursuant to the California Environmental Quality Act (CEQA) and the State CEQA Guidelines, the City prepared the Draft SEIR to present the environmental analysis of the proposed Brooklyn Basin Marina Expansion Project to the public for review and for agency decision-makers to use in their consideration of the Project Modifications.<sup>2</sup> The public review and comment period on the Draft SEIR began June 11, 2021 and ended at 5:00 p.m. August 10, 2021.<sup>3</sup> The Oakland Planning Commission held a public hearing on the Draft SEIR on July 21, 2021.

The Draft SEIR is a supplement to the Brooklyn Basin Project Environmental Impact Report (2009 EIR) for the Brooklyn Basin Project (formerly Oak to Ninth Project) that the City certified on January 20, 2009. Throughout the Draft SEIR and this Final SEIR, the aggregate of previous CEQA approvals related to the original Brooklyn Basin Project are referred to as the 2009 EIR. The original Brooklyn Basin Project approved under the 2009 EIR is referred to as the Approved Project.<sup>4</sup>

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<sup>1</sup> Although the Revised Project Modifications no longer include a marina expansion component, this SEIR retains the original title for consistency.

<sup>2</sup> The *California Environmental Quality Act* can be found in the California Public Resources Code, Section 21000 et seq. The State CEQA Guidelines, formally known as the *Guidelines for California Environmental Quality Act*, can be found in the California Code of Regulations, Title 14, Division 6, Chapter 3, Section 15000 et seq.

<sup>3</sup> Within the public review and comment period and during the public hearing on the Draft SEIR, the City received numerous requests for an extension of the comment period beyond the required 45-day period, which was initially set to expire on July 26, 2021. The City issued a Notice of Extension of the Comment Period on July 23, 2021, that informed the public of an extended comment period ending on August 10, 2021.

<sup>4</sup> The Brooklyn Basin Project was previously called the Oak to Ninth Project. For the purpose of this Supplemental EIR (SEIR) analysis, the 2009 EIR 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 Avenue 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.

This Final SEIR provides responses to comments on the Draft SEIR and makes revisions to the Draft SEIR, as necessary, in response to those comments or to make clarifications in the Draft SEIR. This chapter summarizes the CEQA process for the Project Modifications, explains the CEQA context for this Final SEIR, and describes the organization of this document.

## **I.A CEQA Process**

### **I.A.1 Notice of Preparation**

The City published a Notice of Preparation (NOP) on September 21, 2018, pursuant to State CEQA Guidelines Section 15082 (*Notice of Preparation and Determination of Scope of EIR*), indicating that an SEIR would be prepared for the Brooklyn Basin Marina Expansion Project and inviting comments on the scope of the Draft SEIR. The public scoping period for the Draft SEIR ended on October 22, 2018. Public scoping sessions were conducted by the Oakland Planning Commission on Wednesday, October 17, 2018 and on Wednesday November 7, 2018. The NOP was sent to property owners within 300 feet of the Project site, responsible and trustee agencies, organizations, and other interested parties. A notice was published in the newspaper, and a copy of the NOP was sent to the State Clearinghouse to solicit statewide agency participation in determining the scope of the Draft SEIR, and to the County Clerk, who posted the NOP for 30 days.

### **I.A.2 Notice and Public Review of the Draft SEIR**

The City issued a Notice of Availability/Notice of Completion (NOA/NOC) of the Draft SEIR on June 11, 2021, announcing the availability of the Draft SEIR for public review and comment. The NOA/NOC noticed a 45-day public review and comment period on the Draft SEIR, starting June 11, 2021, and ending July 26, 2021, and the City subsequently extended the review period to August 10, 2021. A public hearing at the Oakland City Planning Commission was held on Wednesday, July 21, 2021. Consistent with Alameda County's Shelter in Place Orders and guidance from the Governor's Office of Planning and Research, the Draft SEIR was made available in digital form and public hearings on the Draft SEIR were held remotely. By the end of the (extended) comment period, the City received oral or written comments and a list of the commenters is provided in Chapter III, *Roster of Commenters*, of this Response to Comments document.

### **I.A.3 Response to Comments / Final EIR**

The City has prepared written responses to comments received during the public review and comment period for the Draft SEIR. These comments and the "Response to Comments" are provided in Chapters IV, V, and VI of this Response to Comments document. Chapter IV provides "Consolidated Responses" that respond collectively to common themes raised by comments received from multiple commenters. Chapter V provides all written comments (submitted by email) together with individual responses to comments not addressed in Chapter IV. Chapter VI provides a summary of oral comments received at the hearing conducted by the Oakland City Planning Commission together with individual responses to those comments not addressed in Chapter IV or V.

In addition to providing the comments and responses to comments on the Draft SEIR, this document includes necessary updates and other modifications and clarifications to the text and exhibits in the Draft SEIR in Chapter II, *Updated Project Information and Analysis*, and Chapter VII, *Changes-Errata to the Draft SEIR*. 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, *Contents of Final Environmental Impact Report*. Due to the large volume of text contained in the Draft SEIR and its appendices, and this Response to Comments, the Final SEIR does not contain the full text of the Draft SEIR, which remains available in a separate volume and is included here by reference.

The Draft SEIR, this Response to Comments / Final SEIR, and all supporting technical documents under City of Oakland Case number PUD06010-R02-ER01, are available to view at Accela Citizen Access and City of Oakland | Current Environmental Review (CEQA/EIR) Documents (oaklandca.gov).

## **I.B Intended Use of the Final EIR**

The City of Oakland, as Lead Agency, will make the decision whether to certify the Final SEIR in accordance with Section 15090 of the State CEQA Guidelines. Before the City may approve the Project, it must independently review and consider the information contained in the Final SEIR, certifying that the Final SEIR adequately discloses the environmental effects of the Project, that the Final SEIR has been completed in conformance with CEQA, and that the decision-making body of the Lead Agency independently reviewed and considered the information contained in the Final SEIR. Certification of the Final SEIR would indicate the City's determination that the Final SEIR adequately evaluated the environmental impacts that could be associated with the Project.

If certified, the Final SEIR would be used by the City to modify, approve, or deny approval of the Project based on the analysis in the document and in accordance with the findings required by CEQA Guidelines Section 15091 (*Findings*) and 15093 (*Statement of Overriding Considerations*). Pursuant to State CEQA Guidelines Section 15126 (*Consideration and Discussion of Environmental Impacts*). The City would then use this Final SEIR as the primary environmental document to evaluate all planning and permitting actions associated with the Project, including adoption of a Standard Conditions of Approval / Mitigation Monitoring and Reporting Program (SCAMMRP), General Plan Amendment and associated zoning code amendment, a revised Preliminary Development Plan (PDP) permit, and several subsequent permits and Final Development Plans (FDP), generally listed in Chapter III, *Project Description*, of the Draft SEIR. Other Responsible Agencies would use the certified SEIR to support their decisions via CEQA Guidelines Section 15096 (*Process for a Responsible Agency*).

## **I.C Standard Conditions of Approval / Mitigation Monitoring and Reporting Program (SCAMMRP)**

Public Resources Code section 21081.6 and State CEQA Guidelines Section 15097 (*Mitigation Monitoring or Reporting*) require public agencies to establish monitoring or reporting programs

for projects approved by a public agency whenever approval involves the adoption of specified environmental findings related to an EIR (also mitigated negative declarations). Accordingly, as Lead Agency, the City has prepared an updated SCAMMRP for the Phases III and IV of the proposed Brooklyn Basin Project, including the landing dock; the SCAMMRP is included as **Appendix A** to this document.

The intent of the SCAMMRP is to track and facilitate successful implementation of the SCAs and mitigation measures identified and adopted as part of the Project to avoid or mitigate significant effects on the environment. The SCAMMRP is designed to ensure compliance with the SCAs and mitigation measures during and after Project implementation. If the City decides to approve the Revised Project Modifications, it would adopt the SCAMMRP at the time of EIR certification and would be responsible for conducting the monitoring included in the SCAMMRP for the life of the Project. The updated SCAMMRP includes SCAs and mitigations measures directly applicable to the components of the Revised Project Modifications that are listed in Draft SEIR Table II-2, *Summary of Impacts, Standard Conditions of Approval, and Mitigation Measures, and Residual Impacts*, as amended in this document and presented in Chapter VII, *Changes-Errata to the Draft EIR*. The updated SCAMMRP also includes all previously adopted mitigation measures that will continue to be implemented as a part of Phases III and IV of the Approved Project. An introduction describing the components of the SCAMMRP and terms used therein is included as part of Appendix A.

## **I.D New Information in the Final EIR**

Following the close of the Draft SEIR comment period, the Project Applicant made revisions to the Project Modifications by eliminating the marina expansion and the Parcel L tower site components from the proposal. A summary of the Revised Project Modifications and environmental review of these project revisions are included in Chapter II, *Updated Project Information and Analysis*.

Responses to comments received on the Draft SEIR focus on comments that pertain to the adequacy of the analysis in the Draft SEIR or to other aspects pertinent to the potential effects of the Project on the environment pursuant to CEQA. Comments that address topics beyond the purview of the SEIR or CEQA are noted as such for the public record. Where comments have triggered changes to text or exhibits in the Draft SEIR, these changes appear as part of the specific response and are consolidated in Chapter II, *Updated Project Information and Analysis* and Chapter VII, *Changes-Errata to the Draft EIR*.

If “significant new information” is added to an SEIR after a notice of public review of the Draft SEIR document has been given, but before final certification of the SEIR, the Lead Agency must issue a new notice and recirculate the Draft SEIR for further comment and consultation. State CEQA Guidelines Section 15088.5 (*Recirculation of an EIR Prior to Certification*), specifies the following:

“Significant new information” requiring recirculation include, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance;
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project’s proponents decline to adopt it; or
- (4) The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.”

None of the changes to the Draft SEIR identified in this document meet any of the above conditions. Therefore, recirculation of any part of this Final SEIR is not required. The information presented in the Draft SEIR and this document support this determination by the City.

## I.E Organization of This Final EIR

Following this **Chapter I, *Introduction***, this Response to Comments / Final SEIR is organized as described below:

- **Chapter II, *Updated Project Information and Analysis*** – This chapter includes a summary of the Brooklyn Basin Marina Expansion Project (Project Modifications) and introduces revisions to the Project Modifications made by the Project Applicant subsequent to the close of the Draft SEIR comment period. This chapter also contains a high-level environmental review of these project revisions.
- **Chapter III, *Roster of Commenters*** – This chapter presents a roster showing each public agency, organization, or individual that provided comments on the Draft SEIR generally during the public review and comment period for the Draft SEIR.
- **Chapter IV, *Consolidated Responses*** – This chapter presents Consolidated Responses to address the topics raised most often by the public in the comments received on the Draft SEIR.
- **Chapter V, *Responses to Individual Comments*** – This chapter includes copies of the written comments received by email from public agencies, organizations, and individuals during the public review and comment period on the Draft SEIR. Specific responses to the individual comments in each correspondence are provided side-by-side with each letter.
- **Chapter VI, *Responses to Public Hearing Comments*** – This chapter presents a written summary of the verbal comments received on the Draft SEIR at the City of Oakland Planning Commission meeting held on Wednesday, July 21, 2021. Responses are presented to summarized verbal comments received.
- **Chapter VII, *Changes-Errata to the Draft EIR*** – This chapter presents all updates made to provide clarification, amplification, and corrections to the text and exhibits in the Draft SEIR - changes initiated by responses to comments received during the public review and comment period on the Draft SEIR. Changes that respond to specific individual comments are also stated or referenced in the corresponding response provided in Chapter V, *Responses to Individual Comments*; or Chapter VI, *Responses to Public Hearing Comments*.

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## CHAPTER II

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# Updated Project Information and Analysis

## II.A Introduction

In April 2022, in response to comments received from individuals and responsible agencies on the Draft SEIR and feedback received from City Planning Staff, Design Review Commission, and the Parks and Recreation Advisory Committee, the Project Applicant made revisions to the originally proposed Project Modifications analyzed in the Draft SEIR. The Project Applicant withdrew their proposal to revise and expand the Approved Project marina and their proposal to allow a residential tower on Parcel L. All other components of the Project Modifications remain. These include a residential unit increase of 600 units, relocation of one approved tower allowance to Parcel M, and a publicly accessible dock to accommodate the launching of small watercraft and potential expansion of an existing water taxi service. The remaining project changes to the Approved Project are referred to as the “Revised Project Modifications.”

In addition, this chapter provides additional information that has been added to the public record by the Project Applicant, and that the City has determined relates to the Project, Project approvals or requirements, or other information mentioned in the Draft SEIR. None of the additional information provided in this section constitutes a change to the Project Modifications or the Draft SEIR that could result in changes to the sufficiency of the environmental analysis in the Draft SEIR under CEQA. The City decided to include additional information in this Response to Comments document, including updates to the Draft SEIR impacts analysis associated with the revisions to the Project Modifications, for informational purposes for the public and decision-makers for the Project. Certain updates included in this chapter also address topics raised by the public that are comprehensively addressed in Chapter IV, *Consolidated Responses*, of this document.

None of the information in this chapter 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 (see Chapter 1, *Introduction*).

## II.B Background and Approved Project

The Approved Project consists of a Preliminary Development Plan (PDP) subdivided into four phases and one sub-phase.<sup>1</sup> The Approved Project includes elements to redevelop the Project site, including: demolition of existing structures and site remediation; restoration of the Ninth Avenue Terminal building; and development of up to 3,100 residential dwelling units, 200,000 square feet

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<sup>1</sup> For the purposes of this SEIR, the Approved Project described in this chapter constitutes the project approved under the Approved PDP, which may differ slightly from the project in the 2009 EIR.

of ground-floor retail/commercial space, approximately 31 acres of parkland, trails, and open space and approximately 3,534 onsite parking spaces located within parking structures. Building heights generally were approved to range from six to eight stories (up to 86 feet), with high-rise tower elements of up to 24 stories (240 feet) allowed on Parcels A, H, J, K and M. In addition, the Approved Project includes shoreline improvements and renovation of the existing Fifth Avenue Marina and Clinton Basin Marina, which would provide for approximately 167 boat slips total.<sup>2</sup>

## II.C Site Development

As described in the Draft SEIR, since preparation of the 2009 EIR, there has been substantial, on-going construction of the Approved Project. Development completed at the time of the NOP (September 2018) and at the time of Draft SEIR publication are described in the Draft SEIR (see Draft SEIR Chapter III, *Project Description*). Since publication of the Draft SEIR, additional Final Development Plans (FDPs) for Phase I and II parcels have been submitted and development proposals for all sites within those phases are either under review, approved, under construction, or operational. The proposals for those parcels utilized the PWD-4 Density Transfer provision that permits the transfer of unused residential units to another parcel, to transfer units within the Project site from one parcel to another through the FDP design review process. The result is the large majority of the Approved Project's 3,100 units have been granted FDP's and/or are already under construction for the first two Phases. Specifically, approximately 2,484 residential units are currently planned for the first two phases leaving 616 units available for development on Phases III and IV under the existing approvals. **Table II-1** provides the status of density distribution across the Project site.

The Draft SEIR analyzed the Project Modifications, which would increase the number of residential units by 600 (for a Project site total of up to 3,700 units and a Phase III/IV total of approximately 1,216 units), update parking ratios to current City of Oakland zoning code requirements applicable in similar zoning districts of 0.75 parking spaces per residential unit and include a publicly accessible dock accommodating the launching of small watercraft and a water taxi/shuttle service operating on San Francisco Bay.<sup>3</sup> **Table II-2** provides a breakdown of the Revised Project Modifications in the context of the Approved Project and the Project Modifications analyzed in the Draft SEIR. Note, as calculated in the table notes and further described in the Draft SEIR, FDPs on Phases I and II were granted minor variances for reduced residential parking.

<sup>2</sup> The Approved PDP permits 25 new additional slips in Clinton Basin, which included 35 existing slips, resulting in a 60-slip marina at Clinton Basin. The Approved PDP also permits renovation of the Fifth Avenue Marina resulting in approximately 107 slips there.

<sup>3</sup> As shown in Table II-1, the updated unit allocation shows 2,484 units to be developed in Phases I and II and 616 to be developed in Phases III and IV under the Approved Project. This 9-unit change would result in 1,216 units in Phases III and IV with the Revised Project Modifications.

**TABLE II-1  
EXISTING PWD-4 ZONING DISTRICT DENSITY DISTRIBUTION AND DEVELOPMENT STATUS**

<b>Location</b>	<b>Baseline Permitted Unit Allocation</b>	<b>Permitted Unit Allocation with Permitted Density Transfers as of December 2019 (included in the DSEIR)</b>	<b>Permitted Unit Allocation with Permitted Density Transfers as of April 2022</b>	<b>Proposed Density per Applicant April 2022</b>	<b>Parcel Approval/ Development Status</b>
Parcel A	407	254	300	254	A1 Occupied A2 Under Construction
Parcel B	175	241	241	241	Occupied
Parcel C	175	241	241	241	Occupied
Parcel D	175	243	175	232	Approved FDP
Parcel E	131	174	138	174	FDP Submitted and Under Review
Parcel F	165	211	165	211	F1 Occupied F2 Occupied
Parcel G	300	371	371	371	Under Construction
Parcel H	375	380	380	382	Approved FDP
Parcel J	339	378	378	378	Approved FDP
<b>Phases I and II subtotal</b>	<b>2,242</b>	<b>2,493</b>	<b>2,389</b>	<b>2,484</b>	
Parcel K	322	231	332	400	
Parcel L	146	146	146	240	
Parcel M	390	230	233	576	
<b>Phases III and IV subtotal</b>	<b>858</b>	<b>607</b>	<b>711</b>	<b>1,216</b>	
<b>Total</b>	<b>3,100</b>	<b>3,100</b>	<b>3,100</b>	<b>3,700</b>	

SOURCE: City of Oakland, 2019, Project Applicant, 2022.

**TABLE II-2  
PROJECT LAND USE COMPARISON**

Land Use	Approved Project	Project Modifications	Revised Project Modifications	Total
<b>Residential</b>				
Units	3,100 units	600 units	600 units	3,700 units
Towers: Building Envelope / Phase	5 towers of 240 feet/ Phases I and II	5 towers of 240 feet/designated tower site relocated from Phase II to Phase III or IV	5 towers of 240 feet/designated tower site relocated from Phase II to Phase IV	5 towers of 240 feet/ Phases I and IV
Five Tower Allowances	1. Parcel A 2. Parcel H 3. Parcel J 4. Parcel K 5. Parcel M	1. Parcel A 2. Parcel H or J 3. Parcel K 4. Parcel M 5. Parcel M or L	1. Parcel A 2. Parcel H or J 3. Parcel K 4. Parcel M 5. Parcel M	5 towers
Parking	3,100 spaces <sup>a</sup>	450 spaces <sup>b</sup>	450 spaces <sup>b</sup>	3,330 spaces <sup>c</sup>
<b>Retail<sup>d</sup></b>				
Area	200,000 sf	No change	No change from Approved Project	200,000 sf
Parking	400 spaces	No change	No change	Up to 400 spaces
<b>Marina</b>				
In-Water Acreage	7.95 acres	10 acres	0.25 acres	8.20 acres
Slips	167 slips	Add 158 slips	No change from Approved Project	167 slips
Water Taxi Landing Dock	0	1	1	1
Parking	34 spaces	Add 31 spaces	No change from Approved Project	34 spaces
<b>Open Space</b>				
Acreage	31 acres	No change	No change	31 acres

## NOTES:

- 2009 EIR parking rates were calculated at: 1 space per residential unit; 1 space for every 500 feet of retail; and 1 space per 5 marina slips.
- The Project Modifications would update the residential parking ratio to 0.75, consistent with current City requirements in other zoning districts. At this ratio, the 600 units from the Project Modifications would yield 450 residential parking spaces.
- Project Modifications would also apply the updated residential parking ratio of 0.75 to *future* development or 1,216 of units (600 units from the Project Modifications and 616 remaining Approved Project units) (see Table II-1 above). Thus, the Approved Project + Project Modifications would include 3,330 spaces (2,418 spaces from existing FDPs) + (600\*0.75 = 450) + (616\*0.75 = 462) = 3,330 spaces.
- Retail uses include: retail, restaurant, service, and small office uses to support the new residential neighborhood and serve visitors to the site.
- Due to the proximity to the Jack London Square Ferry Terminal, it is assumed the water taxi would be used by project residents and employees only and no parking would be dedicated for water taxi riders.

SOURCE: Approved Project details from City of Oakland, 2005, and Project Modification details from Zarsion-OHP 1, LLC, 2019 and 2022.

## II.C.1 Residential Density

The Revised Project Modifications' proposed residential density remains the same as that of the Project Modifications analyzed in the Draft SEIR. The Revised Project Modifications would include a residential unit increase of 600 units (for a Project site total of up to 3,700 units). The proposed increase in residential density would be accommodated within the Approved Project's building height, massing, setbacks, and footprints. To accommodate the increased project area and density, the Revised Project Modifications include an amendment to the Estuary Policy Plan, (which is part of the General Plan) and zoning code to increase the permitted average residential density in the PWD-4 land use classification and PWD-4 zoning district from 50 to 58 dwelling units per gross acre. With these amendments, the Revised Project Modifications would increase the total number of units allowed on the Project site from 3,100 to 3,700. As noted above, the majority of the Approved Project's 3,100 units have been granted FDP's or are already under construction within the first two Phases. Phases III and IV are able to accommodate the remaining approved units along with the Revised Project Modifications' proposed 600 additional residential units for a Project site total of up to 3,700 units without any modifications to the Approved Project's building envelope, including total overall height, massing, and setbacks.

## II.C.2 Residential Tower Relocation

The Revised Project Modifications would eliminate Parcel L as one of the proposed tower locations. The Revised Project Modifications would still relocate one of the tower allowances from either Parcel H or J to Parcel M resulting in two towers on Parcel M. This change would not increase the total number of towers on the Project site, nor would it modify the approved design parameters associated with the towers on the Project site. However, it would result in a shift in the location of one of the Approved Project's towers, would shift the timing of the construction of that tower from Phase II to Phase IV, and result in additional potential building mass in Phase IV. As shown on **Figure II-1**, the new potential tower location on Parcel M would align with the northernmost portion of the parcel along the Embarcadero and be set back from the Fifth Avenue Point.

## II.C.3 Marina Expansion

The Revised Project Modifications would not remove and replace the existing Clinton Basin Marina with a new expanded marina, would not add 158 slips to the Approved Project's marina plan, would reduce the added water surface area from 10 acres to approximately 0.25 acres (for the publicly accessible landing dock discussed below), and would not result in marina infrastructure along the entire shoreline of the peninsula containing Phases I and II. However, the Project Applicant would move forward with the Approved Project's permitted plan for 60 slips, comprised of 35 existing and 25 new, in Clinton Basin, and the upgrade of approximately 118 existing slips in the Fifth Avenue Marina, which results in a decrease in slips in the Fifth Avenue Marina to approximately 107 slips. The Approved Project's 25 new boat slips on the northern side of Clinton Basin and associated required dredging of contaminated sediment was analyzed and mitigated in the 2009 EIR and is outside the purview of this SEIR.



SOURCE: ROMA Design Group, 2019

Brooklyn Basin Marina Expansion Project

**Figure II-1**  
New Potential Tower Location For Approved Towers

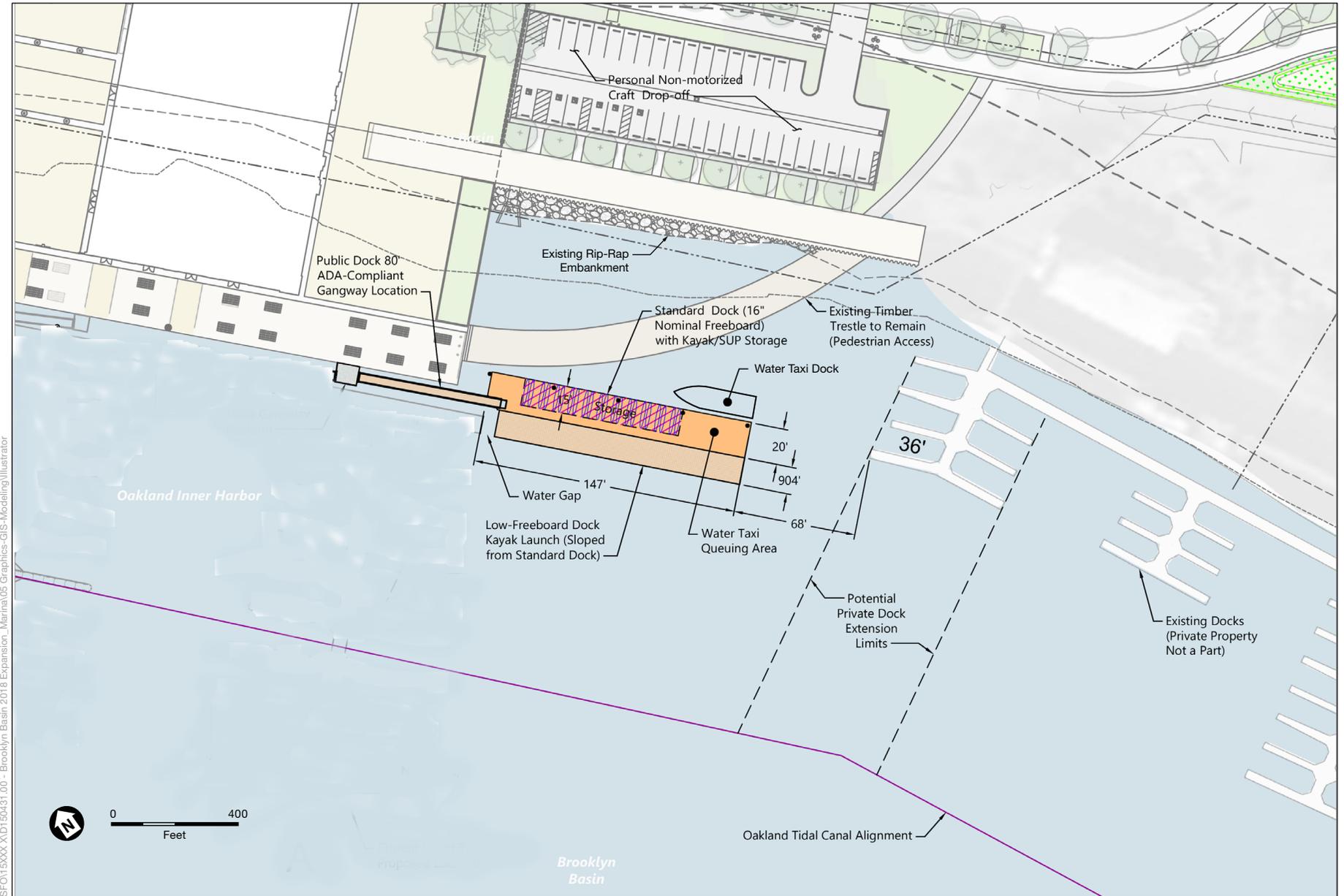
For purposes of this Response to Comments document, it is relevant to note that, in August 2020, after release of the NOP for the Draft SEIR, but prior to publication of that document and pursuant to 2009 Mitigation Measure I.2c: *Obtain Regulatory Permits and other Agency Approvals*, in the 2009 EIR, the Project Applicant fulfilled requirements in the Water Board's Order for the Approved Project involving the permanent removal of 0.59 acres of floating fill, which consisted of removing the existing Clinton Basin marina improvements (Order No. R2-2015-0005, CIWQS Place ID No. 748052). The Project Applicant also submitted to the City for review and approval revised post-construction stormwater treatment plans incorporating updates to the bioretention treatment areas within Phases I and II.

## II.C.4 Landing Dock for Ferry / Water Taxi Service

The Revised Project Modifications' proposed landing dock remains the same as that of the Project Modifications analyzed in the Draft SEIR. The Revised Project Modifications would include a publicly accessible dock with access provided from Township Commons Park via a gangway located near the Ninth Avenue Terminal Building. This component of the Revised Project Modifications would add approximately 0.25 acres of water surface to the Project site and require nine piles to support the structure.

The publicly accessible dock would accommodate the launching of small watercraft (canoes, kayaks, and paddleboards) and the potential expansion of a water taxi and small-scale ferry service that is already operating on the bay. This service would be of a limited-capacity and available to the residents of the Project site and the public. The water taxi service would commence with the operator's existing 40-foot, 12-passenger vessel with the ability to increase ridership capacity with its 56-foot, 45-passenger vessel. Initial service would include pre-arranged, on-demand service operating approximately one to two days per week consisting of approximately two trips per day during the morning and evening commute hours, depending on demand. As demand increases and circumstances warrant, the on-demand service would have the capacity to grow to up to six round trips per day five days per week also during the commute hours. Assuming maximum capacity with 43 passengers in both directions, the on-demand service would accommodate a total of 516 passengers daily. For the purposes of a conservative analysis, the Draft SEIR assumed the worst-case scenario which is the maximum capacity on-demand service. To transition from on-demand service to posted scheduled service, the service provider would be required to apply to the California Public Utilities Commission (CPUC) and establish that the added service is both a necessity and of public convenience. The application would require discretionary approval by the CPUC and thus would be assessed for the need for CEQA environmental review.

Access to the future dock would be provided via the marina gangways and main walkway improvements constructed near the Ninth Avenue Terminal Building (see **Figure II-2**). While the on-demand service could accommodate up to 516 daily passengers, no dedicated automobile parking would be provided to support this ridership. Due to the proximity to the Jack London Square Ferry Terminal and no dedicated parking for water taxi riders, these riders would most likely be limited to residents and employees in the area who can walk or bike to the water taxi service.



SOURCE: ROMA Design Group, 2019

Brooklyn Basin Marina Expansion Project

**Figure II-2**  
Proposed Landing Dock and Water Taxi Access Layout

## II.C.5 Parking Ratios

The Revised Project Modifications' proposed revision to the required residential parking ratio would remain the same as that of the Project Modifications analyzed in the Draft SEIR. The required residential parking ratio would be updated to the current code requirement in similar zoning districts of 0.75 spaces per residential unit. This would apply to all future development including the additional 600 residential units. The Revised Project Modifications would not include additional marina-related parking spaces beyond what is planned for the Approved Project. There is no additional parking proposed for water taxi service.

All other components of the Project Modifications remain. No changes to the Approved Project's circulation and parking plan are proposed. The Revised Project Modifications would be accommodated within the Approved Project's building height, massing, setbacks, and footprints and no changes to the Approved Project's onshore site plan, other than the tower relocation within the envelope of the approved Project site, are proposed. The Revised Project Modifications would not result in changes to onshore construction activity as analyzed in the 2009 EIR, although the number of construction workers and deliveries would increase.

## II.C.6 Project Objectives

The Revised Project Modification's objectives are consistent with those identified for the Approved Project in the 2009 EIR and listed below. Overall, primary objectives for the Approved Project in the 2009 EIR include providing to the Bay Area and the City of Oakland a revitalized accessible waterfront with open spaces for public use and a range of housing opportunities. The Draft SEIR listed four additional objectives specific to the Project Modifications. The Revised Project Modifications revise those four additional project objectives as indicated below:

- Utilize current building code standards and market demands to maximize unit count and design efficient buildings.
- ~~Increase marina capacity of the project by expanding the marina facilities to the Shoreline Park waterfront.~~
- ~~Create an economically viable marina that can sustain costs of maintenance dredging, construction, operation, and insurance in the Bay Area.~~
- ~~Design a marina to accommodate~~ 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 within Brooklyn Basin for a more sustainable community.

## II.D Comparison of Revised Project Modifications Impacts to the Impacts of the Project Modifications

### *Land Use*

An assessment of overall consistency with applicable plans and policies is included in Draft SEIR Section IV.A, *Land Use, Plans, and Policies* and, as with the Approved Project, no conflicts were

identified for the Project Modifications. The Revised Project Modifications would not add in-water infrastructure along the entire shoreline of the peninsula containing Phases I and II. New in-water infrastructure would be limited to a publicly accessible landing dock located near the 9th Avenue Terminal Building. As with the Approved Project, and consistent with the Land Use and Transportation Element (LUTE) Policies W3.4 and W11.6, the Revised Project Modifications would preserve existing views of the water's edge from locations close to or within the Project site and would provide views of open spaces and the Estuary from onsite and offsite locations. The Revised Project Modifications would not alter views of the open water.

**Without the additional marina infrastructure, the Revised Project Modifications** would not contribute to the potentially significant impact related to land use character and habitat conservation plans identified in the 2009 EIR and therefore, 2009 Mitigation Measure I.2b would not be required to avoid a significant impact (see *Biological Resources*, below). The Revised Project Modifications would result in the same overall land use impacts and, except for 2009 Mitigation Measures I.2b, would require the same mitigation measures as those identified for the Project Modifications in the Draft SEIR.

Potentially significant impacts related to the division of Fifth Avenue Point from its surroundings and a potential land use conflict were identified for the Approved Project and the Draft SEIR concluded the Project Modifications would have the same potential issues. Limiting the new tower allowances to Parcel M would still result in a residential density increase on the Project site, would still contribute to these potentially significant impacts, and would not reduce the severity of the impacts beyond that identified for the Project Modifications.

Overall, the Revised Project Modifications would not change the land use policy consistency conclusions for the Project Modifications. It would result in the same less than significant land use impacts and, except for 2009 Mitigation Measures I.2b, would require the same mitigation measures as those identified for the Project Modifications in the Draft SEIR.

### ***Air Quality***

**As with the Project Modifications, operation of the Revised Project Modifications** would result in CAPs and precursor emissions, including ROG, NO<sub>x</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> from a variety of emissions sources, including onsite area sources and mobile on-road sources. The Revised Project Modifications would result in reduced air quality emissions relative to the Project Modifications. The Draft SEIR found the marina expansion component of the Project Modifications would result in approximately 12 morning peak hour trips and 34 evening peak hour trips, which would not represent a meaningful contribution to an increase in Criteria Air Pollutants, precursor emissions, and localized CO concentrations associated with the Project Modifications and would not change the associated impact conclusions. Therefore, the Revised Project Modifications would have lower emissions but would not materially change the less than significant air quality impact conclusions for the Project Modifications.

### ***Hydrology and Water Quality***

Without the expanded marina, the Revised Project Modifications would reduce the amount of marine-related uses of pesticides, cleaners, and other common household products that could

enter stormwater runoff and therefore reduce the less-than-significant impact. However, the Revised Project Modifications would develop the Approved Project marina which would involve marina construction within Clinton Basin. As analyzed in the 2009 EIR, construction of the Approved Project marina within Clinton Basin would result in the need for dredging and use of dredged material as fill. Potential impacts associated with dredging in Clinton Basin, which could require disturbance, removal, and disposal of contaminated sediment that may result in adverse impacts to aquatic organisms and water quality, would be the same as identified in the 2009 EIR and more severe when compared with the Project Modifications.

The Revised Project Modifications would include new in-water infrastructure (the publicly accessible landing dock) and 2009 Mitigation Measure D.1, requiring the Approved Project to comply with the provisions of the Creek Protection Ordinance and obtain a City Creek Permit to ensure no impacts on the estuary, would apply. This mitigation would ensure potential creek related water quality impacts associated with the proposed landing dock would be within the impacts disclosed in the 2009 EIR. Overall, the Revised Project Modifications would result in the same less-than-significant hydrology and water quality impacts as those identified for the Project Modifications.

### ***Cultural Resources***

The Draft SEIR concluded the new marina and boat slips within 100 feet of the Ninth Avenue Terminal Bulkhead Building would not contribute to the Approved Project's significant and unavoidable impact with respect to the significance of an historic resource. Eliminating the marina expansion would not change the conclusions for the Project Modifications. Moreover, the Revised Project Modifications would reduce the additional in-water area from the 10 acres analyzed in the Draft SEIR to 0.25 acres. Therefore, the Revised Project Modifications would reduce the less-than-significant impacts related to archaeological and tribal cultural resources relative to the Project Modifications. Overall, the Revised Project Modifications would result in the same cultural resources impacts as identified for the Project Modifications.

### ***Geology and Soils***

The Revised Project Modifications would construct the Approved Project marina within Clinton Basin and would maintain the need for dredging and use of dredged material as fill associated with the Approved Project. Potential impacts related to settlement or subsidence from the use of dredged material as fill would be the same as identified in the 2009 EIR even though more severe when compared with the Project Modifications. Overall, the Revised Project Modifications would result in the same less-than-significant geology and soils impacts as identified for the Project Modifications.

### ***Noise***

The marina expansion component of the Project Modifications analyzed in the Draft SEIR would result in approximately 12 morning peak hour trips and 34 evening peak hour trips which would not represent a meaningful contribution to increased noise levels along existing roadways. Therefore, eliminating the marina expansion component would reduce roadway noise levels and maintain the less-than-significant vehicular noise impact identified for the Project Modifications.

The less-than-significant operational noise impact associated with the proposed water taxi landing and service would remain the same as identified in the Draft SEIR. Overall, the Revised Project Modifications would result in the same less-than-significant noise impacts as identified for the Project Modifications.

### **Biological Resources**

The marina expansion component originally proposed with the Project Modifications would expand the Project site with 10 acres of water surface area and would require additional in-water construction activity, including installing a pre-manufactured concrete floating dock system comprised of 14 docks ranging from 40 to 80 feet in length and in-water pile-driving activities to install approximately 162 14-, 16-, and 18-inch steel piles. In addition, the marina expansion component would be constructed over five seasons with approximately 20 construction materials delivery trips per season. This proposed marina expansion was analyzed in the Draft SEIR.

As described above, the Project Applicant removed the marina expansion component from their proposal. The Revised Project Modifications no longer include an expanded marina or any new marina infrastructure. The Approved Project marina would proceed under existing approvals and would be subject to the 2009 EIR mitigation measures.

While the marina expansion is no longer proposed, the Revised Project Modifications would still develop a publicly accessible landing dock with access provided from Township Commons Park via a gangway located near the 9th Avenue Terminal Building. The landing dock component of the Revised Project Modifications would expand the Project site with 0.25 acres of water surface area (compared to the 10 acres analyzed in the Draft SEIR) and require additional in-water installation of nine piles (compared to 162 piles analyzed in the Draft SEIR). Construction is estimated to require 8 to 12 weeks including time to coordinate deliveries, staging, and actual in-water construction.

The 2009 Mitigation Measure I.2d requiring best management practices as required by compliance with the General National Pollution Discharge Elimination System (NPDES) Permit for Construction Activities requirements, Regional Water Quality Control Board (RWQCB) General Construction Permit requirements, and all City regulations and Creek Protection Permits requirements (established by 2009 Mitigation Measure D.1) would be required for the landing dock and therefore is included in Draft SEIR Table II-2, *Summary of Impacts, Standard Conditions of Approval, and Mitigation Measures, and Residual Impacts*, as amended in this document and presented in Chapter VII, *Changer-Errata to the Draft EIR*. In addition, the landing dock would require regulatory permits approvals from the US Army Corps of Engineers (Corps), the RWQCB, the San Francisco Bay Conservation and Development Commission (BCDC), and all other agencies with permitting responsibilities for construction activities within jurisdictional waters of other jurisdiction areas. Therefore, 2009 Mitigation Measures I.2c, remains applicable to the Revised Project Modifications and included in Draft SEIR Table II-2, as amended and presented in this document.

Although significantly reduced compared with the Draft SEIR Project Modifications, the Revised Project Modifications would still result in the potential to generate elevated sound levels that

could impact marine mammal species in the vicinity of the Project site. Therefore, Mitigation Measure BIO-2 requiring the Project Applicant to prepare an NMFS-approved sound attenuation monitoring plan, still applies and is included in Draft SEIR Table II-2, as amended and presented in this document.

Although significantly reduced compared with the Draft SEIR Project Modifications, the Revised Project Modifications' landing dock would expand the Project site into an area potentially populated with eelgrass, which is designated an essential fish habitat area of particular concern. Therefore, Mitigation Measure BIO-3, requiring the Project Applicant to conduct eelgrass surveys, still applies.

The 2009 EIR analyzed construction near Clinton Basin, dredging in Clinton Basin, and the use of dredged material as fill and these activities were included as a part of the Approved Project. As described in the Draft SEIR, these activities *would not* have occurred under the Project Modifications. However, as described above, the Revised Project Modifications *would* develop the Approved Project marina including construction near Clinton Basin, dredging in Clinton Basin, and the use of dredged material as fill will be required.

As identified in the 2009 EIR, potential impacts associated with dredging in Clinton Basin could result in temporary disturbance of wetland and channel habitat, adverse impacts to aquatic organisms and water quality, and the potential adverse impact on aquatic migratory corridors, would continue to occur according to the Approved Project. These potential impacts were determined to be less than significant with Mitigation Measures D.1, D.2, H.1a, H.1e, I.2c, I.3a in the 2009 EIR. In addition, the Revised Project Modifications may require minimal maintenance dredging associated with the in-water area of the landing dock (approximately 0.25 acres). In the event the landing dock requires any maintenance dredging, 2009 Mitigation Measure I.3, requiring the Project Applicant to implement measures for protection of salmonids and Pacific herring during dredging projects, would apply to the Revised Project Modifications.

Overall, 2009 Mitigation Measures I.2c, I.2d, and I.3 as well as Mitigation Measures BIO-2 and BIO-3 would apply to the Revised Project Modifications to mitigate potential impacts associated with the proposed landing dock. However, the landing dock would be in an area of open water adjacent to the wharf infrastructure. A pedestrian bridge accommodating the Bay Trail would separate the landing dock from the rip-rap edge embankment and surface parking lot beyond (see Figure II-2). There are no wetlands in the area to be avoided and no requirement for a new wetland delineation. Therefore, although previously required for the Project Modifications and still required for the Approved Project, 2009 Mitigation Measures I.2a, *Corps-Verified Wetland Delineation*, and I.2b, *Wetland Avoidance*, would not be required for the landing dock or the Revised Project Modifications.

As noted above, the landing dock would require Corps, RWQCB, and BCDC approval. This process is supported by SCA HYD-2, *Bay Conservation and Development Commission (BCDC) Approval*, and 2009 Mitigation Measure I.2c, *Obtain Regulatory Permits and other Agency Approvals*. To obtain approval from these agencies, compensatory mitigation for the overwater area associated with the landing dock may be required. However, compensatory mitigation for

temporary impacts to, and permanent loss of, waters of the U.S., as required by regulatory permits issued by the USACE, RWQCB, and BCDC is not required to adhere to the specific requirements in 2009 Mitigation Measure I.2e, *Compensatory Mitigation*. For example, given the landing dock would be in an area of open water, rip-rap edge embankment, and no wetlands, the compensatory mitigation would not likely include restoring wetlands. Therefore, although previously required for the Project Modifications and still required for the Approved Project, 2009 Mitigation Measure I.2e, *Compensatory Mitigation*, would not be required for the landing dock or the Revised Project Modifications. As such, 2009 Mitigation Measure I.2e is replaced with new Mitigation Measure BIO-4, *Compensatory Mitigation*. New Mitigation Measure BIO-4 addresses construction and/or operation of the water taxi landing dock by retaining the requirement for compensatory measures protecting waters of the U.S., including wetlands, as identified in 2009 Mitigation Measure I.2e, while not referring to associated regulatory permits issued by the USACE, RWQCB, or BCDC as they may not be required. Overall, 2009 Mitigation Measures I.2c, I.2d, and I.3, as well as Mitigation Measures BIO-2, BIO-3, and BIO-4 are considered adequate to mitigate the potential impacts of the landing dock to a less than significant level, consistent with the Approved Project. These revised mitigation measures will continue to mitigate any applicable potentially significant environmental impacts of the Revised Project Modifications to a less than significant level and do not cause any significant impacts.

The Revised Project Modifications would still add one potential tower site adjacent to Channel Park. As such, SCA BIO-1 requiring submittal of a Bird Collision Reduction Plan for City review would still apply.

**Overall, compared to the Project Modifications analyzed in the Draft SEIR, the Revised Project Modifications 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. One exception pertains to the Clinton Basin dredging and reuse of fill associated with the Approved Project in the Draft SEIR and that would now continue to occur with the Revised Project Modifications, but which would be the same as identified in the 2009 EIR. All other less-than-significant and less-than-significant with mitigations biological resources impacts would remain the same as those identified for the Project Modifications.

### ***Aesthetics, Shadow, and Wind***

The Revised Project Modifications would not result in changes to scenic views and vistas from the public viewpoints selected for analysis as compared to the Approved Project. Views from the four viewpoint locations depicted in Section IV.K, *Aesthetics, Shadow, and Wind*, would be similar to the second image representing the Approved Project in the existing setting (see Draft SEIR Figures IV.K-2 through IV.K-5). Therefore, the Revised Project Modifications would not change the Approved Project's less-than-significant impact on public scenic vistas.

The Draft SEIR evaluated the proposed new tower locations for changes to visual character and quality, scenic vistas, new sources of light and glare, and wind. While the shift in tower location would alter the effects of the Approved Project, it would not increase the severity of these impacts.

The Draft SEIR Section IV.K, *Aesthetics, Shadow, and Wind* (see Draft SEIR Figures IV.K-6 through IV.K-14), evaluated the proposed new tower locations for changes to the area of potential new shadow from new tower locations. The Draft SEIR showed that the proposed new location on Parcel L would generate potential new shadow on Fifth Avenue Point and Chanel Park during fall and spring mornings, and a portion of Fifth Avenue Point during summer and winter midday. However, these new areas of potential shading would not occur under the Revised Project Modifications. The location on Parcel M would not create any new potential shadow compared with what was analyzed in the 2009 EIR. Therefore, the Revised Project Modifications would not change the Approved Project's less-than-significant impact with respect to shadows.

### ***Public Services and Recreation***

Compared with the Project Modifications, the Revised Project Modifications would reduce boating activity. Activity associated with the landing dock, including the water taxi service, would not result in meaningful increase in demand for maritime emergency services or law enforcement. The less-than-significant impact to public services would remain the same as those identified for the Approved Project. All other less-than-significant public services impacts would remain the same as those identified for the Project Modifications.

### ***Utilities and Service Systems***

The Revised Project Modifications would not result in additional gasoline and diesel marine vehicles and thus would use less energy than the Project Modifications. The energy required to operate the proposed water taxi service, either by diesel-powered vessels or all electric vessels, would be unchanged and would still result in a less-than-significant impact to energy resources. All other less-than-significant utilities impacts would remain the same as those identified for the Project Modifications.

### ***Greenhouse Gas Emissions***

Elimination of the marina expansion component of the Project Modifications would not change the Project Applicant's requirement to implement SCA GHG-1, Project Compliance with the Equitable Climate Action Plan (ECAP) Consistency Checklist. Therefore, the Revised Project Modifications would not result in a meaningful change in this less-than-significant impact.

### ***Other Topic Areas***

In addition to the above topic areas, the Revised Project Modifications would result in the same less-than-significant and less-than-significant with mitigation impacts as those identified for the Project Modifications in the following topic areas:

- Transportation and Circulation
- Hazards and Hazardous Materials
- Population and Housing

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# CHAPTER III

## Roster of Commenters

### III.A Introduction

This chapter lists each public agency, organization, and individual that provided comments on the Draft SEIR generally during the public review and comment period for the Draft EIR, which began on June 11, 2021, and ended at 5:00 p.m. August 10, 2021.<sup>1</sup> The comments addressed in Chapter V (Responses to Individual Comments) and Chapter VI (Responses to Public Hearing Comments) of this Final SEIR are presented in the order of the commenters listed below.

Commenters have an alphabetic designation that corresponds to the category of commenter, such as “A” for public agencies. A number follows the alphabetic designation to indicate the sequence of the comment submissions. For example, “A1” is the first public agency comment submission identified, as shown below.

### III.B Public Agencies

**Table III-1** below lists the public agencies that submitted comments on the Draft SEIR. As shown in the table, each public agency’s comment submission is identified with an “A” designation and followed by a number, which indicates the order in which the comments are responded to in Chapter V of this Final SEIR.

**TABLE III-1  
STATE, REGIONAL, AND LOCAL AGENCIES COMMENTING ON THE DRAFT EIR**

Designator	Commenter	Date Received
<b>Agencies</b>		
A1.1	San Francisco Bay Conservation and Development Commission (BCDC)	7/21/2021
A1.2	San Francisco Bay Conservation and Development Commission (BCDC)	8/10/2021
A2	California Department of Transportation (Caltrans)	7/23/2021
A3	California Department of Fish and Wildlife (CDFW)	7/26/2021
A4.1	United States Coast Guard (USCG)	7/29/2021
A4.2	United States Coast Guard (USCG)	7/28/2021
A5	San Francisco Regional Water Quality Control Board (SFRWQCB)	7/15/2021

<sup>1</sup> Within the public review and comment period and during the public hearing on the Draft SEIR, the City received numerous requests for an extension of the comment period beyond the required 45-day period, which was initially set to expire on July 26, 2021. The City issued a Notice of Extension of the Comment Period on July 23, 2021, that informed the public of an extended comment period ending on August 10, 2021.

### III.C Organizations

Table III-2 below lists the organizations that submitted comments on the Draft SEIR. As shown in the table, each organization’s comment submission is identified with an “O” designation and followed by a number, which indicates the order in which the comments are responded to in Chapter V of the Final SEIR.

**TABLE III-2  
ORGANIZATIONS COMMENTING ON THE DRAFT EIR**

Designator	Commenter	Date Received
<b>Organizations</b>		
O-1	Golden Gate Audubon Society	8/10/2021
O-2.1	Oakland Heritage Alliance	8/8/2021
O-2.2	Oakland Heritage Alliance	8/10/2021
O-3	San Francisco Baykeeper	8/10/2021
O-4	Sierra Club	8/10/2021
O-5	Waterfront Action	7/31/2021
NOTES:		
a. Communities		

### III.D Individuals

Table III-3 below lists the individuals that submitted comments on the Draft SEIR. As shown in the table, each individual’s comment submission is identified with an “I” designation and followed by a number, which indicates the order in which the comments are responded to in Chapter V of this Final SEIR.

**TABLE III-3  
INDIVIDUALS COMMENTING ON THE DRAFT EIR**

Designator	Commenter	Date Received
<b>Individuals</b>		
I-1	Tim Anderson	8/10/2021
I-2	JoAnna Ben-Yisrael	7/20/2021
I-3	Marion Borst	7/14/2021
I-4	John Bowers	8/9/2021
I-5	Kristin Bowman	7/18/2021
I-6	Lisa Broggi	7/21/2021
I-7	Benjamin Burke	8/8/2021
I-8	Leal Charonnat	8/10/2021
I-9	Adrian Cotter	7/28/2021

**TABLE III-3 (CONTINUED)**  
**INDIVIDUALS COMMENTING ON THE DRAFT EIR**

<b>Designator</b>	<b>Commenter</b>	<b>Date Received</b>
I-10	Chelsea Crandall	8/10/2021
I-11	Renee de la Prade	8/4/2021
I-12.1	Emilina Dissette	7/19/2021
I-12.2	Emilina Dissette	8/11/2021
I-13.1	Dan Franco	7/16/2021
I-13.2	Dan Franco	7/22/2021
I-14	Aileen Frankel	7/31/2021
I-15	Marcus Guillard	8/10/2021
I-16	Michael Henderson	7/22/2021
I-17	Brent Housteau	7/24/2021
I-18	Helen Hutchison	8/6/2021
I-19	Larry Karp	7/10/2021
I-20	Oliver Kay	7/19/2021
I-21	Susan Klee	7/20/2021
I-22	John Klein	8/10/2021
I-23	Russ Lebovitz	7/11/2021
I-24	Max Matheson	8/9/2021
I-25	Peter McInerney	8/10/2021
I-26	Mike Perlmutter	7/27/2021
I-27	Stewart Port	8/2/2021
I-28	Kate Rannells	6/26/2021
I-29	John Rogers	8/9/2021
I-30	Teri Sage	8/2/2021
I-31	Elizabeth Sher	7/12/2021
I-32.1	Donna Smithey	7/27/2021
I-32.2	Donna Smithey	8/10/2021
I-32.3	Donna Smithey	8/10/2021
I-33.1	Patty St. Louis	7/19/2021
I-33.2	Patty St. Louis	8/10/2021
I-34	William Threlfall	6/24/2021

### III.E Planning Commission Public Hearing

Table III-4 below lists persons who provided verbal comments at the City of Oakland Planning Commission Public Hearing on the Draft EIR, held on Wednesday, July 21, 2021. Responses to individual comments raised during the Planning Commission Public Hearing are provided in Chapter VI of this Final SEIR and are identified with a “PH” designation.

**TABLE III-4  
PLANNING COMMISSION PUBLIC SPEAKERS AND COMMISSIONERS**

<b>Planning Commission Public Hearing – July 21, 2021</b>			
<b>Public Speakers</b>			
PH-1	Patty St. Louis and additional speaker	PH-7	Naomi Schiff
PH-2	Markita Vanjay	PH-8	John C. Rogers
PH-3	Daniel Franco	PH-9	Nathan Bennett
PH-4	Emilina Dissette	PH-10	Katherine Bell
PH-5	Ben Burke	PH-11	Christian Dixon Phillips
PH-6	Max Matheson	PH-12	Stewart Port
<b>Planning Commissioners</b>			
<ul style="list-style-type: none"> <li>• Tom Limon, Chair</li> </ul>		<ul style="list-style-type: none"> <li>• Clark Manus, Vice-Chair</li> </ul>	
<ul style="list-style-type: none"> <li>• Amanda Monchamp</li> </ul>		<ul style="list-style-type: none"> <li>• Jonathan Fearn</li> </ul>	
<ul style="list-style-type: none"> <li>• Vince Sugrue</li> </ul>		<ul style="list-style-type: none"> <li>• Leopold Ray-Lynch</li> </ul>	
<ul style="list-style-type: none"> <li>• Sahar Shirazi</li> </ul>			

# CHAPTER IV

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## Consolidated Responses

### IV.A Introduction

Although not required by the CEQA, this chapter presents Consolidated Responses to address the topics raised most often by the public in the comments received on the Draft SEIR. The intent of the Consolidated Responses is to improve the readability of the document by reducing repetition and numerous cross-references throughout the responses presented in Chapter V, *Responses to Draft EIR Comments*, and Chapter VI, *Responses to Public Hearing Comments*.

The Consolidated Responses thematically address overarching guidance or a general topic in a comprehensive manner and therefore are cited frequently throughout Chapters V and VI. The reader should be aware that only portions of one or more Consolidated Responses may be directly applicable to any given comment. Conversely, only a portion of a particular comment may be referenced to one or more Consolidated Responses.

The following Consolidated Responses are presented in this chapter:

- **Consolidated Response 1: Project Merits / Other Non-CEQA Topics**
- **Consolidated Response 2: Comments Not Applicable to the Revised Project Modifications**
- **Consolidated Response 3: Existing Conditions / Approved Project**

### IV.B Consolidated Responses

#### IV.B.1 Project Merits / Other Non-CEQA Topics

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)). Comments regarding the merits of the Approved Project, the Project Modification or matters that do not raise an environmental issue or specific questions about the impact analyses, alternatives or information in the Draft SEIR do not require response pursuant to CEQA Guidelines Section 15088.

Several comments received during the public comment period for the Draft SEIR raise concerns that are non-CEQA, even as part of discussion of environmental topics. In particular, these

comments do not address environmental issues that are within the scope of CEQA and tend to express opinions and statements that are rarely accompanied with supporting evidence. Nevertheless, many of the non-CEQA comments address topics of valid concern to the community, general public or the City. However, because the comments were submitted during the public review period for the Draft SEIR, they nonetheless constitute part of the public record that will be available to decision makers as part of this Response to Comments/Final SEIR that they will consider prior to taking action to approve or disapprove the Project.

## IV.B.2 Comments Not Applicable to the Revised Project Modifications

As discussed in Chapter II, *Updated Project Information and Analysis*, of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve a potential residential tower on Parcel L or revisions to the Approved Project marina, aside from the landing dock which remains proposed near the Ninth Avenue Terminal Building.

Updates to the Draft SEIR analysis associated with the revisions to the Project Modifications are also addressed in Chapter II of this document. As described in that chapter, the Revised Project Modifications would still include a publicly accessible dock with access provided from Township Commons Park via a gangway located near the Ninth Avenue Terminal Building. This component of the Revised Project Modifications would add approximately 0.25 acres of water surface to the Project site and require nine piles to support the structure. The landing dock would be installed in an area of open water adjacent to the wharf infrastructure. A pedestrian bridge accommodating the Bay Trail separates the landing dock from the rip-rap edge embankment and surface parking lot beyond (see Figure II-2). There are no wetlands in the area to be avoided and no requirement for a new wetland delineation. Therefore, although previously required for the Project Modifications and still required for the Approved Project, 2009 Mitigation Measures I.2a, *Corps-Verified Wetland Delineation*, and I.2b, *Wetland Avoidance*, would not be required for the landing dock or the Revised Project Modifications and 2009 Mitigation Measure I.2e, *Compensatory Mitigation*, is replaced with new Mitigation Measure BIO-4, *Compensatory Mitigation* (see Chapter VII, *Changes-Errata to the Draft SEIR*, for revisions to the Draft SEIR Table II, *Summary of Impacts, Standard Conditions of Approval, and Mitigation Measures, and Residual Impacts*).

Since the Project Applicant proposed these revisions after the Draft SEIR was published for public review and comment, the City consequently 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; the Project Applicant formally withdrew and modified its proposed Project Modifications as described above and detailed in Chapter II.

Each of these comments that are no longer relevant to the Revised Project Modifications nonetheless constitute part of the public record that will be available to decision makers as part of this Response to Comments/Final SEIR that they will consider prior to taking action to approve or disapprove the Revised Project Modification. In some cases, a comment may address Project

Modifications that are no longer proposed in addition to components that are still proposed and were evaluated in the Draft SEIR and/or this document. Responses in this document appropriately address all comments that apply to the Revised Project Modifications and refer comments that are no longer relevant to this Consolidated Response for clarification and closure. Significant environmental issues and recommendations raised in comments on Project Modifications that are no longer proposed are deemed immaterial by the Revised Project Modifications. In short, because such comments do not raise an environmental issue or specific questions about the impact analyses, alternatives or information in the Draft SEIR for a proposed project, they do not require response pursuant to CEQA Guidelines Section 15088.

### IV.B.3 Existing Conditions / Approved Project

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.

Pursuant to Section 15125(a) of the CEQA Guidelines, the Draft SEIR measures the physical impacts of the Project Modifications against a “baseline” of physical environmental conditions at and near the Project site. The Draft SEIR describes existing conditions present at the time the NOP was published in September 2018. The analysis of potential impacts from the Project Modifications relies on these conditions which serve as the environmental baseline. Many concerns raised by commenters relate to existing conditions that are part of the baseline conditions. To the extent that comments address existing conditions that would not change as a result of the Project Modifications, they do not concern impacts of the Project Modifications or the adequacy of the Draft SEIR. These are issues that will continue to exist with or without the Project Modifications. The focus of mitigation measures included in the Draft SEIR is similar—they are intended to address new and significant impacts of the Project Modifications and not to remedy existing problems. Measures and/or improvements to address existing baseline conditions and impacts beyond those resulting from the Revised Project Modifications would be outside of the scope of the Project Modifications and the Draft SEIR.

Pursuant to Public Resources Code 21166, once an EIR has been certified, further CEQA review is limited whether the project has been constructed or not. 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. This approach is taken because CEQA review has already occurred in the 2009 EIR for the Approved Project, including identification of environmental impacts, feasible mitigation measures, and a range of feasible alternatives. In accordance with CEQA Guidelines Section 15163, the Draft SEIR focuses on the potential impacts of the Project Modifications and additions/changes necessary to disclose environmental impacts from the Project Modifications that were not analyzed in the 2009 EIR or would be substantially more severe than anticipated by the 2009 EIR.

Pursuant to the CEQA Guidelines, due to the limited scope of the analysis in this SEIR, the scope of the responses required to be included in this document in response to public comments received on the Draft SEIR are similarly limited to portions of the Approved Project that are proposed for revision. Challenge to 2009 mitigation measures for the Approved Project, or any other aspect of the 2009 EIR, would have had to be formally raised within 30 days from the filing of the Notice of Determination (NOD) for the 2009 EIR. These comments are not timely now and are beyond the scope of the current CEQA document.

# CHAPTER V

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## Responses to Written Comments

### V.A Introduction

This chapter includes presents all comments received by email during the public review and comment period on the Draft SEIR. Specific responses to the individual comments in each correspondence are provided side-by-side. Actual written correspondence (letters and emails) are included in **Appendix B** to this document.

As described in Chapter III, *Roster of Commenters*, each correspondence is identified by an alphabetic designation that corresponds to the category of commenter, such as “A” for public agencies, and a number follows the alphabetic designation to designate the sequence of the comment submissions (e.g., “A7” for the seventh agency comment letter). Specific comments within each correspondence also are identified by a numeric designator that reflects the numeric sequence of the specific comment within the correspondence (e.g., “A7-3” for the third comment in Comment Letter A7).

Responses focus on comments that pertain to the adequacy of the analysis in the SEIR or to other aspects pertinent to the potential effects of the Revised Project Modifications on the environment pursuant to CEQA. Comments that address topics beyond the purview of this SEIR for the Revised Project Modifications or beyond the purview of CEQA are noted as such for the public record. Where comments have triggered changes to the Draft SEIR, these changes appear as part of the specific response and are consolidated in Chapter VII, *Changes-Errata to the Draft SEIR*, where they are listed in the order that the revision would appear in the Draft SEIR document. Some of the topics raised are addressed in the consolidated responses in Chapter 4, *Consolidated Responses*, as referenced in the responses below.

## V.B Public Agencies

### A1.1 San Francisco Bay Conservation and Development Commission (BCDC)

COMMENT	RESPONSE
<p>We first became aware that the DSEIR was available when Save the Bay emailed us about it. Our administrative secretary does not recall receiving your official Notice of Availability. I have asked her to check again and confirm when she goes into the office tomorrow.</p> <p>Our administrative team is generally diligent about relaying official notices; perhaps this one slipped. We receive official correspondence addressed to BCDC by email at <a href="mailto:info@bcdc.ca.gov">info@bcdc.ca.gov</a> and by post at 375 Beale Street, Suite 510, San Francisco, 94105. Mail sometimes gets sent to one of our old addresses, or gets sidelined if specifically addressed to a person who is currently working remotely.</p> <p>We apologize if the error was on our part and hope you will consider granting the time extension for submitting comments.</p>	<p>A1.1-1 This transmittal comment is noted. No response is required.</p>

### A1.2 San Francisco Bay Conservation and Development Commission (BCDC)

COMMENT	RESPONSE
<p>On behalf of Shruti Sinha, attached is a letter to you regarding Brooklyn Basin Marina Expansion Project DSEIR Comments. BCDC Permit No. 2006.007.03. If you have any questions, please contact Shruti at tel: 415-352-3654 or by email: <a href="mailto:shruti.sinha@bcdc.ca.gov">shruti.sinha@bcdc.ca.gov</a>.</p>	<p>A1.2-1 This transmittal comment is noted. No response is required.</p>
<p>Thank you for the opportunity to comment on the Brooklyn Basin Marina Expansion Project (Expansion Project) Draft Supplemental Environmental Impact Report (DSEIR) on proposed project modifications to the 2009 Oak-to-Ninth Project that may affect public access to the San Francisco Bay and shoreline. This opportunity allows the San Francisco Bay Conservation and Development Commission (BCDC or Commission) to comment on aspects of the Expansion Project that we would be required to approve or deny through the exercise of our own regulatory authority under the McAteer-Petris Act and the California Code of Regulations.</p>	<p>A1.2-2 This comment is a summary of BCDC’s jurisdiction and authority. The City of Oakland, as Lead Agency of the SEIR acknowledges BCDC’s role as a Responsible Agency. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088.</p>
<p><b>Applicants.</b> Zarsion-OHP 1, LLC., Port of Oakland, City of Oakland <b>Project.</b> The Expansion Project is proposed as a modification of the previously approved 64.2-acre project analyzed under the 2009 Oak-to-Ninth Avenue Environmental Impact Report (2009 EIR). The project modifications include a residential density increase of 600 units (for a project site total of up to 3,700 units), an update to the parking ratios, expansion of the approved marina infrastructure and operation</p>	<p>A1.2-3 The comments regarding the components of the Project Modifications are noted and are consistent with the discussion in the <i>Project Description</i> of the Draft SEIR. However, as discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve a potential residential tower on Parcel L or expansion of the Approved Project marina, aside from the landing dock near the Ninth</p>

## A1.2 San Francisco Bay Conservation and Development Commission (BCDC)

COMMENT	RESPONSE
<p>(including increasing the number of slips by 158), increase in site area by approximately 10 acres of water surface to accommodate the expanded marina, and accommodations for an existing water taxi/shuttle service currently operating in San Francisco Bay.</p>	<p>Avenue Terminal Building. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088.</p>
<p><b>Location.</b> The Expansion Project site is bounded by Fallon Street and Jack London Square to the west, Embarcadero and Interstate 880 (I-880) to the north, the Oakland Estuary to the south, and 10th Avenue (generally) to the east. Estuary Park, the southern portion of Lake Merritt Channel (the channel), Clinton Basin, and the Ninth Avenue Terminal are included in the Project site, but approximately 4.72 acres of privately-held parcels along 5th Avenue are not included. The Project site consists of Alameda County Assessor's Parcel Numbers (APNs) 018-0430-001-14, 018-0460-004-06, -08, and -11, and 018-0465-002-06, -12, -15, -27, -29, and -30</p>	
<p><b>Permitting Authority.</b> The McAteer-Petris Act of 1965 "empowers the Commission to issue or deny permits, after public hearings, for any proposed project that involves placing fill, extracting materials or making any substantial change in use of any water, land or structure" within its jurisdiction (California Government Code (CGC) § 66604). Note that "substantial change in use" includes projected changes to the type of use as well as intensity of use, e.g., substantial increase or decrease in population density or occurrence of an activity.</p> <p><b>BCDC Permit No. 2006.007.00.</b> On February 4, 2011, the Commission issued Permit No. 2006.007.00 for the "Brooklyn Basin Oak-to-Ninth Project" (Approved Project). Since 2011, this permit has been administratively amended on three separate occasions. The Expansion Project, as described in the DSEIR, would require a material amendment to the current BCDC permit, involving a public hearing and vote by the Commission. The concerns expressed in this letter will be among the factors considered when and if the Expansion Project proponents apply for an amendment to their permit.</p>	<p>A1.2-4 This comment is a summary of BCDC's jurisdiction and authority under the McAteer-Petris Act. The City of Oakland, as Lead Agency of the SEIR, acknowledges BCDC's role as a Responsible Agency. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088.</p>
<p><b>LAND USE, PLANS, AND POLICIES</b></p> <p>Generally speaking, the Commission's permitting process attempts to balance development with natural resource conservation and maximum feasible public access. The Bay Plan policies listed in this letter are not exhaustive. Our intention is to identify a selection of relevant policies which the DSEIR has not already acknowledged or considered in all applicable contexts, or which have been updated since the 2009 EIR.</p> <p><b>Bay Plan Policies on Public Access.</b></p> <p><b>Policy 1.</b> A proposed fill project should increase public access to the Bay to the maximum extent feasible, in accordance with the policies for Public Access to the Bay.</p>	<p>A1.2-5 BCDC has granted a permit for the Approved Project, indicating that the Approved Project as mitigated is consistent with Bay Plan policies. As noted above, the City of Oakland, as Lead Agency of the SEIR, acknowledges BCDC's role as a Responsible Agency. City SCA, HYD-2 (61), <i>Bay Conservation and Development Commission (BCDC) Approval</i>, requires the Project Applicant to obtain BCDC approval for work within BCDC's jurisdiction and to submit evidence of the permit/approval to the City and comply with all requirements and conditions of the permit/approval. BCDC's current relevant policies will be considered should the Project Applicant apply for new or amended permit. Since the Revised Project Modifications are not a significant change to the Approved Project, the City of Oakland believes that the Revised Project Modifications are consistent with applicable Bay Plan policies.</p>

## A1.2 San Francisco Bay Conservation and Development Commission (BCDC)

COMMENT	RESPONSE
<p><b>Policy 2.</b> In addition to the public access to the Bay provided by waterfront parks, beaches, marinas, and fishing piers, maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, wildlife area, or other use, except in cases where public access would be clearly inconsistent with the project because of public safety considerations or significant use conflicts, including unavoidable, significant adverse effects on Bay natural resources. In these cases, in lieu access at another location preferably near the project should be provided. If in lieu public access is required and cannot be provided near the project site, the required access should be located preferably near identified vulnerable or disadvantaged communities lacking well-maintained and convenient public access in order to foster more equitable public access around the Bay Area.</p> <p><b>Bay Plan Policies on Recreation.</b></p> <p><b>Policy 3(a).</b> Recreational facilities, such as waterfront parks [and] marinas... should be consistent with the public access policies that address wildlife compatibility and disturbance.</p> <p><b>Policy 3(b).</b> Marinas should be allowed at any suitable site on the Bay. Unsuitable sites are those that tend to fill up rapidly with sediment and require frequent dredging; have insufficient upland; contain valuable tidal marsh, or tidal flat, or important subtidal areas; or are needed for other water-oriented priority uses.</p> <p><b>Policy 4(b).</b> In waterfront parks and wildlife refuges with historic buildings... physical and visual access corridors between inland public areas, vista points, and the shoreline should be created, preserved, or enhanced. Corridors for Bay related wildlife should also be created, preserved and enhanced where needed and feasible.</p> <p><b>Marina Expansion.</b> While removal of existing docks in the Brooklyn Basin project area is authorized by the permit, construction of the proposed new docks would require additional BCDC approval. Among other factors, our analysis would scrutinize impacts to Bay views and the tidal marsh along South Park.</p>	
<p><b>Increased Residential Density and Tower Relocation.</b> When analyzing the impacts of increasing density by 600 units in Phases III and IV and relocating the towers from Parcels H and J to Parcels L and M, the DSEIR considers only the net effect on the project (the overall quantitative difference between the Approved Project and the Expansion Project). However, BCDC would need to evaluate each modification individually for maximum feasible public access and natural resource conservation. In addition to requiring approximate equivalency in the amount of fill that is added and removed throughout the overall project site, we would also require qualitative analysis of how each type of fill would impact its immediate surroundings. For example, although swapping a tower from Parcel H</p>	<p>A1.2-6 The Draft SEIR analyzed each component of the Project Modifications, including the potential environmental effects resulting from relocating a tower site to Parcel L or M. The Project Modifications, including the new potential tower sites, would not alter the Approved Project’s overall building envelopes or footprints; the base building heights, massing, or setbacks; or the site circulation plan and proposed open spaces as analyzed in the certified 2009 EIR. Relocating tower sites would not alter Approved Project buildings below 85 feet and would not add obstructions to protected views to the bay, as demonstrated in the Draft SEIR. Therefore, an evaluation of each proposed modification individually within its respective proximal surroundings would not result in any different effects than identified in the 2009 EIR, and the Project Modifications’</p>

## A1.2 San Francisco Bay Conservation and Development Commission (BCDC)

COMMENT	RESPONSE
<p>or J to Parcel L may not change the overall density burden of the project, its closer proximity to the tidal marsh along South Park may be more detrimental to wildlife or Bay views than there was previously. In the final SEIR (FSEIR), the preparers should also evaluate the impacts of each proposed modification individually within their respective proximal surroundings.</p>	<p>potential tower relocation would not result in a new or more severe significant impact with respect to public views and scenic vistas (see Draft SEIR Section IV.K, <i>Aesthetics, Shadow, and Wind</i>).</p> <p>As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve a potential residential tower on Parcel L or expansion of the Approved Project marina, aside from the landing dock near the Ninth Avenue Terminal Building (see Consolidated Response 2 and 3). Therefore, the Revised Project Modifications would not result in tall masts clustered nor alter views from Township Commons or views through BCDC designated view corridors.</p> <p>The Revised Project Modifications would not result in substantial changes to onshore construction activity analyzed in the 2009 EIR. All 2009 Mitigation Measures related to onshore construction are still required for the Approved Project, including 2009 Mitigation Measures 1.2c, <i>Obtain Regulatory Permits and other Agency Approvals</i>, specifying compliance with all BCDC permit conditions.</p>
<p><b>Water Taxi Accommodations.</b> The DSEIR does not identify the ferry service that is currently operating or is expected to operate in the Brooklyn Basin. While BCDC is involved in discussions to potentially permit ferry services at various other Bay Area locations, we have not had specific discussions with ferry operators in the Brooklyn Basin. Any contemplation of fill for water taxi accommodations should include pursuit of a BCDC permit to operate that service</p>	<p>A1.2-7 As noted above, the City of Oakland, as Lead Agency of the SEIR, acknowledges BCDC's role as a Responsible Agency. See Responses to Comments A1.2-5 and A1.2-6 above. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088.</p>
<p><b>Bay Plan Water Surface Area and Volume Policies.</b></p> <p><b>Policy 1.</b> The surface area of the Bay and the total volume of water should be kept as large as possible in order to maximize active oxygen interchange, vigorous circulation, and effective tidal action. Filling and diking that reduce surface area and water volume should therefore be allowed only for purposes providing substantial public benefits and only if there is no reasonable alternative.</p> <p><b>Policy 2.</b> Water circulation in the Bay should be maintained, and improved as much as possible. Any proposed fills, dikes, or piers should be thoroughly evaluated to determine their effects upon water circulation and then modified as necessary to improve circulation or at least to minimize any harmful effects.</p> <p><b>Bay Plan Water Quality Policies.</b></p> <p><b>Policy 1.</b> Bay water pollution should be prevented to the greatest extent feasible. The Bay's tidal marshes, tidal flats, and water surface area and volume should be conserved and, whenever possible, restored and increased to protect and improve water quality.</p> <p><b>Policy 2.</b> Water quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San</p>	<p>A1.2-8 See Response to Comment A1.2-5 above. The Revised Project Modifications will involve filling a small amount of the estuary to accommodate the small watercraft dock. This small amount of fill, which is estimated to be less than 250 cubic feet, is not anticipated to have a significant impact on water circulation in the estuary. Similarly, the possibility of water pollution would not change from the Approved Project.</p>

## A1.2 San Francisco Bay Conservation and Development Commission (BCDC)

COMMENT	RESPONSE
<p>Francisco Bay Regional Water Quality Control Board's Water Quality Control Plan, San Francisco Bay Basin [...].</p>	
<p><b>Policy 3.</b> New projects should be sited, designed, constructed and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay [...].</p>	
<p><b>Water Surface Area.</b> The marina expansion would require an additional 10 acres of water surface to be added to the Approved Project site. This means water that currently benefits from circulation would be at risk of deoxygenation, which may have an adverse impact on aquatic wildlife and vegetation. The FSEIR should analyze the impact that the placement of slips and boats will have on water circulation and the natural resources that rely on it.</p>	<p>A1.2-9 As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve expansion of the Approved Project marina, aside from the landing dock near the Ninth Avenue Terminal Building, which is not near any wetland areas. The landing dock would require 0.25 acres of additional in-water area (as opposed to the 10 acres described in the Draft SEIR) and have a footprint of approximately 6,000 square feet. As noted in the in Chapter III of the Draft SEIR and Chapter II of this document, the Draft SEIR conservatively assumed maximum capacity on-demand water-taxi service which would include to up to six round trips per day five days per week during the commute hours. This is an existing service currently operating on the Bay and only a portion of these trips would be associated with the provision of an additional stop at the proposed landing dock. A significant impact on special-status aquatic species would not occur as a result of the Revised Project Modifications. Nonetheless, modeling of the effects to circulation and water within the Oakland Inner Harbor conducted in support of other recent marina constructions within San Francisco Bay is described in this response for informational purposes only.</p> <p>Modeling conducted in support of the AC34 EIR (2011) and Crane Cove Park Development (2014) provide general indicators for the changes in site conditions as a result of installation of in-water structures to support small vessel traffic. These models concluded that structures and other in-water improvements do have the potential to induce velocity changes of typical currents. The effects on current velocities were found to be restricted to the immediate vicinity of the structures only during stronger currents. At times of low currents, changes would be negligible. Within the Oakland Inner Harbor, sediment transport, salinity and water quality are driven almost entirely by tidal currents. Therefore, any potential changes in these factors caused by the installation of the small watercraft accommodations are expected to be confined to the immediate vicinity of the structures (i.e., within the tidal prism) and, in light of the relatively small addition needed for the small watercraft accommodations, minor. Further, wind and wind-waves, which cause mixing, would be expected to further reduce the potential effects of the water taxi accommodations on the Bay tidal currents, sediment transport, salinity and water quality. Accordingly, impacts caused by the Revised Project Modifications would be less than significant.</p> <p>Additionally, expanded vessel operation is designed to minimize wake-wash impacts. (Wake is caused by boats moving through water and displacing it; wash is caused by the motion of the propeller) Since vessels are shallow-draft and would operate at slow speeds near a landing, negligible scour impacts are expected. Waters would continue</p>

## A1.2 San Francisco Bay Conservation and Development Commission (BCDC)

COMMENT	RESPONSE
<p>Per Water Surface Area and Volume Policy 1, the FSEIR should also analyze alternatives to the marina expansion that could make more efficient use of the water surface area.</p>	<p>to support aquatic habitat and species (e.g., fish and other aquatic species) similar to what currently exists.</p> <p>A1.2-10 See Draft SEIR Chapter V. <i>Alternatives</i>, which considered Alternative 1, No Project Alternative and 2, No Marina Expansion Alternative, which involved less water surface area than the Project Modifications. Also see Consolidated Response 2 and 3.</p>
<p><b>Sea Level Rise and Groundwater.</b> The DSEIR identified sea level rise as a flood risk and, using projections based on current tidal data and FEMA flood maps, concluded that sea level rise would not significantly impact the proposed Expansion Project. The preparers should note, however, that sea level rise threatens water quality not only through overland flooding, but also through possible groundwater contamination caused by saltwater incursions into fresh groundwater reservoirs. The FSEIR should include an analysis of the risk to groundwater contamination and groundwater rise caused by rising sea levels.</p>	<p>A1.2-11 As described in the 2009 EIR, groundwater beneath the Project site is not a source for municipal or agricultural uses. Groundwater wells in the vicinity of the Project site are monitoring wells associated with the remediation of the contamination of the groundwater onsite and are not used for supply. The closest well in the project vicinity is more than a mile from the Project site and is unknown whether this well is a water supply well.</p> <p>Regardless, as described in Draft SEIR Section IV.D, <i>Hydrology and Water Quality</i>, no change is proposed to the number or height of the Approved Project towers or the Approved Project's site in terms of land uses, overall development areas, circulation plan or drainage plans that would affect sea level rise effects on the site. Therefore, the Revised Project Modifications also would not change impacts regarding sea level rise risk. In addition, the conclusion regarding the potential impact to surface water and groundwater quality is the same as identified in the 2009 EIR.</p>
<p><b>Bay Plan Policies for Tidal Marshes and Tidal Flats.</b></p> <p><b>Policy 1.</b> Tidal marshes and tidal flats should be conserved to the fullest possible extent.</p> <p><b>Policy 2.</b> Any proposed fill, diking, or dredging project should be thoroughly evaluated to determine the effect of the project on tidal marshes and tidal flats, and designed to minimize, and if feasible, avoid any harmful effects.</p> <p><b>Policy 6.</b> Any habitat project should include clear and specific long-term and short-term biological and physical goals, success criteria, a monitoring program, and as appropriate, an adaptive management plan. Design and evaluation of the project should include an analysis of: (a) how the project's adaptive capacity can be enhanced so that it is resilient to sea level rise and climate change; (b) the impact of the project on the Bay's and local embayment's sediment transport and budget; (c) localized sediment erosion and accretion; (d) the role of tidal flows; (e) potential invasive species introduction, spread, and their control; (f) rates of colonization by vegetation; (g) the expected use of the site by fish, other aquatic organisms and wildlife; (h) an appropriate buffer, where feasible, between shoreline development and habitats to protect wildlife and provide space for marsh migration as sea level rises; (i) site characterization; (j) how the project adheres to regional restoration goals; (k) whether the project would be sustained by natural processes; and (l) how the project restores, enhances, or creates connectivity across Bay habitats at a local, sub-regional, and/or regional scale.</p>	<p>A1.2-12 See Response to Comment A1.2-5 and A1.2-8 above.</p>

## A1.2 San Francisco Bay Conservation and Development Commission (BCDC)

COMMENT	RESPONSE
<p><b>Policy 8.</b> The level of design; amount, duration, and extent of monitoring; and complexity of the adaptive management plan required for a habitat project should be consistent with the purpose, size, impact, level of uncertainty, and/or expected lifespan of the project. Habitat projects should have a funding strategy for monitoring and adaptive management [...].</p> <p><b>Marina Expansion Along South Park Wetland.</b> The marina expansion would place a long, 10-slip dock for the largest boats (up to 80 feet in length) along the wetland area in South Park (West). Although wetland enhancement in the South Park (West) subarea is a condition of BCDC Permit No. 2006.007.03, the DSEIR does not specifically outline the Applicants' current or future plan for wetland enhancement in this area. The report states that while the Port of Oakland once maintained a program for this wetland called the Wetland Enhancement Project, there is currently no community or regulatory plan for it. The DSEIR lists a number of 2009 Mitigation Measures for wetland protection and restoration, including "The Oak to Ninth Project Mitigation and Monitoring Plan", but does not indicate whether the Applicants have ever used those measures and, if so, which ones. Nor does it indicate the efficacy of any measures that may or may not have been taken. For this reason, the FSEIR should provide information on the Applicants' program for the wetland enhancement and mitigation requirements and their progress.</p>	<p>A1.2-13 As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve expansion of the Approved Project marina, aside from the landing dock near the Ninth Avenue Terminal Building (see Consolidated Response 2 and 3). The landing dock would require 0.25 acres of additional in-water area (as opposed to the 10 acres described in the Draft SEIR) and have a footprint of approximately 6,000 square feet. The landing dock would be in an area of open water adjacent to the wharf infrastructure, which is not near any wetland areas (see Figure II-2). A pedestrian bridge accommodating the Bay Trail would separate the landing dock from the rip-rap edge embankment and surface parking lot beyond. Therefore, although previously required for the Project Modifications and still required for the Approved Project, 2009 Mitigation Measures 1.2a, <i>Corps-Verified Wetland Delineation</i>, and 1.2b, <i>Wetland Avoidance</i>, would not be required for the landing dock or the Revised Project Modifications. In addition, 2009 Mitigation Measure 1.2e is replaced with new Mitigation Measure BIO-4, <i>Compensatory Mitigation</i> (see Chapter II, <i>Updated Project Information and Analysis</i> and Consolidated Response 2 and 3 regarding comments on existing conditions and the Approved Project).</p> <p>Nonetheless, this response includes an explanation of the efficacy and enforceability of 2009 Mitigation Measure 1.2b (which will continue to apply to the Approved Project effects analyzed in the 2009 EIR), which includes the following language:</p> <p style="padding-left: 40px;">Additionally, the existing restoration project [referred to as the Wetland Enhancement Project] at the southwest end of Clinton Basin, implemented by the Port of Oakland, shall be protected during construction activities. The extent of this area shall be clearly marked by a qualified biologist prior to the start of any grading or construction activities and a buffer zone established. All construction personnel working in the vicinity of the restoration area shall be informed of its location and buffer zone.</p> <p>As described in Draft SEIR Impact LU-4 (p. IV.A-19), LU-5 (p. IV.A-20), Impact BIO-4 (p. IV.I-15), Impact BIO-6 (p. IV.I-22), and Impact BIO-8 (p. IV.I-23), Mitigation Measure 1.2b, <i>Wetland Avoidance</i>, would apply to the Approved Project and would reduce any potential conflict with the Clinton Basin Wetland Restoration and Enhancement Project to a less than significant level.</p> <p>Further, the efficacy of the adopted mitigation measures to reduce or avoid the potentially significant impact identified to biological resources generally is addressed in</p>

## A1.2 San Francisco Bay Conservation and Development Commission (BCDC)

COMMENT	RESPONSE
	<p>the 2009 EIR<sup>1</sup> and summarized further in the Draft SEIR (p. IV.I-16), citing Mitigation Measure 1.2b, <i>Wetland Avoidance</i>, and the several other mitigation measures identified to address potential biological resources impacts, as “typical examples of the types of mitigation measures required for all development projects located adjacent to wetlands or other jurisdictional waters and that involve construction activities near or in such waters.”</p> <p>The effectiveness of Mitigation Measure 1.2b, <i>Wetland Avoidance</i>, can be assured through its requirements for avoidance of specific habitats, resources, certain activities, and calendar periods; by the requirement to obtain required agency permits prior to specific activities; through adherence to long-established best management practices (BMPs); through use of a qualified biologist; as-needed resource compensation; and specifically monitoring and allowances adjust adaptive management standards over time. In particular, courts have found that adherence to “best management practices” are proper mitigation under CEQA, especially where they are “widely employed.” (See <i>Friends of Oroville v. City of Oroville</i> (2013) 219 Cal.App.4th 832, 838.) Mitigation Measure 1.2b, <i>Wetland Avoidance</i>, includes such practices, including use of specific sediment control methods or devices, and the type and location of equipment to be used for debris and concrete riprap removal at water’s edge.</p>
<p><b>Tower Relocation.</b> The proposed relocation of one tower to Parcel L would place high population density in very close proximity to a tidal flat. The FSEIR should analyze the impact of the proposed tower on this wetland.</p>	<p>A1.2-14 As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve a potential residential tower on Parcel L (see Consolidated Response 2 and 3).</p>
<p><b>Bay Plan Policies on Appearance, Design, and Scenic Views.</b></p> <p><b>Policy 1.</b> The shores of the Bay should be developed in accordance with the Public Access Design Guidelines.</p> <p><b>Policy 2.</b> All bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore.</p> <p><b>Policy 4.</b> Structures and facilities that do not take advantage of or visually complement the Bay should be located and designed so as not to impact visually on the Bay and shoreline.</p> <p><b>Policy 8.</b> Shoreline developments should be built in clusters, leaving open area around them to permit more frequent views of the Bay. Developments along the shores of tributary waterways should be Bay-related and should be designed to</p>	<p>A1.2-15 See Response to Comment to A1.2-5 above. As noted above and in Chapter II of this FSEIR, the Project Modifications would not substantially change the proposed waterfront development from that proposed by the Approved Project.</p>

<sup>1</sup> Pages II.I-7 and II.I-8 of the Revisions to the Analysis for the Oak to Ninth Project EIR Prepared to Comply with Court Order.

## A1.2 San Francisco Bay Conservation and Development Commission (BCDC)

COMMENT	RESPONSE
<p>preserve and enhance views along the waterway, so as to provide maximum visual contact with the Bay.</p> <p><b>Policy 10.</b> Towers, bridges, or other structures near or over the Bay should be designed as landmarks that suggest the location of the waterfront when it is not visible, especially in flat areas. But such landmarks should be low enough to assure the continued visual dominance of the hills around the Bay.</p> <p><b>Policy 14.</b> Views of the Bay from vista points and from roads should be maintained by appropriate arrangements and heights of all developments and landscaping between the view areas and the water.</p> <p><b>Marina Along Township Commons.</b> Using visual simulations of four viewpoints to evaluate the visual impact of the marina expansion, the preparers concluded that the addition of masted boats along the shoreline, while “noticeable,” would have a less-than-significant impact. They further concluded that the boats could even be viewed as a beneficial effect given their consistency with the existing “maritime character” of the project site. However, the visual simulations for the marina are not adequate in scale or proximity to capture the impacts of the marina on the adjacent park spaces or view corridors. Thus, the methodology used for the DSEIR is insufficient to dispel concerns that the proposed marina expansion would substantially degrade the existing visual character or quality of the site and its surroundings.</p> <p>Additionally, while the Ninth Street Terminal was historically used for commercial shipping purposes, the current character of the shoreline is defined by an open water vista. The former Ninth Street Terminal has been converted to a successful waterfront park called Township Commons. The park sits partially over the Bay and provides sweeping vistas of the Bay across areas of open water. Park visitors who have enjoyed this attractive vista for nearly a year may find the appearance of tall masts clustered along the entire length of the wharf an obstruction that degrades the visual character of the park. Thus, the preparers should engage the local community in quantitative and qualitative studies to determine the visual impact of the marina expansion.</p> <p><b>Effect of Marina Expansion on View Corridors.</b> The BCDC permit for the Approved Project requires six dedicated view corridors throughout the Brooklyn Basin project site (as shown in Figure IV.A.1). Using the visual simulations described above, the DSEIR concludes that the look of clustered masts along the shoreline would not obstruct Bay views, and thus would not obstruct any of the dedicated view corridors. We have two contentions with this conclusion. Firstly, image location 15 is not framed on the center of the view corridor where the pathway opens up a view to the water. The visual simulations should reflect impacts to the view corridors. Secondly, the preparers’ conclusion makes the subjective assumption that the addition of clustered masts would not in fact be considered an obstruction. As discussed above, the masts could constitute a significant change in the character of the view, which may currently be valued by</p>	<p>A1.2-16 See Response to Comment A1.2-6 and A1.2-17. Regarding the concern about the two towers on Parcel M removing views, the public views of the estuary would remain unchanged. The analysis under CEQA is not required to consider changes to private views or the effect of the project on itself.</p>

## A1.2 San Francisco Bay Conservation and Development Commission (BCDC)

COMMENT	RESPONSE
<p>the public for its open nature. The FSEIR should give more consideration to the potential change in visual character from an open view of the water to a view dominated by marina infrastructure and boats. If this could be found to constitute a substantial adverse effect on the public scenic vista, the alignment of the docks shown in Figure III-6 would be considered an obstruction to the view corridors.</p> <p><b>Location of Towers.</b> BCDC has an interest in restoring, protecting, and enhancing visual public access to the Bay regardless of whether view corridors have been specifically dedicated for that purpose. The clustering of the towers may impact Bay views from public areas further inland where the public currently appreciates views of the Bay. Additionally, as shown in Figure III-4, the orientation of the proposed tower in Parcel M aligns the long side of the building parallel to the water. This could have a walling-off effect to the water rather than creating a visual landmark that increases views of or attention to the Bay from surrounding areas.</p>	
<p>The DSEIR includes shadow studies of the proposed towers, but does not include 5 PM in the shading analysis</p>	<p>A1.2-17 The shadow studies included in the Draft SEIR were prepared according to standard City and industry practice. These studies select times of day to show morning, midday, and afternoon in a way that allows comparison between the equinox and solstices. The set of three shadows provide a clear depiction of the shadow path over the course of each day and additional times can easily be extrapolated. The actual shadow analysis relies on these graphics as a guide and the full potential new shadow from sunrise to sunset is considered in the analysis. It was determined that additional graphics were not needed to conduct a thorough analysis.</p> <p>Moreover, as discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve a potential residential tower on Parcel L. New shadow from the proposed new tower site on Parcel M was analyzed in the 2009 EIR and found to result in a less-than-significant impact. Pursuant to Public Resources Code 21166, once an EIR has been certified, further CEQA review is limited whether the project has been constructed. (See Consolidated Response 2 and 3.)</p>
<p>In the FSEIR, the preparers should also include visual simulations of the proposed towers from shoreline and inland locations.</p> <p><b>Design Alternatives.</b> For the reasons discussed above, the FSEIR should offer design alternatives for the marina expansion and tower relocation with BCDC's policies for Appearance, Design, and Scenic Views, and Tidal Marshes and Tidal Flats in mind.</p>	<p>A1.2-18 See Response to Comment A1.2-6.</p>
<p>Once again, thank you for providing BCDC an opportunity to comment on the Brooklyn Basin Marina Expansion Project. We hope these comments aid you in preparing the final SEIR. If you have any questions regarding this letter or the Commission's policies and permitting process, please do not hesitate to contact me at (415) 352-3654 or via email <a href="mailto:shruti.sinha@bcdc.ca.gov">shruti.sinha@bcdc.ca.gov</a></p>	<p>A1.2-19 This comment is noted. No response is required.</p>

## A2 California Department of Transportation (Caltrans)

COMMENT	RESPONSE
<p>Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for this project. We are committed to ensuring that impacts to the State’s multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the June 2021 Draft SEIR.</p>	<p>A2-1 This transmittal comment is noted. No response is required.</p>
<p><b>Project Understanding</b></p> <p>The proposed project is to modify the previously approved 64.2-acre project analyzed under the 2009 Oak-to-Ninth Avenue EIR. The project modifications include a residential density increase of 600 units (for a total up to 3,700 units), an update to the parking ratios to current zoning code requirements in other zoning districts, and an expansion of the approved marina infrastructure and operation including increasing the number of slips by 158, and incorporation provisions with the marina improvements to accommodate an existing water taxi/shuttle service currently operating on the San Francisco Bay. This project site is in close vicinity of Interstate (I)-880.</p>	<p>A2-2 The comments regarding the components of the Project Modifications are noted and are consistent with the discussion in the <i>Project Description</i> of the Draft SEIR. However, as discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve a potential residential tower on Parcel L or expansion of the Approved Project marina, aside from the landing dock near the Ninth Avenue Terminal Building (see Consolidated Response 2 and 3). This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>
<p><b>Freight Movement</b></p> <p>Page IV.B-1: Given the high levels of freight activity around and adjacent to the proposed project area, the identification and discussion of all local, State, and federally designated truck routes should be provided and described in this section.</p> <p>Particularly, an acknowledgement of the Joint Port-City of Oakland Heavyweight Container Permit Program along 3rd Street, Oak Street, and Embarcadero West should be verified and discussed in terms of safety as well as existing and forecast throughput volumes.</p>	<p>A2-3 Text on Draft SEIR p. IV.B-1 is modified as follows (new text in <u>double underline</u>):</p> <p>Interstate 880 is an eight-lane freeway that runs in the north-south direction between Interstate 80 (I-80) near the Bay Bridge and San Jose. I-880 connects with Interstate 980 (I-980) which provides access to Downtown Oakland <u>and the corridor plays a key role in freight and goods movement, directly serving the Port of Oakland, the fourth busiest port in the United States.</u> The Project site is . . .</p> <p>Text on Draft SEIR p. IV.B-3 is modified as follows (new text in <u>double underline</u>):</p> <p>. . . The improvements provided enhanced walking and biking facilities and widened the roadway sufficiently to accommodate two travel lanes in each direction, although the roadway is currently striped for one travel lane in each direction.</p> <p><u>Embarcadero is part of the route designated by the Oakland Police Department to be used by overweight trucks as part of the Heavy Container Permit Program (Municipal Code Chapter 10.53). The route extends on 3rd Street from Adeline Street to Oak Street, south on Oak Street to Embarcadero, north on 5th Avenue, and then east on 8th Street. The primary reason for the program is that heavy containerized loads that exceed Federal and or State weight limits are not allowed on State highways to protect interstate freeway bridge structures. This established program allows shippers to meet the demands of industry and to maximize both transportation efficiencies and the economic benefits afforded by utilizing the full cargo carrying capabilities of shipping containers. Drivers of overweight trucks must obtain a special permit issued by the Oakland Police Department prior to using the corridor. About 20 trucks per day use the</u></p>

## A2 California Department of Transportation (Caltrans)

COMMENT	RESPONSE
<p>In addition, please clarify why conventional highway State Route (SR)-260 is considered a freeway. The California Streets and Highways Code, Section 23.5 defines a freeway as a highway in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right or easement of access.</p>	<p><u>corridor. Given the capacity of the corridors, the addition of 20 trucks per day is not anticipated to create any hazardous conditions.</u></p> <p>Oak Street is a multi-lane . . .</p> <p>A2-4 Text on Draft SEIR p. IV.B-1 is modified as follows: Existing regional <del>freeway</del> access to the Project site exists via Interstate 880 (I-880) and State Route 260. Vehicular access to ...</p>
<p><i>Page IV.B-6:</i> While the intercity Coast Starlight is operated by Amtrak, the two intercity/commuter passenger rail services, Capitol Corridor and San Joaquins are State-supported and are not operated by Amtrak. Instead, Capitol Corridor is operated by the Capitol Corridor Joint Powers Authority (CCJPA) and San Joaquins are operated by the San Joaquin Joint Powers Authority (SJJPA). Please use the correct terminology when describing intercity and commuter train operations as well as proper service titles.</p>	<p>A2-5 Text on Draft SEIR p. IV.B-6 is modified as follows: <i>Regional Rail Service</i> <del>Amtrak operates</del> Regional and interregional rail service <u>is provided</u> through the Oakland Jack London Square Station on 2nd Street between Harrison Street and Jackson Street. This station is about 0.8 miles west of the Project site (about a 16-minute walk). Several lines use this Jack London Square Station, including the Capitol Corridor (<u>operated by the Capitol Corridor Joint Powers Authority or CCJPA</u>), the San Joaquin (<u>operated by the San Joaquin Joint Powers Authority or SJJPA</u>), and the Coast Starlight (<u>operated by Amtrak</u>):</p>
<p><i>Page IV.B-9:</i> There is no consideration provided in the SEIR with respect to the considerable amount of freight train traffic traveling through the project area. With the Port of Oakland, the eighth busiest container seaport in the United States handling 99% of containerized goods in Northern California, this section could be improved in recognition of the high levels of freight rail traffic demand traveling along the Union Pacific Railroad corridor and project area.</p>	<p>A2-6 The Project Modifications would have no effect on freight train traffic. Based on this comment, text on Draft SEIR p. IV.B-9 is modified as follows: Existing Railroad Characteristics The Union Pacific Railroad (UPRR) is a freight-hauling railroad company that owns and operates the rail lines adjacent to the site. These rail lines are used both for passenger transportation by Amtrak and the Capitol Corridor Joint Powers Authority (Capitol Corridor), and freight transport by UPRR, <u>with about 60 trains per day passing through the Oakland Jack London Square Station.</u></p> <p><u>There is an at-grade crossing at 5th Avenue and the rail corridor is fenced south of 5th Avenue which restricts trespassing between rail crossings.</u> There are three UPRR mainline tracks through the at-grade crossing. ...</p>
<p><b>Safety</b> With the proposed project being located along and adjacent to a highly active passenger and freight rail corridor, issues relating to trespassing between rail crossings and along rail corridors are increasingly becoming a critical safety need. The proposed project should address existing safety issues along rail corridors and propose mitigations against future safety issues as the rail services are expected to grow and increase the potential for conflict among pedestrians, bicyclists and motorists. To ensure the safety of children who may attend nearby schools and other developments adjacent to the rail corridor, please consider implementing antitrespassing measures within and adjacent to the project area.</p>	<p>A2-7 See Response to Comment A2-6 and Draft SEIR p. IV.B-9. The Draft SEIR describes the existing railroad characteristics specifically noting the existing at-grade crossing at 5th Avenue and that its crossing was recently improved as part of mitigation described in the 2009 EIR for the Brooklyn Basin Project. These improvements were approved by the City of Oakland, UPRR, and the California Public Utilities Commission. The text also notes that there were no reported train crashes at this at-grade crossing within the 5-year period prior to the 2018 Notice of Preparation for the Brooklyn Basin Project. Furthermore, the railroad corridor as noted in Response to Comment A2-6 is already fully fenced south of the 5th Avenue at-grade crossing which is an antitrespassing measure and restricts trespassing between railroad crossings. The 5th Avenue at-grade crossing improvements, already implemented as part of the 2009 EIR, and the rail</p>

## A2 California Department of Transportation (Caltrans)

COMMENT	RESPONSE
<p><b>Sea Level Rise</b></p> <p>The effects of sea level rise may have impacts on transportation facilities located in the project area. Executive Order (EO) S-13-08 directs State agencies planning construction projects in areas vulnerable to sea level rise to begin planning for potential impacts by considering a range of sea level rise scenarios for years 2050 and 2100. Higher water levels may increase erosion rates, change environmental characteristics that affect material durability, lead to increased groundwater levels and change sediment movement along shores and at estuaries and river mouths, as well as affect soil pore pressure at dikes and levees on which transportation facilities are constructed. All these factors must be addressed through geotechnical and hydrological studies conducted in coordination with Caltrans.</p> <p>Caltrans encourages multi-agency collaboration with partner agencies to achieve multi-benefit approaches to protect bayfront development, infrastructure, and assets from sea level rise and other climate change impacts. Partnership can help distribute potential mitigation costs while balancing environmental justice concerns to achieve equitable adaptation solutions. Accordingly, Caltrans has identified the State Transportation Network (STN) segment of I-880, which is adjacent to the northeast boundary of the project site, as a priority segment in the Caltrans Adaptation Priorities Report 2020 (APR 2020 link). The APR 2020 uses exposure and consequence criteria metrics to develop recommendations for adaptation prioritization of STN assets in the nine-county Bay Area region and defines implications of climate change impacts like sea level rise on Caltrans' assets and the traveling public. The APR 2020 is a preliminary report Caltrans will rely upon for continued efforts to assess opportunities to commit to implementable adaptation solutions, pending the availability of funding to address sea level rise and other climate change impacts.</p> <p><b>Construction-Related Impacts</b></p> <p>Project work that requires movement of oversized or excessive load vehicles on State roadways, and/or travel lane closures on I-880 requires a transportation permit that is issued by Caltrans. To apply, visit: <a href="https://dot.ca.gov/programs/trafficoperations/transportation-permits">https://dot.ca.gov/programs/trafficoperations/transportation-permits</a>. Prior to construction, coordination may be required with Caltrans to develop a Transportation Management Plan (TMP) to reduce construction traffic impacts to the STN.</p>	<p>corridor fencing both enhance safety along this segment of the rail corridor over conditions without these measures. The addition of 600 units, above the 3,100 units approved in the 2009 EIR, do not alter the analysis and findings regarding railroad safety for the Brooklyn Basin Project.</p> <p>A2-8 See Response to Comment A2-2. It is acknowledged that Caltrans permits would be required for over-weight trucks on state highways.</p>

## A2 California Department of Transportation (Caltrans)

COMMENT	RESPONSE
<p><b>Lead Agency</b></p> <p>As the Lead Agency, the City of Oakland is responsible for all project mitigation, including any needed improvements to the STN. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.</p>	<p>A2-9 Mitigation and conditions of approval must have a nexus to identifiable project impacts and be roughly proportional to those impacts. It is impossible to determine whether the Revised Project Modifications would contribute to the need for STN improvements based on sea-level-rise or how much of the need is attributable to the Revised Project Modifications. Further, although the Modified Project would produce GHG emissions that would contribute to climate change, the SEIR confirmed that the contribution would be less than significant and would not exacerbate climate change impacts. In addition, the STN improvements do not appear to be defined and therefore the costs and how they will be divided among existing and future contributors to adaptation needs are unknown.</p> <p>As required by State CEQA Guidelines Section 15126.4(a)(2), mitigation measures must be "fully enforceable through permit conditions, agreements, or other legally binding instruments." The mitigation measures included in the Draft SEIR are proposed for adoption by the City as conditions of Project approval. A related requirement in State CEQA Guidelines Section 15097 requires the lead agency to adopt a Mitigation Monitoring and Reporting Program (MMRP) that establishes how the agency would monitor implementation of the adopted mitigation measures.</p> <p>CEQA also requires City decision makers to adopt certain findings, including a finding that "changes or additions have been required in, or incorporated into, the project" to avoid significant impacts, and findings regarding whether those changes are within the jurisdiction of the agency (State CEQA Guidelines Section 15091(a)).</p> <p>If the City determines to approve the Revised Project Modifications with the Draft SEIR Standard Conditions of Approval (SCAs) and mitigation measures as conditions of approval, it will also adopt a Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCAMMRP) for the project comprised of SCAs and mitigation measures directly applicable to the Revised Project Modifications (from Draft SEIR Table II-2 as amended) along with all 2009 Mitigation Measures applicable to Phases III and IV of the Approved Project. The SCAMMRP is the mechanism for ensuring that mitigation measures are carried out as required and reflects steps established in the SCAs and mitigation measures by requiring the entity responsible for implementation to submit reports to the City at specific points in the development process.</p>
<p><b>Equitable Access</b></p> <p>If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion.</p> <p>As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.</p>	<p>A2-10 The City of Oakland incorporates Americans with Disabilities Act (ADA) requirements into all new and modified street and intersection improvements. See Response to Comment A2-2.</p> <p>A2-11 The City of Oakland incorporates the requirement that all pedestrian and bicycle access must be maintained during construction into all projects under construction. See Response to Comment A2-2.</p>

## A2 California Department of Transportation (Caltrans)

COMMENT	RESPONSE
<p><b>Encroachment Permit</b></p> <p>Please be advised that any permanent work or temporary traffic control that encroaches onto I-880 requires a Caltrans-issued encroachment permit. As part of the encroachment permit submittal process, you may be asked by the Office of Encroachment Permits to submit a completed encroachment permit application package, digital set of plans clearly delineating the State Right of Way, digital copy of signed, dated and stamped (include stamp expiration date) traffic control plans, this comment letter, your response to the comment letter, and where applicable, the following items: new or amended Maintenance Agreement (MA), approved Design Standard Decision Document (DSDD), approved encroachment exception request, and/or airspace lease agreement. Your application package may be emailed to <a href="mailto:D4Permits@dot.ca.gov">D4Permits@dot.ca.gov</a>.</p> <p>To download the permit application and to obtain more information on all required documentation, visit <a href="https://dot.ca.gov/programs/traffic-operations/ep/applications">https://dot.ca.gov/programs/traffic-operations/ep/applications</a>.</p>	<p>A2-12 See Response to Comment A2-2.</p>

## A3 California Department of Fish and Wildlife (CDFW)

COMMENT	RESPONSE
<p>Please find attached California Department of Fish and Wildlife comments on the Brooklyn Basin Marina Expansion Project Draft Supplemental Environmental Impact Report. If you have any questions please contact Arn Aarreberg at <a href="mailto:Arn.Aarreberg@Wildlife.ca.gov">Arn.Aarreberg@Wildlife.ca.gov</a>.</p> <p>The California Department of Fish and Wildlife (Department) received a SEIR from the City of Oakland for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.</p> <p>Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.</p> <p><b>DEPARTMENT ROLE</b></p> <p>The Department is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish &amp; G. Code, Section 711.7, subd. (a) &amp; 1802; Pub. Resources Code, § 21070; CEQA Guidelines Section 15386, subd. (a).) The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish,</p>	<p>A3-1 This comment is noted. No response is required. The City of Oakland, as Lead Agency for the SEIR, acknowledges CDFW's role as a Trustee Agency and a Responsible Agency. This comment does not raise specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>

### A3 California Department of Fish and Wildlife (CDFW)

COMMENT	RESPONSE
<p>wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (<i>Id.</i>, Section 1802.) Similarly, for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. The Department is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of California, and ensuring fisheries are sustainably managed under the Marine Life Management Act.</p> <p>The Department is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). The Department may need to exercise regulatory authority as provided by the Fish and Game Code. Implementation of the Project as proposed may result in take2 as defined by State law of any species protected under the California Endangered Species Act (Fish &amp; Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.</p> <p><b>PROJECT DESCRIPTION SUMMARY</b></p> <p><b>Proponent:</b> Zarsion-OHP 1, LLC.</p> <p><b>Objective:</b> The Project proposes the Brooklyn Basin Marina Expansion Project (Project Modifications) as a modification of the previously approved 64.2-acre project (Approved Project) analyzed under the 2009 Oak-to-Ninth Avenue Environmental Impact Report (2009 EIR). The Project Modifications include a residential density increase of 600 units and an update to the parking ratios to current zoning code requirements in other zoning districts. Project Modifications also include an expansion of the approved marina infrastructure and operation including increasing the number of slips by 158 and incorporating provisions with the marina improvements to accommodate an existing water taxi/shuttle service currently operating on San Francisco Bay.</p> <p><b>Location:</b> The Project site is bounded by Fallon Street and Jack London Square to the west, Embarcadero and Interstate 880 (I-880) to the north, the Oakland Estuary to the south, and 10th Avenue (generally) to the east. Estuary Park, the southern portion of Lake Merritt Channel (the channel), Clinton Basin, and the Ninth Avenue Terminal are included in the Project site, but approximately 4.72 acres of privately-held parcels along 5th Avenue are not included. The Project site consists of Alameda County Assessor's Parcel Numbers (APNs) 018-0430001-14, 018-0460-004-06, 08, and 11, and 018-0465-002-06, 12, 15, 27, 29, and 30.</p> <p><b>MARINE BIOLOGICAL SIGNIFICANCE</b></p> <p>The San Francisco Bay-Delta is the second largest estuary in the United States and supports numerous aquatic habitats and biological communities. It encompasses 479 square miles, including shallow mudflats. This ecologically</p>	

### A3 California Department of Fish and Wildlife (CDFW)

COMMENT	RESPONSE
<p>significant ecosystem supports both state and federally threatened and endangered species and sustains important commercial and recreational fisheries.</p> <p>State and Federally Listed and Commercially/Recreationally Important Species Protected species under the State and Federal Endangered Species Acts that could potentially be present near Project activities include:</p> <ul style="list-style-type: none"> <li>• Chinook salmon (<i>Oncorhynchus tshawytscha</i>), state and federally threatened (Spring-run), state and federally endangered (Winter-run)</li> <li>• Steelhead (<i>Oncorhynchus mykiss</i>), federally-threatened (Central California Coast and Central Valley ESUs)</li> <li>• Green sturgeon (<i>Acipenser medirostris</i>), federally-threatened (southern DPS)</li> <li>• Longfin smelt (<i>Spirinchus thaleichthys</i>), state-threatened</li> <li>• Brown pelican (<i>Pelecanus occidentalis californicus</i>), state fully protected</li> <li>• California least tern (<i>Sternula antillarum browni</i>), state and federally endangered and state fully protected</li> <li>• American peregrine falcon (<i>Falco peregrines anatum</i>), state fully protected</li> </ul> <p>Several species with important commercial and recreational fisheries value that could potentially be impacted by Project activities include:</p> <ul style="list-style-type: none"> <li>• Dungeness crab (<i>Cancer magister</i>),</li> <li>• Pacific herring (<i>Clupea pallasii</i>),</li> <li>• Rockfish (<i>Sebastes</i> spp.),</li> <li>• California halibut (<i>Paralichthys californicus</i>)</li> <li>• Surfperches (<i>Embiotocidae</i>).</li> </ul>	<p>A3-2</p> <p>The 2009 EIR considered potential impacts on special-status marine mammals, special-status fisheries, special-status bats or otherwise protected bats, special-status plants, special-status birds, and migratory birds and concluded all operational and construction impacts were less than significant or reduced to less than significant with implementation of 2009 Mitigation Measures. Likewise, the Draft SEIR considered special-status birds, migratory birds, and special-status bats or otherwise protected bats and concluded that because the Project Modifications would not include any change to onshore construction, they would not contribute to potential impacts identified in the 2009 EIR. The Draft SEIR also considered special-status aquatic species and identified Mitigation Measure BIO-2, <i>Fish and Marine Mammal Protection during Pile Driving</i>, that would reduce potential impacts from construction of the Project Modifications on special-status aquatic species to a less-than-significant level.</p> <p>The Draft SEIR discloses that several species' statuses have changed since preparation of the 2009 EIR. It also states that an assessment of the existing conditions and biological resources as it pertains to the Project Modifications, including the current status of special-status species, was generated in January 2018 by Anchor QEA, LLC (Appendix E to the Draft SEIR). As stated on page IV.I-7 of the Draft SEIR, no delistings or additions to the special-status species lists equate to substantial changes relative to the findings in the 2009 EIR with respect to CEQA Guidelines 15162. In other words, the changes in the environmental conditions under which the Approved Project and Project Modifications would be undertaken do not require major revisions of the 2009 EIR due to involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects. No additional analysis is warranted. Also see Consolidated Response 2 and 3.</p>
<p><b>Longfin Smelt</b></p> <p><b>Comment:</b> Longfin smelt, state listed as threatened, is not discussed nor are potential impacts to the species analyzed within the SEIR. Longfin smelt have the potential to be present within the Project area and may be impacted by Project related activities such as dredging and pile driving. There are no approved work windows to avoid longfin smelt presence and it is assumed that the species could be present year round.</p> <p><b>Recommendations:</b> The Department recommends the SEIR include the following:</p> <ul style="list-style-type: none"> <li>• A discussion on the potential impacts to longfin smelt from Project activities and potential avoidance and minimization measures.</li> <li>• A discussion on whether the 2009 EIR analyzed the potential impacts to longfin smelt.</li> </ul>	<p>A3-3</p> <p>The 2009 EIR and Draft SEIR included analyses of project impacts on fish within the study area; which is directly applicable to longfin smelt. Implementation of the 2009 Mitigation Measure I.3: <i>Protection of Fish and Migrating Salmonids</i>, will reduce the potential impact from dredging on all listed fish species. This measure includes a commitment to comply with <i>The Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region</i> (LTMS), which includes identifies specific work windows and Best Management Practices (BMPs) to aquatic species (including longfin smelt) during dredging. With implementation of the mitigation measure outlined above, it is expected that impacts from the project on longfin smelt, and all aquatic species, would be less than significant with mitigation. The Revised Project Modifications propose very little additional in-water work compared to the Approved Project and that work would not alter conclusions regarding impacts to aquatic species, including longfin smelt.</p>

### A3 California Department of Fish and Wildlife (CDFW)

COMMENT	RESPONSE
<p><b>Impacts to State Listed Species</b></p> <p><b>Comment:</b> The Project proposes to drive approximately 162 steel piles using an impact hammer. Of the pile sizes listed, the 85 18-inch diameter piles pose the highest potential to exceed hydroacoustic thresholds which the Department has determined may cause take of state listed species. These thresholds, as described by the Fisheries Hydroacoustic Working Group, in which the Department is a signatory, are 206 dB peak sound pressure, 187 dB accumulated sound exposure level (SEL) for fish over 2 grams, and 183 dB accumulated SEL for fish under 2 grams.</p> <p>The hydroacoustic analysis presented within the SEIR does indicate that exceedances of the 183 dB accumulated sound exposure level may occur. This exceedance could result in take of state listed species, specifically longfin smelt and spring and winter run Chinook salmon.</p> <p><b>Recommendations:</b> The Department recommends the following:</p> <ul style="list-style-type: none"> <li>• Consult with the Department for incidental take coverage via a 2081(b) Incidental Take Permit (Fish and Game Code Section 2081) for longfin smelt and spring and winter run Chinook salmon.</li> <li>• Utilize a vibratory hammer to the maximum extent feasible for driving piles to refusal prior to utilizing an impact hammer to reach desired pile depth.</li> <li>• Utilize a bubble curtain during all impact pile driving.</li> </ul>	<p>A3-4</p> <p>Although the Revised Project Modifications would involve less in-water construction than considered in the Draft SEIR (see Chapter II of this document), as part of the permitting process, the Project Applicant will consult with CDFW on the potential need for incidental take coverage for in-water construction (i.e., pile installation and dredging). However, with the implementation of Mitigation Measure BIO-2, as outlined in the Draft SEIR, it is anticipated that hydroacoustic impacts would remain below a threshold of concern. As part of Mitigation Measure BIO-2 (which continues to apply with the Revised Project Modifications), the Project Applicant would prepare a NMFS and CDFW-approved sound attenuation monitoring plan. As specified in the mitigation measures, this plan will provide detail on the sound attenuation system (including the use of a vibratory hammer a bubble curtain) and outline methods used to monitor and verify that sound levels during pile driving are below NMFS-approved thresholds for fish and marine mammals.</p>
<p><b>Work Windows</b></p> <p><b>Comment:</b> The work window for Pacific herring described within the SEIR is incorrect. The SEIR states that the construction work window for dredging is March 1 to November 30. The correct work window for dredging and other in water activities, related to potential impacts to Pacific herring, is March 15 through November 30. However, the pile driving work window of June 1 through November 30 is correct.</p> <p><b>Recommendations:</b> The Department recommends updating the work window, for Pacific herring, in the final SEIR to reflect the correct work window of March 15 through November 30 for dredging and other in-water activities.</p>	<p>A3-5</p> <p>To reflect the correct Pacific herring construction work window, the third paragraph of 2009 Mitigation Measure 1.3: <i>Protection of Fish and Migrating Salmonids</i> will be edited as follows (new text in <u>double underline</u>):</p> <p>As identified in the LTMS, restricting dredging and other in-water construction activities to the specified work periods would avoid the direct and indirect impacts on juvenile or adult herring or salmonids that would otherwise result from dredging-related increases in turbidity or changes in water quality. Impacts of dredging operations on coho salmon, Chinook salmon, steelhead, and Pacific herring would therefore be less than significant, provided that dredging activities are conducted within the work windows identified in the LTMS. For waters in central San Francisco Bay, the construction work window for dredging activities in Pacific herring habitat is between <u>March 15</u> and November 30 (Corps, 2001). The dredging work window for salmonid species in central San Francisco Bay is June 1 through November 30. These work windows are summarized in the table below.</p>

### A3 California Department of Fish and Wildlife (CDFW)

COMMENT	RESPONSE
<p><b>Eelgrass (<i>Zostera marina</i>) Surveys</b></p> <p><b>Comment:</b> The Department is in agreement with <b>Mitigation Measure BIO-3: Eelgrass Surveys</b> which describes the process in which pre- and post-construction eelgrass surveys would be conducted in accordance with the conditions and recommendations outlined within the National Marine Fisheries Service (NMFS) <i>California Eelgrass Mitigation Policy</i>. However, the mitigation measure only describes providing the surveys to NMFS staff for review and approval.</p> <p><b>Recommendations:</b> The Department recommends that Mitigation Measure BIO 3 should be edited in the final SEIR to include the Department as a required reviewing agency. All eelgrass surveys conducted for the Project should be provided to the Department, as well as NMFS and the other permitting agencies, for review and approval prior to conducting in-water Project activities.</p>	<p>A3-6 To include CDFW as a reviewing agency for Eelgrass surveys, the first paragraph of Mitigation Measure BIO-3 in the Draft SEIR will be edited as follows (new text in <u>double underline</u>):</p> <p style="text-align: center;"><b>Mitigation Measure BIO-3: Eelgrass Surveys.</b></p> <p>Prior to the start of any in-water construction, the Project Applicant shall conduct a National Marine Fisheries Service <u>and California Department of Fish and Wildlife</u>-approved eelgrass survey in the marina expansion area consistent with the measures described in the National Marine Fisheries Service’s October 2014 <i>California Eelgrass Mitigation Policy and Implementation Guidelines</i> (2014 CEMP) and include the following:</p>
<p><b>Project Timeline</b></p> <p><b>Comment:</b> There does not appear to be an exact Project timeline listed within the SEIR. It appears that some components of the Approved Project have already been initiated. It is not clear exactly when and for how long the Project Modifications will be undertaken and completed.</p> <p><b>Recommendations:</b> The Department recommends that the final SEIR include a specific timeline for Project components that have already been started or completed and when the phases of the Project Modifications will be initiated and completed, specifically the proposed expansion of marina infrastructure.</p>	<p>A3-7 The Draft SEIR provides a status of Approved Project development from 2009 EIR certification to the 2018 publication of the Draft SEIR NOP and from NOP publication to Draft SEIR publication in June 2021 (see Section III.D.2, <i>Site Development Since 2009</i>, and Table III.3, <i>Status of Approved Project Elements as of SEIR Publication</i>). Also see Section III.D.3, components in Table Project Applicant will include a revised timeline within the final SEIR.</p> <p>Chapter II of this document provides a current status update (see Table II.1, <i>Existing PWD-4 Zoning District Density Distribution and Development Status</i>) reflecting changes the Project Applicant elected to made to the originally proposed Project Modifications after publication of the Draft SEIR (see Consolidated Response 2 and 3). In addition, the Draft SEIR Project Description state that the Project Modifications would amend the Development Agreement to 1) vest an additional 600 units; 2) extend the term of Agreement to 2038 for Parcels K, L and M; 3) recognize the allocation of existing and additional units across parcels; and 4) modify agreements regarding local hiring, job training assistance; 5) create an affordable housing endowment. Additional specificity to the development timeline would be speculative.</p>
<p><b>ENVIRONMENTAL DATA</b></p> <p>CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). Information on submitting data to the CNDDDB can be found at: <a href="https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data">https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data</a>.</p>	<p>A3-8 This comment requests that survey information related to special-status species occurrences observed to prepare the SEIR be reported to the California Natural Diversity Database (CNDDDB). Given the comprehensive biological analysis included in the 2009 EIR and the results of the database searches performed for this SEIR, the City determined no additional on-site surveys were required. Such surveys also would have been difficult given the present construction on the Project site. In addition, any special-status species documented as part of surveys required for the Project will be incorporated into the CNDDDB.</p>

### A3 California Department of Fish and Wildlife (CDFW)

COMMENT	RESPONSE
<p><b>FILING FEES</b></p> <p>The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by the Department. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish &amp; G. Code, § 711.4; Pub. Resources Code, § 21089.)</p> <p><b>CONCLUSION</b></p> <p>The Department appreciates the opportunity to comment on draft SEIR to assist the City of Oakland in identifying and mitigating Project impacts on biological resources. Questions regarding this letter or further coordination should be directed to Arn Aarreberg, Environmental Scientist at (707) 791-4195, Arn.Aarreberg@wildlife.ca.gov</p>	<p>A3-9 If the Lead Agency certifies the Final SEIR, the required Department of Fish and Wildlife filing fees will be submitted with the CEQA Notice of Completion.</p>

### A4.1 United States Coast Guard (USCG)

COMMENT	RESPONSE
<p>Pete, This call from the Coast Guard came in on one of our mail office lines Monday, and our marketing team picked it up. Unfortunately, I'm just now getting to it. Perhaps he called you also. The message simply says he wants to express concerns. We think its most appropriate for the City (you) to speak with him, but let me know if you think otherwise. We did not received DEIR comments from the Coast Guard.</p>	<p>A4.1-1 This transmittal comment is noted. No response is required.</p>

## A4.2 United States Coast Guard (USCG)

COMMENT	RESPONSE
<p>From a National Security perspective, with regards to passage of the Maritime Security Cutters, large (WMSL), the Coast Guard has concern with access in an out of the proposed project site. The proposed construction encroaches on the federal channel, which would reduce clearance for law enforcement vessel transits (inbound/outbound). This project would also likely negatively impact recreational vessels that transit the area. We provide this response on Coast Guard concerns to alleviate financial constraints down the line and before construction. This project would also likely negatively impact recreational vessels that transit the area. We provide this response on Coast Guard concerns to alleviate financial constraints down the line and before construction.</p>	<p>A4.2-1 As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve a potential residential tower on Parcel L or expansion of the Approved Project marina, aside from the landing dock (see Consolidated Response 2 and 3). The Revised Project Modifications would still include a landing dock with public access provided near the Ninth Avenue Terminal Building. The total footprint of the dock and gangway would be 6,000 feet and require a Project site expansion of approximately 0.25 acres of water surface area. The dock would support the launching of small watercraft (canoes, kayaks, and paddleboards) and the expansion of a water taxi and small-scale ferry service. The Revised Project Modifications no longer involve expansion of the Approved Project marina or encroach on the federal channel. The Revised Project Modifications would not develop in-water infrastructure along the east side of South Park, along the south and east of Township commons extending north to the Ninth Avenue Terminal building and would not result in tall masts clustered in this area. Therefore, the Revised Project Modifications would not encroach on the federal channel.</p>

## A5 San Francisco Regional Water Quality Control Board (SFRWQCB)

COMMENT	RESPONSE
<p>San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the <i>Draft Supplemental Environmental Impact Report for the Brooklyn Basin Marina Expansion Project</i> (DSEIR). The DSEIR evaluates the potential environmental impacts associated with expanding the Brooklyn Basin Marina (Expansion Project) in Oakland.</p> <p>Project Summary. The Expansion Project site is bounded by Fallon Street and Jack London Square to the west, Embarcadero and Interstate 880 to the north, the Oakland Estuary to the south, and 10th Avenue to the east. Estuary Park, the southern portion of Lake Merritt Channel, Clinton Basin, and the Ninth Avenue Terminal are included in the Project site. Zarsion-OHP 1, LLC (Project Applicant) proposes the Expansion Project as a modification of the previously approved 64.2-acre Oak to Ninth Project (Original Project) analyzed under a 2009 EIR. The modifications to the Original Project include: a residential density increase of 600 units (for a Project site total of up to 3,700 units); an update to the parking ratios to current zoning code requirements in other zoning districts; an expansion of the approved marina infrastructure and operation including increasing the number of boat slips by 158 (from the current 167) and water surface area coverage by approximately 10 acres (from the current 7.95 acres approved by the City of Oakland, but not by the Water Board); and incorporating provisions with the</p>	<p>A5-1 The comment regarding the components of the Project Modifications is noted and is consistent with the discussion in the <i>Project Description</i> of the Draft SEIR. However, as discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve a potential residential tower on Parcel L or expansion of the Approved Project marina, aside from the landing dock near the Ninth Avenue Terminal Building (see Consolidated Response 2 and 3). This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>

## A5 San Francisco Regional Water Quality Control Board (SFRWQCB)

COMMENT	RESPONSE
<p>marina improvements to accommodate an existing water taxi/shuttle service currently operating on San Francisco Bay.</p>	
<p><b>Summary of Water Board Comments.</b> In 2015, the Water Board issued Waste Discharge Requirements and Clean Water Act Section 401 Water Quality Certification (Order) for the Original Project, which was subsequently renamed the Brooklyn Basin Project. The Order, not including its attachments, is enclosed with this letter. Neither the 7.95 acres of water surface impacts for marina facilities that have been approved by the City of Oakland (City) subsequent to the Order's adoption, nor the proposal to further expand the water surface impacts by 10 acres for the Expansion Project are consistent with the Order's mitigation requirements. In addition, mitigation required by the Order appears to be about three years delayed and the Discharger named in the WDRs and Certification does not appear to have been submitting stormwater treatment plans for the Original Project to the Water Board for review prior to construction, as the Order requires. As such, the DSEIR is inconsistent with the Water Board's Order. While the Board could consider amending the Order to incorporate proposed Project changes, that amendment would need to require mitigation sufficient to address the Project's impacts to waters of the State. The DSEIR does not appear to provide sufficient mitigation for the Expansion Project's impacts to waters of the State. As part of identifying sufficient mitigation, the DSEIR should use as the environmental baseline a condition in which the Clinton Basin marina is not present at the site.</p>	<p>A5-2 This comment provides a summary of subsequent comments and is addressed in the following responses to this letter.</p>
<p><b>Comment 1. As part of the mitigation required for the Oak to Ninth Project's impacts to waters of the State, the Order required the permanent removal of marina facilities from the Project site.</b></p> <p>The Water Board's Order for the Original Project (Order No. R2-2015-0005, CIWQS Place ID No. 748052) was adopted on January 21, 2015. Mitigation for the Original Project's impacts to waters of the State is discussed in Order Findings 34 and 35 and Provisions C.11.c and C.20.c. Required mitigation for the Original Project included the permanent removal of 0.59 acres of floating fill, which was to consist of removing the existing Clinton Basin marina. Table A in Order Attachment 2 specifies that the floating fill in Clinton Basin was to be removed during Phase II of the Original Project, sometime between 2016 and 2018.</p> <p>The Order required the complete and permanent removal of floating fill from the Original Project site. Therefore, the proposal to implement the City's approved installation of 7.95 acres of marina facilities and expand the marina facilities by an additional 10 acres is not consistent with the Order's requirements.</p>	<p>A5-3 As Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve expansion of the Approved Project marina. The Revised Project Modifications' proposed landing dock would add approximately 0.25 acres of water surface to the Project site rather than the 10 acres analyzed in the Draft SEIR, which is a significant reduction in in-water construction activity compared with the Project Modifications analyzed in the Draft SEIR.</p> <p>See Response to Comment A1.2-13 above, which explains that although previously required for the Project Modifications and still required for the Approved Project, 2009 Mitigation Measures 1.2a, <i>Corps-Verified Wetland Delineation and 1.2b, Wetland Avoidance</i> would not be required for the landing dock or the Revised Project Modifications and that 2009 Mitigation Measure 1.2e is replaced with new Mitigation Measure BIO-4, <i>Compensatory Mitigation</i>. Also see Chapter II, <i>Updated Project Information and Analysis</i> and Consolidated Response 2 and 3 regarding comments on existing conditions and the Approved Project.</p>
<p>In addition, the 0.59 acres of floating fill at the Clinton Basin Marina should have been removed at least three years ago. According to DSEIR Section IV, the floating fill is still present in Clinton Basin.</p>	<p>A5-4 See response to comment A5-6 below. The compliance with the Water Board order is outside the scope of CEQA review.</p>

## A5 San Francisco Regional Water Quality Control Board (SFRWQCB)

COMMENT	RESPONSE
<p><b>Comment 2. The status of compliance with Order Provision C.23 is not clear.</b> At the time that the Order was adopted, the Water Board had been provided with preliminary designs for post-construction stormwater treatment measures for each phase of the Original Project. Order Provision C.23 required that:</p> <p>No later than 90 days prior to the start of construction for each of the four phases of the Project, the Discharger shall submit final plans for the postconstruction stormwater treatment measures for the impervious surfaces that are to be created in that phase of the Project to the Executive Officer for review and approval. Stormwater treatment measures shall be consistent with the designs and phasing in Attachment 3 to this Order and findings 38, 39, and 40. Construction of each Project phase shall not start until the Executive Officer has approved the final designs for the post-construction stormwater treatment measures to be constructed for that phase (Note: “Construction of a phase” does not include work that is solely necessary to implement the RP/RAP described in Finding 6 of this Order).</p> <p>In 2017, Water Board staff reviewed revisions to the stormwater treatment plans for Phases 2 and 3. These revised stormwater plans had been submitted for review by the City, but had not been provided to the Water Board until we became aware of and requested them. Water Board staff should be provided with any subsequent revisions to stormwater treatment plans for our review. Failure to receive Water Board approval of final stormwater treatment plans prior to construction of each Original Project phase would be a violation of the Order.</p>	<p>A5-5 The comment urges the Project Applicant to submit plans – specifically revised post-construction stormwater treatment plans for Phases I and 2 - required under Order Provision C.23 to the Water Board for review or approval or risk violation, even though plans may be submitted for review by the City. See Response to Comment A5-1.</p>
<p><b>Comment 3. For the purpose of assessing potential impacts to waters of the State during the permitting of any new marina facilities at the Expanded Project site, the baseline is the absence of existing floating fill.</b></p> <p>Potential impacts on special status species habitat as a result of marina expansion are discussed in Impact BIO-2 on DSEIR pages IV:1-8 through IV:1-13. This discussion acknowledges that:</p> <p>The marina expansion component of the Project Modifications would result in a net increase in the area of over-water structures and shading. The shading of the water column and benthic habitat as a result of overwater structure installation has the potential to reduce the quality of fish habitat within the area shaded by the structure. Overwater shading has been demonstrated to reduce the growth rates and establishment of aquatic vegetation, decrease primary productivity, alter predator-prey dynamics, compromise the invertebrate community by changing the species composition, and reduce the overall density of benthic invertebrates (Helfman, 1981; Glasby, 1999; Struck et al., 2004; Stutes et al., 2006)</p>	<p>A5-6 This comment challenges the use of the CEQA baseline when calculating the area of over-water structures. Pursuant to Section 15125(a) of the CEQA Guidelines, the Draft SEIR measures the physical impacts of the Project Modifications against a “baseline” of existing physical environmental conditions present at and near the Project site at the time the NOP was published in September 2018 (see Consolidated Response 2 and 3). These conditions include the presence of the approximately 28,150 square foot unusable Clinton Basin marina. Despite the comment’s request to use a mitigated condition rather than the existing physical environment as the CEQA baseline, the Draft SEIR comparison of the area of over-water structures with the existing unusable marina in Clinton Basin to area of over-water structures following installation of the proposed marina expansion is accurate.</p> <p>As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve a potential residential tower on Parcel L or expansion of the Approved Project marina, aside from the landing dock near the Ninth Avenue Terminal Building. The Revised Project Modifications’ proposed landing dock would add approximately</p>

## A5 San Francisco Regional Water Quality Control Board (SFRWQCB)

COMMENT	RESPONSE
<p>In addition to the habitat issues noted in the DSEIR, near-shore habitat is especially valuable to rearing fish, who find refuge from predation in near-shore waters. The size of the floating fill impact is described as follows in the DSEIR:</p> <p>Current shading due to over-water structures in the Project area can be attributed to the existing unusable marina in Clinton Basin, which spans approximately 28,150 square feet. Following installation of the proposed marina expansion (which would include removal of the existing marina in Clinton Basin), the area of shading by over-water structures would increase by approximately 86,225 square feet, for a total area of approximately 114,375 square feet.</p> <p>For the purpose of permitting any expansion of the marina, the baseline condition is the absence of any floating fill, since all floating fill in Clinton Basin was required to be removed by the Order and this removal was to have been completed in 2018. Also, the Order does not allow the replacement or expansion of the Clinton Basin marina. Any requested modifications to the Order must address both the delayed provision of the mitigation provided by the removal of the existing Clinton Basin marina and the mitigation necessary for all new floating fill.</p>	<p>0.25 acres of water surface to the Project site rather than the 10 acres analyzed in the Draft SEIR and represents a significant reduction in in-water construction activity compared with the Project Modifications analyzed in the Draft SEIR (see Consolidated Response 2 and 3). Nonetheless, because the Revised Project Modifications would add approximately 0.25 acre of water surface area to the Project site to accommodate the proposed landing dock, as noted in Chapter III of the Draft SEIR for the originally proposed Project Modifications, the Revised Project Modifications would require various RWQCB reviews and approvals regarding the placement of solid and floating fill material associated with the marina construction. Also see Response to Comment A5-3.</p>
<p><b>Comment 4. The discussion of the need to obtain a permit from the Water Board does not acknowledge that the proposed Expansion Project is not consistent with the requirements of the existing Water Board Order for the Brooklyn Basin Project.</b></p> <p>In the discussion of Impact BIO-4, the DSEIR acknowledges that the proposed Expansion Project will require a permit from the Water Board (p. IV:1-17). As noted above in Comment 1, the Order for the Original Project required the permanent removal of all floating fill at the Project site. Implementation of the proposed Expansion Project cannot occur until the Order has been revised. As the Order was adopted by the Water Board at a public meeting, any modifications to the Order similarly must be considered by the Water Board, following a public review period of at least 30 days. Any modifications must include measures to compensate for delayed mitigation and for any elements of the Original Project that have been constructed without Order-required preconstruction approval from the Water Board's Executive Officer.</p>	<p>A5-7 This comment reiterates the need for a new RWQCB permit and revisions to the existing Water Board Order. This comment also describes some of the likely requirements and the process to obtain a modified Water Board Order. See Response to Comment A5-3.</p>

## A5 San Francisco Regional Water Quality Control Board (SFRWQCB)

COMMENT	RESPONSE
<p><b>Comment 5. The proposed shoreline mitigation is out-of-kind and may not be legally feasible.</b></p> <p>The DSEIR proposes the following mitigation measures for the proposed Expansion Project's impacts to jurisdictional waters:</p> <p>The project applicant shall further enhance the shoreline from Lake Merritt Channel to Clinton Basin. The primary objective of the enhancement shall be to improve the habitat value for shorebirds, gulls, ducks, and other avian life that frequent the area. Components of the restoration plan shall include 1) restoration of the tidal marsh, 2) enhancement of roosting areas for shorebirds and water birds, and 3) increase in habitat diversity. Shoreline enhancements shall include removal of debris, including concrete riprap, and excavation of the shoreline at Channel Park to create marsh vegetation along this area. Excavation shall provide a shoreline slope that falls between the MTL elevation (approximately -2.4 mean sea level) to the MHW) to allow for the colonization of marsh habitat and the creation of high marsh habitat (p. IV:1-18).</p> <p>As discussed above in Comment 3, the proposed installation of the new marina will impact habitat for fish. Since the proposed mitigation measures will primarily benefit shorebirds, the proposed mitigation is out-of-kind. Consistent with the Water Board's policies directing that mitigation preferably be in-kind and on-site, and where it is not, that a greater amount of mitigation be provided, if the mitigation measures are used to offset the impacts associated with new marina work, it necessarily will have to be provided at a greater than 1 to 1 ratio.</p> <p>Mitigation features are required to be placed under some form of perpetual restrictive covenant (e.g., conservation easement, deed restriction) to ensure their permanence. During the Order's development, it was determined that the site's shoreline consisted of public lands that are subject to the jurisdiction of the State Lands Commission. The State Lands Commission was not able to allow proposed mitigation sites along the shoreline to be placed under a restrictive covenant that met the requirements of the U.S. Army Corps of Engineers or the Water Board. Because of this, proposed shoreline habitat enhancements could not be included in the mitigation measures required by the Order. The proposed mitigation measures in the DSEIR appear to be identical to the mitigation measures that were found to be infeasible in the development of the Order. Please confirm that any proposed shoreline mitigation projects can be placed under appropriate restrictive covenants.</p> <p>If the proposed mitigation measures along the shoreline of the Expansion Project cannot be placed under an appropriate restrictive covenant, alternate mitigation must be developed to compensate for the deferred removal of the Clinton Basin marina and for the proposed new marina facilities at the Expansion Project.</p>	<p>A5-8 The commenter contends the 2009 Mitigation Measures designed to reduce potential project impacts to potentially jurisdictional wetlands is out-of-kind because "the proposed mitigation measures will primarily benefit shorebirds." However, the commenter mistakenly lists only one portion of one of the five 2009 Mitigation Measures required to reduce these potential impacts to a less than significant level. Specifically, 2009 Mitigation Measure 1.2a: <i>Corps-Verified Wetland Delineation</i>, 2009 Mitigation Measure 1.2b: <i>Wetland Avoidance</i>, 2009 Mitigation Measure 1.2c: <i>Obtain Regulatory Permits and other Agency Approvals</i>, 2009 Mitigation Measure 1.2d: <i>Best Management Practices (BMPs)</i>, and 2009 Mitigation Measure 1.2e: <i>Compensatory Mitigation</i> are listed as necessary in 2009 EIR Impact 1.2.</p> <p>See Response to Comment A5-3 above.</p> <p>A5-9 See Response to Comment A1.2-13 above and Consolidated Response 2 and 3. In addition, the Project Modifications did not defer the removal of the Clinton Basin marina, which is an existing condition and properly included as part of the baseline in the SEIR. See Response to Comment A5-6.</p>

## A5 San Francisco Regional Water Quality Control Board (SFRWQCB)

COMMENT	RESPONSE
<p><b>Conclusion.</b> We encourage the City and the Project Applicant to coordinate with the Water Board to address outstanding mitigation required by the Order, potential delayed implementation of Order requirements, and to discuss the feasibility of amending the existing Order to allow construction of the proposed marina. Any amendment of the Order will require mitigation sufficient to compensate for the deferred removal of the Clinton Basin marina and for implementation of the proposed new marina.</p> <p>If you have any questions, please contact me at (510) 622-5680 or via e-mail to <a href="mailto:brian.wines@waterboards.ca.gov">brian.wines@waterboards.ca.gov</a>.</p>	<p>A5-10 This comment encourages the Project Applicant to coordinate with the RWQCB to address the status of the existing Order and the requirements to amend the Water Board Order to accommodate the Revised Project Modifications. See Response to Comment A5-1.</p>

## V.C Organizations

### O1 Golden Gate Audubon Society

COMMENT	RESPONSE
<p>On behalf of the Golden Gate Audubon Society (GGAS), please accept these comments on the Brook Brooklyn Basin Marina Expansion Project (Project). GGAS is a 104-year-old non-profit organization with over 7,000 members who are dedicated to protecting native bird populations and their habitats.</p>	<p>O1-1 This comment describes the commenting organization’s membership and dedication. It raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. This comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>
<p><b>Inadequacy of the Project Description and Existing Conditions</b>  The SDEIR Project Description does not include Clinton Basin Wetland Restoration and Enhancement Project within the Project Boundary. The Approved Project, however, does include the Wetlands Restoration within the boundary of the Project Site (See Figure III-2 of 2006 FEIR).</p>	<p>O1-2 See Response to Comment A1.2-13 in Section V.B of this chapter. Also see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed.</p> <p><i>The Brooklyn Basin Marina Project Description, Bioacoustic Evaluation, and Water Quality Management Plan</i> prepared by Anchor QEA, LLC in 2018 and included in the Draft SEIR as Appendix E, explains that the Wetland Restoration and Enhancement Project is outside of the project area. The Clinton Basin Wetland Restoration and Enhancement Project was completed by the Port of Oakland and is not a component of the Approved Project or the Revised Project Modifications. Nonetheless, it is depicted in figures and impacts thereto are assessed in the Draft SEIR (see, e.g. Draft SEIR Impact LU-4, Draft SEIR Impact BIO-6) and specifically included in 2009 Mitigation Measures that will continue to apply to the Approved Project and would have applied to the Project Modifications to ensure the Clinton Basin Wetland Restoration and Enhancement Project is protected during project construction and operation. The Draft SEIR’s description of the Project Boundary without the Wetlands Restoration does not compromise the validity of the impacts evaluation nor invalidate the conclusions in the Draft SEIR.</p>
<p>The Biological Resources section is therefore inadequate because the supporting studies assumed that this feature was outside the Project Site. Components of the Marina Expansion slips (ramps, fences, other structures) are not described.</p> <p>The Oak to Ninth Project DEIR (2005) included this language:  “Clinton Basin Wetland Restoration and Enhancement Project. In addition to new and permanent open space areas, the project would maintain the existing Clinton Basin Wetland Restoration and Enhancement Project wetland restoration area at the west shore at the mouth of Clinton Basin (Figure III-6). No changes are proposed to this resource as part of the project.”</p> <p>The Marina Expansion would change resources because the slips and ramps wrap around the Wetland Restoration Area and vessels have operational impacts. See comparison of the figures below.</p>	<p>O1-3 See Response to Comment A1.2-13 in Section V.B of this chapter. Also see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed.</p> <p>As noted above, the Clinton Basin Wetland Restoration and Enhancement Project is not a component of the Approved Project or the Revised Project Modifications. The <i>Brooklyn Basin Marina Project Description, Bioacoustic Evaluation, and Water Quality Management Plan</i> prepared by Anchor QEA, LLC in 2018 and included in the Draft SEIR as Appendix E, explains that the Clinton Basin Wetland Restoration and Enhancement Project is outside of the project area. Nonetheless, it is depicted in figures and impacts thereto are assessed in the Draft SEIR (see, e.g. Draft SEIR Impact LU-4, Draft SEIR Impact BIO-6) and specifically included in 2009 Mitigation Measures that will continue to apply to the Approved Project and would have applied to the Project Modifications to ensure the Clinton Basin Wetland Restoration and Enhancement Project is protected during project construction and operation.</p>

## O1 Golden Gate Audubon Society

COMMENT	RESPONSE
<p><b>Alternatives Analysis</b></p> <p>The adoption of the <b>Alternative 2, No Marina Expansion</b> would substantially reduce environmental damage. GGAS urges the Commission to either adopt the environmentally superior alternative (which is Alternative 2) or request a modified design to the Marina Expansion component of the project that does not include new floating marina structures in front of the South Park Wetlands.</p> <p>Per CEQA Guidelines Section 15021(a)(2), CEQA established a duty for public agencies to avoid or minimize environmental damage where feasible, (2) A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.</p> <p>As stated in Section V pg. 13, “the No Marina Expansion Alternative would avoid and/or substantially reduce new Biological Resources impacts of the Project Modifications compared to the other alternatives, and still meet some of the basic objectives of the Project Modifications.”</p> <p>Given the duty to minimize environmental damage where feasible and that Alternative 2 would meet all objectives of the Approved Project and align with the Estuary Policy Plan, without needlessly sacrificing wetland habitat or opportunities for the public to observe biologically rich waters. The Approved Project already allows 167 slips on the project site, which are in locations that would not have significant impacts to biological resources. As proposed in the DSEIR, the addition of 157 more slips that wrap around the shoreline would create new impacts beyond the threshold of what is reasonable to accommodate and are not compatible with use – including ablating functions of the existing Clinton Basin Wetland Restoration and Enhancement Project and precluding future restoration. Alternative 2 promotes stewardship of existing resources and does not lose investments and gains made restoring mudflats. Alternative 2 would keep soft edges on the Bay Trail side of the Clinton Basin, while boats and slips would be allowed at the existing hard edge side to minimize impacts. Every decision contributes towards the wider-scale goal of restoring the Lake Merritt Channel and surrounding Oakland Estuary, and every decision is critical at this point in the face of immense loss of biodiversity. The Oakland Estuary is a site of global significance for migratory shorebirds, and although the site is in a heavily modified area of the coast, birds have come to critically rely on this habitat as they face increasing pressure from climate change, development, and other threats.</p>	<p>O1-4 See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant proposed revisions to the Project Modifications, which no longer involve expansion of the Approved Project marina aside from the landing dock near the Ninth Avenue Terminal Building and is a moderate variant of the No Marina Expansion Alternative. Chapter II addresses the resulting Project Objectives with these Revised Project Modifications. Chapter II also describes and evaluates the landing dock with public access that would still be provided near the Ninth Avenue Terminal Building with the Revised Project Modifications. The total footprint of the dock and its gangway would be 6,000 feet and require a Project site expansion of approximately 0.25 acres of in-water area instead of the 10 acres of in-water area considered with the originally proposed Project Modifications in the Draft SEIR.</p> <p>Several adopted mitigation measures are identified in the 2009 EIR to reduce or avoid potentially significant impacts to biological resources. As described in Draft SEIR Impact LU-4 (p. IV.A-19), LU-5 (p. IV.A-20), Impact BIO-4 (p. IV.I-15), Impact BIO-6 (p. IV.I-22), and Impact BIO-8 (p. IV.I-23), Mitigation Measure 1.2b, <i>Wetland Avoidance</i>, would apply to the Approved Project and reduce any potential conflict with the Clinton Basin Wetland Restoration and Enhancement Project to a less than significant level. The Revised Project Modifications no longer involve work in proximity to the wetlands restoration and enhancement in Clinton Basin or near the South Park wetlands. See Chapter II which discusses biological resources and wetland mitigation measures that pertain to the Revised Project Modifications.</p>
<p>Additionally, The Marina Expansion Project Objectives would actually conflict with the Project Objective to “Provide a significant amount of open space and water-oriented activities accessible to the general public to encourage the public to interact with the Oakland Estuary both visually and recreationally” and “Provide new permanent and accessible open space areas and extend pedestrian walkways along the estuary in order to meet the passive recreational needs of local residents and visitors, and to complement the existing and proposed</p>	<p>O1-5 See Chapter II of this document, which describes the Revised Project Modifications, including revisions to the Project Objectives in the Draft SEIR to reflect the Revised Project Modifications. The proposed revisions align with the commenter’s concerns regarding inadequate physical and visual access to the waterfront. Also see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed.</p>

## O1 Golden Gate Audubon Society

COMMENT	RESPONSE
<p>surrounding urban fabric while enhancing the waterfront access experience for visitors and employees to the area.” The addition of slips in the Marina Expansion are for private purposes and do not provide opportunities that are accessible to the general public, but do degrade existing viewsheds to the waterfront.</p>	
<p><i>The alternatives analysis description is inadequate because:</i></p> <p>The analysis underrepresents the environmental benefits of choosing Alternative 2, given that the Project Alternative has more significant impacts and unstudied impacts to Biological Resources and to Land Use Policy than are described in this section or in Table V-1. These impacts are described in detail below.</p>	<p>O1-6 See Response to Comment O1-4, which discusses the Project Applicant’s proposal of a moderate variant of Alternative 2 rather than the Project Modifications considered in the Draft SEIR.</p>
<p><b>Aesthetics</b></p> <p>Comments from the Oakland Heritage Alliance on Aesthetic Impacts are incorporated by reference.</p>	<p>O1-7 See Response to Comment O2.1-4, which responds to comments from the Oakland Heritage Alliance on Aesthetic Impacts. Also see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed.</p>
<p><b>Biological Resources</b></p> <p><i>Biological Resources at or Near the Project Site not adequately studied.</i></p> <p>Pg.IV.I-1 states that existing conditions and current status of special-status species was based on the 2018 Brooklyn Basin Marina Project Description. This report (pg. 3) states that the wetland enhancement project (referring to Clinton Basin Wetland Restoration and Enhancement Project [Wetland Restoration Area]) is outside of the project area. Figure 1 of this report and Figure III-4 of the DSEIR actually do show the Wetland Restoration Area within the project boundary of the Proposed Expansion of Marina use. Further, the DSEIR Project Description does not include the Wetland Restoration, which is an oversight because the Approved Project does include this feature (see Figure II-2 and Project Description of FEIR, 2006). This analysis should be recompleted to understand impacts and mitigation measures, particularly the Phase 5 slips that would wrap around the Wetland Restoration Area.</p>	<p>O1-8 See Response to Comment A1.2-13 in Section V.B of this chapter. Also see Response to Comment O1-2.</p>
<p><u>Impact BIO-1:</u></p> <p><i>Updates to presence of special-status species and adverse impacts to special-status birds and migratory birds through habitat modification</i></p> <p>California Least Tern is listed as a Federal- and State- Endangered Species. Page 16 of the 2018 (Anchor) Brooklyn Basin Marina Project Description states that Least Tern has no recorded occurrences within the project area. According to E-Bird (<a href="https://ebird.org/hotspot/L6567620">https://ebird.org/hotspot/L6567620</a>) observations at the Brookly Basin, Least Tern was last observed in Brookly Basin on July 23, 2021. While Least Tern suitable breeding habitat is not expected to occur in the Project Site, there is a major protected breeding site located across the Oakland Estuary channel and approximately 3 miles west in the NAS Alameda Airport. Least Terns are frequently observed foraging for fish to feed their chicks in the Oakland Estuary</p>	<p>O1-9 As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant proposed revisions to the Project Modifications, which no longer involve a potential residential tower on Parcel L or expansion of the Approved Project marina, aside from the landing dock near the Ninth Avenue Terminal Building and is a moderate variant of the No Marina expansion Alternative (see Consolidated Response 1 and 2). These Revised Project Modifications would not result in an additional 158 marina slips and associated increased vessel operations considered in the Draft SEIR. As mentioned above, the Revised Project Modifications would still include the landing dock near the Ninth Avenue Terminal Building; the resulting additional in-water area would be approximately 0.25 acres instead of the 10 acres of in-water area considered with the Project Modifications in the Draft SEIR. As noted in Chapter III of the Draft SEIR and Chapter II of this document, the Draft SEIR conservatively assumed</p>

## O1 Golden Gate Audubon Society

COMMENT	RESPONSE
<p>and at Oakland mudflats during the breeding season. The area of boat slips covering open water should be analyzed for its potential to reduce foraging (including access to smelt and anchovies – see <a href="https://baeccc.org/pdf/sfbaygoals031799.pdf">https://baeccc.org/pdf/sfbaygoals031799.pdf</a> and <a href="https://www.ebparks.org/civicax/filebank/blobdload.aspx?BlobID=23562">https://www.ebparks.org/civicax/filebank/blobdload.aspx?BlobID=23562</a>). The Long Term Management Strategy (LTMS) makes recommendations for work for least tern during March through July 31 within 3 miles of active nesting areas. While construction impacts (e.g. pile driving noise, sediment) are discussed, there is no analysis of operational impacts for wildlife that forage in open waters (e.g. slips will cover large areas of previously open water, and activity of boats will cause disturbance that precludes foraging). See photos attached below of birds foraging over open waters within Clinton Basin. Vessel operations are stated to only have a minor increase to existing conditions, however the number of vessels will double, so this claim is not substantiated and is only analyzed for impacts to fish, not migratory birds.</p>	<p>maximum capacity on-demand water-taxi service which would include up to six round trips per day five days per week during the commute hours. However, because this is an existing service currently operating on the Bay, only a portion of these trips would be associated with the provision of an additional stop at the proposed landing dock. A significant impact on special-status aquatic species and birds that use open water for foraging would not occur as a result of the Revised Project Modifications.</p> <p>The comment documents a single onsite observation of the Least Tern that occurred one month after the June 23, 2021, publication of the Draft SEIR. The Draft SEIR discloses that several species' statuses have changed since preparation of the 2009 EIR. It also states that an assessment of the existing conditions and biological resources as it pertains to the Project Modifications, including the current status of special-status species, was generated in January 2018 by Anchor QEA, LLC (Appendix E to the Draft SEIR). The California least tern is listed in Appendix E of the Draft SEIR and is determined to have low to moderate potential to occur on the Project site as a transitory visitor and that no breeding habitat is present. As stated on page IV.1-7 of the Draft SEIR, no delistings or additions to the special-status species lists equate to substantial changes relative to the findings in the 2009 EIR with respect to CEQA Guidelines 15162 (see Response to Comment A3-6 in Section V.B of this chapter)</p> <p>The potential operational effect to Least Tern remains unlikely based on information documented in the February 2022 certified EIR for the Waterfront Ballpark District fronting the Oakland Estuary channel approximately 1.25 miles west of the Brooklyn Basin site. As stated on page 4.3-17 of that Draft EIR,</p> <p><i>[Least Tern] Breeding colonies are located in Southern California along marine and estuarine shores, and in San Francisco Bay within abandoned salt ponds and at the former Alameda Naval Air Station on Alameda Island... [it] may intermittently use the Oakland-Alameda Estuary ... for foraging but are not expected to breed within the Project site due to the...close proximity of the established breeding colony on Alameda Point with preferential habitat conditions.</i></p> <p>The Draft SEIR for the Project Modifications also states that migratory bird species that pass through the Project site include waterfowl, shorebirds, pelicans and songbirds that have numerous options for stopover habitat during migration through the Bay Area and would not be substantially impacted by the temporary loss of Project site stopovers during construction or operation. No changes are warranted to the Draft SEIR.</p>
<p>Raptor species that were observed in Brooklyn Basin E-bird Hotspot include Peregrine Falcon, Osprey, Cooper's Hawk, and Red-tailed Hawk. Mitigation Measures BIO-1.4.b Preconstruction Surveys should specify pre-construction nesting bird surveys of trees and vegetation within ¼ mile (typical non-disturbance buffer for raptors), unless the analysis is updated to show that there is no suitable nesting habitat between 500-ft and ¼ mile (current measure only specifies a 500-ft survey buffer).</p>	<p>O1-10 Pursuant to Public Resources Code 21166, once an EIR has been certified, further CEQA review is limited whether or not the project has been constructed. Consistent with CEQA guidance, the SEIR evaluated only the changes in the project, circumstances, or new information that led to the preparation of the SEIR as compared to that contained in the 2009 EIR for the Approved Project. See Consolidated Response 3 regarding comments on existing conditions and the Approved Project.</p>

## O1 Golden Gate Audubon Society

COMMENT	RESPONSE
	<p>The Revised Project Modifications would occur within the same overall building envelopes and, other than the additional approximately 0.25 acres of in-water area to accommodate the landing dock next to the Ninth Avenue Terminal Building, the Revised Project Modifications would occur within the same Project site as the Approved Project and the Draft SEIR assumes that there would be no substantial increase in duration of residential construction-related activity with approval of the Project Modifications. The Project Modifications would result in an approximate 10 percent increase in labor force and associated worker trips to and from the site, as well as an approximately 10 percent increase in delivery trips to develop the additional 600 residential units on Phases III and IV.</p> <p>The Revised Project Modifications would not change the Approved Project's on-shore construction activities, including ground clearing, grading, on-shore pile-driving, excavation, demolition, or tree removal as analyzed in the certified 2009 EIR. Overall, as noted in the Draft SEIR, the Project Modifications would not result in substantial changes to onshore construction activity as analyzed in the certified 2009 EIR and as such would not substantially change the Approved Project's potential impacts from construction on nesting habitat for breeding raptors and the mitigation measure referenced in this comment (2009 Mitigation Measure 1.4b) would not apply specifically to the Project Modifications but would remain relevant and adequate for ongoing development of the Approved Project. As discussed in Chapter II of this document, this conclusion would remain the same for the Revised Project Modifications.</p>
<p><i>Construction Impacts – work seasons unclear</i></p> <p>Within the project description of the DSEIR, the Project Phasing and Construction is difficult to understand (see pg. III-20) - what is the length of “constructed over five seasons rather than one” - is that five consecutive seasons or five years? In the 2018 (Anchor) Brooklyn Basin Marina Project Description, it appears that each season is considered to be one in-water work period that would occur between June 1 – November 30.</p> <p><i>Cumulative Impacts not considered: Five consecutive seasons may be considered permanent impacts</i></p> <p>Five consecutive construction seasons of in-water work may not meet the definition of temporary impacts, since there would not be a return to the baseline environment within the calendar year or season; five years of temporal impacts can be considered permanent to wildlife. This should be considered when applying for in-water work permits to the resource agencies.</p>	<p>O1-11 See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. Also see Chapter II of this document, which describes the Revised Project Modifications, including a reduced construction duration due to removal of the previously proposed marina expansion.</p>
<p><i>Mitigation Measure SCA BIO-1</i></p> <p>Thank you for incorporating the mitigation measures SCA Bio-1 Bird Collision Reduction Measure required by AB 734 for bird safe buildings (the City of Oakland's Bird Safety Measures). Please do contact Golden Gate Audubon Society for educational materials that can be distributed to building occupants.</p>	<p>O1-12 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>

## O1 Golden Gate Audubon Society

COMMENT	RESPONSE
<p><u>Impact Bio-4</u></p> <p><i>Mitigation Measure 1.2b: Wetland Avoidance – Project Design may conflict with mitigation measure – but not enough information to make conclusions</i></p> <p>The Mitigation Measure 1.2b states’ the existing restoration project at the southwest end of Clinton Basin, implemented by the Port of Oakland, shall be protected during construction activities. The extent of this area shall be clearly marked by a qualified biologist prior to the start of any grading or construction activities and a buffer zone established. All construction personnel working in the vicinity of the restoration area shall be informed of its location and buffer zone.”</p> <p>The Phase 5 boat slips are so close to the Wetland Enhancement Area that it seems they would be within the buffer zone itself. Impacts from the Phase 5 boat slips should be further described and analyzed.</p>	<p>O1-13 See Response to Comment A1.2-13 and A1.2-17. Also see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. Also see Chapter II, <i>Updated Project Information and Analysis</i> and Consolidated Response 3 regarding comments on existing conditions and the Approved Project</p>
<p><i>Mitigation Measures 1.2a, 1.2b, 1.2c, 1.2d, and 1.2e requiring an updated wetland delineation and associated wetland avoidance.</i></p> <p>Without a recent wetland delineation (only wetland delineation is non-verified conducted in 2004, and in the last 17 years many definitions changes to what constitutes jurisdictional features for Waters of the State and Waters of the US), it is unclear how habitat types were determined. The study references a 2001 (PWA) study of the Wetland Restoration Area is unlikely to be used by threatened or endangered species due to the small extent of tidal marsh in the vicinity. The vegetation and potential habitat of the Wetland Restoration Area should be characterized as part of the EIR, since it has not been studied in 20 years.</p> <p>It is clear that the Marina Expansion was designed without considering the location of existing wetlands – which violates the “avoid” first rule of the Clean Water Act.</p> <p><i>Mitigation Measure 1.2e: Compensatory Mitigation – criteria for off-site mitigation and mitigation calculations</i></p> <p>Supporting documents suggest that off-site mitigation will be purchased from mitigation banks, which conflicts with the mitigation measure.</p> <p>2018 (Anchor) Brooklyn Basin Marina, pg 24: To offset unavoidable impacts resulting from an increase in solid fill, the project proponent proposes purchasing credits from an approved mitigation or conservation bank.</p> <p>Any statements about purchasing credits should be modified to be consistent with MM 1.2e – whereby compensatory mitigation is achieved first onsite, then offsite if necessary. Any offsite locations should be as close to the location of impacts as possible, and enhance areas identified in Lake Merrit Estuary Plan and Restoration Plan for Lake Merrit around Clinton Basin. Purchase of off-site credits is not consistent with these Plans. According to the Oakland Estuary Plan, the basic premise of the plan and its preceding efforts is that the Estuary is a</p>	<p>O1-14 See Response to Comment A1.2-13 in Section V.B of this chapter, which explains that although previously required for the Project Modifications and still required for the Approved Project, 2009 Mitigation Measures 1.2a, <i>Corps-Verified Wetland Delineation and 1.2b, Wetland Avoidance</i> would not be required for the Revised Project Modifications, including the landing dock. 2009 Mitigation Measure 1.2c requires the Approved Project to obtain all required permit approvals from the Corps, the RWQCB, BCDC, and all other agencies with permitting responsibilities for construction activities within jurisdictional waters and other jurisdiction areas. 2009 Mitigation Measure 1.2d requires implementation of BMPs. These requirements remain applicable. The commenter does not indicate why these mitigation measures need to be updated. In addition, 2009 Mitigation Measure 1.2e is replaced with new Mitigation Measure BIO-4, <i>Compensatory Mitigation</i> and the requested review of consistency with this mitigation measure is not warranted. Also see Chapter II, <i>Updated Project Information and Analysis</i> and Consolidated Response 3 regarding comments on existing conditions and the Approved Project).</p>

## O1 Golden Gate Audubon Society

COMMENT	RESPONSE
<p>resource of citywide and regional significance. This area cannot be viewed as a single-purpose district isolated from the city, but rather as a diverse and multifaceted place that connects the city and the bay.</p>	
<p><i>Area of permanent impacts and shading:</i> The 2018 Report states that mitigation credits will be purchased for solid fill. It appears the areas of the slips are not included in this calculation – but do represent a new permanent impact (despite not being solid fill) and should be mitigated for accordingly for loss of open water space as well as shading.</p> <p><i>Temporary versus permanent impacts.</i> As noted above, construction over 5 consecutive in-water work seasons may constitute permanent impacts to wildlife, not temporary. The mitigation ratios should be determined with this in mind.</p> <p><u>Impact BIO-5</u></p> <p>The conclusion (pg. IV.I-22) that “No new significant environmental effects... would result from changes in the Project due to Project Modifications” is not substantiated. “Temporary impacts” would occur for five consecutive years, so it is possible this represents a permanent loss of temporary stopover habitat.</p>	<p>O1-15 See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant proposed revisions to the Project Modifications, which no longer involve expansion of the Approved Project marina site (including the additional slips) aside from the landing dock near the Ninth Avenue Terminal Building and is a moderate variant of the No Marina Expansion Alternative. Chapter II describes the Revised Project Modifications, including a reduced construction duration due to the removal of the previously proposed marina expansion.</p>
<p>Operational impacts of vessels were not analyzed in this section in regards to migratory birds, and as stated above, is inadequately analyzed in section BIO-1. The Marina Expansion would create 158 additional slips for watercrafts that are 40 – 80-ft long. Operating these vehicles would result in disturbance by flushing birds and disrupting foraging, and additional noise and light that could also interfere with native and migratory birds.</p> <p>A 2012 USGS Report Assessing Habitat Displacement of Rafting Waterbirds in San Francisco Bay States:</p> <p>“The main way in which human recreational activities negatively impact birds is by restricting their access to resources that would otherwise be exploited (Gill 2007). Boat traffic can adversely affect waterbirds by causing them to flush from foraging sites (Mori et al. 2001, Knapton et al. 2000, Huffman 1999) resulting in habitat displacement. Disturbance can cause waterbirds to expend more energy flying and spend less time feeding, reducing body condition and the ability to migrate and reproduce (Belanger and Bedard 1990, Haramis et al. 1986, Bell and Austin 1985). Repeated disturbance may cause waterbirds to shift distribution patterns, forage in less preferred habitats, or emigrate (Havera et al. 1992). Responses to human presence can greatly depend on species, bird densities, individual body condition, foraging conditions in the impact area, type of disturbance and other parameters (Borgmann 2011, Gill 2007, Yasue 2005), and much remains to be learned about how these factors can interact to influence waterbird responses.</p>	<p>O1-16 See Response to Comment O1-9.</p>

## O1 Golden Gate Audubon Society

COMMENT	RESPONSE
<p>There is not information in the DSEIR about how open water is used by birds (no winter surveys) or discussion about what activities influence main waterbird species.</p> <p><b>Land Use Planning</b> <i>Inconsistencies with Estuary Policy Plan and Open Space, Conservation and Recreation</i> (OSCAR) Element of the General Plan</p> <p>Pg. IV.A-9 states that: “The Project Modifications would not alter Approved Project improvements to shoreline conditions and natural areas for potential habitats along the estuary and the Lake Merritt Channel frontages of the Project site (EPP SA-Objectives 1 and 5) or wetland modifications (EPP Policy OAK-1.1). The proposed Phase 5 boat slips would directly interfere with the Wetland Enhancement Area – so potential habitat along the estuary would be altered and may conflict with the Estuary Plan and the OSCAR.</p> <p><i>The Open Space, Conservation and Recreation Element of the General Plan</i> includes Objective CO-8 to conserve wetlands so they may continue to provide habitat for fish and wildlife. Action CO-8.1.2 calls for the establishment of buffers or mandatory setbacks on the perimeter of wetlands. Policy CO-8.2 calls for limitation on “recreational uses within wetland “parks” to activities that are consistent with the fragile environmental characteristics of the areas” with an “emphasis in most wetland areas...on passive uses and resource protection, Action CO-9.1.4 limits “recreational uses on publicly-owned open space lands to those which have minimal impacts on rare, threatened, or endangered species.” This discussion should be reevaluated to include this impact – without analysis (particularly about buffering wetlands), the slips could be a significant impact that has not been avoided.</p> <p><u>Impact LU-4</u></p> <p>As discussed above Mitigation Measure BIO-I.2b Wetland Avoidance does not adequately mitigate for impacts to the Wetland Restoration Area – therefore, there is a conflict with this Port of Oakland Project that should be avoided. This section should identify and describe what the Port of Oakland requirements are for maintaining the Wetland Restoration Area into the future and how the Marina Expansion is consistent. As discussed above Mitigation Measure BIO-I.2b Wetland Avoidance does not adequately mitigate for impacts to the Wetland Restoration Area – therefore, there is a conflict with this Port of Oakland Project that should be avoided. This section should identify and describe what the Port of Oakland requirements are for maintaining the Wetland Restoration Area into the future and how the Marina Expansion is consistent.</p>	<p>O1-17 As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant proposed revisions to the Project Modifications, which no longer involve expansion of the Approved Project marina, aside from the landing dock near the Ninth Avenue Terminal Building (see Consolidated Response 2). Also as discussed in Chapter II, the Revised Project Modifications no longer involve work in proximity to the wetlands restoration and enhancement in Clinton Basin or near the South Park wetlands. Therefore, the requested reevaluation of plans and policy consistency is not warranted.</p>
<p><u>Impact LU-4</u></p> <p>As discussed above Mitigation Measure BIO-I.2b Wetland Avoidance does not adequately mitigate for impacts to the Wetland Restoration Area – therefore, there is a conflict with this Port of Oakland Project that should be avoided. This section should identify and describe what the Port of Oakland requirements are for maintaining the Wetland Restoration Area into the future and how the Marina Expansion is consistent. As discussed above Mitigation Measure BIO-I.2b Wetland Avoidance does not adequately mitigate for impacts to the Wetland Restoration Area – therefore, there is a conflict with this Port of Oakland Project that should be avoided. This section should identify and describe what the Port of Oakland requirements are for maintaining the Wetland Restoration Area into the future and how the Marina Expansion is consistent.</p>	<p>O1-18 See Response to Comment A1.2-13 in Section V.B of this chapter.</p>

## O1 Golden Gate Audubon Society

COMMENT	RESPONSE
<p><b>Conclusion</b></p> <p>Thank you for considering these comments and for all of your work towards a healthy, equitable, and biodiverse future for Oakland. Please notify us of any actions or materials pursuant to this DEIR.</p>	<p>O1-19 This comment is noted. No response is required.</p>

## O2.1 Oakland Heritage Alliance

COMMENT	RESPONSE
<p>Oakland Heritage Alliance appreciates the opportunity to comment on the proposed revisions to the Brooklyn Basin/Ninth Avenue Terminal project, in particular the addition of 10 acres of marina facilities.</p> <p>For the reasons explained below, OHA submits that further study and analysis is needed on the following impacts before the City can consider the Supplement DEIR and the proposed project modification:</p>	<p>O2.1-1 See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant proposed revisions to the Project Modifications, which no longer involve expansion of the Approved Project marina site aside from the landing dock near the Ninth Avenue Terminal Building and is a moderate variant of the No Marina Expansion Alternative.</p>
<p>PROPOSED MARINA RELOCATION AND EXPANSION</p> <p><b>The Finding that the Marina Relocation and Expansion Would Have a “Less Than Significant” Impact on Biological Resources in the Port of Oakland Marsh Restoration Area Is Unanalyzed, Unstudied, and Unsupported (BIO)</b></p> <p>The DEIR summarily states that the project modifications will have a less than significant impact on biological resources (BIO), and specifically “would not substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites” (BIO-5), and “would not fundamentally conflict with any applicable habitat conservation plan or natural community conservation plan” (BIO-6).</p> <p>The Port of Oakland created the Marsh Restoration Area in 2001 as part of a wetland enhancement project that included “the creation of a tidal channel, the creation of a tidal marsh and the enhancement of roosting areas for shore and water birds.”</p> <p>The August 2005 Oak to Ninth Project DEIR confirmed that “the project would maintain the existing Clinton Basin Wetland Restoration and Enhancement Project wetland restoration area at the west shore at the mouth of Clinton Basin (Figure III-6). No changes are proposed to this resource as part of the project.”</p> <p>The DEIR assumes, without study or evidence, that placement of boat slips directly offshore from the Restoration Area could not have any impact on the</p>	<p>O2.1-2 See Responses to Comments O1-4 and O1-9 regarding analysis in Sections IV.I, <i>Biological Resources</i>, and IV.A, <i>Land Use, Plans, and Policies</i>, in the Draft SEIR supporting that the originally proposed Project Modifications would not result in substantially new or more severe impacts to biological resources than identified in the 2009 EIR for the Approved Project. Response to Comment O1-9 specifically addresses the comment regarding potential impacts to shore and water birds.</p> <p>Also, as discussed in Chapter II, since publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve expansion of the Approved Project marina, aside from the landing dock near the Ninth Avenue Terminal Building (see Consolidated Response 2). Therefore, the Revised Project Modifications no longer involve work in proximity to the wetland restoration area. No additional study is warranted to support the impacts and mitigation measures identified in the Draft SEIR or in Chapter II of this document.</p>

## O2.1 Oakland Heritage Alliance

COMMENT	RESPONSE
<p>shore and water birds who roost there. The project proponent has not provided the City with any study, expert report, or other competent evidence to support a no significance finding, and to OHA's knowledge, the City has no evidence in the record to support such a finding.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• Shore and water birds consume fish and mollusks from the estuary. The placement of boats and associated human activity, including noise and oil discharges, could potentially interfere with fish and mollusk circulation in the estuary adjacent to the Restoration Area and adversely affect the sustainability of the area as a roosting area for shore and water birds, as contemplated when the preserve was established.</li> <li>• Some water birds, such as cormorants, require ample water surface area to take off. The proposed marina installation could potentially interfere with the flight patterns of such birds and the continued viability of the Restoration Area as a bird habitat.</li> <li>• Wave generation due to the proposed relocation and expansion of the marina could adversely affect the restored marsh area.</li> </ul> <p>Because clear potentially adverse impacts of the proposed marina relocation and expansion on the Restoration Area remain unstudied and unknown, the no impact finding is speculative and without evidentiary support. The impacts of placing boat slips directly offshore from the Restoration Area must be studied and assessed before any boat slips can be placed there, nor can the City evaluate the benefits of the environmentally superior alternative without evidence of the impact of the proposed marina placement on the Restoration Area.</p> <p>OHA is unable to consider or propose any modification of the proposed marina expansion and relocation without such a study and evidence. When an appropriate study of the impacts of the placement of boat docks on the Restoration Area is submitted, OHA will review it and provide comments if an alternative placement of boat slips that would not adversely affect the Restoration Area is feasible.</p>	<p>O2.1-3 This comment is noted. No response is warranted in addition to the preceding responses provided to this commenter because the Revised Project Modifications no longer include a marina expansion. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>
<p><b>AESTHETIC IMPACTS</b></p> <p>The Finding that the Marina Relocation and Expansion Would have a "Less Than Significant" Aesthetic Impact on the Visual Character and Quality of the Shoreline Park Is Unanalyzed, Unstudied, and Unsupported (AES)</p> <p>When the Brooklyn Basin Project was proposed over 15 years ago, then known as the Oak to Ninth Project, the project proponent and the City promised the public that the project would transform an unused and underused industrial site into a bayfront public park with unobstructed Bay views. That public benefit was a leading justification for approving a 3,100 unit private development with limited</p>	<p>O2.1-4 Section IV.K, <i>Visual Quality and Shadows</i>, in the Draft SEIR provides that the originally proposed Project Modifications would not result in substantially new or more severe impacts to aesthetics of the Approved Project as identified in the 2009 EIR. The determination is supported by various setting photographs and photo simulations, which evaluate the potential effects on Bay views and other scenic vistas, as well as changes to visual character and visual quality effects, that would occur with the Project Modifications. The photographs and simulations capture a representative sample of existing views of and from the marina expansion area. Less than significant impacts are identified with no mitigation measures required.</p>

## O2.1 Oakland Heritage Alliance

COMMENT	RESPONSE
<p>street and transit access and access to public services, such as schools and emergency services. The demolition of most of the Ninth Avenue Terminal was justified in major part by the promise of a large bayside open space as a public park and venue for concerts and other events that would link the isolated and relatively inaccessible Shoreline Park recreationally to the rest of Oakland. Public access to the Bay, views of the Bay, and the continuation of the Bay Trail were prominent elements of this plan. To protect the public character of the park, the marina was confined to the largely privatized part of Clinton Basin that is surrounded by residential development.</p> <p>The proposed marina expansion and relocation now proposes to surround Shoreline Park with private development—a marina—that interferes with unobstructed views of the Bay and substantially diminishes the bayfront character of the park, contrary to the original promises of the City and the project proponent to the citizens of Oakland. Surrounding the park with a marina would “substantially degrade the existing visual character or quality of the site” as a public park (AES-3) and “have a substantial adverse effect on a public scenic vista.” (AES-1.)</p>	<p>As discussed in Chapter II, since publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve a potential residential tower on Parcel L or expansion of the Approved Project marina, aside from the landing dock near the Ninth Avenue Terminal Building (see Consolidated Response 2). Therefore, the Revised Project Modifications would not result in tall masts nor alter unobstructed Bay views from Township Commons or views through view corridors with clusters of tall boat masts.</p> <p>No additional study is warranted to support the impact determinations and mitigation measures identified in the Draft SEIR or in Chapter II of this document.</p>
<p>Viewpoint 11, from the Bay Trail, shows that views of the San Francisco skyline “would remain visible though partially obscured.” (P. IV.K-9.) However, the DEIR provides no viewpoint looking west from Shoreline Park toward the San Francisco skyline. Presumably, that view would be at least “partially obscured,” but the DEIR provides no analysis from that point in the park, which unlike the singular point on the Bay Trail, is a public bayside gathering place.</p>	<p>O2.1-5 See Response to Comment O2.1-4. Also see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed.</p>
<p>Still, Viewpoint 15B illustrates how the proposed marina relocation and expansion would degrade views of the bay and distant views from Shoreline Park, even looking south toward Alameda. (Figure IV. K-5.) The DEIR acknowledges that “the Project Modifications’ marina expansion would result in a noticeable increase in marina infrastructure and use by various types of watercraft that would be visible from both within the Project site and from surrounding viewpoints.” (P. IV.K-5.) This “noticeable increase” will significantly degrade the bayside character of Shoreline Park by and interfere with views of the Bay and remote views of the San Francisco skyline</p> <p>The proposed marina relocation and expansion breaks the promise the City and the project proponent made to the public that Shoreline Park would be a public park, integrated with the Bay, provided unobstructed views of the Bay and points distant, with a character separate and protected from the surrounding private residential development. The proposal will demonstrably “substantially degrade the existing visual character or quality of the site” as a public park and “have a substantial adverse effect on a public scenic vista,” directly contrary to the unsubstantiated claim that the proposed project would have no substantial adverse impact.</p>	<p>O2.1-6 See Response to Comment O2.1-4. Also see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed.</p>

## O2.1 Oakland Heritage Alliance

COMMENT	RESPONSE
<p><b>MITIGATIONS</b></p> <p>Oakland’s long-term monitoring of mitigations subsequent to approval of EIR documents and conditions of approval is often inadequate. We are aware of numerous breaches, for example, blockages of the Bay Trail. Indicate who is monitoring mitigations, for how long, and how they will be enforced.</p> <p>We were disappointed, upon visiting in June 2021, to see that although some interpretive plaques outside are visible, none of the historical exhibits in the Ninth Avenue Terminal remnant have been installed. We assume a Certificate of Occupancy for the initial buildings was issued nonetheless, but would request that the exhibits be completed before any further certificates are issued. To quote the DEIR: “Although not complete by September 2018, historical exhibits depicting the history of the Oakland Municipal Terminal were in design by the Project Applicant. Exhibits would include a minimum 200 square-foot floor area within the Terminal Building as well as a series of interpretive plaques on the outside of the Terminal Building. The installation is anticipated to be completed by March 2020 and approved in conjunction with the 9<sup>th</sup> Avenue Terminal Certificate of Occupancy.”</p> <p>Small as it is, we would appreciate adherence to this mitigation measure, and to all the mitigation program measures. With the large size of this development we request that the monitoring program be thorough, robust, and that there be a procedure for ensuring it is carried out.</p>	<p>O2.1-7 Also see Consolidated Response 3 regarding comments on existing conditions and the Approved Project.</p> <p>Also, in Section V.B of this section, See Response to Comments A2-9 and A2-11 regarding the implementation and monitoring of mitigation measures, and See Response to Comment A1.2-13 regarding assuring the efficacy of the adopted mitigation measures to reduce or avoid the potentially significant impact identified to biological resources generally is addressed in the 2009 EIR and summarized.</p> <p>Overall, this comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p> <p>O2.1-8 See Consolidated Response 3 regarding comments on existing conditions and the Approved Project. Also, in Section V.B of this section, See Response to Comments A2-9 and A2-11 regarding the implementation and monitoring of mitigation measures.</p> <p>Overall, this comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>
<p><b>HOUSING</b></p> <p>We recommend that if 600 units are to be added, 150 affordable units should be included in the project, proportionate to how the affordable housing was included in the original project.</p>	<p>O2.1-9 See Response to Comment I2-3 in Section V.D in this chapter. Also see Consolidated Response 1 regarding comments on the merits of the project. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>
<p><b>TRANSIT</b></p> <p>This site remains unserved by transit. The references to its pedestrian design and transit prioritization make little sense when there is no bus service, and when a substandard at-grade crossing of many railroad tracks faces any pedestrian who wishes to reach BART or the rest of the city. The comments in the draft supplement do not comport with reality. (Figures attached)</p>	<p>O2.1-10 The commenter is correct that transit service is not provided adjacent to the site. Residents, visitors, and employees who use BART, for example, would need to walk about 18 minutes to access the Lake Merritt BART Station. As discussed in the Draft SEIR, while no bus routes directly serve the Project site, several bus lines can be accessed nearby, including at the Lake Merritt BART Station (Draft SEIR p. IV.B-4). There are also continuous bicycle facilities connecting the site and the Lake Merritt BART station which would reduce travel time to about 7 minutes. The Approved Project</p>

## O2.1 Oakland Heritage Alliance

COMMENT	RESPONSE
	<p>is required through its Conditions of Approval to provide a shuttle bus connecting the Project site to the BART station for residents, visitors, and employees which would reduce travel time to about 5 minutes and this Condition would continue to apply notwithstanding any modifications to the Approved Project. People would be unlikely to drive between the Project site and BART because there are fewer than 200 parking spaces available for BART riders and all spaces have been reserved through BART's permit parking program. Furthermore, BART plans to remove these parking spaces to accommodate redevelopment of the BART station area.</p> <p>The City's Transportation Impact Review Guidelines (TIRG) identifies transit as a non-CEQA transportation topic. The commenter is referred to Draft SEIR Appendix C which describes the non-CEQA transit characteristics associated the Approved Project and with the Project Modification. The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>

## O2.2 Oakland Heritage Alliance

COMMENT	RESPONSE
Same as Comment O2.1-1	O2.2-1 Same as Response O2.1-1
Same as Comment O2.1-2	O2.2-2 Same as Response O2.1-2
Same as Comment O2.1-3	O2.2-3 Same as Response O2.1-3
Same as Comment O2.1-4	O2.2-4 Same as Response O2.1-4
Same as Comment O2.1-5	O2.2-5 Same as Response O2.1-5
Same as Comment O2.1-6	O2.2-6 Same as Response O2.1-6
Same as Comment O2.1-7	O2.2-7 Same as Response O2.1-7
Same as Comment O2.1-8	O2.2-8 Same as Response O2.1-8
Same as Comment O2.1-9	O2.2-9 Same as Response O2.1-9
Same as Comment O2.1-10	O2.2-10 Same as Response O2.1-10

## O2.3 Oakland Heritage Alliance

COMMENT	RESPONSE
<p>The SEIR draft is strangely dismissive of the marsh restoration area, even though the developer, no doubt recognizing the contamination issues, has now decided not to build at the western edge of Clinton Basin, if I understand correctly. This wetland restoration area was created after a 2000 agreement to remedy contamination that arose as a result of the Port's activities in boat-dismantling at the site.). (See Attachments 1 and 2)</p>	<p>O2.3-1 See Response to Comment A1.2-13 in Section V.B of this chapter.</p>
<p>Soft edges are critical. Just in the last week, a major article appeared in <i>The New Yorker</i> (<a href="https://www.newyorker.com/magazine/2021/08/09/the-seas-are-rising-could-oysters-protect-us">https://www.newyorker.com/magazine/2021/08/09/the-seas-are-rising-could-oysters-protect-us</a>), discussing a more enlightened approach to coastlines than simply hardening them. This is not new. For well more than a decade, the California State Coastal Conservancy and related agencies have been using science and experimentation to come up with approaches to protect our coastlines (<a href="http://www.sfbaylivingshorelines.org/sf_shorelines_about.html">http://www.sfbaylivingshorelines.org/sf_shorelines_about.html</a>) and come up with recommendations. Notable to me was the minimal mention of Oakland in the 2019 report <i>State of the Estuary</i> (<a href="https://www.sfestuary.org/wp-content/uploads/2019/10/State-of-the-Estuary-Report-2019.pdf">https://www.sfestuary.org/wp-content/uploads/2019/10/State-of-the-Estuary-Report-2019.pdf</a>). We should be leaders in these efforts, not only resorting to concrete. The SEIR does not consider that the project should support and expand upon these ongoing SF Bay resilience projects.</p>	<p>O2.3-2 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p> <p>Also, this comment does not specifically set forth how the SEIR omits analysis or provides inaccurate information. As a result, the City cannot further address those claims in the comment without more detailed information provided by the commenter.</p>
<p>Oakland can do more with our opportunities. This SEIR must address protecting, enhancing, and nurturing the wetland area between Clinton Basin and along Sixth Ave. The above information, plus the attachments I am including below, should be considered, much more comprehensive further study undertaken, and alternatives provided to support the marsh rather than rendering it ineffective.</p>	<p>O2.3-3 The purpose and appropriate scope of the Draft SEIR is to address the physical environmental effects of originally proposed Project Modifications to the Approved Project analyzed in the 2009 EIR. Further, as discussed in Consolidated Response 2, since the publication of the Draft SEIR, the Project Applicant proposed revisions to the Project Modifications, which are referred to as the Revised Project Modifications. Chapter II of this document provides an evaluation of the environmental effects of the Revised Project Modifications. Further, in accordance with CEQA Guidelines Section 15163, this SEIR contains the information necessary to make the 2009 EIR adequate for the modifications to the Approved Project.</p> <p>While important policy considerations, this comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p> <p>No further analysis is warranted for the SEIR, which details impacts and mitigation measures for the originally proposed Project Modifications and the subsequent Revised Project Modifications pertaining to the wetland area between Clinton Basin/Sixth Avenue. See also Response to Comment A1.2-13 in Section V.B of this chapter.</p>

## O2.3 Oakland Heritage Alliance

COMMENT	RESPONSE
<p>I spent one morning, about two and a half hours, at the restoration area, recently, and was impressed at the amount and variety of bird and plant life (Attachment 3). I wasn't equipped to wade in and look at subtidal natural resources, but those resources must also be investigated as part of the SEIR. Can rays, fish, shellfish, microorganisms, and aquatic mammals continue to use this shore? Or must it be devoted to intermittently-used shoreline-obstructing watercraft, much of it motorized, emitting pollutants, noise, and generating wakes?</p>	<p>O2.3-4 Attachment 3 referenced in this comment is omitted from Comment Letter O2.3. See Comment Letter O2.4.</p> <p>See Response A3-2 in Section V.B of this chapter. Also see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed.</p>
<p>My observation of other marinas in our area is that most of the boats are stationary at least 90% of the time, with occasional dockside cocktail hours, and that the access to them is gated, such that the public is blocked from the water and recreational muscle-powered crafts are pushed out away from shore and into the waterway. The expanded marina plan would sandwich the much-boasted-about public park areas between private residential development and private marina development. Wasn't one of the attractions the wide view of water expanses? That was the initial rationale for removing 89% of Ninth Avenue Terminal. See attachment 4, an illustration showing how a marina would block the water view.</p>	<p>O2.3-5 See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. Also See Response to Comment O2.1-4 regarding the assessment of views under the Revised Project Modifications.</p>
<p>The public, residents, and wildlife would benefit from a modest stretch of soft shore, and people should be able to continue to enjoy views from parks, unencumbered by idle masts and looming motorized watercraft.</p>	<p>O2.3-6 See Consolidated Response 1 regarding comments received on the merits of the project, as well as Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed.</p> <p>Also See Response to Comment O2.1-4 regarding the assessment of views under the Revised Project Modifications.</p>
<p>The study of both these issues is incomplete. There are already boat marinas in Alameda and Oakland. Let us not further privatize our trustland public areas, intended for public use under the original Estuary Policy Plan.</p>	<p>O2.3-7 See Response to Comment A1.2-13 in Section V.B of this chapter.</p>
<p>Please study all the locations shown in Attachment 4 and 5 and simulate views as they would be seen with marina facilities—especially the curved trestle area, Shoreline Park, view of San Francisco, and the marsh restoration area. Oakland has obstructed access to the coastline along much of its edge. Do not block these long stretches of water views.</p>	<p>O2.3-8 See Response to Comment O2.3-5.</p>
<p>I look forward to a thoroughgoing analysis of continued restoration and gentle treatment at the marsh restoration, to alternatives that do not cut it off from open water, and alternatives that preserve more public uses of public lands and views from them. The SEIR is woefully insufficient and inadequate in these respects.</p>	

## O2.4 Oakland Heritage Alliance

COMMENT	RESPONSE
Same as Comment O2.3-1	O2.4-1 Same as Response O2.3-1
Same as Comment O2.3-2	O2.4-2 Same as Response O2.3-2
Same as Comment O2.3-3	O2.4-3 Same as Response O2.3-3
<i>(Same as Comment O2.3-4, except Attachment 3 is included here.)</i> I spent one morning, about two and a half hours, at the restoration area, recently, and was impressed at the amount and variety of bird and plant life (Attachment 3). I wasn't equipped to wade in and look at subtidal natural resources, but those resources must also be investigated as part of the SEIR. Can rays, fish, shellfish, microorganisms, and aquatic mammals continue to use this shore? Or must it be devoted to intermittently-used shoreline-obstructing watercraft, much of it motorized, emitting pollutants, noise, and generating wakes?	O2.4-4 Same as Response O2.3-4
Same as Comment O2.3-5	O2.4-5 Same as Response O2.3-5
Same as Comment O2.3-6	O2.4-6 Same as Response O2.3-6
Same as Comment O2.3-7	O2.4-7 Same as Response O2.3-7
Same as Comment O2.3-8	O2.4-8 Same as Response O2.3-8

## O3 San Francisco Baykeeper

COMMENT	RESPONSE
I write on behalf of San Francisco Baykeeper ("Baykeeper") regarding the proposed expansion of the Brooklyn Basin development project and marina ("Project"). Baykeeper submits these comments on behalf of its approximately 5,000 members and supporters who live and/or recreate in and around the San Francisco Bay Area. Baykeeper's mission is to defend San Francisco Bay from the biggest threats and hold polluters and government agencies accountable to create healthier communities and help wildlife thrive. Our team of scientists and lawyers investigate pollution via aerial and on-the-water patrols, strengthen regulations through policy advocacy, and enforce environmental laws on behalf of the public.	O3-1 This transmittal comment is a summary of Baykeeper's mission and team. The comment is noted.
In March 2000, the Port of Oakland was attempting to drag a workboat named "Moby Dick" from the Oakland Estuary inlet when it was damaged, spilling lead paint, battery acid, and other harmful materials into the Bay. As a result of this incident, and according to reports from the surrounding community, about half a dozen or more similar ones, Baykeeper filed a lawsuit against the Port of	O3-2 This comment describes the commenting organization's membership and dedication. It raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record

### O3 San Francisco Baykeeper

COMMENT	RESPONSE
<p>Oakland. The litigation was resolved with the Port agreeing to pay \$110,000 in mitigation and fees. A majority of the funds the Port paid were used to promote environmentally beneficial projects and education, including habitat and wetlands restoration projects in the area and a restored shoreline at the site.</p>	<p>and made available to the decision makers prior to a final decision on the proposed Project.</p>
<p>Through the settlement, Baykeeper has a vested interest in this site and in maintaining the beneficial results for the Bay and the Oakland community that came from the agreement. The restored marsh at the site has resulted in significant beneficial impacts for the Bay and recreational users of the area, has enhanced the availability of public space for the community, and has helped the species that rely on these marshes to thrive. Therefore, Baykeeper is concerned about the Project and newly proposed changes at the site. For example, as recently documented by the Oakland Heritage Alliance, the restored area is now used by many species of shore and water birds for feeding and habitat: [photos]</p> <p>As Table II-1 in the SEIR (copied below) describes, the proposed changes to the Project are significant. The magnitude of the changes belies the Project Sponsor’s conclusion that no environmental impacts would occur. The conclusory assessment is not supported by any evidence, technical assessment, or expert analysis, and is belied by the magnitude of the marina expansion and a common-sense analysis of the potential damage that such an expansion would likely cause.</p>	<p>O3-3 See Response to Comment O2.1-2.</p>
<p>As approved, the Project would create 3,100 housing units, 8 acres of in-water development, 167 recreational boat slips between 40 and 80 feet in length. The proposed changes would add 600 housing units, cause a 240% increase in the in-water acreage used by the marina, and would roughly double the number of recreational boat slips at the expanded marina.</p>	<p>O3-4 As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant proposed revisions to the Project Modifications, which no longer involve tower relocation to Parcel L or expansion of the Approved Project marina, aside from the landing dock near the Ninth Avenue Terminal Building. See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed.</p> <p>Furthermore, the increase of 600 housing units would be accommodated within the Approved Project’s building height, massing, setbacks, and footprints and the Draft SEIR presents analyses relevant to whether 600 additional units could be accommodated with the Project Modifications in Section IV.B <i>Transportation and Circulation</i>; Section IV.J, <i>Population and Housing</i>; Section IV.L, <i>Public Services and Recreation</i>; and Section IV.M, <i>Utilities and Service Systems</i>. Chapter II of this document assesses the same for the Revised Project Modifications.</p>
<p>This massive marina expansion requires a thorough environmental review based on actual data and an informed evaluation of the impacts of the proposed expansion on the restored marsh, shoreline community, and the wildlife species that use the area.</p> <ul style="list-style-type: none"> <li>The environmental reviews of the Project to date provide no substantive or objective analysis of the impact of the expanded marina on the wildlife species in the area, or the flora and fauna they rely upon. This alone is a</li> </ul>	<p>O3-5 See Responses to Comments O2.1-2 and O3-4.</p>

### O3 San Francisco Baykeeper

COMMENT	RESPONSE
<p>deficiency that must be corrected before approval of the expanded marina and project can go forward.</p> <ul style="list-style-type: none"> <li>While the developer has indicated they do not intend to build marina slips on the restored marsh areas, they have not analyzed the impact of having 300 boats using the water adjacent to the restored marsh. Such an analysis is needed to properly and adequately evaluate the impact of the proposed changes to the Project.</li> <li>Further, the reviews to date also lack analysis of the equitable (or inequitable) nature of the creation of new housing, new recreational facilities, and new boat slips. The Port must ensure that housing in the area is affordable and that the water remains accessible to the Clinton Basin community, not just people wealthy enough to buy the new homes and/or who own large boats. Accessibility also requires ensuring that human powered crafts (paddleboards, kayaks, etc...) are able to safely use the area without being overwhelmed by the wake created by the increase in motorized boats in the area</li> </ul>	<p>O3-6 The comment suggests responsibilities of the Port regarding affordable housing, public access to the community of Clinton Basin, and safe public use of motorized boats in the area. No aspect of the Revised Project Modifications would affect these considerations; see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. Also see Response to Comments I2-2 and I2-3 in Section V.D of this chapter.</p>
<p>Finally, there is insufficient analysis to determine whether and to what extent the marina might be used for live aboard purposes, and the impact that would have both on the affordability of housing in the area or the impact on the Bay that could be posed by an increase in the number of people living aboard vessels docked in the expanded marina.</p>	<p>O3-7 See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. The Revised Project Modifications no longer include the marina expansion considered in the Draft SEIR and therefore no live-aboard vessels are assumed. Also see Response to Comments I2-2 and I2-3 in Section V.D of this chapter.</p>
<p>Simply concluding that a 240% expansion in the size of the marina combined with a doubling in the number of boat slips and an increase in the number of housing units at the Project will have no impact on the environment does not comply with CEQA. Adopting the changes to the Project without requiring and reviewing actual data and expert scientific analysis is also not consistent with good stewardship of the Bay.</p>	<p>O3-8 See Response to Comment O3-4.</p>
<p>Baykeeper urges the Port to require additional information and analysis from the Project Sponsor. It would also seem prudent to gather more information from the community who will be most immediately impacted by the Project. We strongly recommend that the Port ensure that the environmental impacts of the massive expansion of the marina does not harm or undo the restored marsh and shoreline that the Port and other stakeholders worked so hard to create and protect as part of the settlement of the litigation two decades ago.</p>	<p>O3-9 The comment is directed to the Port, rather than the City as lead agency, and does not specify additional information than what is raised in prior comments from this commenter. The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>

## O4 Sierra Club

COMMENT	RESPONSE
<p>The Sierra Club respectfully submits the following comments on the Brooklyn Basin Draft Supplemental Environmental Impact Report.</p>	<p>O4-1 This transmittal comment is noted.</p>
<p>We wish to support the remarks previously submitted by SF Baykeeper and Naomi Schiff. In particular, we request that additional alternatives should be studied, as we believe that they may be environmentally superior to the recommended project alternative. More robust alternatives for muscle-powered craft used by members who may not rent slips should be considered.</p>	<p>O4-2 See responses to multi-part comment letters O2 (OHA) and O3 (Beekeeper) in this section.</p> <p>CEQA requires that a reasonable range of feasible alternatives to the project be analyzed (and not every possible alternative) that are designed to reduce the significant environmental impacts of the project while still meeting the general project objectives. (See CEQA Guidelines Section 15126.6.) CEQA generally defines “feasible” to mean an alternative that is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, technological, and legal factors. The Draft SEIR analyzes a reasonable range of alternatives, including a No Project Alternative, No Marina Expansion Alternative, and No Tower Relocation Alternative, taking into account project objectives and the significant impacts of the Project Modifications. (See Draft EIR, Chapter V.)</p> <p>Also see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant proposed revisions to the Project Modifications, which no longer involve expansion of the Approved Project marina aside from the landing dock near the Ninth Avenue Terminal Building. The Revised Project Modifications incorporate numerous aspects of the Alternative 2, No Marina Expansion, from the Draft SEIR and that would substantially reduce environmental impacts.</p>
<p>Consistent with comments previously received, we also request that this SEIR:</p>	<p>O4-3 See Response to Comment O2.3-3.</p>
<p>(1) Address protecting, enhancing, and nurturing the wetland area between Clinton Basin and along Sixth Avenue;</p>	
<p>(2) Provide a superior environmental alternative to the expanded marina plan which, as presented, sandwich the public park areas between private residential development and private marina development;</p>	<p>O4-4 See Response to Comment O2.3-5 and Response to Comment O4-2</p>
<p>(3) Provide a superior environmental alternative that includes a stretch of soft shore, which would allow members of the public to continue to enjoy unencumbered views from parks;</p>	<p>O4-5 See Response to Comment O2.3-6 and Response to Comment O4-2.</p>
<p>Furthermore, we concur with comments provided by SF Baykeeper that:</p>	<p>O4-6 See Response to Comment O3-5 and O2.1-2.</p>
<p>(1) The environmental reviews of the Project to date provide no substantive or objective analysis of the impact of the expanded marina on the wildlife species in the area, or the flora and fauna they rely upon. This alone is a</p>	

## O4 Sierra Club

COMMENT	RESPONSE
deficiency that must be corrected before approval of the expanded marina and project can go forward.	
(2) While the developer has indicated they do not intend to build marina slips on the restored marsh areas, they have not analyzed the impact of having 300 boats using the water adjacent to the restored marsh. Such an analysis is needed to properly and adequately evaluate the impact of the proposed changes to the Project.	O4-7 See Response to Comment O2.1-2.
(3) The reviews to date also lack analysis of the equitable (or inequitable) nature of the creation of new housing, new recreational facilities, and new boat slips. The Port must ensure that housing in the area is affordable and that the water remains accessible to the Clinton Basin community, not just people wealthy enough to buy the new homes and/or who own large boats. Accessibility also requires ensuring that human powered crafts (paddleboards, kayaks, etc...) are able to safely use the area without being overwhelmed by the wake created by the increase in motorized boats in the area.	O4-8 See Response to Comment O3-6.
(4) There is insufficient analysis to determine whether and to what extent the marina might be used for live aboard purposes, and the impact that would have both on the affordability of housing in the area or the impact on the Bay that could be posed by an increase in the number of people living aboard vessels docked in the expanded marina	O4-9 See Response to Comment O3-7.
We join with the referenced submitters in urging the Port to require additional analysis from the Project Sponsor as well as to further consult directly impact community stakeholders. We also urge the Port to ensure that the environmental impacts of this project does not adversely impact the condition of the recently restored marsh and shoreline	O4-10 See Response to Comments O3-9.

## O5 Waterfront Action

COMMENT	RESPONSE
<b>Impact BIO-4:</b> <i>Protect Project Modifications would not result in a substantial adverse effect on potentially 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.</i>	O5-1 See Response to Comments by the RWQCB and BCDC regarding its jurisdiction of review and approval for aspects of the project; see Responses to Comments A5-3 and A5-8 in Section V.B of this chapter. No revision to the Draft SEIR is warranted.

## 05 Waterfront Action

COMMENT	RESPONSE
<p>This impact is deemed “Less than significant”. However, the proposed marina expansion has <u>not</u> been heard by BCDC and agency approval cannot be assumed. The DSEIR should reflect this uncertainty.</p> <p>Impact BIO-4 includes <b>2009 Mitigation Measure I.2c: Obtain Regulatory Permits and other Agency Approvals</b>. The following excerpts from the minutes of the April 8, 2019 BCDC Design Review Board meeting reveal comments by the public and board during the public hearing on the proposed marina expansion. They also highlight the fact that the proposed marina is not yet authorized by BCDC and the Design Review Board intends to review any such proposal:</p> <ul style="list-style-type: none"><li>• Ms. Alschuler stated her assumption that there is no marina around Shoreline Park but only at the Clinton Basin location and the existing marina at the end of Fifth Avenue.</li><li>• Ms. Gaffney stated the current BCDC permit does not authorize a marina. It authorizes the removal of the docks in Clinton Basin. She agreed that the exhibits indicate that a marina would be planned at a future date but it has not yet been authorized.</li><li>• Daniel Franco stated that is getting to be a bigger point – it spits in the face of any sane definition of wetlands to say that the tiny wetlands, which is less than one acre, will be able to survive as a wetlands when there is a mega marina built around it.</li><li>• Sandra Threlfall distributed a handout to the Board and stated the existing mitigation area at the top of Clinton Basin has a proposed marina around it with more slips for ships. This is not logical.</li><li>• Ms. Alschuler suggested beginning with what the Board was given to review - the two parks. She asked if the marina is major enough to come back to the Board for review and what the timing looks like in relation to building the parks. Mr. Van Ness stated BCDC and Board review will be required for any marina proposal.</li><li>• Ms. Alschuler stated concern about the marina and stated the need for the Board to see more information as they are revised.</li><li>• Ms. Alschuler stated there was public comment about the marina. The Board will ask to review the plan again if there is a marina added.</li><li>• Ms. Alschuler stated the Board may need to see this project again if the design evolves in a dramatic way. The Board would especially be interested in the resolution of the marina.</li></ul> <p>These public comments are directly relevant to the marina expansion considered in the DSEIR.</p>	<p>O5-2</p> <p>As discussed in Chapter II, since publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve relocation of Tower to Parcel L or expansion of the Approved Project marina, aside from the landing dock near the Ninth Avenue Terminal Building (see Consolidated Response 2). As discussed in Chapter II of this document, these Revised Project Modifications no longer involve work in proximity to the wetland restoration area at Shoreline Park, Clinton Basin, or Fifth Avenue. See also Consolidated Response 3 regarding comments on existing conditions and the Approved Project.</p> <p>None of the remaining comments listed raise significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comments will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>

## V.D Individuals

### I1 Tim Anderson

COMMENT	RESPONSE
<p>1) Brooklyn Basin's plan to build a marina at the head of 5th Avenue Point will not protect the protected wildlife area, it will in all likelihood destroy it. It is absurd to think you could build a marina adjacent to a protected wetland! Take a look up and down the estuary at all the marinas, the fancier they are the more trash, oil, pollution etc. is collecting at the shoreline. This is just at the surface, you don't need an imagination to see the worst.</p>	<p>I1-1 Several adopted mitigation measures are identified in the 2009 EIR to reduce or avoid potentially significant impacts to biological resources Also, as described in Draft SEIR Impact LU-4 (p. IV.A-19), LU-5 (p. IV.A-20), Impact BIO-4 (p. IV.I-15), Impact BIO-6 (p. IV.I-22), and Impact BIO-8 (p. IV.I-23), Mitigation Measure 1.2b, <i>Wetland Avoidance</i>, would reduce any potential conflict with the Clinton Basin Wetland Restoration and Enhancement Project to a less than significant level.</p> <p>See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. As discussed in Chapter II, <i>Updated Project Information and Analysis</i>, of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve the tower location to Parcel L or expansion of the Approved Project marina, aside from the publicly accessible landing dock near the Ninth Avenue Terminal Building.</p> <p>The Revised Project Modifications no longer involve work in proximity to the wetlands restoration and enhancement in Clinton Basin or near the South Park wetlands. See response A1.2-13 (Section V.B of this chapter) regarding biological resources and wetland mitigation measures that will pertain to the Revised Project Modifications. Also see the updated <i>Biological Resources</i> analysis in Chapter II.</p> <p>Because the comment also raises concern about aspects of the Approved Project analyzed in the 2009 EIR or the Project Modifications analyzed in the Draft SEIR, see Consolidated Response 3.</p> <p>Lastly, see Consolidated Response 1 since this comment also includes statements that do not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comments are noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>2) I am a resident of Shadetree, adjacent to the parcel where they would like to move their 20+ story tower, this tower would cast an immense shadow over us, most of the day, every day. Their shade study ends at 3pm, WTF?!? Might as well end at 3am.... This would prevent us from growing just about anything, and completely prevent us from implementing our planned solar PV/solar hot water projects, in addition to our existing small PV systems, and even down to our solar garden lights! This is just 1 example of how wrong this is.</p>	<p>I1-2 See Response to Comment A1.2-17 in Section V.B of this chapter.</p>
<p>3) Adding an additional 600 units to Brooklyn Basin is just plain not sustainable to the community! Not to mention an additional 158 boat slips. Their reasoning? Something like: "market research has shown people want smaller units" or</p>	<p>I1-3 The comment does not provide specificity or evidence supporting its assertion that the additional 600 units analyzed in the Draft SEIR is not sustainable to the community.</p>

## I1 Tim Anderson

COMMENT	RESPONSE
<p>however they put it. I call shenanigans on that! Plain and simple greed folks, they got their foot in the door, now "please accept our gift of this wonderful wool pullover". They at least need to stick to their plan. You think this whole development isn't the end of us down here? Traffic and parking is ALREADY bad enough, which leads to:</p>	<p>The Draft SEIR presents analyses relevant to whether or not 600 additional units could be accommodated with the Project Modifications, including in Section IV.B <i>Transportation and Circulation</i>; Section IV.J, <i>Population and Housing</i>; Section IV.L, <i>Public Services and Recreation</i>; and Section IV.M, <i>Utilities and Service Systems</i>. Chapter II of this document assesses the same for the Revised Project Modifications. As indicated in the Draft SEIR and Chapter II, the additional units would not result in new or substantially more severe impacts than disclosed in the 2009 EIR for the Approved Project.</p> <p>See Consolidated Response 1 since this comment concerns the merits of the Proposed Modifications. The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>4) There are 3 two- lane streets leading to/from this neighborhood, 600 more units + 158 boat slips, at least 3x the people, probably 2x plus the cars, no public transportation and this adds up to, pardon my French, One Giant Clusterf#%k! There's no way around it...</p>	<p>11-4</p> <p>The Project Modifications would increase the housing unit count from 3,100 units with the Approved Project to 3,700 units with the Project Modifications. As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve the expanded marina. See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. The commenter is directed to Table IV.B-4 in the 2009 EIR which notes that the Approved Project at buildout would generate about 27,110 daily vehicle trips. The Project Modifications, correctly identified by the commenter, would generate about 2,830 daily vehicle trips per the Draft SEIR Table IV.B-1 (p IV.B-27) which represents about 10 percent of the daily vehicle trips that would be generated by the Modified Project (Approved Project plus the Project Modifications) at buildout. As noted in the Draft SEIR (p IV.B-33) the Project Modifications would occur within the same overall building envelopes as the Approved Project and the same Project site plan including streets, sidewalks, bike facilities, intersections, and waterfront access. The Approved Project as part of its Conditions of Approval provides a shuttle bus service between the site and the Lake Merritt BART Station to offset the lack of AC Transit bus service to the site.</p> <p>The commenter should also be made aware that trip generation estimates were completed for the Approved Project in the 2009 EIR, ITE's <i>Trip Generation Manual</i> (7th Edition, 2003) was utilized, and the City of Oakland had no recommended trip generation adjustment factors. This Draft SEIR does not reevaluate Approved Project trip generation. However, if trip generation were estimated today for the Approved Project, it would be lower than that assumed in the 2009 EIR. Further, if trip generation were estimated today for the Approved Project plus the Project Modifications (or Revised Project Modifications), it also would likely be lower than that assumed for the Approved Project in the 2009 EIR. As described in the Draft SEIR, for the purposes of a conservative analysis, this Draft SEIR attributes new trips to the Project Modifications</p>

## I1 Tim Anderson

COMMENT	RESPONSE
	<p>and analyzes the potential environmental impacts of new trips in sections IV.B, <i>Transportation and Circulation</i>, IV.C, <i>Air Quality</i>, IV.G, <i>Noise</i>, and IV.N, <i>Greenhouse Gas Emissions</i>.</p> <p>The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>
<p>Then .75 parking spaces? How many people will just not pay the extra parking fees and just "park on the street"? Unbelievable...</p>	<p>I1-5</p> <p>The Project Modifications would provide 0.75 parking spaces per housing unit for the residential units in Phase III and IV of the Project. This parking ratio meets the current zoning code requirements. These parking spaces would be integrated into each residential building on one to three floors. Many years ago, the courts determined that parking supply and unmet parking demand created by a project need not be considered a significant environmental effect in urban areas under CEQA. Specifically, a Court of Appeal decision (regarding a challenge to San Francisco's treatment of parking as a social, not physical, effect) held that parking is not part of the permanent physical environment, and that parking conditions change over time as people change their travel patterns. (<i>San Franciscans Upholding the Downtown Plan v. the City and County of San Francisco</i> (2002) 102 Cal.App.4th 656). This decision is consistent with the Significance Criteria (Draft SEIR p. IV.B-26) which does not identify parking as a CEQA consideration and is also consistent with Appendix G of the State's CEQA Guidelines which also does not identify parking as an environmental effect under CEQA.</p> <p>The City's <i>Transportation Impact Review Guidelines</i> (TIRG) identify parking supply and demand as non-CEQA transportation topic. The commenter is referred to Draft SEIR Appendix C which describes the non-CEQA parking supply and demand characteristics associated with the Project Modification. The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>
<p>BUT, I have a solution! Doesn't take a smart guy to figure out this one: If, by their own reasoning, market research shows that people want enough of "less space" to be able add 600 units, then simply eliminate those 600 units! Imagine ALL the money they would save by NOT building an entire 20+ story building! I am such a solution machine, they should hire me!</p>	<p>I1-6</p> <p>See Consolidated Response 1 since this comment concerns the merits of the Project Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## I2 JoAnna Ben-Yisrael

COMMENT	RESPONSE
<p>The wetlands these developers purport to build this high-rise on, those wetlands are payment to the city of Oakland and it's residents, for the disastrous harm already perpetrated upon them from the dismantling of the Moby Dick years ago. Those wetlands were granted protection from development in perpetuity. Wetlands have a very important balancing job to do as our climate grows more treacherous. Living in a tsunami warning zone it's a critical job. We need more wetlands protected, not less.</p>	<p>I2-1 Neither the Approved Project, the proposed Project Modifications addressed in the Draft SEIR, nor the Revised Project Modifications addressed in Chapter II of this document, propose high-rise development on wetlands. Regarding the comments concerning wetlands, see Response to Comment I1-1.</p> <p>The discussion of risk related to flooding or damage by tsunami are adequately addressed in Section IV.D, <i>Hydrology and Water Quality</i>, in the Draft SEIR, Impact HYD-4.</p>
<p>Residents of Oakland need affordable housing...</p>	<p>I2-2 This comment asserts a need for affordable housing in Oakland. The issue of housing affordability is an important local, regional, and statewide policy issue, but is not required to be analyzed under CEQA, where potential social and economic effects have a circumscribed role. CEQA Guidelines Section 15131 allows the approving agency to include or present economic or social information in an EIR, but Guidelines section 15131(a) limits the consideration of such factors in the assessment of significant impacts, stating:</p> <p style="padding-left: 40px;"><i>Economic or social effects of a project shall not be treated as significant effects on the environment. An EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused the economic or social changes. The intermediate economic or social changes need not be analyzed in any detail greater than necessary to trace the chain of cause and effect. The focus of the analysis shall be on the physical changes.</i></p> <p>Although not relevant to the environmental impacts under CEQA, the Project developer has transferred ownership of Lots F and G to the City for the purpose of constructing 465 units of affordable housing, as specified in the Project Conditions of Approval and Development Agreement between the City and developer.</p> <p>Overall, this comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>
<p>... housing that doesn't block out the sun.</p>	<p>I2-3 See Response to Comment A1.2-17 in Section V.B of this chapter.</p>
<p>Please do not approve yet another scope creep plan. We don't need more slips, we don't need more boats, and we don't need our shoreline developed further. We need the wetlands to remain intact.</p>	<p>I2-4 The commenter's opinion is noted. The Project Modifications would not dissect wetlands (see Response to Comment I1-1). See Consolidated Response 1 since this comment concerns the merits of the Proposed Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

### 13 Marion Borst

COMMENT	RESPONSE
<p>It has come to my attention that the proposed plans for the waterfront at Brooklyn Basin have changed to include a plan that does not value the long term concerns of or citizens or our planet. The new proposal seems to eliminate one of the last wetland areas in the whole estuary and focus on profit. I really think this new plan is unacceptable.</p>	I3-1 See Response to Comment I1-1 regarding the analysis relevant to the wetland areas.
<p>I am a home owner, small biz owner, and landlord in oakland. I do not believe this is a good use of my taxes to be changing this plan. I feel blindsided and unheard. The original plan allows our world to have one small part of nature remaining. Think about protecting what is left of our world and your part in it.</p>	I3-2 The comment is noted. See Consolidated Response 1 since this comment concerns the merits of the Proposed Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.

### 14 John Bowers

COMMENT	RESPONSE
<p>In the late 1990's I served as a member of an ad hoc advisory group convened by the Port of Oakland (Port). I did so in my capacity as a member of the East Bay Conservation Committee, a constituent body of the Golden Gate Audubon Society (GGAS). The GGAS is a chapter of the National Audubon Society (NAS). Both the GGAS and the NAS have as one of their principal purposes the protection of natural resources that function as habitat for migratory and non-migratory waterfowl and other avian species.</p>	I4-1 This comment is a summary of the commenter's associations. The comment is noted.
<p>The purpose of this advisory group was to provide advice to the Port on a project to restore wetland habitat values to a roughly one acre area on the southwester shoreline of Clinton Basin, now commonly referred to as a part of Brooklyn Basin, near where the waters of Clinton Basin commingle with the waters of the Oakland-Alameda Estuary. The Port elected to undertake this project as an environmental remediation project required by the Regional Water Quality Control Board (RWQCB) as an alternative to the payment of a significant fine that the RWQCB had assessed against the Port for the discharge of hydrocarbon pollution into the waters of Clinton Basin. This discharge occurred in the course of an undertaking by the Port to remove and dismantle from such waters a vessel (the "Moby-Dick") that had run aground in the nearshore area.</p> <p>The Port hired an environmental consultant to design the restored wetland. After the consultant developed plans for the restoration project and the advisory group concurred in the plans, the Port undertook to construct the restored wetland, hereinafter referred to as the Clinton Basin Wetland Restoration Project, or CBWRP) in accordance with the approved plans. The project included removal of several tons of rock revetment to restore the shoreline to a natural condition. As</p>	I4-2 This comment provides a synopsis of the advisory group's involvement with the Clinton Basin Wetland Restoration Project but does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft SEIR, nor does the comment raise a new environmental issue. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.

## I4 John Bowers

COMMENT	RESPONSE
<p>such, the CBWRP represents one of only stretches of natural shoreline along the entire length of the Oakland-Alameda Estuary from Emeryville to San Leandro Bay. Wetland vegetation, including salt grass, pickleweed, and marsh gumplant, was planted. An elevated area to serve as a waterbird roosting and resting area was created. Protection of this elevated area was and is provided by a channel that was dredged around it that allows for the inflow of Clinton Basin waters at high tides.</p>	
<p>The CBWRP lies at the southern end of an aerial flyway between Lake Merritt and the Estuary. Waterbirds use the Lake Merritt Channel as a guidepost as they migrate back and forth between these two heavily used destination points. As a result, one can observe many of the same species of birds at or near the CBWRP as one can observe at Lake Merritt. Waterfowl species that GGAS members have from time to time observed at or in close proximity offshore from the CBWRP include, but are by no means limited to, great and snowy egrets, brown and white pelicans, kildeer, greater and lesser scaup, doublecrested cormorants, Canada geese, least (an endangered species) and forester's terns, and great blue heron.</p>	<p>I4-3 This comment includes an overview of the biological setting including the species of birds that have been observed in the proximity of the Clinton Basin Wetland Restoration Project. See Response to Comment I1-1 regarding the fact that the Project Modifications would not have an impact on the Clinton Basin Wetland Restoration Project. The remainder of this comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p> <p>Of note, the Draft SEIR for the Project Modifications states that migratory bird species that pass through the Project site include waterfowl, shorebirds, pelicans and songbirds that have numerous options for stopover habitat during migration through the Bay Area and would not be substantially impacted by the temporary loss of Project site stopovers during construction or operation.</p>
<p>The DSEIR for the marina expansion project at Brooklyn Basin is seriously deficient in a number of respects. Among the most prominent of these deficiencies are the following: 1) Failure to even acknowledge the existence of the CBWRP and thus to properly characterize the environmental setting of the proposed marina expansion project, 2) failure to identify and evaluate the adverse effects the proposed marina expansion project will have on the environmental values of the CBWRP, 3) failure to identify and evaluate the feasibility of measures by which the adverse environment effects of the project on the CBWRP might be mitigated, and 4) failure to analyze degree to which proposed project does or does not conform to applicable policies of Estuary Policy Plan, a component of Oakland's General Plan.</p>	<p>I4-4 This comment lists deficiencies that the commenter finds in the Draft SEIR. See Responses to Comments I4-5, I4-6, I4-7, and I4-8, below.</p>
<p><b>I. Failure to Acknowledge Existence of the CBWRP and Thus to Properly Characterize the Environmental Setting of the Project.</b></p> <p>In Section III.D the DSEIR purports to identify the existing conditions of and thus the environmental setting in which the proposed project will be undertaken. However, nowhere does the DSEIR, in section III.D or otherwise, even acknowledge the existence of the CBWRP, let alone describe its features and properties.</p>	<p>I4-5 See Responses to Comments A1.2-13 and O1-2 (in Sections V.B and V.C, respectively) regarding the Clinton Basin Wetland Restoration Project and its location.</p> <p>See Response to Comment A3-2 regarding additional existing setting information, in addition to the <i>Environmental Setting</i> in Section IV.1.1 in the <i>Biological Resources</i> section of the Draft SEIR.</p>

## I4 John Bowers

COMMENT	RESPONSE
<p><b>II. Failure to Identify and Evaluate the Adverse Effects the Proposed Project Will Have On the CBWRP.</b></p> <p>The proposed project proposes to place a raft of boat slips direct offshore from, and in close proximity to, the CBWRP. The mere presence of a physical structure such as a set of docks and boat moorings in close proximity to wildlife habitat cannot help but degrade the quality of that habitat. Furthermore, human use of the docks and moorings will exponentially increase the level of disturbance that is inflicted on any immediately adjacent wildlife habitat area such as the CBWRP. As one who has for many years engaged in the sport of sailing, I can personally attest to the verbal and equipment (e.g., rigging) noise and commotion that occurs when disembarking and returning from an outing in a sailboat. Similar levels of disturbance of wildlife habitat can be expected to occur in connection with the use of motorboats. Natural resource science has confirmed the adverse effects that recreational activity such as boating can have on nearby wildlife habitat.</p>	<p>I4-6 See Chapter II of this document and see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. The Revised Project Modifications no longer involve the Approved Project marina expansion but do involve the publicly accessible landing dock near the Ninth Avenue Terminal Building, as considered in the Draft SEIR. Therefore, the Revised Project Modifications will not involve work in proximity to the wetland restoration area or substantially increase adverse effects of increased recreational boating activity by users. Because the comment also raises concern about aspects of the Approved Project analyzed in the 2009 EIR, see Consolidated Response 3.</p>
<p><b>III. Failure to Identify and Evaluate the Feasibility of Measures By Which the Adverse Effects of the Proposed Project On the CBWRP Might Be Mitigated.</b></p> <p>In light of the fact that the DSEIR does not identify or analyze any adverse effects of the projection the CBWRP, including but not limited to the ones discussed in the immediately preceding paragraph, it comes as no surprise that the DSEIR also fails to identify or evaluate the feasibility of measures by which such non-acknowledged effects might be mitigated, including complete avoidance. However, there are two obvious measures by which the above-identified adverse effects might be mitigated. The first is to completely eliminate from the project the raft of docks and moorings that the project proposes to locate immediately offshore the CBWRP. The second measure is to relocate the subject docks and moorings to a different part of the project site.</p>	<p>I4-7 See Response to Comment I4-6 and Response to Comment I1-1 regarding the analysis of wetland areas.</p>
<p><b>IV. Failure to Identify and Apply Applicable Provisions of the Estuary Policy Plan.</b></p> <p>Policies of the Estuary Policy Plan (EPP, pp. 83, 86 - 88) that are applicable to project components, such as the docks and moorings that the project proposes to locate in close proximity to the CBWRP, include but are not necessarily limited to the following:</p> <p>Policy OAK-1: "It is important to focus first on preserving the intrinsic qualities of the shoreline and to insure that environmental values of [Oak-to-Ninth] site are not compromised."</p> <p>Policy OAK-1.1: "Encourage the preservation and enhancement of wetland areas. Wetlands should be protected by such treatments as setting back trails from the shoreline, installing suitable buffer planting to prevent disruption to</p>	<p>I4-8 The Draft SEIR evaluated compliance of the Project Modifications with applicable Estuary Policy Plan provisions and identified no conflicts, same as with the Approved Project analyzed in the 2009 EIR. Regarding the specified policies regarding preserving the shoreline and wetland areas, Chapter II of this document describes that the Revised Project Modifications would further comply with these particular Estuary Policy Plan policies, as the marina expansion nor the potential tower relocation to Parcel L are no longer proposed. No additional analysis is warranted. See also Consolidated Responses 2 and 3.</p>

## I4 John Bowers

COMMENT	RESPONSE
<p>nesting and resting areas, and seasonal routing of pedestrians to avoid sensitive habitats."</p> <p>It is important to note that the foregoing policies are in the section of the EPP that is expressly applicable to the Oak-to-Ninth/Brooklyn Basin geographic area of Oakland. They confirm the importance that the City attaches to the protection of wetland resources within its borders in general, and in Brooklyn Basin in particular.</p> <p>In light of the serious deficiencies in the DSEIR identified in these comments, I respectfully submit that the City should decline to approve or certify it.</p>	<p>I4-9 See Consolidated Response 1 since the comment is the commenter's opinion, which is noted for the record and will be made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>

## I5 Kristin Bowman

COMMENT	RESPONSE
<p>I recently learned about the proposed marina for Brooklyn Basin and I want to express my deep opposition to this plan. Brooklyn Basin has become a regional destination for people who want to enjoy the open water views of the estuary. A marina would destroy the experience of the open water for people who do not have the means to buy a boat. A simple picnic, or dancing, roller skating, walking at this unique location along the water provides peace of mind and a healthy outlet during such a difficult time. It has been a great success, do not destroy this free experience for people.</p>	<p>I5-1 See Consolidated Response 1 since this comment concerns the merits of the Project Modifications. The commenter's opposition is noted for the record and will be made available to the decision makers prior to a final decision on the Revised Project Modifications.</p> <p>Also see Consolidated Response 3 regarding comments that pertain to aspects of the Approved Project analyzed in the 2009 EIR or existing conditions.</p>
<p>I just heard about this proposal at my recent visit. My concern is not many people know about this proposal and therefore they have not been given an opportunity to respond. What type of outreach has been done to inform people? Has it been put on Nextdoor throughout Oakland neighborhoods? I would like to request an extended comment period to give time for proper outreach and receive feedback.</p>	<p>I5-2 The Project Modifications were originally noticed to the public in a 2018 Notice of Preparation (NOP) of the Draft SEIR. The State CEQA Guidelines state "[t]he public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days except under unusual circumstances" (State CEQA Guidelines Section 15105(a)). Lead and responsible agencies may use their discretion to extend such time periods to allow for additional public review and comments in accordance with these standards. Pursuant to State and City of Oakland CEQA Guidelines, the City issued a Notice of Availability (NOA) of the Draft SEIR and circulated the Draft SEIR for public review for 45 days, from June 11, 2021 to July 26, 2021. The NOA specifying the public review period and public hearing was sent via US mail to responsible agencies and all other parties who had previously expressed interest in the Project. The NOA was also posted on the City's website.</p> <p>In response to numerous requests from the public received during the public comment period, including this comment, the City extended the deadline for receipt of public comment on the Draft SEIR to August 10, 2021, for a total period of 61 days, which the City determined was adequate time for the public to provide meaningful comments on the Draft SEIR and no further extension was warranted.</p>

## I5 Kristin Bowman

COMMENT	RESPONSE
Please put me on the mailing list to receive updates on this matter.	I5-3 The comment is noted. City staff will add the commenter's email address to the distribution list for any future CEQA public notices for this project upon request as follows: Members of the public may access project information and request notifications on the City's website, <a href="https://www.oaklandca.gov/projects/brooklyn-basin-formerly-oak-to-ninth-mixed-use-development">https://www.oaklandca.gov/projects/brooklyn-basin-formerly-oak-to-ninth-mixed-use-development</a> .

## I6 Lisa Broggi

COMMENT	RESPONSE
I wanted to use my voice to request that the Marina Expansion Project for Brooklyn Basin be denied. This project will encroach on a marsh area that should be preserved both for the natural world but also as a public space for enjoyment.	I6-1 See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. The Revised Project Modifications no longer involve work in proximity to the marsh area. Also see Consolidated Response 3 regarding comments pertaining to aspects of the Approved Project in the 2009 EIR and of the Project Modifications in the Draft SEIR.
There is so much change happening in Oakland and we must be diligent to preserve wildlife zones and public spaces. I appreciate your time.	I6-2 This comment does not state a specific concern or question regarding the sufficiency of the analysis or mitigation measures contained in the Draft SEIR, nor does the comment raise a new environmental issue. The comment is noted for the record and will be made available to the decision makers prior to a final decision on the Revised Project Modifications.

## I7 Benjamin Burke

COMMENT	RESPONSE
Brooklyn Basin are terrible neighbors with little, if any, concern for the community that surrounds them which has been around for over forty years, long before they even considered building upon this land. Their original plans took no notice of the property where I and 29 others live—Shadetree. We the residents purchased it for ourselves in 2017, thwarting their plans to purchase our property and raze our home— something they did not anticipate—and they have been squeezing us ever since.	I7-1 This comment discusses concern about the impacts of the Project Modifications; however, this comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.
This latest SEIR is further indication that they have no intention of appreciating our presence. Our lives. The air we breathe. The sun. The water.	

## 17 Benjamin Burke

COMMENT	RESPONSE
<p>It's not enough that they pile drive pylons into the earth just yards away from 8a to 5p M-F. Or that rather than clean up the parcels they purchased which directly surround us, they simply dumped mountains of concrete and waste on top of it, with minimal abatement—something we had to fight for. We listen to their pile driving all day long, hear the incessant ringing of their malfunctioning Halide street lamps at night, inhale the constant dust from their mountainous debris—</p>	<p>17-2 This comment brings attention to a current issue of noise generated from pile driving from 8am to 5pm on the weekday associated with construction of the Approved Project. The City, through the Mitigation Monitoring and Reporting Program applicable to this project, has confirmed that air quality mitigation measures to reduce dust and noise are required to be implemented. Therefore, see Consolidated Response 3 reading existing conditions. Also, the comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Project Modifications.</p>
<p>...and now they want to block the sun from reaching our property, destroy a legally protected wetlands area, take away our parking, our communal garden, our driveway easement which was guaranteed to us in perpetuity as our right of way to the water which they immediately fenced off having somehow wiped that deed from existence God knows now, and more and more. I have to move my own home 14 inches because it intrudes into some bushes they have planned, for example.</p>	<p>17-3 See Response to Comment A1.2-17 regarding sun access, in Section V.B of this chapter. See Response to Comment I1-5 regarding parking and see Response to Comment I13.2-5 regarding the design of 5<sup>th</sup> Avenue as a public street.</p>
<p>And now, just the other day, one of their neighboring parcels caught fire in the middle of the night while we were all sleeping. Fortunately, we were able to put it down with several fire extinguishers until the fire department arrived to finish it off.</p>	<p>Regarding comments on the previously removed driveway easement and concerns with other properties raise neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comments will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>They are no longer simply bad neighbors and a constant nuisance to our eyes, ears, noses, mouths and minds—they are threatening our lives with their negligence.</p>	<p>17-4 As above, the comments here neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comments will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>All we have ever asked is that they be good neighbors. They claim up and down that they are. I've spoken with Mike Ghielmetti in person on two occasions and on one of those occasions he said, "Look, I've done everything I'm required to do." And I responded, "You keep using that word—required. I'm simply talking about doing what's right." He laughed it off.</p>	<p>This is the problem with Brooklyn Basin, with Signature Properties and Mr Ghielmetti himself. If they are not required to do the right thing, they simply will not.</p>
<p>Myself and everyone I call friend and neighbor around here are fighting for our lives. Fighting for our peace, our clean air, our sunlight, and now our safety. Who can we turn to in order to require these developers to develop their property in a respectful manner? Who? Several of us spoke up the other day at your meeting and even more are now writing you letters because we are hoping that you may be the ones who have the compassion, respect and authority to make our neighbors behave like real citizens of Oakland as opposed to foreign invaders.</p>	

## 17 Benjamin Burke

COMMENT	RESPONSE
<p>Please. Help. It has come to the point where we are now begging you. Begging our city to do something. So that we may finally live and thrive in peace upon the land which we have fought so hard to secure.</p>	

## 18 Leal Charonnat

COMMENT	RESPONSE
<p>This letter is in response to the proposed revisions to the Brooklyn Basin/Ninth Avenue Terminal project, in particular to the proposed marina and parcel changes and entitlement relocations of high-rise buildings.</p> <p>The fact that major changes to the way the area density is being changed, all the while the DSEIR is titled "Brooklyn Basin Marina Expansion Project," is pure subterfuge. While the proposed marina is the titled subject, the actual impact on the project area and environs is the change to the entitlements asked for in this DSEIR.</p>	<p>18-1 While the Draft SEIR is prepared for a proposal entitled the "Brooklyn Basin Marina Expansion Project," the scope of the project analyzed in the Draft SEIR was initially introduced to the public in the September 21, 2018, "<i>NOTICE OF PREPARATION (NOP) OF A SEIR FOR THE BROOKLYN BASIN (FORMERLY OAK TO NINTH MIXED USE DEVELOPMENT) PROJECT.</i>" As described in detail in the NOP with supporting exhibits of the Approved Project and the proposed Project Modifications.</p> <p>The NOP describes three primary project components of the proposed Project Modification's under relevant headings: <i>Additional Residential Units, Marina Expansion, and a Landing Dock for Ferry / Water Taxi Service.</i> The Draft SEIR also clearly describes all three components of the Marina Expansion Project.</p> <p>The first reference to the "Brooklyn Basin Marina Expansion Project" title is in the June 11, 2021, "<i>NOTICE OF AVAILABILITY (NOA) OF A DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (DSEIR) FOR THE BROOKLYN BASIN MARINA EXPANSION PROJECT AND NOTICE OF PUBLIC HEARING ON DSEIR,</i>" and the subsequent July 23, 2021, "<i>NOTICE OF EXTENDED COMMENT PERIOD RELATED TO</i>" the aforementioned NOA. In light of the information in the NOP and in the Draft SEIR itself, and as evidenced by this comment, the public understood that the Project Modifications include the addition of up to 600 residential dwelling units.</p>
<p>The following pages include my comments as well as pertinent pages from previous reports.</p> <p>After witnessing the Planning Commission meeting, it would seem that the current Planning Commission members have little or no firsthand knowledge of why there is even a 'Brooklyn Basin' project. It seems quite likely from the way the commissioners discussed this project, they had no sense of what the League of Women Voters report, or the Estuary Policy Plan – developed over several years with the input of hundreds of Oakland citizens – actually asked for.</p> <p>Any changes from the already approved entitlements to this project area – 'Brooklyn Basin, formerly Oak to Ninth Avenue – must adhere to the Estuary Policy Plan</p>	<p>18-2 See Consolidated Response 1 since this comment addresses neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comments will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p> <p>See also Response to Comment 14-8.</p>

## I8 Leal Charonnat

COMMENT	RESPONSE
<p>Enclosures (Specifically included for Commissioner review and study):</p> <ul style="list-style-type: none"> <li>• LWVO Waterfront Study 1999</li> <li>• Estuary Policy Plan – Oakland California, June 1999</li> <li>• Oak-to-Ninth Mixed-use Development – Response to Request for Qualifications - 2001</li> <li>• Brooklyn Basin – Oak to 9th Development Plan – Axonometric View (ROMA Design) 2005</li> </ul>	<p>I8-3 The documents provide planning and policy context for the Brooklyn Basin Project. The information in these documents do not speak to environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The documents will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p><b>I. PROPOSED MARINA</b></p> <p><i>The proposed marina concept should be rejected in whole. The actual proposal is based on hearsay – the supposed request by an anonymous marina operator. The fact that the proponent is targeting “large” ships only lends to the targeted audience for this scheme. The fact that the proponent is asking for unheard of entitlements never before discussed in the 20 years since the League of Women Voters first published their report on the Oakland waterfront (see attached annotated document).</i></p> <p><b>Proposed Marina is without Merit.</b> The proposed marina is based wholly on a folly – the project proponent specifically testified that the marina design was based on what one particular marina operator asked for. Such reasoning is counter to the basis of the Estuary Policy Plan (see attached) that directs development to be for the citizens of Oakland.</p>	<p>I8-4 The comment speaks directly to the merit of the Project Modifications, and does not raise significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p> <p>See also Response to Comment I4-8 and Consolidated Response 2.</p>
<p><b>Unsupported – no additional facilities.</b> The proposed marina is not to be supported by any additional facilities (such as those normally found at a marina including but not limited restrooms, shower facilities, storage, parking, etc.) The proposed marina is designed for “large” craft, ones that do require additional support staff that is not uncommon with marinas of such size craft. The documentation of this is wholly inadequate in its detailing the actual use of such a marina.</p>	<p>I8-5 See Consolidated Response 2 and 3.</p>
<p><b>Blocks the view of the estuary.</b> The proposed marina is basically a parking lot blocking the view from shore for anyone of all the activity on the estuary including boating activity, racing, training, etc. The p [sic]</p>	<p>I8-6 See Response to Comment A1.2-6 regarding views, in Section V.B of this chapter. Also see Consolidated Response 2 and 3.</p>
<p><b>Shoreline will be walled off with Security Fencing.</b> The proposed marina will essentially privatize the shoreline. Users of the marina will require security, which will entail security fencing found at any “high-end” marina. The proponent has not shown any evidence of this type of security which all marinas of this type have installed. It is a fiction that this marina would have no such security. The review of this proposal is incomplete without such illustration.</p>	<p>I8-7 See Consolidated Response 2 and 3.</p>

## 18 Leal Charonnat

COMMENT	RESPONSE
<p><b>II LOSS OF NATURAL EDGE (WETLAND)</b></p> <p><i>The proposed changes completely negate any possible ‘natural’ wetlands, and as such should be reject in whole. The entire purpose of and reason for this development is based on the tenets of the Estuary Policy Plan –that these 60+ acres of shoreline be developed for all of Oakland. The proposed changes create essentially a privatized shoreline. As such, these changes should be reject.</i></p> <p>Marina docks are not friendly to ‘natural’ shorelines. The proposed marina would require a hardening of the shoreline. Boats –particularly those with keels, require dredging for a harbor of sufficient depth. The proposal does not address this in detail to the point of an adequate review.</p> <p>Marina vomit on the shoreline. Measure DD was voted on to develop a natural shoreline for Oakland. The extensive marina design – any marina design – is in conflict with a natural shore.</p> <p><b>Incompatible with any previous Estuary Policy/Measure DD.</b> The installation of as marina will impact any natural shoreline wildlife. It is complete fiction that such as marina will allow natural shoreline wild life to exists.</p> <p>Inadequate analysis of shoreline impact. In particular, there is no detail analysis of impact on nesting shoreline wildlife, or other wildlife that uses the estuary as a food source.</p> <p><b>2001 Wetlands Creation Project Ignored.</b> The Port of Oakland already settled in 2001 to create a wetland on the shores of this project. This project completely ignores any impact it would have on such wetland.</p>	<p>18-8 See Consolidated Response 2 and 3. The Revised Project Modifications no longer involve work in proximity to wetlands. See Response to Comment A3-2 (in Section V.B of this chapter) and Response to Comment O1-90 (in Section V.C of this chapter) addressing shoreline wildlife. Also see the updated <i>Biological Resources</i> analysis in Chapter II. Chapter II also discusses that the Revised Project Modifications, which excludes the marina expansion and potential tower relocation to Parcel L, would further comply with Estuary Policy Plan policies pertaining to wetlands, other shoreline wildlife, and public shoreline access. No additional analysis is warranted.</p> <p>Also see Consolidated Response 1 regarding comments stating the commenter’s urging rejection of the Project Modifications.</p>
<p><b>I Project Parcel Swamping (sic).</b> The project proponent’s original design was fully vetted and prepared by their professional team of consultants. Without adequate traffic, noise, and other detailed studies, the proponent now wants to increase their entitlements with only limited review by the denizens of Oakland. Such major changes cannot be adequately addressed with the ‘distraction’ of the bogus marina project proposal. Such ‘swamping’ needs to be wholly rejected until such time a more thorough review is possible.</p> <p>Inadequate Public Review of Changes. The proposed ‘swapping’ of density and the change in location of the large high-rise towers is without adequate public input. No community outreach has been done for such major changes. The Estuary Policy Plan was created with numerous community meetings, over a period close to two years. This proposal is slipped in with a “marina additions” as a distraction.</p>	<p>18-9 The comment suggests that the City’s process to consider the Project Modifications offered limited review by the public. See Response to Comment I5-2 regarding the Draft SEIR process pursuant to CEQA. See Response to Comment I4-8 regarding compliance with the Estuary Policy Plan. Also see Response to Comment A1.2-6 (in Section V.B of this chapter) regarding the proposed tower relocations. Also see the updated analysis of the Revised Project Modifications in Chapter II of this document, as well as Consolidated Response 2 and 3.</p>

## I8 Leal Charonnat

COMMENT	RESPONSE
<p>Marina Distraction to Parcel changes. The review of a out-of-step marina addition is in part a distraction of the real purport of these changes. The changes are profound: adding units with reducing access.</p>	
<p>Tower Changes Negatively Impact on local art community. The change in the position of the high-rise tower in relation to the existing art community severely impacts those residents – in clear violation of the intended Estuary Policy. Such major changes must be done with more community input including further shadow and wind studies, community outreach. Etc.</p>	
<p><b>Out of Scale – out of touch with the Estuary Policy Plan.</b> The scale of the proposed building is not respectful of the existing low-rise community structure. The original design and layout was done by the project proponent with adequate professional design and advice, and was adequately vetted by the proponent. Such a “swap” only “swamps” the local community. This proposal would never have been approved in the original design.</p>	
<p><b>Inadequate Documentation of Proposal.</b> The proposed changes are actually profound, yet there is little documentation except for a few charts for comparison. The public and city require additional design documentation (models, 3-D illustrations, ‘story poles’) to understand the implications of what is asked for. The city of Oakland cannot rely on such rudimentary documentation for thorough review of what is to be the final development of Oakland’s waterfront.</p>	<p>I8-10 See Response to Comment I8-19 above, and the overall analysis of the Revised Project Modifications in Chapter II, in addition to Consolidated Response 2 and 3.</p>
<p>Duplicate of transmittal letter (Comments I8-1 through I8-10).</p>	<p>I8-11 See Responses to Comments I8-1 through I8-10.</p>

## I9 Adrian Cotter

COMMENT	RESPONSE
<p>I am writing to Oppose the extended marina in Clinton Basin around the marsh restoration.</p>	<p>I9-1 See Consolidated Response 1 since this comment expresses an opinion and does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. See also Consolidated Response 2, as the commenter’s concerns are about elements of the Project Modifications that are no longer being proposed. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications. Also see Consolidated Response 3 since the comment speaks to existing conditions.</p>
<p>Before this little park was cut off by construction, it was a frequent stop for me. I discovered it as I was exploring the shoreline, and would get over there whenever I could. It was an excellent little spot to watch birds at different times of the year, some ducks would winter there, loons, various shorebirds like killdeer, and resting and hunting cormorants and terns. There were the occasional hunting hawks, and song birds, as well as butterflies and other insects. (here’s a partial list from iNaturalist)</p>	
<p>As it stands now with the construction around it, it will never be the escape it once was: The Osprey nest that stood just across the basin is gone (it was on a industrial light pole that was removed) and some of the resting places for the</p>	

## I9 Adrian Cotter

COMMENT	RESPONSE
<p>killdeer and cormorants have been removed. I'm sure with the boats already planned for the basin, the birds might not return in the same way.</p> <p>But there is still a lot of possibility here, and a place for the coming residents that is unlike anything else in the city. The rest of our shorelines, with the exception of Lake Merritt and channel, Middle Harbor, and the John Sutter regional shoreline/Toll plaza beach (the latter three relatively inaccessible) there is no natural shoreline left to us, no beaches to explore -- or care for.</p> <p>If this little park is surrounded by boats, in addition to the boats and housing on either side, it will likely neither be good for people or critters. The beach might remain (though I imagine there would also be effects on the beach and marsh from the change in water flow and the additional pollutants in the water).</p> <p>The shoreline is important for all the people -- not just those who own boats. As we have seen with this past year, open space is important to our mental health. There are other options nearby, but I don't think the addition of this marina is worth it compared to what it might offer the new residents of the buildings and regular visitors like myself. It's also a place that people could help maintain and improve (attending to the accumulation of trash and helping the plant life).</p> <p>If we should do anything with it, we should make it a more welcoming little park (it already has a lovely sign above the gate, I hope that stays).</p> <p>Thanks for your attention and care of our Public shores.</p>	

## I10.0 Chelsea Crandall

COMMENT	RESPONSE
<p>Our community is recognized and protected in the Estuary Plan of 1999, in that policies should be "carefully applied, so as not to adversely affect property values and inadvertently change the very essence of what makes it unique."</p>	<p>I10-1 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>
<p>The proposed developments for the Brooklyn Basin DSEIR (e.g., parcels K, L, M) —announced without consultation with our community— will significantly affect our community and the numerous species the Estuary Plan was designed to protect.</p>	<p>I10-2 See Response to Comment I5-2 regarding public notification of the Draft SEIR being prepared, pursuant to CEQA.</p> <p>See Consolidated Response 2 and 3. The Revised Project Modifications no longer involve work in proximity to wetlands except work that was analyzed in the 2009 EIR and is part of the Approved Project. However, see Response to Comment A3-2 (in Section V.B of this chapter) and Response to Comment O1-90 (in Section V.C of this chapter) addressing effects to species in the area. Also see the updated <i>Biological Resources</i> analysis in Chapter II.</p>

## 110.0 Chelsea Crandall

COMMENT	RESPONSE
<p>Negative impacts of the 9th Avenue Marina expansion are already at our doorstep: parking demand for Township Commons events already already spills into our community. The addition 600 units (current: 607 --&gt; 1207) will surely impact our delicate infrastructure. A few weeks ago, when walking to Rocky's Market, I noticed blackwater rising from the streets between the newly developed residential buildings. I worry greatly about similar human health hazards happening as development occurs here.</p>	<p>110-3 This comment does not provide evidence supporting its assertion that the additional 600 units analyzed in the Draft SEIR will adversely impact infrastructure. The Draft SEIR assesses the infrastructure capacity for 600 additional units with the Project Modifications in Section IV.M, <i>Utilities and Service Systems</i>. Chapter II of this document assesses the same for the Revised Project Modifications.</p> <p>This comment brings attention to current conditions asserted to be issues of parking demands and human health hazards; see Consolidated Response 3 regarding comments on existing conditions or the Approved Project. Also see Response to Comment I12.2-2 addressing existing parking conditions.</p>
<p>In particular the Shadetree community is adversely and negatively impacted by many elements of the Brooklyn Basin project including losing its driveway access to the building courtyard when the historical driveway easement was "removed" in favor of the Brooklyn Basin developers. Proposed designs for 5th Avenue ignores our historical community and setbacks and parking are badly neglected for impact.</p>	<p>110-4 See Consolidated Response 2 and 3 since the comment speaks to the Approved Project from the 2009 EIR and/or the Project Modifications addressed in the Draft SEIR but that are no longer proposed.</p> <p>Comments regarding the previously removed driveway easement and parking concerns, which raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comments will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>The proposed development revised plans as reviewed in the DSEIR have ignored the impacts on this vital part of the 5th Avenue Point community. From the outside, it does not appear that demand for the 9th Avenue buildings is very high or even reached full capacity, and Google Reviews from the Orion building are far from positive. In light of COVID-19 and the rise of remote work, it remains unclear to me whether demand for Bay Area housing will increase enough to sufficiently justify the addition of 600 units.</p>	<p>110-5 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>
<p>The requested amendment will increase the unit density far higher than 60 units. If added, I strongly encourage that the additional units be scattered across all remaining development parcels. I am very concerned by the lack of affordable units, and that while convenient, Rocky's Market is not an affordable option for local low-income residents. It makes me question who the demographic is that this development seeks to support.</p>	<p>110-6 See Consolidated Response 1 since this comment expresses an opinion on the distribution of units and does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications</p> <p>Unit density is not expressed or evaluated by development parcel but by the PWD-4 land use classification and PWD-4 zoning district. However, the environmental impact analysis considers parcel-specific characteristics where relevant, such as the shadow effects of building mass and locations, for example.</p> <p>See Response to Comment I2-2 regarding affordable housing.</p> <p>Also see Consolidated Response 2 and 3 since the comment speaks to the Approved Project from the 2009 EIR and/or the Project Modifications addressed in the Draft SEIR.</p>

## I10.0 Chelsea Crandall

COMMENT	RESPONSE
<p>In Brooklyn Basin negating our historical community easements and setbacks, we have already lost access to our community garden—an important source of community bonding and food security—in addition to potentially losing our driveway.</p>	<p>I10-7 The comment does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications</p>
<p>Furthermore, the relocation of a tower from Parcel H or J to Parcel L or M is concerning. It will create sufficient challenges in the ability of our community with regards to flooding/stormwater management, access to sunlight, privacy, and quality of life, while in return only providing slightly better views of the waterfront to a select group of high rise residents, the exact additional units in the tower also being unclear in the DSEIR. To me, the benefits do not seem to outweigh the great quality of life cost that will impact our community.</p>	<p>I10-8 See Response to Comment A1.2-6 (in Section V.B of this chapter) regarding the proposed tower relocations. See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. The Revised Project Modifications no longer involve the tower relocation to Parcel L., and Chapter II addresses the updated analysis.</p> <p>Also see Consolidated Response 1 since this comment expresses an opinion and does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>Since the 1990s, our community has worked very hard to protect our local wetland—a 0.6 acre mudflat—and to be good stewards of our local flora and fauna. The additional Marina slips seems unnecessary and invalidates the Estuary Plan's intent to have 50:50 development-open parks space ratio, tilting towards 60:40. It is a tremendous joy to see our waterfowl alive and thrive. The proposed marina expansion will benefit a handful of individuals, while reducing views and of the open water, the ability to enjoy by low-impact watercraft, and access to natural wetlands (a rarity in Oakland). I do believe, and ecologists have suggested, that waterfowl need "runway" to access this mudflat, which the proposed DSEIR completely overrides. I would love to see more environmental education programs to showcase our local natural ecology rather than privatized boat slips for a few privileged individuals, which would affect our quality of life, water quality, etc. Please see the attachment for more details.</p>	<p>I10-9 See Response to Comment I1-1.</p>
<p>Upon reading the IPCC's 6th Assessment Report this week, I am deeply concerned about climate change, which seems unavoidable. 30-50% of species are projected to become extinct by 2100, and I deeply care for our local wildlife. As the open space has been currently designed, I do not see nearly the same flourishing of rabbits, possums, skunks, hummingbirds, butterflies, herons, and other waterfowl at the Township Commons as I do here at Shadetree and the 5th Avenue Marina. With additional sea rise and king tide threats on the horizon, I worry deeply about our climate future here in our community.</p>	<p>I10-10 The comment raises concern about climate change, anticipated loss of species as a result, and existing conditions regarding local wildlife. The comment does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## I11 Renee de la Prade

COMMENT	RESPONSE
<p>I am Renee de la Prade, and am registered to vote in Oakland. Please add my comments below to the public conversation about the proposed update to the Brooklyn Basin housing development: Oakland is a wonderful city known for its vibrant culture and its international port. It is NOT known for its beautiful waterfront beaches and wetlands, and the concern I raise is that the Brooklyn Basin development wastes an opportunity to expand Oakland's natural shoreline for community use.</p>	<p>I11-1 The comment does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>It's upsetting to see wasted potential of developing water access for local Oakland youth and tossing out the chance to preserve natural coastline in favor of offering a few more boat slips to rich people. Building a bunch of towers on landfill also seems like a past-century idea which is not in line with current science on climate change. Oakland will face regular flooding in the coming years as the sea levels rise. The Brooklyn Basin development is a host of problems waiting to happen.</p>	<p>I11-2 See Consolidated Response 2 and 3 since the comment appears to speak to the Approved Project from the 2009 EIR and/or certain Project Modifications addressed in the Draft SEIR but that are no longer proposed.</p> <p>Regarding sea level rise, as described in Draft SEIR Section IV.D, <i>Hydrology and Water Quality</i>, no change is proposed to the number or height of the Approved Project towers or the Approved Project's site in terms of land uses, overall development areas, circulation plan or drainage plans that would affect sea level rise effects on the site. Nor has the change in sea-level rise projections altered the impacts of the Approved Project on the environment. Therefore, the Revised Project Modifications also would not change impacts regarding sea level rise risk. In addition, the conclusion regarding the potential impact to surface water and groundwater quality is the same as identified in the 2009 EIR.</p> <p>Reference information linked with the comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>I think it is a terrible idea to build this giant development in an ecologically sensitive area. I believe that a mixed development of wetlands park and community boating opportunity would be a far more economical, climate-change focused, and responsible community-planning move. Here is the model for my line of thinking, a public-oriented, open-access shoreline which is the pride of Boston: <a href="https://www.community-boating.org/">https://www.community-boating.org/</a></p>	<p>I11-3 See Consolidated Response 1 since this comment primarily concerns the merits of the Proposed Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## I12.1 Emilina Dissette

COMMENT	RESPONSE
<p>Attached is a pdf I'd like to use @ the meeting on Wed July 21 @ 3pm I will be in attendance as Emilina Dissette on Zoom.</p>	<p>I12.1-1 This comment introduces an attachment which includes comments that concern the merits of the Proposed Modification. The comment is noted. See Responses to Comments in Letter I12.2, below.</p>

## I12.2 Emilina Dissette

COMMENT	RESPONSE
<p>Thank you for your time, reading, recording and forwarding this out to who needs to read this, Sewage/Black water back up @ the Orion in Brooklyn Basin is NOT OK!</p> <p>Sincerely, a VERY concerned resident @ 5th ave.</p>	<p>I12.2-1 See Consolidated Response 3 regarding comments on existing conditions.</p>
<p><i>First, Parking.</i> The weekends always bring the greater Oakland public to attend events and skate at Township Commons. Parking continues to be an issue, for visitors and for tenants @ Orion, and customers of the Canoe and Kayak store, as well as Rocky's Market. Brooklyn Basin has mentioned that they have allotted more parking for visitors under the 1-80. <b>What they fail to mention is that they charge 10\$ to park and there are literally NO crosswalks from the parking lots across Embarcadero Ave.</b> <i>How do they expect those forced to pay for parking, to cross the main embarcadero street safely without providing any way for people to do so? Brooklyn Basin doesn't care.</i> That's why. They don't account for the public influx with the beautiful park created because they don't have to. To encourage people to walk from bart is to encourage folks to potentially be put in harm's way. The sidewalks leading to Bart aren't safe, so people drive, and SOMEONE needs to account for the masses that show up on the weekends and evenings, I have witnessed road rage, near car accidents, speeding, illegal parking, and dangerous driving. The hotel and restaurant next door have signs blocking attendees of the park from entering their parking lots and we have seen our only street blocked, congested and filled up by random people as well.</p>	<p>I12.2-2 On March 31, 2022, the Project Applicant received an Off Site Infrastructure (PX) Permit for crosswalk improvements including an RRFB (rapid rectangular flashing beacon) that when completed connects the parking and the Brooklyn Basin Site and the passive park use.<sup>1</sup></p> <p>In addition, as described throughout the Draft SEIR, the analysis in the Draft SEIR focuses on the activities associated with the Project Modifications. This approach is taken because CEQA review has already occurred in the 2009 EIR for the Approved Project, including identification of environmental effects, feasible mitigation measures, and feasible alternatives. The Project Modifications/Revised Project Modifications would not alter the Approved Project's site plan including circulation, parking or transportation plan related to site access; on-site streets, sidewalks, bike facilities, intersections; or waterfront access. The 2009 EIR reviewed the Approved Project's site plan for consistency with plans, ordinances, and policies under Impacts B.4, B.5, B.6, B.7 with 2009 Mitigation Measures B.4a, B.4b, and B.7 and found the impacts to be less than significant with mitigation and thus no additional analysis is required.</p> <p>The courts determined that parking supply and unmet parking demand created by a project need not be considered a significant environmental effect in urban areas under CEQA. Specifically, a Court of Appeal decision (regarding a challenge to San Francisco's treatment of parking as a social, not physical, effect) held that parking is not part of the permanent physical environment, and that parking conditions change over time as people change their travel patterns. (San Franciscans Upholding the Downtown Plan v. the City and County of San Francisco (2002) 102 Cal.App.4th 656). This decision is consistent with the Significance Criteria (Draft SEIR p. IV.B-26) which does not identify parking as a CEQA consideration and is also consistent with Appendix G of the State's CEQA Guidelines which also does not identify parking as an environmental effect under CEQA.</p> <p>The City's TIRG identify parking supply and demand as non-CEQA transportation topic. The commenter is referred to Draft SEIR Appendix C which describes the non-CEQA parking supply and demand characteristics associated the Approved Project and with the Project Modification. The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

<sup>1</sup> A PX permit is issued for the construction of public improvements within the City's right-of-way or City Easement or as part of a new Subdivision, Parcel or Tract Map approval.

## I12.2 Emilina Dissette

COMMENT	RESPONSE
<p><i>WE DO NOT NEED TO EXPAND THE MARINA OR ADD 600 UNITS</i> if the parking and traffic issue aren't a bigger concern for the city and for Brooklyn Basin. We only have one access road to emergency services and if the influx of traffic hinders our safety, that should NOT be allowed. The Estuary Plan states that 5th ave residents must be protected!</p>	<p>I12.2-3 The comment notes traffic and parking management concerns in the area.</p> <p>Traffic management concerns are not identified as CEQA analysis topics. The City's TIRG defines the CEQA analysis criteria (TIRG Section 5 p 19). The Project would have a significant effect on the environment if it would:</p> <ul style="list-style-type: none"><li>• Conflict with a plan, ordinance, or policy addressing the safety or performance of the circulation system, including transit, roadways, bicycle lanes, and pedestrian paths (except for automobile level of service or other measures of vehicle delay); or</li><li>• Cause substantial additional VMT per capita, per service population, or other appropriate efficiency measure; or</li><li>• Substantially induce additional automobile travel by increasing physical roadway capacity in congested areas (i.e., by adding new mixed-flow lanes) or by adding new roadways to the network.</li></ul> <p>As noted in the Draft SEIR (p IV.B-33) the Project Modifications would occur within the same overall building envelopes as the Approved Project as well as the same Project site and the same Project site plan including streets, sidewalks, bike facilities, intersections, and waterfront access. The 2009 EIR reviewed the Approved Project's potential to interfere with an adopted emergency response or evacuation plan and found the impacts to be less than significant and thus no additional analysis is required.</p> <p>The Project site is not in danger of encroaching wildfire because it is not in an urban wildland interface. Roads to and from the site are generally adequate and designed to City standards. The Embarcadero is the primary road serving the Project site and has been improved to arterial standards. While it is striped for a single lane in either direction, the road maintains the capacity to accommodate fire and evacuation teams because the adjacent bike lanes could be used as additional traffic lanes. In addition, although not required to support an evacuation plan, water evacuation is potentially possible.</p> <p>Further as noted in Response to Comment I1-4, the Project Modifications would result in about a 10 percent increase in overall vehicle trips and these are attributable to the 600 residential units on Phases III and IV. When trip generation estimates were completed for the Approved Project in the 2009 EIR, ITE's <i>Trip Generation Manual</i> (7th Edition, 2003) was utilized, and the City of Oakland had no recommended trip generation adjustment factors. The Draft SEIR does not reevaluate Approved Project trip generation. However, if trip generation were estimated today for the Approved Project, it would be lower than that assumed in the 2009 EIR. Further, if trip generation were estimated today for the Approved Project plus the Project Modifications, it also would likely be lower than that assumed for the Approved Project in the 2009 EIR. As described in the Draft SEIR, for the purposes of a conservative analysis, the Draft SEIR attributes new trips to the Project Modifications and analyzes the potential</p>

## 112.2 Emilina Dissette

COMMENT	RESPONSE
<p><b>SEWAGE BACK UP!</b></p> <p>I was jogging around the Orion, the condo complex a Brooklyn Basin with my neighbors dog on July 31st, and noticed that Black Water had risen from the sidewalk drains and was flooding the mulch that lined the sidewalk. A horrible putrid smell had corrupted the block and I was so alarmed that I gripped the dog so close to me in fear it might get its nose or mouth exposed to it. What the heck was that? Did the sewage back up? I want you to investigate and make public the reason behind the back up. The Orion, the only completed building Basin has, appears to be scarcely lived in. It has horrible reviews, and now the sewage is backing up? Why? Is it Brooklyn Basin pile driving the foundation of another future parcel that caused the plumbing to fail? Is it the pile driving they used in the first place? I felt so nauseous after being exposed and I want to know what happened. I'm worried that when they start to pile drive phase 2, our plumbing, structures and foundation will be negatively affected by the major impact that pile driving the estuary creates. Also who would be held responsible in fixing it? I'd like to know if the Orion is held responsible for the sewage, grey or black water build up, or did Brooklyn Basin take accountability? If not, I would like the city to get involved and manage this new project better than they can, before it becomes a literal "shitshow".</p> <p><b>PLEASE DO NOT RELOCATE TOWERS!</b></p> <p>The impact of the [sic] The amount of pile driving in the Estuary it takes to create foundations for these un-lived in, poorly reviewed buildings not only kicks up so much toxic dirt that covers tenants cars daily, but it also is affecting the health of the tenants, by creating an avoidable smashing sound continuously from 8am to 5pm... As I see the lackluster condo companies take over, I'm left to ponder what Brooklyn Basin actually takes account for, or if they even have to?</p>	<p>environmental impacts of new trips in sections IV.X <i>Transportation and Circulation</i>, IV.C, <i>Air Quality</i>, IV.G, <i>Noise</i>, and IV.N, <i>Greenhouse Gas Emissions</i>.</p> <p>The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
	<p>I12.2-4 See Consolidated Response 3 regarding comments on existing conditions.</p> <p>As described throughout the Draft SEIR, the Project Modifications would occur within the same overall building envelopes as the Approved Project. This is also true for the Revised Project Modifications. Other than the additional approximately 0.25 acres of water surface area to accommodate water taxi landing dock, the Revised Project Modifications would occur within the same Project site as the Approved Project and this SEIR assumes that there would be no substantial increase in duration of construction-related activity with approval of the Revised Project Modifications. In addition, geographically, the water taxi landing dock would be further away from receptors than construction areas of the Approved Project and would therefore have lesser construction noise and vibration impacts.</p> <p>Pile driving is not anticipated to cause vibration that would damage adjacent plumbing or foundations. As stated in the SEIR, the Project Modifications would not alter the building envelopes and foundations planned for Parcel L or the vibration impacts. Piles have been driven in urban environments in the Bay Area for many decades and there is a large body of evidence regarding the performance of existing buildings, streets, utilities, and other improvements near pile driving. Pile driving does create both temporary noise and vibration. The impacts of noise, typically nuisance, are felt the furthest from the pile driving because noise travels through air, which provides limited resistance. Vibrations resulting from pile driving are primarily one of three types: Rayleigh, compression, or shear. Rayleigh, or surface waves, travel along the ground surface and radiate from the location of the pile driving. Because they travel on the surface, they have very little damping and can travel relatively large distances with little reduction in the vibration pulse. The majority of the energy from pile driving that is converted into vibration travels as Rayleigh waves. Because they are on the surface, these waves generally do not affect subsurface improvements. Compression and shear vibrations travel through the soil downward and outward from the pile; they are quickly damped by the soil. Because of these effects, and based on experience, the most common damage due to vibrations, if any, observed from pile driving is very minor cracking of improvements above ground. There is generally no damage to buried utilities from pile driving even when the utilities are adjacent to the driven pile. This has been demonstrated repeatedly in previous phases of pile driving at Brooklyn Basin and other projects in the Bay Area.</p> <p>Also, the comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The commenters</p>

## I12.2 Emilina Dissette

COMMENT	RESPONSE
	<p>concerns are noted for the record and will be made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>Traffic, Parking, Toxic elements in the ground being unearthed by construction and impacting tenants' lives are serious concerns that need to be better managed and I believe Brooklyn Basin does NOT have the intention to make good on what they originally offered with the zoning, planning, and reports written.</p>	<p>I12.2-5 This comment references the environmental issues that were previously mentioned in the comment letter. See Response to Comments I12.2-2 through I12.2-4.</p> <p>The commenter also states their belief that Brooklyn Basin does not have the intention to make good on offers contained within the zoning, planning, and reports written. It is not clear what reports the commenter is referring to; however, the Project Modifications are required to comply with the zoning requirements and applicable planning documents.</p> <p>This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p><b><i>Please postpone any further approvals until more investigation is done on the condo's built, the land itself and foundational impact of this project!!</i></b></p>	<p>I12.2-6 See Consolidated Response 1, as the comment does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The Revised Project Modifications would not alter the building footprints or overall size. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## I13.1 Dan Franco

COMMENT	RESPONSE
<p>Regarding the proposed SEIR modification to allow a mega-marina to obliterate a preserved wetlands: It is interesting that despite years and years of asking first Signature Properties, then Mr. Ghielmetti himself, and later Zarsion for details on this mega-marina, it's only now that they provide any details</p>	<p>I13.1-1 See Chapter II of this document and see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. The Revised Project Modifications no longer involve the Approved Project marina expansion and therefore will not involve work in proximity to the wetland restoration area.</p> <p>Also see Response to Comment I8-1 regarding the public noticing and description of all components of the proposed Project Modifications analyzed in the Draft SEIR.</p>
<p>-- and suddenly we the public only get a few weeks to review and comment. That's backwards, and anti-resident.</p>	<p>I13.1-2 See Response to Comment I5-2 regarding the public notice and review of the Draft SEIR pursuant to CEQA, as well as the City's extension of the public comment period.</p>

## I13.1 Dan Franco

COMMENT	RESPONSE
<p>At a minimum this public comment period should be 1 year in duration, so that effective scientific data can be collated and checked against this ill-begotten scheme. There is no way untrained citizens can do the proper science needed in such a short window of time, with none of the financial resources of Mr. Ghielmetti and his foreign-money backers. Accordingly; the Planning Commission should not stack the deck in Zarsion's favor. It should extend this period to 1 year from June 11th 2021 in recognition of the fact that we have been asking for these details for 16 years with no success. It's simply baffling to give their side 16 whole years to plan out an 800+ page document, yet expect the local citizens to process and respond properly in 45 days. No. Extend this to 1 year so that citizen research can be properly done. It's only 1/16th of the time they had, I don't see that as an unreasonable request.</p> <p>That said, since this department and you personally, Ms. Payne, have carried water for Zarsion all along; I fully expect that any extension will not be granted. Accordingly I plan to speak on the issue at the next meeting to bring the full commission's attention to the matter. I am given to understand that on Zoom a speaker is allowed to have slides shown to the group, and so I attach below a 1 page PDF to be displayed.</p>	

## I13.2 Dan Franco

COMMENT	RESPONSE
<p>Since the blood of dead critters will be on your hands if you approve this monstrosity, <b>the very least you can do is actually read the comments</b> that get sent in to you. Don't fob this one off on staffers, and glibly accept their summaries - this issue is too important. Do the work, it's part of your solemn duty. Then you will see that you must deny this request. You gave Zarsion 16 years to create their proposal, but the public got only 60 days to reply. They also, at every turn and every meeting, have been allowed to speak as long as they want while we only ever get 2 minutes. That is profoundly unbalanced. It is certainly not enough time for residents to commission &amp; execute their own traffic study, for example.</p> <p>Accordingly, the spirit of equity demands that at the very least you soberly and critically consider all the public comments, not leave the task to staffers.</p> <p>Fire season is now year round. The sky turned red for a week. 12 Western states are out of drinking water &amp; our Governor just declared water rationing for the whole state. Yet these chuckleheads, in their endless greed, are pretending that</p>	<p>I13.2-1 Appropriate responses are provided to all parts of each comments received on the Draft SEIR. As discussed in the introduction to this Chapter IV, <i>Responses to Written Comments</i>, "responses focus on comments that pertain to the adequacy of the analysis in the SEIR or to other aspects pertinent to the potential effects of the Revised Project Modifications on the environment pursuant to CEQA. Comments that address topics beyond the purview of this SEIR for the Revised Project Modifications or beyond the purview of CEQA are noted as such for the public record."</p> <p>Pursuant to CEQA Guidelines Section 15088(c), all responses have been prepared in good faith, present reasoned analyses that are not conclusory. The level of detail in a response generally corresponds to the level of detail provided in the comment, and where comments present only opinion, unsupported by evidence and unrelated to the CEQA analysis, reasons are provided explaining why specific comments are not responded to. In many cases, the comprehensive Consolidated Responses presented in Chapter IV, <i>Consolidated Responses</i>, allow for many responses to be a brief, explanatory cross reference to the appropriate Consolidated Response.</p> <p>I13.2-2 Although the comment makes statements pertaining to state and regional environmental conditions as context for the commenter's opinions on the Project Applicant, it also addresses the marina expansion proposal. See Chapter II of this</p>

## I13.2 Dan Franco

COMMENT	RESPONSE
<p>things are <i>juuuuust</i> fine. They want more, more, more. Instead of defending or expanding much needed wetlands, they want 325 pollution-spewing boats at Ghielmetti's Mega-Marina. Instead of trying to help the bivalves, butterflies, birds, frogs and fishes survive mankind's assault on their habitat, they want a super-skyscraper to blot out the sun.</p>	<p>document and see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. The Revised Project Modifications no longer involve the Approved Project marina expansion and therefore would not involve work in proximity to the wetland restoration area. Also, the Revised Project Modifications no longer include the potential tower relocation to Parcel L and therefore would not cast periodic new shadow on portions of the Fifth Avenue Point and Channel Park at certain times day and year. In addition, the Project Modifications would not exacerbate fire risk. The Approved Project and the Revised Project Modifications would be constructed to meet the City's fire code requirements. As shown in the Draft SEIR, the Project Modifications would make a less than cumulatively considerable contribution to significant cumulative climate change impacts.</p> <p>Moreover, the comment states opinions unrelated to the environmental analysis or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>For the sake of the animals who have no voice in this room, and for your children, do the right thing. Do not build these travesties. Build wetlands instead.</p>	<p>I13.2-3 This comment primarily concerns the merits of the Proposed Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p> <p>The comment presumably pertains to the Approved Project marina expansion and the tower relocations analyzed in the Draft SEIR and raised in the previous comment. See Response to Comment I13.2-2 and Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed.</p>
<p>Put housing downtown where Transit actually exists - not here. Some such as Cmsr. Monchamp would tell you that BART is close to here but they don't see the reality of hobo-alley and how hard it is to get to BART unless one drives. Don't listen to their delusions. Further, Zarsion OHP's traffic &amp; parking allegations are lies that do not conform with present-day parking and traffic jam realities. Our concern is not that our ShadeTree / 5th Ave. buildings are like the Ghost Ship scenario. Those allegations are lobbed at us by the city agencies all the time - - and we refute them too.</p>	<p>I13.2-4 The commenter is correct that public transit service is not provided adjacent to the site; however, a Project-supported shuttle provides service to Lake Merritt, 12th Street, and 19th Street BART stations, as required by the Brooklyn Basin TDM Plan. Residents, visitors, and employees who use BART, for example, and opt not to take the Project-provided shuttle, would need to walk about 18 minutes to access the Lake Merritt BART Station (Draft SEIR p IV.B-4). Refer to Draft SEIR section titled "Existing Transit Services" (p IV.B-4 through 6) which notes the walking distances between the Project Modifications areas and all the nearby transit services. Specific to the BART station there are continuous bicycle facilities connecting the site and the Lake Merritt BART station which would reduce travel time to about 7 minutes. People would be unlikely to drive between the Project site and BART because there are fewer than 200 parking spaces available for BART riders and all spaces have been reserved through BART's permit parking program. Furthermore, BART plans to remove these parking spaces to accommodate redevelopment of the BART station area. As noted above, the Approved Project is required through its Conditions of Approval to provide a shuttle bus</p>

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<p>BUT, the ability to evacuate in a fire, flood, earthquake or other disaster is presently nearly ZERO, due to the 1 lane road bottleneck. <b>More residents will guarantee more deaths</b> when that time comes. You can avoid those extra deaths, by denying this permit modification.</p>	<p>connecting the Project site to the BART station for residents, visitors, and employees which would reduce travel time to about 5 minutes (see Response to Comment O2.1-103 in Section IV.C of this chapter).</p> <p>The City's <i>Transportation Impact Review Guidelines</i> (TIRG) identify parking supply and demand as non-CEQA transportation topic. The commenter is referred to Draft SEIR Appendix C which describes the non-CEQA parking supply and demand characteristics of the Approved Project and associated with the Project Modification. The analysis concludes that if no TDM strategies were implemented, residential parking supply for the Project Modifications would be inadequate and the likely outcome is that people with less need for an automobile would self-select to live in the residential units. The Project Modifications, however, are required to include an extensive TDM Plan promoting walking, bicycling, and transit as well as access to BART. For example, unbundled parking, a TDM strategy required by the City, has been estimated to reduce car ownership rates up to 38 percent, dependent on monthly parking fees assessed. In addition, the Project provides a shuttle between the site and BART. As a result, it is likely that parking demand can be effectively managed through an effective TDM Plan, unbundled parking fees and residents self-selecting to live at the Project site because they do not own a car and so do not require a parking space.</p> <p>The City's TIRG identify transit as a non-CEQA transportation topic. The commenter is referred to Draft SEIR Appendix C which describes the non-CEQA transit characteristics associated the Approved Project and with the Project Modification. The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p> <p>I13.2-5 The commenter is directed to the Approved Project's site plan which shows that the unimproved private street referenced by the commenter would be improved to the City's public street standards such that 5<sup>th</sup> Avenue would have sidewalks, designated on-street parking, and two 13-foot travel lanes and offered for dedication. Designed as a public street, it would also comply with the Fire Department requirements for access and circulation. As noted in the Draft SEIR (p IV.B-33) the Project Modifications would occur within the same overall building envelopes as the Approved Project as well as the same Project site. Also see Response to Comment I12.2-3 regarding traffic management concerns.</p> <p>In addition, as described throughout the Draft SEIR, the analysis in the Draft SEIR focuses on the activities associated with the Project Modifications. This approach is taken because CEQA review has already occurred in the 2009 EIR for the Approved Project, including identification of environmental effects, feasible mitigation measures, and feasible alternatives. The Project Modifications/Revised Project Modifications would not alter the Approved Project's site plan including circulation, parking or transportation plan related to site access; on-site streets, sidewalks, bike facilities,</p>

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<p>We continue to be in a global pandemic that has killed millions. American society immediately reacted by dropping all use of mass transit. Now that the Delta Variant is on the rise, society again is abandoning mass transit. You must see that cars are the future, because the entire nation has so deemed it. A lofty but abstract .75 spot/apartment rule will not overcome their reservations about dying via an agonizing plague. Accept reality, build lots of electric charging stations, and be done with the fantasy that these residents will behave the way you imagine. Help folks migrate to electric vehicles - that's a realistic, doable task.</p>	<p>intersections; or and waterfront access. The 2009 EIR reviewed the Approved Project's potential to interfere with an adopted emergency response or evacuation plan and found the impacts to be less than significant and this conclusion is not altered by the addition of 600 units.</p> <p>I13.2-6 See Response to Comment I1-5 related to the parking ratio of 0.75 parking spaces per housing unit. Electric vehicle charging infrastructure referenced in the comment is identified in the Draft SEIR (p. IV.B-25). All project applicants must provide plug-in electric vehicle charging infrastructure per the requirements of Chapter 15.04 of the Oakland Municipal Code. In addition, transit ridership has steadily increased as the COVID-19 pandemic has receded and a significant percentage of workers are working remotely, decreasing automobile use. It also would be speculative to try to predict the course of COVID and associated work-from-home policies and their effect on mass transit use and the use of personal vehicles.</p> <p>The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>Brooklyn Boondoggle has been a blunder since the beginning. This is your moment, Planning Commissioners, to fix a great wrong. This land was meant to be set aside for the critters in perpetuity, and it's up to you to finally tell this greedy developer what perpetuity means. Say NO to yet another playground for the rich, say YES to avian habitat. Say NO to thousands of dead Oaklanders who will not be able to evacuate during the next emergency, and allow fewer or NO people to move to an area with only 1 escape route; not 600 more sardine can units. <b>Listen to your own city planning manager Laura Kaminski, who notes that "just because we built housing in areas where we shouldn't have, doesn't mean we should continue to."</b></p> <p>Do the right thing - insist on wetlands and ONLY wetlands at the shoreline.</p> <p>Say NO to their endless greed; say NO to a 16% expansion of their takings for free. Zarsion got this entire property for \$18 million bucks, then sold a chunk of it back to the city for \$24 million. But even getting waterfront land for <b>negative</b> six million bucks wasn't enough of a swindle, now they want 10 more acres for free too. No way, no how should you allow this farce to continue.</p>	<p>I13.2-7 This comment concerns the merits of the Proposed Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Project Modifications.</p> <p>Also see Consolidated Response 3 since aspects of the comment speak to the Approved Project.</p>
<p>Bear in mind also that despite Zarsion's fib, important stakeholders such as the US Coast Guard were never noticed or consulted about the mega-marina and the hazards to navigation that will be imposed upon them and their efforts to save lives on a daily basis. I leave it to them to comment on this matter; but I bring it to your attention because when I notified them of the situation they were horrified. And also concerned - - because in order to reply in any form they must first go</p>	<p>I13.2-8 This comment is noted. The United States Coast Guard (USCG) was aware of the Draft SEIR and submitted public comment on the Draft SEIR to the City, which is included in this document as Comment Letter A.4-2 (in Section IV.B of this chapter) and appropriately responded to therein.</p>

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<p>through several bureaucratic layers all the way up to Washington DC. Since they didn't get 45 days, (and if I understood them probably even IF they had the full 45 days), it's simply impossible for them to turn around a proper legal response. So if you do not hear from them do not presume they are in favor of it, rather; conclude that they were sand-bagged by this unfair process.</p> <p>I came before this body years ago during the last round of objections. I compared all developers to the slavetraders who once sold human beings in public marketplaces. I noted that future generations would see all developers as exactly the same because they are in fact committing a huge injustice and hiding behind the law to do so.</p> <p>Well I am here today to correct the record.</p> <p>I was wrong.</p> <p>I'm big enough to admit it, I was wrong.</p> <p>I was wrong because it's not actually <i>future</i> generations that see developers as criminals destroying the planet, it is in fact TODAY'S young folks who already see that and they are very clear in stating such. If you listen to groups such as Extinction Rebellion, and you should, you will know that the time has come to completely abandon our suicidal march to oblivion. STOPPING THIS HEINOUS PROJECT MUST BE THE STARTING POINT. <b>Build nothing here</b>, unless it expands and preserves the wetlands and mudflats, and creates more 'managed retreat' spaces for the future storm surges and flooding that are surely coming soon.</p> <p>Close to a billion shellfish died in the heatwave the Pacific Northwest just endured. Smoke from the NW fires blackened the skies of New York City while you were meeting on Zoom yesterday - - 2800 miles away from BC and Oregon. Thousands drowned in subway cars in Henzen Province of China as well, due to unexpected flooding. It's time to stop pretending that Oakland is exempt, that these things cannot happen here. It's time for you to plan for the worst.</p> <p>The whole planet is telling humanity, in no uncertain terms, to stop its' taking of animal habitat. Will you listen? Or will you keep on dooming the ecosphere to extinction with your continued 'death by a thousand cuts' of perfectly legal, but perfectly immoral approvals of these fiendish projects? This developer is pretending that because all the critters were dead or barely hanging on when they began their harvesting of the critter's habitat, NOW they should be allowed to keep on killing off critters. Nothing could be further from the truth.</p> <p>You need to exercise a larger perspective: the planet's ecosphere is literally dying, and if the animals all die then humanity will not be far behind them. Do not create a tombstone for humanity that is boat-shaped. To quote an old movie, "if you build it, they will come." So if you build wetlands, the animals will return. If</p>	<p>I13.2-9 This comment mainly concerns the merits of the Proposed Modifications and the people who develop housing and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The commenter is commenting on the impacts of the environment on the Project, which is not exacerbating sea level rise. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

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<p>you build a playground for the rich, well... guess who's coming to dinner? 'Managed Retreat' is the scientifically proven best defense. Heck, Hayward is already doing that, why not try it here? To do so, though, there will need to be available shoreline to build wetlands and swales on.</p>	
<p>Here before you sits the golden opportunity; the best place to start. Cancel the condos, sink the marina, preserve the habitats.</p>	<p>I13.2-10 The commenters opinion is noted. City decision makers will have an opportunity to consider it as part of the record and for consideration prior to a final decision on the proposed Revised Project Modifications.</p>
<p>Several attachments follow, below.</p>	<p>I13.2-11 As included in Appendix B to this document, the comment includes extensive attachments (286 pages) that are the following:</p> <ol style="list-style-type: none"><li>1) a link to the Estuary Policy Plan (not printed);</li><li>2) a "Citizen Response Document" that includes additional comments in response to the Draft SEIR (numbered pages 1-46);</li><li>3) draft "Oak through Ninth District" objectives, a two-page excerpted from the August 1997 draft of the <i>Oakland Waterfront Initiatives: Estuary Plan, and URL</i> links and printed text of 32 websites and documents on the topic of climate change (numbered pages 47-127);</li><li>4) the <i>Protecting Local Wetlands</i> document by Save the Bay (153 pages);</li><li>5) an undated "Speech In Re: Shoreline Park Appeal" (5 pages); and</li><li>6) the Notice of Availability of the Draft SEIR (4 pages).</li></ol> <p>The overarching theme of the comments and information in these attachments mirrors that of the commenter's preceding comments (I13.1-1 and I13.1-2, and I13.2-1 through I13.2-12): opposition to the Project Modifications, as well as the Approved Project and prior-approved CEQA documents and processes. The compilation of websites, documents and other sources address climate change risk, related environmental consequences, and prioritization of wetlands preservation and creation to manage the effects of sea level rise and loss of species habitat. Also, the attachments include numerous opinions and assertions by the commenter that are not relevant to the environmental analysis in the Draft SEIR or the Revised Project Modifications introduced in this document.</p> <p>Therefore, nearly all comments in the attachments are largely addressed by other individual responses in this document in Chapter V (Written Responses), Chapter VI (Public Hearing Responses), and/or by one or more of the Consolidated Response in Chapter III. Consolidated Response 1 addresses comments do not address environmental issues that are within the scope of CEQA and tend to express opinions and statements that are rarely accompanied with supporting evidence; Consolidated Response 2 addresses comments on aspects of the Project Modifications that are no longer proposed; and Consolidated Response 3 addresses comments on the Approved Project analyzed in the 2009 EIR, existing conditions, or other topics outside the scope</p>

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	<p>of the Draft SEIR or modifications addressed in this document. Also, many of the forthcoming comments in this Comment Letter repeat or elaborate on issues raised in its preceding comments.</p> <p>As part of the public record within Appendix B to this document, the attachments are readily accessible for the public and decision makers. In a practical effort to avoid presenting in this section hundreds of pages that repeat the text of the attachments and cross references to Consolidated Responses and/or other individual responses, response authors have excerpted specific comments that warrant stand-alone responses. Presented below, these are comments that generally are within the scope of CEQA, raise new topics or concerns or a varied perspective, or topics of broad interest but that are not specifically addressed in a Consolidated Response (i.e., wetlands, biological resources, parking). Where available, the attachment page number of each excerpted comment below is noted for ease of reference in Appendix B.</p>
<p>There can be no valid path forward for a marina, let alone a mega-marina. Herewith you will learn why that is the case, what the SEIR failed to address in the past and continues to ignore now. Then you must act accordingly and fully deny these modifications and permits. (Comment Attachment p. 3)</p>	<p>I13.2-12 As mentioned in the previous response, this comment summarizes the focus and intent of the comments in the attachments to Comment Letter I13.2, which largely pertain to the Approved Project marina expansion, which is no longer proposed. See Consolidated Responses 1 and 2.</p>
<p>Chapter I</p> <p>I.a.3 pp1- It is the wrong approach to remove parking, in fact all trends are in the opposite direction. Due to Covid, essentially nobody uses public transit anymore. There is no reason to expect they will do so in the next 5-10 years, either, given our nations' horrific and inept response to the outbreak of Q1 2020. (Comment Attachment p. 5)</p>	<p>I13.2-13 The comment actually addresses text on I.a.3 page 2 of the Draft SEIR. See Response to Comment I1-5 regarding parking supply and demand within the context of CEQA. As part of the record, the comment is available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>I.a.3 pp2- There shall be no 'shifting' of building envelopes, per the previous court battle and subsequent agreement with the ShadeTree / 5th Ave. neighbors. To install any skyscrapers next to shade tree will violate the agreement (Case No. RG06-280345) in place and blanket this existing neighborhood in darkness for most of the day. (Comment Attachment p. 7)</p>	<p>I13.2-14 Revised Project Modifications no longer include the potential tower relocation to Parcel L and therefore would not cast periodic new shadow on portions of the Fifth Avenue Point at certain times day and year, which would have occurred with the Project Modifications analyzed in the Draft SEIR. Further, as analyzed in the Draft SEIR, the potential tower relocation to Parcel M would not result in shadow effects that are different from those presented in the Draft SEIR (see Chapter II of this document). Also see Consolidated Response 2 and 3.</p>
<p>II.a pp5- Already here in the neighborhood we have huge traffic problems created by the new residents, the ongoing construction, and often both. Note that since Planning Commission so graciously allowed Zarsion to be doing construction all the way into 2038, it is folly to pretend the construction delays and traffic hassles are not impactful. (Comment Attachment p. 14)</p>	<p>I13.2-15 See Response to Comment I12.2-3 regarding traffic and parking management and see Consolidated Response 3 regarding comments on existing conditions.</p> <p>Regarding comments on the construction duration, see Chapter II of this document, which describes the reduced construction duration with the Revised Project Modifications but that were analyzed in the Draft SEIR (see Consolidated Response 2). The prior construction-period transportation effects of the Approved Project remain as identified in the 2009 EIR, including consideration of the previously approved time extension for certain project elements.</p>

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<p>II.a pp7- Again, your parking formula is hopelessly wrong and out of touch with current citizen needs. As well, none of it addresses the problems boaters will cause to your parking formula. (Comment Attachment p. 15)</p>	<p>I13.2-16 The Revised Project Modifications no longer include the previously proposed Approved Project marina expansion that was analyzed in the Draft SEIR but that was analyzed in the Draft SEIR. See Chapter II of this document and see Consolidated Response 2.</p>
<p>As it stands now, in a crisis there is only 1 path IN or OUT of the area, the Embarcadero. That's a choke point, and with all the new residents coming in already during a fire or flood many will be trapped and die due to being unable to evacuate. Fire season, we now know, lasts nearly all year. Don't make that problem worse with 600 more residents. (Comment Attachment p. 16)</p>	<p>I13.2-17 See Consolidated Response 3 since the comment speaks to existing conditions. The 2009 EIR reviewed the Approved Project's potential to interfere with an adopted emergency response or evacuation plan and found the impacts to be less than significant. Regarding concerns for vehicular egress, the 2009 EIR reviewed the Approved Project's potential to interfere with an adopted emergency response or evacuation plan and found the impacts to be less than significant. See Response to Comment I12.2-3 explaining that the Project site is not in an urban wildland interface, roads to and from the site are generally adequate and designed to City standards, and the primary road serving the Project site (The Embarcadero) has been improved to arterial standards and maintains the capacity to accommodate fire and evacuation teams.</p> <p>The comments raise neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR or this document that would require response pursuant to State CEQA Guidelines Section 15088. The comments will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>Nope, every new empty storefront you build here is a literal DAGGER TO THE HEART of existing commercial landlords in Oakland. Go around the rest of Oakland, Emeryville, Hayward. We are in danger of having more plywoodcovered stores than actual open stores, and yet Zarsion seeks to add 200K more footage? No, that is unreasonable and wishful thinking. Turn those spots into parking or more housing, but stop giving this part of town insta-blight. (Comment Attachment p. 18)</p>	<p>I13.2-18 This comment concerns the merits of the Approved Project, which includes 200,000 square feet of commercial space. The Project Modifications would not alter this aspect of the Approved Project. Accordingly, this comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR concerning the Project Modifications that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>Chapter IV (p.77) IV.i - Significant, unavoidable changes to the baseline will occur here if you allow the installation of this megamarina. What baseline? The one from 2005? Oh please, BCDC dispensed with that fiction more than a year ago. One must start from the present day. And the present day is a dire one. Everywhere, but most crucially here in CA, plants and wildlife are under heavy predation. If the fires don't get them, our megayacht anchors or propellers surely will. (Comment Attachment p. 29)</p>	<p>I13.2-19 First, the Revised Project Modifications no longer include the previously proposed Approved Project marina expansion that was analyzed in the Draft SEIR. See Chapter II of this document and see Consolidated Response 2.</p> <p>Next, pursuant to Section 15125(a) of the CEQA Guidelines, the Draft SEIR measures the physical impacts of the Project Modifications against a "baseline" of existing physical environmental conditions present at and near the Project site at the time the NOP was published in September 2018. See Response to Comment A3-2 regarding additional existing biological resources setting information, in addition to the <i>Environmental Setting</i> in Section IV.I.1 in the <i>Biological Resources</i> section of the Draft SEIR.</p>
<p>IV.b Transit services - It's notable that this document crows about the "Free B" bus, which never comes within a literal mile of this neighborhood. And nowhere does the document address that 90% of BART's riders abandoned it and most</p>	<p>I13.2-20 See Response to Comment I1-5 regarding parking supply and demand within the context of CEQA. The transportation analysis assumed a 23.1 percent reduction from ITE trip data to account for the Project site's location in an urban area and residents</p>

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<p>will not return ever. Similarly, AC Transit runs a heck of a lot of empty busses too nowadays. That is not their fault. But it does reflect the fact that society changed its' mind about mass transit, once a deadly plague was unleashed upon it. Times have changed, it's folly to pretend that 'business as usual' will return. In the case of mass transit and THIS project, it's not just folly but in fact a recipe for disaster and traffic nightmares. (Comment Attachment p. 30)</p>	<p>who would use a mode of transportation other than driving including walking, biking, and using transit. As part of the record, the comment is available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p><b>No Routes Directly Serve The Project Site.</b> They have done nothing to remedy this, other than sometimes offer a bus that seats 12. On some days, at inconvenient times. So mostly it runs empty and sits balefully at the BART station. That's not a solution. You know what people do do? They get in their cars, and drive! That's what they do. I don't like it. They should take mass transit, or take their chances against the hobo bands. But they drive. <b>And they will continue to do so.</b> That's reality, not this feeble pretend document. (Comment Attachment p. 32)</p>	<p>I13.2-21 See Response to Comment I13.2-4 and Response to Comment O2.1-10 (in Section IV.B of this chapter) which address transit issues. Also see Response to Comment I1-5 which addresses the comments assertion about future mass transit use. As part of the record, the comment is available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>These developers are pretending that everything is fine. <b>You, the Commission, must set them straight.</b> Do not accept 2018 data, it's out of balance with what scientists are saying TODAY. On the face of it, it sounds crazy to have to plan for 10'-0" rise. (Comment Attachment p. 33)</p>	<p>I13.2-22 The Draft SEIR (starting on pages IV.D-2 and IV.D-16) includes a comprehensive discussion and assessment of the proposed ground-floor levels and the capacity to implement additional adaptation measures as needed when sea level rise increases further, as aligned with BCDC recommendations. The analysis acknowledges that the research and science around sea level rise is regularly updated, as is the public's awareness of coastal developments' vulnerabilities. Also, as sea level rise projections and mapping evolve and gain accuracy, agency guidance for appropriate adaptation measures also evolve (Draft SEIR p. IV.D16). The California Ocean Protection Council's (OPC) 2018 projections and guidance detailed in the Draft SEIR is considered the best estimates of future sea level rise to be available. Moreover, pursuant to Section 15125(a) of the CEQA Guidelines, the Draft SEIR measures the physical impacts of the Project Modifications against a "baseline" of existing physical environmental conditions present at and near the Project site, including recognized sea level rise projections, at the time the NOP was published in September 2018.</p>
<p>IV.g Noise - As noted above, every part of this document ignores or discounts construction noise such as pile driving, because they assume it is temporary. <b>But a noise which persists from 2015 to 2038 is permanent,</b> let us be clear on that fact. It's also not acceptable. Insist on mitigation. (Comment Attachment p. 34)</p>	<p>I13.2-23 The 2009 EIR identified Mitigation Measure G.1a through G.1d to address significant and unavoidable construction noise impacts (Impact G.1) of the Approved Project. 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. This approach is taken because CEQA review has already occurred in the 2009 EIR for the Approved Project, including identification of feasible mitigation measures. Neither the Project Modifications nor the Revised Project Modifications addressed in this document would result in new or substantially increased construction noise than identified in the 2009 EIR; the original mitigation measures would continue to apply throughout development of the Approved Project, which excludes the expanded marina or potential tower relocation to Parcel L. No additional analysis is warranted. See Consolidated Response 3 regarding comments about aspects of the Approved Project analyzed in the 2009 EIR or the Project Modifications analyzed in the Draft SEIR.</p>

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<p>But most Bay Area marinas have a poor track record of enforcement of rules against their rich tenants. There is no reason to believe this new mega-marina will follow a different pattern, given that it will be controlled by people known for dumping containers full of tools into the bay. So Planning Commissioners must rightly conclude that both a large increase of activity will occur, and that such activity will dramatically increase spillage, dumping, peeing into the bay, etc. For the flora and fauna killed, there won't be 'mitigation', they will simply be dead. (Comment Attachment p. 36)</p>	<p>I13.2-24 See Chapter II and Consolidated Response 2 which address changes to the Project Modifications analyzed in the Draft SEIR but that are no longer proposed; the Revised Project Modifications exclude the previously proposed Approved Project marina expansion. The comment concerns the merits of the Proposed Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>"Migratory bird species that pass through the Project Site include waterfowl, shorebirds, pelicans and songbirds. These birds have numerous options for stopover habitat during migration through the San Francisco Bay Area, and would not be substantially impacted by the temporary loss of Project Site stopovers." (page 254) (Comment Attachment p. 37)</p>	<p>I13.2-25 See Consolidated Response 2 and 3. The Revised Project Modifications no longer involve work in proximity to wetlands. However, see Response to Comment A3-2 (in Section V.B of this chapter) and Response to Comment O1-9 (in Section V.C of this chapter) addressing shoreline wildlife. Also see the updated <i>Biological Resources</i> analysis in Chapter II.</p>
<p>...it has not been my experience that sun and shade patterns follow these scenarios as laid out. Most especially, the afternoon projections appear to be completely drawn as fictional, wishful thinking. Where is the proof? Why do these calculations stop at 3pm? What are they hiding? (Comment Attachment p. 40)</p>	<p>I13.2-26 See Response to Comment A1.2-17 (in Section V.B of this chapter) regarding the assessment of sun and shade patterns. Also, see Chapter II and Consolidated Response 2, which address changes to the Project Modifications analyzed in the Draft SEIR but that are no longer proposed; the Revised Project Modifications exclude the potential tower relocation to Parcel L.</p>
<p>At a minimum this project and it's steady supply of drunken boaters will be taxing the first responders in away they never have seen. Where is there proof that these modifications will be adequately served by law enforcement and emergency services? (Comment Attachment p. 40)</p>	<p>I13.2-27 The Revised Project Modifications no longer include the Approved Project marina expansion that was analyzed in the Draft SEIR. See Chapter II of this document and see Consolidated Response 2 and 3. The comment is noted and, as part of the record, will be made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>Do not build these monstrosity buildings which will only lure more people to CA and break even further our already broken water system. No credible argument can be made that resources exist to support new residents to the area. Relying on 2009 legal fictions will not change the reality - we are facing a multi-decade drought, and the results will be poor for all. Making the problem worse by bringing in new people would be a mistake. (Comment Attachment p. 41)</p>	<p>I13.2-28 The Project Modifications analyzed in the Draft SEIR or modified in this document do not involve the construction of any additional buildings than with the Approved Project. The comment suggests that the additional units and resulting residents would adversely affect the water resources to the areas. The Draft SEIR describes that, based on an EBMUD water supply assessment factoring in the proposed 600 additional units, the Project Modifications were accounted for in EBMUD's projections and that EBMUD would have adequate water supplies to serve the Project Modifications (Impact UTL-1, Draft SEIR p. IV.M-12). Also, pursuant to Section 15125(a) of the CEQA Guidelines, the Draft SEIR measures the physical impacts of the Project Modifications against a "baseline" of existing physical environmental conditions present at and near the Project site at the time the NOP was published in September 2018. The comment is noted and, as part of the record, will be made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## I13.2 Dan Franco

COMMENT	RESPONSE
<p>Please note I'm joining this appeal to inform you that the CEQA 16-162 standards the commission used are factually incorrect, and therefore are legally invalid. Staff stated on record that "nothing of note has occurred since 2006 or 2009 that would alter the EIR or CEQA position that was approved at that time".</p>	<p>I13.2-29 The comment refers to Section 15162 of the CEQA Guidelines, pursuant to which the Draft SEIR determined that the Project Modifications would not involve any new impacts or trigger the criteria of "project changes," "changed circumstances" or "new information" in Section 15162 <i>with respect to the Existing Project Area</i> (Draft SEIR p. I-4). The analysis in the Draft SEIR focuses on the activities associated with the Project Modifications. This approach is taken because CEQA review has already occurred in the 2009 EIR for the Approved Project, including identification of environmental effects, feasible mitigation measures, and feasible alternatives (see Consolidated Response 3). Each environmental topic section in the Draft SEIR describes the topic's environmental and regulatory setting, which includes updates and changes to conditions since preparation of the 2009 EIR.</p> <p>Consistent with staff statement purported by the comment, the analysis in the Draft SEIR supports any such updates or changes would not result in "new significant environmental effects or a substantial increase in the severity of previously identified significant effect" (CEQA Guidelines Section 15162). No further analysis is warranted. Also see Chapter II of this document which provides the evaluates and determines the same for the proposed Revised Project Modifications (see Consolidated Response 2). The comment is noted and, as part of the record, will be made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>In fact several fatal errors exist in the EIR and CEQA documents. So even if staff was correct, we'll still be in a crisis! For instance they still are using a 100 year floodplain model, which calls for a 6'-0" rise over that time. We're already at that point now, 10 years later.</p>	<p>I13.2-30 This comment does not specifically cite "fatal errors" in the EIR (presumably Draft SEIR) and CEQA documents, although responses are provided to the commenter's concerns raised in other comments in this letter. The comment is part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications. The commenter incorrectly infers that there has been six feet of sea-level rise between 2009 and 2019.</p> <p>See Response to Comment I13.2-22 regarding sea level rise modeling. No further response is warranted.</p>
<p>Here are more examples of errors in the CEQA: page 13 <b><i>Physical Division of an Existing Community</i></b> "The proposed project would not result in any physical division of an existing community in any of the areas surrounding the project site, because of the site's physical separation from other surrounding neighborhoods. ... the project would not physically divide these communities. Thus, there is no physical opportunity for the project itself, or in combination with any past, present, or reasonably foreseeable future projects, to physically divide an existing community."  &gt;&gt;&gt; Note that the 5th Ave community will be heavily impacted by this project, with no positive gains. We sit literally in the middle of the proposed complex.</p>	<p>I13.2-31 See Consolidated Response 3 regarding comments pertaining to aspects of the Approved Project in the 2009 EIR and the Project Modifications in the Draft SEIR. Also, the Draft SEIR land use analysis determined that the 2009 EIR Mitigation Measure A.1 would continue to apply to the Project Modifications to address the potential land use compatibility impact originally identified for the Approved Project (Impact LU-1, Draft SEIR p. IV-16). The comment is noted and no further analysis is warranted.</p>

## I13.2 Dan Franco

COMMENT	RESPONSE
<p>page 17 <b>Consistency with Habitat Conservation Plan or Natural Community Conservation Plan</b></p> <p>"There are no adopted habitat conservation plans or natural community conservation plans related to the project site or the surrounding geographic area. Consequently, the project would not itself, and would not combine with any other past, present, or reasonably foreseeable future project to, conflict with any such plan."</p> <p>&gt;&gt;&gt; Note that the 1999 Estuary Policy Plan still exists, was in effect at the time in question, and called for wetlands here. The EPP was generated after years of public input. The above statement is flat wrong; though after it was adopted some underhanded horse-trading occurred... One of it's top priorities is Tidelands Enhancement. So much so; that Policy OAK 1 is "Encourage the preservation and enhancement of tideland areas". That's on page 87.</p>	<p>I13.2-32 See Response to Comment O2.1-3 in Section IV.C of this chapter. The Estuary Policy Plan is not a Habitat Conservation Plan or Natural Community Conservation Plan. A Habitat Conservation Plan (HCP) is a document that meets federal Endangered Species Act (ESA) requirements and enables local agencies to allow projects and activities to occur in endangered species' habitats. In exchange, those projects and activities must incorporate HCP-prescribed measures to avoid, minimize, or compensate for adverse effects on natural communities and endangered species. A Natural Community Conservation Plan (NCCP) is the State counterpart to the federal HCP. It provides a means of complying with the Natural Community Conservation Plan Act (NCCP Act) and securing take authorization at the State level. The primary objective of the NCCP program is to conserve natural communities at the ecosystem scale while accommodating compatible land uses, which must be approved by the California Department of Fish and Wildlife.</p>

## I14 Aileen Frankel

COMMENT	RESPONSE
<p>The proposed project would be contrary to the mission to "Save the Bay" and would authorize more manmade intrusions into the wetlands and shallow areas. The additional docks and number of boat slips would impair the goals of protecting water and airways for birds; disrupt natural ebb and flow of waters of the Bay and Estuary; and obscure or fragment views by park visitors and pedestrians across the Estuary and Bay. Incremental development into the Estuary waters is avoidable.</p> <p>It was very important to those of us who advocated for the establishment of the Estuary Plan, and later conditions of open space, public access, bicycle paths, and walkways along the Oak to Ninth project shoreline - - that the ecology of the area, health of the wildlife corridors, and views be improved and protected. The Bay Trail where possible should allow for persons and critters to be able to see and feel a landscaped shoreline and open waters -- not more docks or private boat slips, that will bring noise, and add to debris and ounces of fuel and byproducts deposited in the water.</p> <p>I am very concerned about going beyond the previously planned 60 boat slips to 218 boat slips. This marina would block a marsh restoration area established after the Moby Dick pollution incident, near Sixth Avenue. Clinton Basin and Shoreline Park would be diminished (indeed cluttered) by allowing these additional boat slips.</p> <p>Please note the following:</p>	<p>I14-1 See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. The Revised Project Modifications no longer involve of the Approved Project marina, aside from the publicly accessible landing dock near the Ninth Avenue Terminal Building. As a result, no activity with the Revised Project Modifications would occur at or near existing wetlands. As a result, the Revised Project Modifications would substantially reduce the water surface area involved, compared to that of the Project Modifications analyzed in the Draft SEIR.</p> <p>The commenters opinion is noted. The commenter suggests that the Approved Project authorized 60 boat slips. That is incorrect; the Approved Project permits up to 167 boat slips. The comment does not raise specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## I14 Aileen Frankel

COMMENT	RESPONSE
<p>a) The draft SEIR is inadequate in not studying the impacts on public recreation activities of an expanded private-boat marina along much of the parkland area intended for public use. Would a marina displace paddleboarders, rowers,</p>	
<p>b) Alternatives should be studied, protecting and expanding the present marsh and soft water edge and perhaps incorporating some or all of the western side of Clinton Basin.</p>	<p>I14-2 The commenter’s opinion is noted. As discussed in the Draft SEIR, alternatives to the Project Modifications that would represent means of reducing or avoiding long-term environmental impacts were identified and address in the SEIR. Alternative 2, the No Marina Expansion Alternative, would maintain the Approved Project marina of no more than 167 slips and approximately 7.95 acres of water surface. This alternative is considered the “environmentally superior alternative as it would avoid and/or substantially reduce new Biological Resources impacts of the Project Modifications to the greatest extent compared to each of the other alternatives, and still meet most of the basic objectives of the Approved Project along with one of the three additional objectives of the Project Modifications.” Since circulation of the Draft SEIR, the Project applicant has proposed the Revised Project Modifications, which do not include a marina expansion with the exception of a small watercraft dock. Accordingly, the Revised Project Modifications are closer to the No Marina Expansion Alternative with respect to impacts. City decision makers will have an opportunity to consider whether to adopt the study alternatives when they consider whether or not to approve the proposed Revised Project Modifications.</p>
<p>c) If any bit of enlarged marina is constructed, it should be for temporary, non-motorized (human-powered) craft (such as paddleboards, rowboats, and kayaks), safe for public use.</p>	<p>I14-3 The Revised Project Modifications no longer include a marina expansion. See Response to Comment I14-1.</p>
<p>I look forward to the results of City of Oakland staff and Commission deliberation</p>	

## I15 Marcus Guillard

COMMENT	RESPONSE
<p>In particular the Shadetree community is adversely and negatively impacted by many elements of the Brooklyn Basin project including losing its driveway access to the building courtyard when the historical driveway easement was “removed” in favor of the Brooklyn Basin developers.</p>	<p>I15-1 This comment brings attention to a current issue of loss of an alleged driveway easement to . This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>

## I15 Marcus Guillard

COMMENT	RESPONSE
<p>Proposed designs for 5th Avenue ignore our historical community and setbacks and parking are badly neglected nor assessed adequately for negative impacts on Shadetree. The proposed development revised plans as reviewed in the DSEIR have ignored the impacts on this vital part of the 5th Avenue Point community.</p>	<p>I15-2 The area called 5<sup>th</sup> Avenue by the commenter is an unimproved private street without any designated parking. The commenter is directed to the Approved Project’s site plan which shows that the unimproved street referenced by the commenter would be improved to the City’s public street standards such that 5<sup>th</sup> Avenue would have sidewalks, designated on-street parking, and two 13-foot travel lanes. If accepted as a public street, it would also comply with the Fire Department requirements for access and circulation. This would be an improvement to existing conditions. As noted in the Draft SEIR (p IV.B-33) the Project Modifications would occur within the same overall building envelopes as the Approved Project as well as the same Project site and the same Project site plan including streets, sidewalks, bike facilities, intersections, and waterfront access.</p> <p>In addition, as described throughout the Draft SEIR, the analysis in the Draft SEIR focuses on the activities associated with the Project Modifications. This approach is taken because CEQA review has already occurred in the 2009 EIR for the Approved Project, including identification of environmental effects, feasible mitigation measures, and feasible alternatives. The Project Modifications/Revised Project Modifications would not alter the Approved Project’s site plan including circulation, parking or transportation plan related to site access; on-site streets, sidewalks, bike facilities, intersections; or and waterfront access. The 2009 EIR reviewed the Approved Project’s potential to interfere with an adopted emergency response or evacuation plan and found the impacts to be less than significant and thus no additional analysis is required.</p>
<p>Addition of 600 units to parcels K, L, and M:</p> <p>1. Do not add 600 units to parcels K, L, and M. Increasing the number of units for parcels K, L, and M from the current proposal (after allowed unit “swaps” between parcels) from 607 to 1207 creates extreme density and will cause extensive adverse effects on streets, infrastructure, and the fragile 5th Ave Point community. If 600 additional project units are added, they should be scattered across all remaining development parcels.</p>	<p>I15-3 See Chapter II and see Consolidated Response 2 that pertains to the Revised Project Modifications, which no longer involve the potential tower relocation to Parcel L. See Consolidated Response 1 since this comment expresses an opinion on the distribution of units. Unit density is not expressed or evaluated by development parcel but by the PWD-4 land use classification and PWD-4 zoning district. However, the environmental impact analysis considers parcel-specific characteristics where relevant, such as the shadow effects of building mass and locations, for example.</p> <p>The comment does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>2. Failure to add additional affordable units with the increased density request. If 600 additional units are approved, the 20% should be affordable.</p>	<p>I15-4 See Response to Comment I2-2 regarding affordable housing.</p>
<p>3. The requested amendment to the Estuary Plan to increase unit density from 50 to 58 is an illusion since the density is applied to the entire project. This is misleading because the density for parcels K, L, and M will be vastly higher if 60 units are added to just these parcels.</p>	<p>I15-5 See Response to Comment I15-3 regarding unit density.</p>

## I15 Marcus Guillard

COMMENT	RESPONSE
<p>4. Page IV.J-10 implies that there is no displacement effect on 5th Avenue Point. This is highly erroneous. Adding market rate units does not create a trickle-down effect of more affordable units emerging within the market generally, and adding more market rate units potentially increases nearby property values significantly. Because the vast majority of 5th Avenue Point and 5th Ave Marina are controlled by one property owner, there is no way to discern if and when property values rise enough that that owner decides to sell. If that should happened, there will be massive displacement of residents and business at the heart of what makes the 5th Ave. community unique and valuable for Oakland.</p>	<p>I15-6 The potential for indirect housing displacement is addressed in the 2009 EIR for the Approved Project (pp IV.J-41 through IV.J-46), and the discussion includes a subsection specially about the potential housing demand effects of Approved Project on the “Adjacent Fifth Avenue Pint Area.” CEQA directs that the focus of the economic or social changes analysis shall be on the physical changes, which would be the secondary physical effects of construction and operation of replacement housing. The 2009 EIR determined that the Approved Project housing market effects would not lead to significant indirect physical impacts. No aspect of the Project Modifications addressed in the Draft SEIR, or the Revised Project Modifications addressed in this document, involve elements that would result in a new or worsened effect on this topic.</p>
<p>5. Relocation of a tower from either H or J to either L or M is unnecessary and creates significant infrastructure challenges and quality of life problems for current residents and businesses.</p>	<p>I15-7 This comment does not provide evidence supporting its assertion that potential relocation of towers to Parcel L or M analyzed in the Draft SEIR would adversely impact infrastructure or adversely impact existing residents or businesses. See Consolidated Response 3 regarding comments on existing conditions or the Approved Project. Further, see Consolidated Response 2, as the Revised Project Modifications no longer involve the potential tower relocation to Parcel L.</p> <p>The commenter’s opinion is noted. It raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>6. A tower on either L or M adds an undefined number of units to the parcels. There is no informational readily available in the DSEIR or Development Plan that clearly lays out how many units are in a tower compared to an 8 story building. Is it 400? This number is important because the swap to L or M of additional tower units is above the 600 increased density request. So instead of these parcels being 1207 units, could it be 1600? This issue is not addressed at all and impacts all categories of the report from flooding to traffic to infrastructure and more.</p>	<p>I15-8 See Table II-1, <i>Existing PWD-4 Zoning District Density Distribution and Development Status</i>, by parcel, in Chapter II of this document. The unit count by building type is not pertinent to the environmental analysis. The commenter’s opinion is noted. It raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>7. The Shadowing and Viewpoint studies ignore Shadetree as a JLWQ property. A tower on L would place the Shadetree property in perpetual shade at all times and days of the year. Not only is this a high impact on the light for residents but precludes our current plans to use solar for most of our utility needs. The shadowing studies demonstrate the adverse effects on both Shadetree and all local residents and businesses. The Viewpoint studies completely and totally ignore the Shadetree community and all of 5th Avenue Point.</p>	<p>I15-9 See Response to Comment A1.2-17 (in Section V.B of this chapter) regarding the assessment of sun and shade patterns. Also, see Chapter II and Consolidated Response 2, which address changes to the Project Modifications analyzed in the Draft SEIR but that are no longer proposed; the Revised Project Modifications would not include a potential tower on Parcel L, and thus would not include an associated additional shadow on Shadetree.</p>
<p>8. The design of the roadway, parking, landscaping, and infrastructure on 5th Avenue from Embarcadero to the water is poorly designed, ignores current uses by residents and businesses, and creates a density of traffic and “trips” that are not sustainable and have a highly negative impact on the existing community.</p>	<p>I15-10 See Response to Comment I13.2-5 regarding the design of 5<sup>th</sup> Avenue as a public street.</p> <p>Also, the transportation analysis was conducted in compliance with the City of Oakland Transportation Impact Review Guidelines (City of Oakland, 2017) in effect at the time of</p>

## I15 Marcus Guillard

COMMENT	RESPONSE
<p>9. The lack of a new traffic study that analyzes both existing conditions compared to projected, but also makes it impossible to adequately comment on this area. The DSEIR approval process should be postponed until an adequate traffic study is completed.</p>	<p>the NOP dated in 2018. These guidelines describe the transportation studies necessary to address both CEQA and non-CEQA topics. The CEQA-transportation topics are addressed in Draft SEIR Section IV.B Transportation and Circulation (p. IV.B-1 through IV.B-40) and the non-CEQA topics are addressed in Appendix C of the Draft SEIR. The transportation study (Appendix C of the Draft SEIR) concluded that the Project Modifications would not result in significant impacts related to transportation safety.</p> <p>The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>10. Already events at the Shoreline Park are causing massive traffic and parking problems. Whatever parking is being provided is clearly inadequate, and because there is virtually no public transportation on site, parking and roadways are overwhelmed, and local residents and businesses find that it is difficult to access their places, and already barely adequate parking is swamped. Attendees at these events have also been trespassing onto Shadetree's property and courtyard.</p>	<p>I15-11 The commenter is referred to Response to Comment I12.2-3 which addresses traffic and parking management concerns. See Response to Comment I12.2-2 which address weekend parking for visitors to the Project amenities. As described throughout the Draft SEIR, the analysis in the Draft SEIR focuses on the activities associated with the Project Modifications. This approach is taken because CEQA review has already occurred in the 2009 EIR for the Approved Project, including identification of environmental effects, feasible mitigation measures, and feasible alternatives. The Project Modifications/Revised Project Modifications do not include any changes to the Approved Project's site plan including site access intersections as well as on-site streets, sidewalks, bike facilities, intersections, and waterfront access. In addition, as shown in Appendix C of the Draft SEIR, with the Project Modification's proposed TDM, the Project Modifications would not exacerbate any existing traffic or parking issues.</p> <p>The commenter is also referred to Response to Comment I29-5 which addresses transit to the Project site.</p> <p>Also see Consolidated Response 3 as the comment pertains to existing conditions.</p>
<p>11. Adding addition Marina slips is wrong on every level and well refuted and addressed by many organizations and knowledgeable individuals.</p>	<p>I15-12 See Chapter II of this document and see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. The Revised Project Modifications no longer involve the Approved Project marina expansion.</p> <p>The commenters opinion is noted. The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>12. Section V-13, VD-D Environmental Superior Alternative, clearly states "In summary, the No Marina Expansion Alternative is considered the environmentally superior alternative as it would avoid and/or a substantially reduce new Biological Resources impact of the proposed Revised Project Modifications to the greatest</p>	<p>I15-13 See Response to Comment I15-14 regarding the Approved Project marina expansion previously proposed.</p> <p>Also, the 5th Avenue Marina is an existing condition and would be renovated as part of the Approved Project analyzed in the 2009 EIR; it would not be altered as part of the</p>

## I15 Marcus Guillard

COMMENT	RESPONSE
<p>extent compared to each of the other alternatives, and all meet some of the basic objectives of the Project Modifications.”</p>	<p>Project Modifications addressed in the Draft SEIR or the Revised Project Modifications addressed in this document. Therefore, see Consolidated Response 3 for comments that pertain to existing conditions and the Approved Project.</p>
<p>13. The impact on the existing 5th Avenue Marina is not clearly addressed. Will those slips be eliminated? The 5th Ave Marina plays a vital role in the artisan and cultural life of 5th Ave Point and is one of the remaining affordable boat slip locations in the Bay Area.</p>	
<p>14. Currently the project proposes that the 5th Avenue Marina be brought up to “world class” standards. Would existing slip renters be relocated during construction Would the existing slip renters be allowed a right to return at affordable rates?</p>	
<p>15. 5th Ave Marina plans must be made transparent, and the existing community should be involved in decision making. To quote again from the Estuary Plan regarding 5th Ave Point: <b>“Policies..., should be carefully applied so as to not adversely affect property values or inadvertently change the very essence of what makes it unique.”</b></p>	
<p>16. Infrastructure impacts are vastly understated and completely dismiss the need for updated Sea Level Rise accommodations.</p>	<p>I15-14</p>
<p>17. Shadetree sites surrounded on all 4 sides by the Brooklyn Basin project, but as Shadetree needs to make its own plans for infrastructure, it has had no access to the plans for Brooklyn Basin nor any information on how infrastructure design and planning will impact Shadetree both currently and in the future.</p>	<p>The commenter’s opinion regarding the need for Brooklyn Basin infrastructure plans is noted. See Consolidated Response 3 regarding existing conditions, in addition to Response to Comment I13.2-22 regarding sea level rise. The Revised Project Modifications would not alter the infrastructure compared to the Approved Project. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>My Personal General Comments: While I support urban renewal, land reclamation and hazmat mitigation, I do not support the blatant disregard for existing community, existing affordable housing, artist housing and communities, and a flourishing hub for Oakland artist and makers. All we ask is that we be considered in this process and that we all end up with a better shared experience. What we have received thus far is far short of respect. The is very little indication that this project wants the best for Shadetree or all the other residents of 5th avenue.</p> <p>All approvals for the proposed Project Modifications should be postponed until an adequate community engagement process has been initiated and completed with 5th Ave Point residents, businesses and boaters.</p>	<p>I15-15</p> <p>See Response to Comment I5-2 regarding the public notice and review of the Draft SEIR pursuant to CEQA. The comment regarding postponement of action on the Project and request for community engagement is noted. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## I16 Michael Henderson

COMMENT	RESPONSE
<p>Hello, I am writing to you regarding 2 serious concerns with the Brooklyn Basin Expansion. The first is the seismic issues that will most likely develop when a large building is built by on landfill. While I understand the buildings will be pile driven into bedrock, the surrounding buildings are not. As a result of this building process, the ground will be disturbed all around in the neighboring lots. There are issues as you may know between the Transbay Tower and the Millennium Tower in SF-and both of those buildings are anchored to bedrock, but the building of one may have led to the ground shifting and the sinking and tilting of the other. The City of SF is being sued. That case will be litigated for years. It seems this issue is one of liability that may come back to the City of Oakland. There should be extensive studies by non affiliated experts on the risk of the Brooklyn Basin (BB) Development on those who live here. There is real risk to our homes. I have lived here for over 16 years. I have seen development plans from BB and none of them even acknowledge our existence or mention any possible issues.</p>	<p>I16-1 Potential impacts associated with seismicity were evaluated and addressed in the Draft SEIR, as well as the 2009 EIR. As discussed in Section IV.F, <i>Geology and Soils</i>, of the DSEIR, "potential exposure of people and property to risks associated with settlement or seismic ground shaking, liquefaction, or earthquake-induced settlement due to a major earthquake within the Project area were analyzed in the 2009 EIR under Impacts F.1, F.2, and F.3. The potential impacts were determined to be less than significant with mitigation. Implementation of 2009 Mitigation Measures F.1, F.2, and F.3 under these impacts would, in part, ensure compliance with current Building Code requirements. The Approved Project's potential impacts related to settlement and subsidence from the use of dredged materials as fill was also evaluated in the 2009 EIR (Impact F.4) and determined to be less than significant with mitigation (2009 Mitigation Measure F.4).</p> <p>The conclusion regarding the potential for the Project Modifications to result in impacts related to seismic stability and damage is substantially the same as those identified in the 2009 EIR. Furthermore, "geology and soils impacts related to the environmental conditions of the Project site, including expansive soil; landslide conditions; and the presence of active faults, landfill, unknown fill soils, well, pit, swamp, mound, tank vault, or unmarked sewer line, were analyzed in the 2009 EIR under Impacts F.6 and F.7 and the impact was determined to be less than significant. Risks related to the Project Modifications being located above a well, pit, swamp, mound tank, tank vault, unmarked sewer line, and/or landfill; or having soils incapable of supporting a wastewater disposal system are the same as identified in the 2009 EIR and remain less than significant.</p> <p>Overall, no new significant environmental impacts or substantial increase in the severity of previously identified significant impacts would result from changes pursuant to CEQA Guidelines Section 15162. Chapter II addresses the same for the proposed Revised Project Modifications.</p>
<p>Secondly is the (C)armageddon that gas already started. The are real safety issues that have never been addressed. As I understand it BB would like to expand to over 3500 units, which could mean an increase of 5000-7000 people living in a very tight/small area. Currently VB has completed 2 of the 12 buildings in their plan. Those 2 buildings are nowhere close to full vacancy, but the traffic and parking are already horrible. BB has no plans to address this: no parking structures and a small one way street feeding their lot. There is only limited street parking. At least the building projects at Jack London Square included parking garages.</p>	<p>I16-2 See Response to Comment I1-5 regarding parking, Response to Comment I12.2-3 regarding traffic management, and Response to Comment I13.2-6 regarding the adequacy of 5th Avenue. Also see Consolidated Response 3 since the comment pertains to existing conditions.</p>
<p>There only reliable public transportation is a 25-30 min walk from the BB location. The units at BB are expensive. The people who can afford to move in have cars and they are not going to give them up. There are no grocery stores nearby. I have a small child and need my car for work, but now BB residents, along with attendees of BB's ever constant events has made parking on my street nearly impossible, so i have to park in unsafe areas.</p>	<p>I16-3 See Response to Comment I13.2-4 and Response to Comment O2.1-10 (in Section IV.B of this chapter) which address transit issues.</p>

## I16 Michael Henderson

COMMENT	RESPONSE
<p>I see BB associated people parking on sidewalks, taking other's private parking and blocking driveways.</p>	<p>I16-4 This comment brings attention to a current issue of inadequate parking and subsequent illegal parking by those associated with Brooklyn Basin. However, this comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>
<p>The most concerning part though is the traffic. I recently was unable to get across an intersection and the light changed 3 times. This was due to cars coming down 5th Avenue onto Embarcadero and blocking the intersection (which was already a very dangerous one before BB came along), because of the train tracks. A young boy was killed a few years ago because of way the intersection is laid out. Also it would be impossible for emergency vehicles to get to the area when there are events or when BB is I hope you address these concerns as until BB is at full capacity.</p>	<p>I16-5 This comment brings attention to a current issue of transportation and circulation. The 2009 EIR reviewed the Approved Project's potential to interfere with an adopted emergency response or evacuation plan and found the impacts to be less than significant and thus no additional analysis is required. See Consolidated Response 3 regarding existing conditions. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>

## I17 Brent Housteau

COMMENT	RESPONSE
<p>Please say no to the proposed marina expansion in Brooklyn Basin. There is so little remaining SF Bay wetlands why risk destroying what we have left? Every little piece we lose deteriorates the overall health of the bay. The land that is threatened is so close to downtown and Jack London square. It's been wonderful to be able to walk around Jack London square and see shorebirds flying by. The more habitat that is destroyed, the less wildlife we will get to see and experience. It's as simple as that.</p>	<p>I17-1 See Chapter II of this document and see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed, such as the Approved Project marina expansion. The commenter's opinion is as it concerns the merits of the Proposed Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications. In addition, see Response to Comment I12.2-3 regarding traffic and parking management concerns.</p>
<p>I spent a couple of hours last week walking around the development currently under construction and viewed the proposed marina expansion area. When I learned that 325 slips are being proposed, I was shocked. Have you ever been to a Bay Area marina on the weekend? The lots are packed! Cars, trucks and trailers are strewn everywhere within a quarter-mile of the marina. Boat owner's guests park wherever they can find a spot, usually illegally. Parking isn't enforced because it is "bad for business".</p>	<p>I17-2 See Response to Comment I13.2-4 and Response to Comment O2.1-10 (in Section V.B of this chapter) regarding transit. See Chapter II of this document and see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed, such as the Approved Project marina expansion.</p>
<p>Meanwhile anyone living within a half mile of the marina are the ones that suffer. The proposed parking, public transit, and road infrastructure is completely inadequate for such a significant project. It will be a nightmare for anyone living in Brooklyn Basin.</p>	

## I17 Brent Housteau

COMMENT	RESPONSE
<p>The city has already approved so many new apartment complexes in Brooklyn Basic without adequate public transit infrastructure. Approving this marina would make it even a worse nightmare for all the new people that will now be living in Brooklyn Basin.</p>	<p>The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p> <p>I17-3 See Response to Comment O2.1-10 (in Section V.C of this chapter) and I13.2-4 regarding transit. See Chapter II of this document and see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed, such as the Approved Project marina expansion. The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>
<p>Lastly, I've lived in Oakland for 21 years and I don't ever recall meeting a boat owner that actually lives in our city. Why accommodate rich out-of-town boat owners and even richer uncaring developers when so many Oaklanders are struggling through the pandemic? Do you think these people will actually spend money in our city? No, they will just bring everything they need on the boat from home, bypassing local business. Please vote no on the Brooklyn Basin marina expansion.</p>	<p>I17-4 See Chapter II of this document and see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed, such as the Approved Project marina expansion. The commenter's opinion is noted; however, this comment concerns the merits of the Proposed Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Project Modifications.</p>

## I18 Helen Hutchison

COMMENT	RESPONSE
<p>I am very concerned about the proposed addition of 10 acres of marina facilities. The increased number of slips – from a 60 to 218 – needs further study. The marina would wrap around both the Tidelands Trust lands, and Brooklyn Basin public parks. This would block the marsh restoration area which, while not large, supports a variety of birds, fish, and plants. How would this planned expansion affect the marsh and the public parks? This plan needs additional study. In particular, the marsh needs protection – and potential expansion</p>	<p>I18-1 See Chapter II of this document and see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed, specifically the Approved Project marina expansion previously proposed near the wetlands area or parks. Also see Responses to O1-9 (in Section V.C in this chapter) regarding potential effects to biological resources.</p> <p>The commenter's opinion is noted; however, this comment concerns the merits of the Proposed Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>

## I19 Larry Karp

COMMENT	RESPONSE
<p>I live in Jack London Square and I swim in the estuary. I hope that the proposed marina expansion is not allowed.</p>	<p>I19-1 See Chapter II of this document and see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed, such as the Approved Project marina expansion. The comment is noted; however, this comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>

## I20 Oliver Kay

COMMENT	RESPONSE
<p>I'm writing to share my concern regarding the Brooklyn Basin Marina Expansion Project. Nestled amidst the 64.2 acre Brooklyn Basin development project is a rare and hidden remnant of natural wetland habitat on the Oakland waterfront. The 0.6 acre wetland restoration project site is thriving with mudflat, waterbirds and marsh plants.</p> <p>I understand that you are currently reviewing a proposal by developer Signature Properties to build 10 acres of marina docks directly in front of the restoration project, blocking meaningful access to resting places and food sources for wildlife and obscuring the view of the open water from shoreline parks that Oaklanders have been working on and enjoying for many years.</p> <p>This particular marshland's proximity to high-density urban areas presents a rare opportunity for the public to view wetlands and I believe that this threat to our hard won open space is both an environmental and social justice issue.</p> <p>Additionally, the proposed project would privatize a large portion of open water space for the benefit of a few privileged individuals. Right now, many people can paddle through there on a canoe or a kayak, waterbirds frequently fly and fish there, and everyone can enjoy the view of the open water. I urge you to reject this project and protect the wildlife and open space that's been carefully carved out by Oaklanders who wanted to see a piece of their waterfront thrive.</p>	<p>I20-1 See Response to Comment I18-1 above.</p>

## I21 Susan Klee

COMMENT	RESPONSE
<p>Please! Stop the expansion at the Brooklyn Basin.</p> <p>The project is not good for the people who use the waterfront. It is not good for boaters. And it is BAD for the wildlife in the area.</p>	<p>I21-1 See Response to Comment I18-1 above.</p>

## I22 John Klein

COMMENT	RESPONSE
<p>I support retaining the open public space and the expansive and historic views as they currently exist from the pier aka Township Commons at Brooklyn Basin. The proposal to expand marinas to wrap around the pier will denigrate and permanently obstruct the open and expansive nature of that open space and those views. Following is a discussion, guided by images, of issues that need to be more fully addressed, including:</p> <ol style="list-style-type: none"> <li>1. Public vs. private use of public amenities and waterways.</li> <li>2. Expansive and historic views vs. obstructed views.</li> <li>3. Use of the pier, crowd size relating to parking and public transportation.</li> </ol>	<p>I22-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.</p>
<p><b>1. Public vs. private use of public amenities and waterways.</b></p> <p>Below is an aerial photo of the Oakland estuary showing nine existing marinas and the proposed expansion marina at Brooklyn basin. The question arises when considering adding another marina:</p> <ol style="list-style-type: none"> <li>1. Why should we prioritize a privately owned and operated marina over the public's right to publicly owned parks and waterways and to unobstructed views of public waterways?</li> </ol> <p>Further, with regard to public access to the water, the photo clearly shows that shorelines on both sides of the estuary are saturated with marinas. Looking more closely and investigating on the ground, it becomes apparent that the pier is one of the largest improved public access spaces on the water's edge of the estuary. Looking at this situation, it could be concluded that the policy principle of <u>retaining and expanding public access along the estuary</u> has not been completely successful. To the contrary, public access is extremely limited and adding an additional marina will only decrease public access and the expansive, unobstructed views.</p> <p><b>Expansive and Historic Views vs. Obstructed Views</b> The pier at Brooklyn Basin is one of the largest and last remaining publicly accessible spaces with unobstructed expansive and historic views on the estuary. The presence of numerous marinas in the area directly and negatively affect the expansive and historic views available at each of those other marinas and do not serve the policy goal of public access to the water.</p>	<p>I22-2 [See all referenced photos in this Comment Letter I-22 in Appendix B to this document.]</p> <p>See Chapter II of this document and see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed, specifically the Approved Project marina expansion previously proposed near Shoreline Park and waterways. The Revised Project Modifications will not result in new marina uses within existing public views. See Consolidated Responses 2 and 3 since the comments pertain to prior project modifications and the Approved Project.</p> <p>The commenter's question is noted; however, this comment concerns the merits of the Proposed Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>

## I22 John Klein

COMMENT	RESPONSE
<p><b><i>Use of the pier and crowd size relating to parking and public transportation</i></b> The pier has become very popular especially on weekends often drawing large crowds of visitors skating, picnicing and joining improvised and free DJ dance sessions and lessons.</p> <p>With such crowds comes the need for parking. All available parking within Brooklyn Basin is full on these days. Parking overflows onto Embarcadero up to several blocks away.</p> <p>Additionally, there is a lot of circulating traffic looking for parking on the existing streets of Mid-Penn's occupied buildings.</p> <p>Following is a series of photos of three sections of the same street contrasting parking on weekdays to that on weekends (the 'loop' created by this street encircles a yet-to-be-developed site for Mid-Penn housing.)</p> <p>Given the forgoing regarding parking, please address the following questions:</p> <ol style="list-style-type: none"> <li>1. What is the recommended parking ratio for marinas?</li> <li>2. What parking ratio was used in the original marina proposal as adopted?</li> <li>3. What is the parking ratio for the current modification proposal?</li> <li>4. Will there be designated parking for marina boat owners and users? If so, where?</li> <li>5. Where and how will daily users or non-motorized boats, such as kayaks, paddleboats, etc., who do not rent slips, access the water and where will they park?</li> </ol>	<p>I22-3 See Response to Comment I22-2 above. The reader is referred to Consolidated Response 3 since the comments pertain to existing conditions, supported by photographs [see all referenced photos in this Comment Letter I-22 in Appendix B to this document].</p> <p>See Response to Comment I1-5 regarding the parking ratio for the current modified proposal (the Project Modifications analyzed in the Draft SEIR), which is 0.75 parking spaces per housing unit for the residential units in Phase III and IV of the Project. Chapter II explains that the same ratio will be maintained with the Revised Project Modifications analyzed in this document. Also, Table II-2 in Chapter II of this document provides a breakdown of parking (including marina parking) considered in the Revised Project Modifications in the context of the Approved Project and the Project Modifications analyzed in the Draft SEIR. The proposed parking ratio is consistent with the current zoning code requirements and the ratio required in other parts of the City. The parking ratio is designed to encourage residents to make use of the Project's TDM measures, including the shuttle to BART. See Chapter II of this document and see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed, such as the Approved Project marina expansion.</p>
<p>Finally, Brooklyn Basin exists in a public transportation 'desert'. There is no public transportation along Embarcadero, the only street leading to Brooklyn Basin. Even if inclined to use public transportation, boat owners and marina users will be forced to walk <math>\frac{3}{4}</math> of a mile from the nearest public transportation at the Lake Merritt BART station and its adjoining AC Transit access points. Mid-Penn provides a shuttle service to several BART stations and to Jack London Square.</p> <p>Please respond to the following questions:</p> <ol style="list-style-type: none"> <li>1. What is the level of utilization of the Brooklyn Basin shuttle?</li> <li>2. Are there plans for future AC Transit access points along Embarcadero to serve Brooklyn Basin?</li> </ol>	<p>I22-4 See Response to Comment I13.2-4 and Response to Comment O2.1-10 (in Section V.B of this chapter) regarding public transit service.</p>
<p>To close, I support retaining the current expansive and historic views and recommend that the requested modifications be denied.</p>	<p>I22-5 The commenter's opinion is noted and concerns merits of the Proposed Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>

## I23 Russ Lebovitz

COMMENT	RESPONSE
I am writing to share my concern over the proposed expansion of the Brooklyn Basin Marina. This project encroaches on environmentally sensitive and much needed wetlands...	I23-1 See Chapter II of this document and see Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. The Revised Project Modifications no longer involve the marina expansion of the Approved Project, aside from the publicly accessible landing dock near the Ninth Avenue Terminal Building. Therefore, no marina would occur near existing wetlands. See response A1.2-13 (Section V.B of this chapter) regarding biological resources and wetland mitigation measures that will pertain to the Revised Project Modifications. Also see the updated <i>Biological Resources</i> analysis in Chapter II.
...and can negatively impact our community's ability to effectively deal with impending climate change.	I23-2 See Response to Comment I23-1 above. As indicated there, the Revised Project Modifications no longer propose the Approved Project marina expansion near existing wetlands or that could potentially otherwise increase sea level rise risk.
I encourage you to look beyond the short term benefit of a few individuals and towards the longer term well-being of our entire community.	

## I24 Max Matheson

COMMENT	RESPONSE
Currently the site of the proposed marina addition is a protected wildlife sanctuary and, despite what some of the commissioners said at the last meeting regarding these changes, there absolutely IS a vast amount of terrestrial, avian and nautical creatures relying on this area for the basic necessities of life	I24-1 See Consolidated Response 2 and 3. The Revised Project Modifications no longer involve work in proximity to wetlands. However, see Response to Comment A3-2 (in Section V.B of this chapter) and Response to Comment O1-9 (in Section V.C of this chapter) addressing shoreline wildlife. Also see the updated <i>Biological Resources</i> analysis in Chapter II.
On a summer day you will find snowy white egrets and great blue herons flying and fishing and bat rays, leopard sharks, jellyfish and sea lions swimming. Humans use this area as an entry point for small craft to recreate in the estuary and once upon a time the shoreline was accessible to everyday people including artists and creators to gain inspiration, share works and commune with a natural environment just removed from the urban hustle and bustle. A marina of the size proposed would steal all of this from everyday Oakland residents and reserve it for the privileged individuals who can afford a boat and a slip. The developers say they want a bigger Marina because a smaller one is not economically viable, if they are to be granted this concession they - and you - will literally be stealing from Oakland residents in order to line developers pockets.	I24-2 See Response to Comment I24-1 above. The comment raise opinions about the merits of the Proposed Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.

## I24 Max Matheson

COMMENT	RESPONSE
<p>Within the new proposal for this larger marina, the only public access that is given is in a dangerous area for small, unpowered craft to put in. There has been no discussion around parking, sanitary necessities (bathrooms, etc.) or security. Marinas are much, much more than just docks in the water. It is imperative that you understand the negative impacts of this marina in regard to native flora, fauna, local residents and the great Oakland population far outweigh any benefit besides more money for already rich developers.</p>	<p>I24-3 See Response to Comment I24-1, referencing Consolidated Response 2 and 3. The Revised Project Modifications no longer involve the Approved Project marina expansion near wetlands. As analyzed in Chapter II, the Revised Project Modifications maintain the publicly accessible landing dock considered in the Draft SEIR, which would substantially reduce the water surface area involved compared to that of the Project Modifications analyzed in the Draft SEIR.</p> <p>The commenters opinions are noted. They raise neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>The proposal to move a condo tower onto Parcel G, directly next to the Shadetree artist community is a concern for a multitude of reasons. Historically, parcel G has been a dumpsite for numerous dangerous materials such as tires, industrial waste, power supplies, etc. It was originally built up from sand dredged out of the bay and has subsequently been covered with all manner of other detritus none of which is stable, seismically or otherwise.</p>	<p>I24-4 The Project Modifications did not consider relocating towers to Parcel G, as the comment mistakenly states. As discussed in Chapter II, the Revised Project Modifications no longer involve a potential tower relocation to Parcel L, as considered with the Project Modification analyzed in the Draft SEIR, but maintain the potential to move a second tower to Parcel M. See Consolidated Response 3 as the comment pertains to the Approved Project addressed in the 2009 EIR.</p> <p>Also see Response to Comment I16-1 regarding seismic risk and other geologic hazards.</p> <p>This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>
<p>There have been numerous fires on the site as a result of unstable chemicals and materials buried underground igniting once the right conditions are met.</p>	<p>I24-5 This comment brings attention to the current issue of fires that have occurred on site. See Response to Comment I24-4 above; neither the Project Modifications or the Revised Project Modifications address changes to Parcel G. The Revised Project Modifications would not exacerbate existing hazardous conditions. The Revised Project Modifications would be required to adhere to the 2009 Mitigation Measures requiring cleanup plans; storage, transport, and disposal of hazardous waste including groundwater, and construction best management plans, which will improve existing conditions. The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>

## I24 Max Matheson

COMMENT	RESPONSE
<p>Any study that is done to ascertain the seismic and environmental viability of that parcel for a giant condo tower should be conducted by a third party paid for by Signature Properties and chosen by the local 5th Avenue Point community.</p>	<p>I24-6 Mitigation measures to address seismic or geologic risks were fully evaluated in Section IV.F, <i>Geology and Soils</i>, of the 2009 EIR. 2009 Mitigation Measure F.1 identified for the Approved Project requires reviews and approvals of each site-specific geotechnical investigation by a third-party registered engineer review and, in part, ensure compliance with current Building Code requirements.</p> <p>The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>
<p>Beyond those concerns, there is also a great cultural concern surrounding the tower proposed for lot G. Directly next to the site is the Shadetree arts community. Shadetree is a historically recognized site which has been battling tooth and nail to preserve the safe and affordable housing they have provided to all walks of Oaklanders for over 40 years. Members of Shadetree are greatly concerned that the condo tower will block out all available estuary views and sun to the area, they have already been told they will be losing their communal garden space and studio space which is on a piece of property only a couple hundred square feet large that Brooklyn Basin is demanding as their own. They have endured everything from neglect and outright disrespect from Signature Properties and are now faced with a monstrosity as a neighbor.</p>	<p>I24-7 See Response to Comment I24-4 above. See Response to Comment A1.2-17 (in Section V.B of this chapter) regarding the assessment of sun and shade patterns at 5th Avenue Point.</p> <p>The comment also includes opinions on the merit of the Project Applicant, which are noted, since it does not address significant environmental issues, specific questions about the analyses, or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>
<p>In addition to all that has been stated above, it is also important to recognize the very real public safety issue surrounding the influx of people to this area. Embarcadero is currently a two lane road hemmed in by 880, railroad tracks and the estuary. Since the opening of the 9th avenue terminal as a palace to recreate, we have seen an increase in traffic and parking to a level no one ever expected.</p> <p>Once all the proposed housing is built, the amount of vehicular traffic will not be sustained in a safe and efficient manner. We will have bottlenecks and backups that will prevent emergency services from reaching their destination, we will have collisions and pedestrian/bicyclist injuries and death.</p>	<p>I24-8 The comment does not provide evidence supporting its assertions of future traffic issues. See Response to Comment I12.2-3 which addresses traffic and parking management concerns, in addition to Consolidated Response 3 that pertains to comments raising concerns about existing conditions. Response to Comment I13.2-5 regarding 5th Avenue improvements. The existing unimproved streets would be improved to the City's public street standards such that 5<sup>th</sup> Avenue would have sidewalks, designated on-street parking, and two 13-foot travel lanes. It would also comply with the Fire Department requirements for access and circulation.</p> <p>In addition, as noted in the Draft SEIR (p IV.B-33) the Project Modifications would occur within the same overall building envelopes as the Approved Project as well as the same Project site and the same Project site plan including streets, sidewalks, bike facilities, intersections, and waterfront access. The 2009 EIR reviewed the Approved Project's potential to interfere with an adopted emergency response or evacuation plan and found the impacts to be less than significant and thus no additional analysis is required.</p>
<p>Signature Properties simply has not done their due diligence in making sure that an increase in population of this size will be sustainable.</p>	<p>I24-9 This comment does not specify or provide evidence supporting its assertion that the additional 600 units analyzed in the Draft SEIR are not sustainable. The Draft SEIR presents analyses relevant to whether or not 600 additional units could be accommodated with the Project Modifications in Section IV.B <i>Transportation and Circulation</i>; Section IV.J, <i>Population and Housing</i>; Section IV.L, <i>Public Services and Recreation</i>; and Section IV.M, <i>Utilities and Service Systems</i>. Chapter II of this document assesses the same for the Revised Project Modifications.</p>

## I24 Max Matheson

COMMENT	RESPONSE
	<p>The comment is noted since it does not address significant environmental issues, specific questions about the analyses, or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>

## I25 Peter McInerney

COMMENT	RESPONSE
<p>This is a letter in opposition to the recent Supplemental Environmental Impact Report issued by the Brooklyn Basin developers. I have lived in the 5th Ave Point Artist Community for the last five years.</p>	<p>I25-1 This comment speaks to the merits of the Proposed Modifications and will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>
<p><b>1. Tower relocation to Parcel L is a direct violation of the Estuary Policy Plan</b> This would have drastic negative impacts on the existing community on 5th Ave, preventing access to direct sunlight and destroying the character of the neighborhood. The SEIR's shade study ends at 3pm, which is a gross oversight and must be amended. A tower in the proposed location would prohibit the use of our community garden and solar power resources.</p>	<p>I25-2 As discussed in Chapter II of this document, the Revised Project Modifications addressed in this document no longer involve the potential tower relocation to Parcel L. See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. The comments are noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p> <p>The commenter is also referred to Response to Comment A1.2-17 in Section V.B of this chapter.</p>
<p>Furthermore, relocating the tower would be in direct contradiction to Oakland's Estuary Plan, which specifically states:</p> <p><u>Policies that promote preservation and expansion of the Fifth Avenue Point community should be carefully applied, so as not to adversely affect property values, or inadvertently change the very essence of what makes it unique.</u> (Estuary Policy Plan OAK-4.1)</p> <p>The developer already has viable sites for the towers closer to the freeway that can easily mitigate these concerns, so they must be compelled to use them.</p>	<p>I25-3 See Response to Comment I25-2 above.</p>
<p>An adequate traffic study has not been done that examines the increased vehicle flow from these towers, creating both safety and nuisance issues.</p>	<p>I25-4 The commenter is directed to Response to Comment I12.2-3, which addresses traffic and parking management concerns. In addition, as noted in the Draft SEIR (p IV.B-33) the Project Modifications would occur within the same overall building envelopes as the Approved Project as well as the same Project site and the same Project site plan including streets, sidewalks, bike facilities, intersections, and waterfront access. The 2009 EIR reviewed the Approved Project's potential to interfere with an adopted emergency response or evacuation plan and found the impacts to be less than significant and thus no additional analysis is required. The Project Modifications would have no new or substantially more severe impacts than disclosed in the 2009 EIR. In</p>

## I25 Peter McInerney

COMMENT	RESPONSE
<p>Lastly, although the 5 towers have already been approved it must be noted that it is still a disastrous idea in the face of seismic danger...</p>	<p>addition, the SEIR discloses that the Revised Project Modifications' 600 units would result in 2,515 daily trips and discusses the significant traffic impacts of the Approved Project, which would not significantly worsen with the Project Modifications.<sup>2</sup> (See Response to Comment I12.2-3 above). Further, the Project site is in a low-VMT areas, making it an appropriate location to add density in a manner that does not increase VMT.</p> <p>I25-5 See Consolidated Response 3 regarding comments received on the Approved Project. Also see Response to Comment I16-1 regarding seismic risk and other geologic hazards.</p>
<p>...and the ongoing sea-level rise due to climate change. The city should not be supporting new development on landfill that is destined to be under water in thirty years.</p>	<p>I25-6 Regarding sea level rise, as described in Draft SEIR Section IV.D, <i>Hydrology and Water Quality</i>, no change is proposed to the number or height of the Approved Project towers or the Approved Project's site in terms of land uses, overall development areas, circulation plan or drainage plans that would affect sea level rise effects on the site. Therefore, the Revised Project Modifications also would not change impacts regarding sea level rise risk or contribute to sea-level rise. In addition, the conclusion regarding the potential impact to surface water and groundwater quality is the same as identified in the 2009 EIR.</p>
<p><b>2. Marina expansion would destroy the last natural shoreline in Oakland</b>  This is an opportunity to preserve the last existing piece of natural shoreline between Berkeley and San Leandro - it's that important. This small wetland area is host to numerous avian and aquatic species and holds inherent value through ecosystem services. The wetland should be protected for enjoyment by wildlife and the public, not the select wealthy few with a mega-yacht slip. The public wants to be able to come to a wetland park and have views of wildlife and the open water, not mega-yachts.</p>	<p>I25-7 This comment urging the City not to support the Project Modifications addresses merits of the Project and will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p> <p>As discussed in Chapter II of this document, the Revised Project Modifications addressed in this document no longer involve expansion of the Approved Project marina near existing wetlands, aside from the publicly accessible landing dock near the Ninth Avenue Terminal Building. See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. See Chapter II which discusses the proposed landing dock. The comments are noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

<sup>2</sup> The Draft SEIR analyzed 2,830 daily trips associated with the Project Modifications, only 2,515 of which would be associated with the 600 residential units. The remaining 315 daily trips were associated with the marina expansion which is no longer proposed.

## I25 Peter McInerney

COMMENT	RESPONSE
<p>There has already been questionable dealing between the developer and the city with land buybacks. Now they're asking for an additional 10 acres of public space (open water and shoreline) for free. What has the developer done to deserve this? What services are they offering to the public to merit such a hand-out? None.</p> <p>They want to make more money by charging rich people to park their yachts, making it harder for the general public to use public water resources.</p>	<p>I25-8 As indicated above, the Revised Project Modifications no longer involve expansion of the Approved Project marina. The publicly accessible landing dock near the Ninth Avenue Terminal Building would add approximately 0.25 acres of open water area to the site instead of 10 acres considered with Project Modifications addressed in the Draft SEIR. The Revised Project Modifications include many of the characteristics as the No Project Alternative 2, the No Marina Expansion Alternative.</p> <p>Moreover, the commenter's opinion is noted; however, this comment concerns the merits of the Proposed Modifications. See Consolidated Response 1 pertaining to comments on merits. The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>
<p>Please use this opportunity to exercise your oversight power for the good of the people of Oakland, not the for-profit developers.</p>	<p>I25-9 The comment is noted since it does not address significant environmental issues, specific questions about the analyses, or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>

## I26 Mike Perlmutter

COMMENT	RESPONSE
<p>The document on p 2 and 387 describes the No Marina Expansion as the Superior Environmental Alternative, and I am voicing support for that.</p> <p>San Francisco Bay has lost approximately 80% of its tidal wetlands due to development. Those that remain must be protected and restored.</p>	<p>I26-1 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Project Modifications. Decision makers will have access to this comment and others expressing support for alternatives to the Project Modifications.</p> <p>Moreover, the Revised Project Modifications omit the proposed expanded marina, as would the No Marina Expansion.</p>
<p>I have worked for years on various San Francisco Bay wetland conservation projects as an ecologist, and have published articles on the subject, such as this Encyclopedia article describing the San Francisco Bay Estuary.</p> <p>Much of the Oakland shoreline has been altered and hardened. Wetlands that remain are that much more critical as wildlife habitat, soft shoreline protection against storms and sea level rise, and for their natural aesthetic value.</p>	<p>I26-2 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Project Modifications. Decision makers will have access to this comment and others expressing support for alternatives to the Project Modifications</p>

## I26 Mike Perlmutter

COMMENT	RESPONSE
<p><b>The wetlands of Clinton Basin should be protected.</b></p> <p>The Draft EIR does not go into detail about the wetlands, and while it clearly describes the No Marina Expansion alternative as environmentally superior for reasons of wetland and aquatic habitat protection, the Draft EIR inconsistently states no wetland loss (p93) from the full development proposal and then mentions potential off-site wetland restoration mitigation at Channel Park (p252).</p> <p>It is curious why the marina expansion proposal did not consider a smaller footprint that would exclude and not impact the wetlands. That would be consistent at least with environmental laws which prioritize avoidance of impacts over mitigation.</p>	<p>I26-3 The Revised Project Modifications no longer involve the Approved Project marina expansion in proximity to the wetlands restoration and enhancement in Clinton Basin. See Consolidated Response 2 regarding comments on project elements that are no longer proposed. The commenter’s statement is noted; however, this comment concerns the merits of the Proposed Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Project Modifications.</p> <p>I26-4 See response A1.2-13 (Section V.B of this chapter) and regarding biological resources and wetland mitigation measures that will pertain to the Revised Project Modifications. Also see the updated <i>Biological Resources</i> analysis in Chapter II.</p> <p>I26-5 See Response to Comment I14-2.</p>

## I27 Stewart Port

COMMENT	RESPONSE
<p>1. Is it possible to see written comments that have been submitted so far in response to the current DSEIR? I am particularly interested in anything from BCDC, or the Army Corps of Engineers.</p>	<p>I27-1 The release of this Response to Comments / Final EIR document is the public release of all comments on the Draft SEIR. See Comment Letters A1.1 and A1.2 (in Section V.B of this chapter and Appendix B) from BCDC; no comments were received from the Army Corps of Engineers. All submitted comments are part of the public record and available by making a Public Records Act request to the City Clerk.</p> <p>This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.</p>
<p>2. In his introductory presentation, Eric from Zarsion / OHP mentioned a Community Benefits Agreement that had been made in connection with the proposed changes. A community benefits agreement is also mentioned in the Staff Report included in the NOP from 10/17/2018. How would one go about learning more about this agreement? Has it been submitted as part of OHP’s proposal?</p>	<p>I27-2 The community benefits agreement for the Project Modifications is developed separately from the CEQA process and is a legally binding contract between the Project Developer and representatives from the community.</p> <p>This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as a part of</p>

## I27 Stewart Port

COMMENT	RESPONSE
<p>3. Until about three years ago, I had been receiving written notice via USPS of all Planning Commission proceedings concerning the Brooklyn Basin project and the Oak-to-Ninth District. (Three copies in fact: one each for my business, myself as a participant in various hearings and public fora, and in my capacity as contact person for the Fifth Avenue Waterfront Community Alliance.) More recently, I have had to rely on the kindness of strangers, and my careful attention to signs posted on fences and lamp-posts to stay current. Can I be placed (just once this time) on a contact list? Hard copies would be ideal, but email would suffice,</p>	<p>the record and made available to the decision makers prior to a final decision on the proposed Project.</p> <p>I27-3 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. It is noted for the record and staff action. Members of the public may access project information and request notifications on the City's website, <a href="https://www.oaklandca.gov/projects/brooklyn-basin-formerly-oak-to-ninth-mixed-use-development">https://www.oaklandca.gov/projects/brooklyn-basin-formerly-oak-to-ninth-mixed-use-development</a>.</p>

## I28 Kate Rannells

COMMENT	RESPONSE
<p>The expansion of housing units and slips exceeds the capabilities of the existing AND proposed infrastructure in terms of traffic, light, sound, and water pollution. The whole area shuts down when there (used to be) Warriors victory parades in DOWNTOWN OAKLAND, and during every flea market or event at Laney.</p>	<p>I28-1 See Response to Comment I1-3.</p>
<p>With the constrictions of the shoreline, the freeway, and the railroad there is no actual space for all the potential people and their multiple cars to exist here. People will drive regardless of the public transit options. There is no way to believe that the traffic isn't going to be a total nightmare with 3100 new units, let alone 3700, and people driving their boat trailers to a crowded marina, or to events at the parks.</p>	<p>I28-2 The transportation analysis was conducted in compliance with the City of Oakland Transportation Impact Review Guidelines (City of Oakland, 2017) in effect at the time of the NOP dated in 2018. These guidelines describe the transportation studies necessary to address both CEQA and non-CEQA topics. The CEQA transportation topics are addressed in Draft SEIR Section IV.B Transportation and Circulation (p. IV.B-1 through IV.B-40) and the non-CEQA topics are addressed in Appendix C of the Draft SEIR.</p> <p>See Response to Comment I1-4 which addresses the Project Modifications trip generation compared to the Approved Project. Notably, the Project Modifications propose adding 600 units rather than 3700 units as suggested by the commenter; 3100 units have already been approved. The commenter is also directed to the Draft SEIR (Appendix C) that documents the non-CEQA topic, Intersection Analysis. Per Table 3 in the Draft SEIR Appendix C the combination of the Approved Project plus the Project Modifications would result in some increase in intersection delay compared to the Approved Project. But, even with some increase in delay all the intersection Level of Service would remain the same which indicates a minor impact to traffic operations.</p> <p>As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve expansion of the Approved Project marina.</p> <p>The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a</p>

## I28 Kate Rannells

COMMENT	RESPONSE
<p>The proposed increase of slips at the marina in Clinton Basin is not sustainable for wildlife. The increase in the number of boat slips will pollute the narrow waterway at Clinton Basin with fecal matter, oil and trash until it will become a pollution soup and destroy the meaning of the tiny sliver of existing protected wetlands, which even disappears from some of the maps.</p>	<p>part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p> <p>I28-3 The Revised Project Modifications no longer involve the Approved Project marina expansion in proximity to the wetlands restoration and enhancement in Clinton Basin. See Consolidated Response 2 regarding comments on project elements that are no longer proposed.</p> <p>The commenter’s statement is noted; however, this comment concerns the merits of a portion of the Proposed Modifications that is no longer proposed and thus raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Project Modifications.</p>
<p>There is no way that this amount of pollution will not affect the wildlife in the mudflats and wetlands. The San Francisco Bay area is a place of crucial breeding, nesting, and habitat for so many aquatic species. The build-up of the shoreline means that there will not be refuge, or filtration sites, or brackish water for breeding for countless species. The only real sustainable future for the shoreline is wetlands, which will not only protect wildlife, but also protect the shore from flooding from the INEVITABLE sea rise which will corrode buildings and destroy infrastructure, and back up sewage systems, further polluting the bay.</p>	<p>I28-4 See Consolidated Response 2 and 3. The Revised Project Modifications no longer involve work in proximity to wetlands. However, see Response to Comment A3-2 (in Section V.B of this chapter) and Response to Comment O1-9 (in Section V.C of this chapter) addressing shoreline wildlife. Also see the updated <i>Biological Resources</i> analysis in Chapter II. See Response to Comment I11-2 regarding sea-level rise.</p>
<p>There is no way that this whole area from the freeway to the shore, which is fill-land, will not become thixotropic (the technical term for “turn into pudding”) in the next big earthquake, destabilizing or destroying everything on top.</p>	<p>I28-5 See Response to Comment I16-1 regarding the analysis if seismic risk and other potential geologic hazards, including liquefaction.</p>
<p>In an effort to prevent this collapse the driving of support piling deep enough will create an intolerable amount of sound for humans and wildlife alike, no matter what the mitigation purports to be. Bass frequencies travel through solid objects quite easily. The fish and marine mammals are affected by sound on the land as well as in the sea, more to the point, it is intolerable to make that level of noise where people are living already. We lived through the freeway repair. We know what it means. There is no way to live with that level of sound.</p>	<p>I28-6 See Response to Comment I13.2-24 regarding pile driving effects and mitigation. Response to Comment A3-2 specifically considers potential impacts from construction of the Project Modifications on special-status aquatic species.</p> <p>Some of the comment addresses existing conditions, so see Consolidated Response 3 as well.</p>
<p>Wetland protection is impossible with the expansion of the marina, or indeed a creation of a marina. There has been a long history of illegal boat wrecking and dumping in Clinton Basin, and if any of it is dredged an unknown amount of toxic materials (of unknown origin) would be stirred up, and released into the bay.</p>	<p>I28-7 See Consolidated Response 2 and 3. The Revised Project Modifications no longer involve work in proximity to wetlands. However, see Response to Comment A3-2 (in Section V.B of this chapter) and Response to Comment O1-9 (in Section V.C of this chapter) addressing shoreline wildlife. Also see the updated <i>Biological Resources</i> analysis in Chapter II.</p>
<p>Wetland mitigation is proposed to be located in another place in the bay altogether, which is not how wetlands work.</p>	<p>I28-8 The comment is noted. The 2009 EIR requires compensatory mitigation, which can include offsite wetland creation, as part of Mitigation Measure 1.2e. It is too late to challenge this mitigation measure. CEQA Guideline section 15370(e) provides that mitigation may include “[c]ompensating for the impact by replacing or providing</p>

## I28 Kate Rannells

COMMENT	RESPONSE
<p>The shoreline will become rigid, filled with polluting boats and the benefit of the existing mudflat wetlands will be destroyed, for wildlife (who do not know that their new place is now in the south bay) and for protection from flooding with the inevitable sea rise. This whole project is based on historic flooding, not on future projections.</p>	<p>substitute resources or environments, including through permanent protection of resources in the form of conservation easements.” Accordingly, CEQA allows offsite mitigation, including the creation or preservation of wetlands in a different location than the impacted wetlands. This comment concerns the merits of the Proposed Modifications and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Project Modifications.</p> <p>I28-9 See Response to Comment I28-7 above.</p>
<p>So much of this Brooklyn Basin (formerly Oak to Ninth) project from the beginning has been to promise one thing and then later behind closed doors to change it entirely. Starting with the changing of the California State Constitution to allow for the sale of public land for private benefit. The idea that the community would be able to read a 400-page document about this expansion and only have 45 days with which to respond is another example. We have asked for plan specifics for over a decade, so give us more than a month and a half to respond! So much money has been poured into the project, and the project is continuing to expand, pushing the limits of infrastructure, human and other wildlife habitation, the destruction of lifestyle, the standard of living, and housing for a whole existing vital community, and all for the greed of foreign investors who will never know what they want to destroy. The density of units is being allowed to shift all over the project, but the shift of the highest density and the highest of the towers to RIGHT NEXT to the thriving artists' community at Shadetree (which is only 2 stories high) is a direct effort to force out the existing community, the type of community that Oakland purports to support. It has always been the intent of Michael Ghielmetti Signature Development group and his foreign investors to wipe our existence off the map. Don't make it so easy for them to try.</p>	<p>I28-10 See Response to Comment I5-2 regarding the Draft SEIR process pursuant to CEQA. The remaining comments are noted. As addressed in Consolidated Response 1, they address opinions and merits of the Proposed Modifications and raise neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>
<p>Hence the push for greater density. IT IS ONLY EVER ABOUT MONEY for this project, and to believe otherwise is foolish. The community at Shadetree and 5th avenue have never objected to revitalization and habitation, but on a much-modified scale, following the science of climate change and the proven wealth of protecting communities rather than “redevelopment” and gentrification. NO PART OF THIS PROJECT whether within the existing plan or the proposed expansion is for the actual public benefit or good. This is the displacement of a vibrant community that is currently the home and refuge of so many people who cannot survive in Oakland if they do not live and work here.</p>	<p>I28-11 The commenter’s opinion is noted; however, this comment concerns the merits of the Proposed Modifications. As addressed in Consolidated Response 1, the comments raise neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>

## I29 John Rogers

COMMENT	RESPONSE
<p>SEIR is incomplete, full of vagaries, and public should be allowed to have input before the SEIR is issued. Redo with public input and further research. This is in regards to the very incomplete Supplemental Environmental Impact report issued by the Brooklyn Basin developers. I am a longstanding member (28+ years) of the 5th Ave Point Artist Community, right in the middle of the development area. To my knowledge, at no point in the development of this expansion was any kind of public process initiated. The public outcry at the marina expansion and the privatization of the water's edge alone should be allowed to be vetted by the citizens of Oakland. Go back to square one with this nonsense...</p>	<p>I29-1 The City as prepared the Draft SEIR and this Response to Comments/Final EIR document in accordance Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163. The comment does not specify what aspect of the SEIR it considered incomplete or vague. The analysis in the Draft SEIR focuses on the activities associated with the Project Modifications. This approach is taken because CEQA review has already occurred in the 2009 EIR for the Approved Project. The Project Modifications in the Draft SEIR, and the Revised Project Modifications introduced in this document, do not include any changes to the Approved Project that triggers a supplemental EIR be prepared. The comment is noted.</p> <p>Regarding public input and process, see Response to Comment I5-2 regarding the public notice and review process for the Draft SEIR conducted pursuant to CEQA. As detailed in Response to Comment I8-1, the project modifications were first introduced to the public in the 2021 NOP, and then first referred to as the "Brooklyn Basin Marina Expansion Project" in the June and July 2021 NOAs for the Draft SEIR.</p> <p>The Revised Project Modifications are introduced in this Response to Comments/Final SEIR document and evaluated in Chapter II, pursuant the aforementioned CEQA Guidelines.</p> <p>The remaining comments are noted. As addressed in Consolidated Response 1, they address opinions and merits of the Proposed Modifications and raise neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>
<p><b>Infrastructure is not capable of supporting project as planned, let alone this expansion.</b> To put it bluntly, the infrastructure as created (and existing in the surrounding areas) is woefully inadequate to handle a development of this size, let alone any kind of expansion. No new traffic study has been done. The original EIR states repeatedly that all intersections for miles around will be "significantly impacted" by the development, yet they continue to try to fit 10 pounds of manure into a 5 pound sack.</p>	<p>I29-2 Comments to the "project as planned" are addressed in Consolidated Response 3 regarding comments pertaining to the Approved Project analyzed in the 2009 EIR. The Draft SEIR presents analyses relevant to whether existing infrastructure can accommodate the Project Modifications; specifically see Draft SEIR Section IV.B <i>Transportation and Circulation</i>; Section IV.J, <i>Population and Housing</i>; Section IV.L, <i>Public Services and Recreation</i>; and Section IV.M, <i>Utilities and Service Systems</i>. Chapter II of this document assesses the same for the Revised Project Modifications.</p> <p>The comment suggests a new traffic study is warranted. Transportation impacts that would result from the Project Modifications are discussed in Section IV.B of the Draft SEIR. As discussed in the Draft SEIR, "in accordance with Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 and 15163, the City examined whether the 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" and the impacts associated with the Project Modifications were found to be less than significant. No additional analysis is required. See the discussion of the Revised Project Modifications in Chapter II in this document.</p>

## 129 John Rogers

COMMENT	RESPONSE
<p><b>New traffic study needs to be made taking into consideration one-lane traffic where two lanes were promised, transit corridor on East 12th st and International, and increased population in East Lake District, Alameda, and Jack London Square.</b></p>	<p>I29-3 The transportation analysis was conducted in compliance with the City of Oakland Transportation Impact Review Guidelines (City of Oakland, 2017) in effect at the time of the NOP dated in 2018. These guidelines describe the transportation studies necessary to address both CEQA and non-CEQA topics. The CEQA-transportation topics are addressed in Draft SEIR Section IV.B Transportation and Circulation (p. IV.B-1 through IV.B-40) and the non-CEQA topics are addressed in Appendix C of the Draft SEIR. The non-CEQA topic, Intersection Analysis, considered the one-lane each way configuration of the Embarcadero corridor and determined that the Embarcadero intersections along the Project frontage would operate at Level of Service D or better with buildout of the Approved Project plus the Project Modifications.</p> <p>Project residents, visitors, and employees who use the BRT stops, northbound on International Boulevard at 5<sup>th</sup> Avenue and southbound on East 12<sup>th</sup> Street at 7<sup>th</sup> Avenue, are about 0.6 and 0.7 miles or a 14-minute walk from the Project. (Draft SEIR p IV.B-4).</p> <p>The commenter is referred to Draft SEIR Appendix C which describes the non-CEQA transit characteristics associated the Approved Project and with the Project Modification. The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>If you approve this new proposal, you will be in charge of creating what I can only see as a death trap, with the traffic boondoggle potentially causing a situation where first responders will be greatly hampered by congestion, delaying response to life and death situations such as an active shooter or cardiac arrest victim. The developers promised two lanes of traffic (with the acknowledgment that the Embarcadero Bridge would be a bottleneck) but instead we have one lane going each way. The development is only beginning to fill up and already we see back-ups happening along Embarcadero and 5th ave. Throw a train into the mix and it quickly becomes a hot mess. Any kind of evacuation in the event of a gas leak or major disaster would certainly be out of the question.</p>	<p>I29-4 As described throughout the Draft SEIR, the analysis in the Draft SEIR focuses on the activities associated with the Project Modifications. This approach is taken because CEQA review has already occurred in the 2009 EIR for the Approved Project, including identification of environmental effects, feasible mitigation measures, and feasible alternatives. The Project Modifications/Revised Project Modifications would not alter the Approved Project's circulation, parking or transportation plan related to site access. The 2009 EIR reviewed the Approved Project's potential to interfere with an adopted emergency response or evacuation plan and found the impacts to be less than significant and thus no additional analysis is required.</p> <p>The commenter is referred to Response to Comment I29-3 for a discussion of intersection operations on Embarcadero with one lane each way. As noted in the response the Embarcadero intersections all operate at LOS D or better with buildout of the Approved Project and the Project Modification. Embarcadero was improved as part of the Approved Project to accommodate two lanes each way with Class II Bike Lanes although the City directed the Contractor to install striping with one lane each way until such time that two lanes are needed. The Draft SEIR evaluated safety issues related to transportation and concluded that the Project Modifications would not create any new or substantially more severe significant impacts compared to the Approved Project.</p>

## I29 John Rogers

COMMENT	RESPONSE
<p><b>Parking needs to be examined more closely, including expanded marina proposal as well as the success of the new park and events happening there. Public transit is limited to BB shuttle, no bus stop has been planned, foot transit to BART or Bus is subject to increase in crime.</b> Parking has already become an issue, with events at the 9th ave Terminal overflowing up and down Embarcadero including into our area at 5th ave Point, and now the developers want to include over 100 new boat slips on top of the 600 units. The new park is terrifically successful, but again, no infrastructure has been provided for this. I'm not sure how .75 parking spaces per unit became the new standard in the city, but it is simply not realistic. California is still a car culture. With no dedicated bus stop (as clearly noted in the SEIR) there is simply no realistic access to Rapid Transit. Walking to and from Lake Merritt BART station is simply an invitation to get robbed. Crime in Oakland has not disappeared, but statistically gotten worse.</p>	<p>I29-5</p> <p>As described throughout the Draft SEIR, the analysis in the Draft SEIR focuses on the activities associated with the Project Modifications. This approach is taken because CEQA review has already occurred in the 2009 EIR for the Approved Project, including identification of environmental effects, feasible mitigation measures, and feasible alternatives. The Project Modifications/Revised Project Modifications do not include any changes to the Approved Project's site plan including site access intersections as well as on-site streets, sidewalks, bike facilities, intersections, and waterfront access.</p> <p>As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve expansion of the Approved Project marina, aside from the publicly accessible landing dock near the Ninth Avenue Terminal Building. They also received on March 31, 2022, a PX Permit for crosswalk improvements including an RRFB that when completed connects the parking and the Brooklyn Basin Site. The improvements are in response to the success of the new passive park.</p> <p>The City's TIRG identify parking supply and demand as non-CEQA transportation topic. The commenter is referred to Draft SEIR Appendix C which describes the non-CEQA parking supply and demand characteristics of the Approved Project and associated with the Project Modification. The analysis concludes that if no TDM strategies were implemented, residential parking supply for the Project Modifications would be inadequate and the likely outcome is that people with less need for an automobile would self-select to live in the residential units. The Project Modifications, however, are required to include an extensive TDM Plan promoting walking, bicycling, and transit as well as access to BART. For example, unbundled parking, a TDM strategy required by the City, has been estimated to reduce car ownership rates up to 38 percent, dependent on monthly parking fees assessed. In addition, the Project provides a shuttle between the site and BART. As a result, it is likely that parking demand can be effectively managed through an effective TDM Plan, unbundled parking fees and residents self-selecting to live at the Project site because they do not own a car and so do not require a parking space.</p> <p>The commenter is correct that transit service is not provided adjacent to the site. Residents, visitors, and employees who use BART, for example, would need to walk about 18 minutes to access the Lake Merritt BART Station (Draft SEIR p IV.B-4). There are also continuous bicycle facilities connecting the site and the Lake Merritt BART station which would reduce travel time to about 7 minutes. The Approved Project is required through its Conditions of Approval to provide a shuttle bus connecting the Project site to the BART station for residents, visitors, and employees which would reduce travel time to about 5 minutes (see Response to Comment O2.1-10 in Section V.B of this chapter), and this Condition would apply to the Project Modification. People would be unlikely to drive between the Project site and BART because there are fewer than 200 parking spaces available for BART riders and all spaces have been reserved through BART's permit parking program. Furthermore, BART plans to remove the parking to accommodate redevelopment of the BART station area.</p>

## I29 John Rogers

COMMENT	RESPONSE
<p>Moving tower block to either side of the end of 5th ave Point in direct violation of Estuary Policy Plan stating the 5th ave Point Artist's Community is to be "preserved and enhanced". Seismic viability should be further examined in detail as doubling the number of tower blocks at the end of 5th ave Point has never been examined. To add insult to injury, the proposal included in the SEIR to move a light-killing Tower Block further toward the water on the Phase 3 area completely ignores the Estuary Policy Plan's specific verbiage stating that the integrity of the 5th ave Point Artist's Community is to be "preserved and enhanced". It calls for a ziggaraut style of building around our community that specifically addresses the issue of light blockage, and now they want to kill the sky for not only our community, but the rest of Phase 3 and 4 of their own development.</p>	<p>Regarding the comment suggesting that foot traffic to BART or the bus is subject to increase in crime, CEQA does not require analysis of existing conditions unchanged by the Project. . Quality of life issues, such as crime, will be considered as part of the City's planning considerations for the Project</p> <p>Overall, the comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications</p> <p>I29-6 As discussed in Chapter II of this document and in addressed in Consolidated Response 2, Revised Project Modifications no longer include the potential tower relocation to Parcel L and therefore would not cast periodic new shadow on portions of the Fifth Avenue Point at certain times day and year, which would have occurred with the Project Modifications analyzed in the Draft SEIR. Further, as analyzed in the Draft SEIR, the potential tower relocation to Parcel M would not result in shadow effects that are different from those presented in the Draft SEIR.</p> <p>See Response to Comment I16-1 regarding the analysis if seismic risk and other potential geologic hazards.</p> <p>Also see Response to Comment A1.2-17 (in Section V.B of this chapter) regarding the assessment of sun and shade patterns of the Project Modifications and the Revised Project Modifications and consistency with applicable plans and policies.</p>
<p>The shadow study suspiciously ends at 3pm every day. This needs to be revised to include the impact of not only the new tower placement, but also the placement and height of all buildings in Phases 3 and 4. This is not only for our thriving community, but also the residents of Oakland as a whole. Humans need open sky, not gigantic luxury high-rises only available to the very rich. Put the tower blocks along the freeway edge of the development if they need to exist at all. And I very much question the need for their existence, except to make a very small number of people very rich, give the wealthy a place to gaze down on the worker bees, and to block out the light to the residents of the East Lake District and beyond.</p>	<p>I29-7 As discussed above, the Revised Project Modifications no longer include the potential tower relocation to Parcel L; see Consolidated Response 2. Therefore, the Revised Project Modifications would not cast periodic new shadow on portions of the Fifth Avenue Point at certain times day and year, which would have occurred with the Project Modifications analyzed. See Response to Comment A1.2-17 (in Section V.B of this chapter).</p>
<p>There is also the question of whether the area is seismically fit to accommodate such elements right along the waters edge. Further in detail studies need to be made.</p>	<p>I29-8 See Response to Comment I16-1 regarding the analysis if seismic risk and other potential geologic hazards.</p>
<p>Expanded Marina will destroy rich habitats and obstruct views of the water and SF from successful new park. Claim of scant biodiversity needs to be seriously reexamined.</p>	<p>I29-9 The Revised Project Modifications no longer involve the Approved Project marina expansion near wetlands, aside from the publicly accessible landing dock near the Ninth Avenue Terminal Building. Nor do the Revised Project Modifications involve the potential tower relocation to Parcel L. Therefore, the Revised Project Modifications would not affect existing habitats nor alter public views. See Consolidated Response 2</p>

## I29 John Rogers

COMMENT	RESPONSE
	<p>regarding comments on changes no longer proposed with the Revised Project Modifications. See Chapter II which discusses the landing dock still proposed.</p> <p>Response to Comment A3-2 (in Section V.B of this chapter) and Response to Comment O1-9 (in Section V.C of this chapter) addressing existing conditions and effects to species and habitat in the area. Also see the updated <i>Biological Resources</i> analysis in Chapter II.</p>
<p>Others will address the proposed marina expansion in depth, but I must say that it sickens me to think of the impact the at 150+ more luxury pleasure craft will have on the avian and waterborne residents of the small ecosystem known as Clinton Basin.</p>	<p>I29-10 The comment is opinion and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>Petrochemical and sewage discharge from boats is inevitable, let alone the disruptive noise caused by boats going in and out. The developers have publicly stated their hatred of the protected wetlands area which has been protected by the state IN PERPETUITY as reparations after the mess the Port of Oakland made with their destruction of the Moby Dick back in 1999. The developer's proposal drawings include a COMPLETE ERASURE of this area, replacing it with a walking path and more rip-riff. In my mind, the proposal to wrap the marina around this area solidifies their intent to sterilize the entire shoreline.</p>	<p>I29-11 The Revised Project Modifications no longer include the Approved Project marina, expansion, aside from the publicly accessible landing dock near the Ninth Avenue Terminal Building. See Consolidated Response 2 regarding comments on changes no longer proposed with the Revised Project Modifications. Also see Consolidated Response 3 regarding comments on the Approved Project marina analyzed in the 2009 EIR.</p> <p>The commenter's assertions of the Project Applicant's intentions raise neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>In addition, the massing of masts of crafts wrapping around the new park would destroy the view of the water and SF now enjoyed by folks just getting used to having some nice views... The SEIR's claim that there is very little biodiversity is complete nonsense, obviously written by someone who has never been down to the waterside at all. I would urge an expansion of the wetlands as opposed to a reduction of them as all of the area from here from here to Jack London square is quickly being sanitized... Mega-Marshland, not Mega-Marina!!</p>	<p>I29-12 See Response to Comment I29-9 above regarding views and biological resources.</p> <p>Other parts of the comment are suggestions for aspects of the Project Modifications, which do not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## I29 John Rogers

COMMENT	RESPONSE
<p>Moving of tower block, the expanded marina, and increased density (and this development in general) will annihilate a community that has given cities around the world an immense amount of joy. In all, this development is marching toward a similar elimination of our community, a community that has provided an untold quantity of art and music to the Bay Area and beyond. Anish Kapoor's "Cloudgate", the epic mirrored stainless steel sculpture in Millennium Park in Chicago was created here, as well as numerous other of his works scattered around the globe, from NYC to Jerusalem. My own "Undercurrent" light sculpture below the 12th St Bridge was created here with Measure DD funding. The giant baseball glove at ATT park was built here, as well as endless music and art that has rippled outward from our small enclave into the entire world. Globe-trotting music tours have been launched from here, and art made that has circled the globe. We are a thriving artist community, we need our light, we need respect. The rest of Oakland does as well.</p>	<p>I29-13 The comment is noted. It raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## I30 Teri Sage

COMMENT	RESPONSE
<p>I'm a 14 year resident of the 5th Ave. waterfront community, and I have major concerns regarding the proposed modifications to the Brooklyn Basin's development project, as they would severely impact, and possibly up-end my community. Even in its incipient phases, the magnitude of the development has already had a negative impact on the neighboring community, with regard to traffic, after-hours construction noise, air quality, and lack of access to previously free and open stretches of waterfront. Now the developer is asking the city to make an amendment to the Estuary Policy Plan and to change a zoning code to increase the permitted average residential density in order to accommodate the hefty expansion they hope to tack on to the existing plans.</p>	<p>I30-1 The comment addresses existing conditions, therefore see Consolidated Response 3. Also see Consolidated Response 1 since parts of the comment address merits of the project, which raise neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>
<p>Presumably, zoning standards are developed with public safety in mind. Pre-established zoning codes shouldn't be on the table for hasty modifications, based on the whims of big developers, who may be more profit driven than safety driven. The proposed expansions to the project come across as imprudent, greedy and unnecessary, considering that this is already the largest approved development project in Oakland since WW2.</p>	<p>I30-2 The comment speaks to the proposed amendment to the zoning code to increase the permitted average residential density in the PWD-4 zoning district from 50 to 58 dwelling units per gross acre, as needed to increase the total number of units on the site with the Project Modifications and Revised Project Modifications. In response to the concern that the process for public consideration of this proposal has been "hasty," see Response to Comment I5-2 regarding the public notice and review of the Draft SEIR pursuant to CEQA.</p> <p>Also see Consolidated Response 1 since parts of the comment address merits of the project and do not require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>

## I30 Teri Sage

COMMENT	RESPONSE
<p>The areas that I find the most worrisome are the impacts of:</p> <p><b>1) Tower relocation</b>~ seismic and geological issues, as well as shadow impact on the adjacent property.</p> <p><b>2) Traffic and parking</b>~ inadequate road infrastructure to accommodate traffic caused by the influx of 1000's new residents and event-goers, and very inadequate roads for emergency vehicle access, or in the event of a mass evacuation of residents from this area; it is a choke point with only one lane in either direction on all roads leading to and from the project site, where likely over 6000 new people are about to reside.</p>	<p>I30-3 As discussed in Chapter II of this document and is addressed in Consolidated Response 2, Revised Project Modifications no longer include the potential tower relocation to Parcel L and therefore would not cast periodic new shadow on portions of the Fifth Avenue Point at certain times day and year, which would have occurred with the Project Modifications analyzed in the Draft SEIR. Further, as analyzed in the Draft SEIR, the potential tower relocation to Parcel M would not result in shadow effects that are different from those presented in the Draft SEIR.</p> <p>See Response to Comment A1.2-17 (in Section V.B of this chapter) regarding the assessment of sun and shade patterns of the Project Modifications and the Revised Project Modifications. Also see Response to Comment I16-1 regarding the analysis if seismic risk and other potential geologic hazards.</p> <p>See Response to Comment I13.2-5 regarding street improvements and emergency egress. Also see Response to Comment I1-5 regarding parking supply and demand within the context of CEQA.</p>
<p>(*all blue text below is a direct quote, cited from the 2005 Draft EIR, the 2021 SEIR or the Estuary Policy Plan)</p> <p><b>Regarding tower relocation (to Parcel L) and the current shade study:</b></p> <p>The current study ends at 3 and is therefore incomplete. No approval should go through without a new, comprehensive shade study, examining the impact it will have on the adjacent property- Shadetree.</p> <p>Relocation to Parcel L would, in fact, have a SIGNIFICANT impact on the lives and well-being of all residents of the Shadetree live/work property on 5th ave. point. PLEASE do not approve the proposal to move a large tower to LOT L, as it is immediately adjacent to Shadetree's building and would effectively block out any direct sunshine at any time of day. This would adversely affect our ability to continue growing food and would alter the existing greenery throughout our property. We have also considered eventually converting to solar power as funds become available, but this would become an impossibility if the tower is placed on Lot L. Please adhere to the original plan, keeping the tower on Parcel H or J, where the shade and visual impacts would be worked out within the project design for those lots, and <b>would not adversely affect an already existing community</b>. There is no good reason to place this tower as close as it could possibly be to an already existing residence. If the development wishes to preserve our community as they claim, this is a really bad look, and is a direct contradiction to the following assessment:</p>	<p>I30-4 (Blue text is shown in the original Letter I1-30 in Appendix B to this document.)</p> <p>See Response to Comment I30-3 above regarding tower relocation and shade study.</p> <p>Other aspect of the comment address opinion and merits of the project. Therefore, the comments are noted and do not require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>

## I30 Teri Sage

COMMENT	RESPONSE
<p><b>Table II-2 SDEIR: Summary of Impacts, Standard conditions of Approval, Mitigation Measures and Residual Impacts; Section IV-K Aesthetics, Shadow and Wind</b></p> <p>Impact AES-4: Project modifications would not cast a shadow that would substantially impair a nearby use reliant on sunlight</p> <p><b>Regarding tower relocation and geology, soils &amp; seismicity concerns:</b></p> <p>Due to the type of fill and the nature of the soil on the entire project site, which consists of “poorly engineered artificial fill of varied depth and thickness,” (Section IV.F- 8-20. 2005 Draft EIR) combined with compressible Bay Mud and presence of historic sloughs, buried foundations and former marshes, the project site is vulnerable to multiple seismic hazards, such as strong potential for:</p> <ul style="list-style-type: none"> <li>● <b>differential settlement-</b> “New Fill and structural loads would cause a new cycle of primary consolidation to occur, with the settlement depending on the magnitude of the load and thickness of Bay Mud: the amount of settlement is anticipated to be significant. Differential settlement is often the most damaging and could occur at the site, due to liquefaction, variations in the thickness of the fill and Bay Mud...(IV.F-17. 2005 Draft EIR)</li> <li>● <b>severe ground shaking</b></li> <li>● <b>Liquefaction-</b> “the project site is located within a Seismic Hazard Zone for liquefaction, as designated by the California Geological Survey. (IV.F-11. 2005 Draft EIR)</li> </ul> <p>A 24 story tower will put a significant structural load on the ground fill under and around the tower. It seems imprudent to place 24 story towers anywhere on the project site, but certainly, relocation should not be approved without first doing a new parcel-specific geotechnical investigation of the ground in the vicinity of where the tower would be relocated-- especially if said tower is moved to the proposed location on Parcel L, which is directly adjacent to the Shadetree live/work building and could pose dangerous seismic consequences to the building and/or foundation of the existing property. Differential settlement also has the potential to cause damage to gravity utilities on the Shadetree property by flattening the gradient or changing the direction of flow.</p>	<p>I30-5      See Response to Comment I30-3 above regarding shadow. See Response to Comment I16-1 regarding the analysis if seismic risk and other potential geologic hazards.</p>

## I30 Teri Sage

COMMENT	RESPONSE
<p><b>Regarding traffic and parking with relation to an additional 600 residential units and 158 boat slips:</b></p> <p>The most recent traffic study was done in Dec of 2018, which, as stated in the SEIR, was conducted during a time in which the Embarcadero Bridge had been shut down for 3 years for bridge retrofit. The 3 yr. shutdown significantly altered the traffic flow through the intersection at 5th. Ave and Embarcadero, such that many people learned to take alternate routes during those years. Therefore, the traffic study conducted during the bridge closure is completely inadequate to have assessed traffic patterns for that time in 2018 and certainly inadequate to estimate the impact of an additional 6000 or more people once the project is complete.</p> <p>A new study needs to be done under current and realistic (non pandemic) rush hour conditions. Even before there were 3100 new residences at Brooklyn Basin, there was always a major back-up along Embarcadero during rush hour. The 2005 report gives the intersection at 5th Ave and Embarcadero an F, indicating it is an intersection with “extreme congestion, and very high delays and long queues unacceptable to most drivers.” (section IV. B-9. 2005 Draft EIR). The report states that heavy eastbound traffic flow back then was around 500 vehicles during each peak hour. (IV. B-8). Any commuter who works in San Francisco and lives in the Brooklyn Basin or Jack London area is contributing to this eastbound clog in the afternoon, or westbound clog in the mornings. Even if said commuters use BART or bus, the nearest station is a 20-25 minute walk (1 mile) from Brooklyn Basin; many will still likely drive to park their vehicles at BART or hire a ride to get to BART, therefore still contributing to peak hour congestion in this area. No local bus service directly serves this site.</p>	<p>I30-6</p> <p>The transportation analysis was conducted in compliance with the City of Oakland Transportation Impact Review Guidelines (City of Oakland, 2017) in effect at the time of the NOP dated in 2018. These guidelines describe the transportation studies necessary to address both CEQA and non-CEQA topics. The CEQA-transportation topics are addressed in Draft SEIR Section IV.B Transportation and Circulation (p. IV.B-1 through IV.B-40) and the non-CEQA topics are addressed in Appendix C of the Draft SEIR.</p> <p>The non-CEQA topic, Intersection Analysis, considered the one-lane each way configuration of the Embarcadero corridor as well as the additional turn lanes and signalization changes at the Embarcadero intersections that were required as mitigation for the Approved Project. The intersection traffic data used in the analysis reflected 2018 intersection traffic counts which were adjusted to account for the Embarcadero Bridge closure at the time of data collection. The adjusted 2018 intersection traffic counts were then evaluated to establish the existing intersection operations as well as operations with the Approved Project traffic and the additional traffic from the Project Modifications. As noted in Appendix C (Table 3) of the Draft SEIR the Embarcadero intersections all operate at LOS D or better with buildout of the Approved Project and the Project Modification. While the analysis shows that the intersections along Embarcadero and the Project frontage operate at LOS D or better, Embarcadero was improved as part of the Approved Project to accommodate two lanes each way with Class II Bike Lanes. The City, during construction, directed the Contractor to install striping with one lane each way until such time that two lanes are needed.</p> <p>The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>Another important thing to note here is that train tracks used by Amtrak and Union Pacific run parallel to Embarcadero along the project site. Amtrak alone runs 38 trains through daily. Union Pacific has no set schedule, but when it goes through, traffic going up and down 5th ave is cut off, sometimes for longer than 5 minutes, depending on the length of the train-- this is a major obstacle for emergency vehicle access during peak hours. Also take into account that the new boardwalk at Brooklyn Basin has become a major hotspot for hundreds and sometimes thousands of non-residents every weekend and whenever events are held. There are now major traffic jams in the area every Sunday during events.</p>	<p>I30-7</p> <p>There are two nearby fire stations that can access the Project when the at-grade 5<sup>th</sup> Avenue railroad crossing is blocked. Fire Station No. 2 would use Embarcadero and is between 1.0 and 1.5 miles to the Project depending on destination. Fire Station No. 4 would use the 16<sup>th</sup> Avenue overcrossing and is between 1.2 and 1.7 miles to the Project depending on destination. Without a train blocking 5<sup>th</sup> Avenue Fire Station No. 2 would use 5<sup>th</sup> Avenue and is between 1.0 and 1.3 miles to the Project depending on location.</p> <p>As noted in the Draft SEIR (p IV.B-33) the Project Modifications would occur within the same overall building envelopes as the Approved Project as well as the same Project site and the same Project site plan including streets, sidewalks, bike facilities, intersections, and waterfront access. The 2009 EIR reviewed the Approved Project’s potential to interfere with an adopted emergency response or evacuation plan and found the impacts to be less than significant and thus no additional analysis is required.</p> <p>See Response to Comment I12.2-3 regarding traffic management concerns.</p>

## I30 Teri Sage

COMMENT	RESPONSE
<p>In order to moderately improve the flow of traffic in this bottleneck and, most importantly, for the safety of new and existing residents, additional lanes in each direction should be added to Embarcadero between Oak st and 16th ave, as was recommended in the mitigation measures in the 2005 Draft EIR. At present, there is only a single lane in each direction going along this section of Embarcadero from Oak to 16th Ave. It is a choke point and could be a death trap if 3700+ people ever needed to evacuate in a hurry.</p> <p>The 2005 Draft EIR traffic study found that the project would significantly impact certain intersections. In specific reference to the intersection at Embarcadero and 5th Ave, it states that:</p> <p><i>“The project site plan does not provide sufficient capacity for this intersection. A modification of the project site plan would be needed to add additional lanes on Embarcadero and to restripe 5th. Avenue to provide sufficient capacity at this location.</i></p> <p><i>Mitigation Measure B.2j: Widen Embarcadero to provide two travel lanes in each direction along the project site frontage (i.e., from north of 4th ave to 9th ave), with separate left-turn lanes provided at the intersections, and provide appropriate lane configurations on the streets that intersect Embarcadero within the above-cited limits. The project applicant shall pay for this measure.” (section IV.B-40)</i></p>	<p>I30-8 See Response to Comment I30-6 regarding intersection operations along Embarcadero with the Approved Project and the Approved Project Plus Project Modification.</p>
<p>The same assessment is made for the intersection at Embarcadero and I-880 Northbound off-ramp. These are the 2 intersections nearest to the Brooklyn Basin Development, and this part of the mitigation measure has NOT been adhered to. Embarcadero from Oak to 5th Ave was shut down for 3 years for the bridge reconstruction. The Bridge is in fact wider, but mostly due to a very wide sidewalk for pedestrians on either side. There is still only one lane for each direction of traffic along Embarcadero until 16th ave, so due to the lack of mitigation measures currently in place to address the significant traffic impact of the originally proposed 3100 new units, it would be foolish and very poor planning to slap on an additional 600 dwelling units, plus an additional 158 marina slips with no additional traffic or parking mitigation measures on the table.</p>	<p>I30-9 See Response to Comment I30-6 regarding intersection operations along Embarcadero with the Approved Project and the Approved Project Plus Project Modification.</p>
<p><b>Regarding the parking plan in general: .75 spaces per unit?!!</b></p> <p>Some, if not many households will likely have more than one vehicle, so the ratio of spaces to residents is severely inadequate and there is no bus access! It is entirely unrealistic to assume that everyone will ride a bike or hire a ride to get to their apartments-- especially if they are families with children or are elderly or disabled. Though we'd all like to live in a world where less people drove cars, we can't assume that providing fewer parking spaces will magically cause residents to give up their vehicles. It will more likely result in Brooklyn Basin resident</p>	<p>I30-10 The City's TIRG identify parking supply and demand as non-CEQA transportation topic. The commenter is referred to Draft SEIR Appendix C which describes the non-CEQA parking supply and demand characteristics of the Approved Project and associated with the Project Modification. The analysis concludes that 0.75 parking spaces per residential unit is provided and if no TDM strategies were implemented, residential parking supply for the Project Modifications would be inadequate and the likely outcome is that people with less need for an automobile would self-select to live in the residential units. The Project Modifications, however, are required to include an extensive TDM Plan promoting walking, bicycling, and transit as well as access to BART. For example, unbundled parking, a TDM strategy required by the City, has been estimated to reduce</p>

## I30 Teri Sage

COMMENT	RESPONSE
<p>parking to spill over into surrounding areas, thus placing a burden on surrounding communities, as is already the case.</p>	<p>car ownership rates up to 38 percent, dependent on monthly parking fees assessed. In addition, the Project provides a shuttle between the site and BART. As a result, it is likely that parking demand can be effectively managed through an effective TDM Plan, unbundled parking fees and residents self-selecting to live at the Project site because they do not own a car and so do not require a parking space.</p> <p>See Response to Comment I12.2-2 addressing the weekend parking issues and Response to Comment I12.2-3 addressing traffic and parking management concerns.</p>
<p>Again, I have to mention the new boardwalk's weekend traffic impact. There are major traffic jams every Sunday throughout the surrounding neighborhoods caused by the heavy influx of event-goers looking for non-existent parking.</p>	<p>I30-11 See Response to Comment I12.2-2 addressing the weekend parking issues and Response to Comment I12.2-3 addressing traffic and parking management concerns.</p>
<p>Nothing about this proposed project expansion sits right. It is shamelessly greedy and lacks any concern for the impact it would have on the neighboring communities or the wildlife that inhabits the area. I could go on, but this letter is already lengthy, so I'll close with a section from the Estuary policy plan that the developer has continuously turned a blind eye to, but that I hope the Oakland Planning Commission will kindly take into consideration:</p> <p><b>Preserving the 5th ave. community:</b> <i>Preserve and expand the existing Fifth Avenue Point community as a neighborhood of artists and artisan studios, small businesses, and water-dependent activities. West of Clinton Basin, the Fifth Avenue Point community is one of Oakland's most unique neighborhoods. It has nestled among declining waterfront industrial uses, creating a spark of life and activity. The artisan work that takes place there is an economic asset which is valuable for local residents. In addition, the existing work/live units within the Fifth Avenue artisan village contribute to the inventory of affordable studio spaces within Oakland. These units should be maintained and reinforced through the provision of additional units, including artist and artisan work/live studios and small light industrial and water-dependent businesses. A limited amount of retail and restaurant use, such as the existing Seabreeze Cafe, should also be promoted within the area. It should be noted that enclaves such as this are rarely planned. Rather, they develop through the spontaneous vision and dedication of creative, entrepreneurial property owners and residents. By their very nature and character, these enclaves are economically fragile. Policies that promote preservation and expansion of the Fifth Avenue Point community should be carefully applied, so as not to adversely affect property values, or inadvertently change the very essence of what makes it unique. (Estuary Policy Plan OAK-4.1)</i></p>	<p>I30-12 The comment is noted. It raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The Draft SEIR analyzed the consistency of the Project Modifications with applicable plans and policies, including the Estuary Policy Plan. (Draft SEIR, p. IV.A-10.) The Revised Project Modifications no longer include the tower relocation to Parcel L or marina expansion. Thus the conclusion in the Draft SEIR and the 2009 EIR that the Project Modifications are consistent with the policy to preserve the Fifth Avenue Point community remains unchanged. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## I31 Elizabeth Sher

COMMENT	RESPONSE
<p>We live in Jack London Square. We are very opposed to allowing the Brooklyn Basin Development to expand. Below are some of our reasons:</p> <p>1. The development is already overly dense. The promised open space is limited to a swath along the estuary and not the park spaces pictured on the original plans</p>	<p>I31-1 The comment is noted; see Consolidated Response 3. The comment suggesting changes/reduction of open space is unclear; as presented in Table II of the Draft SEIR and in Chapter II of third document, neither the Project Modifications nor the Revised Project Modifications involve changes to the configuration or acreage of open space considered with the Approved Project in the 2009 EIR.</p> <p>The comments raise neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>2. Particularly in our "climate changed" environment, wetlands are more important than ever. This expansion would encroach on the wetlands there.</p>	<p>I31-2 The Revised Project Modifications no longer involve expansion of the Approved Project marina, aside from the publicly accessible landing dock near the Ninth Avenue Terminal Building. Therefore, no aspect of the Revised Project Modifications will occur near wetlands. See Consolidated Response 2 regarding comments on modifications no longer proposed. Also see Consolidated Response 3 regarding comments on the Approved Project marina analyzed in the 2009 EIR.</p> <p>The comments raise neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>Across the country and around the state communities who have destroyed wetlands have experienced increased flooding and due to sea rise have waters coming over the banks and onto the sidewalks. NOTE - many of these communities are now struggling with how to bring back these protective natural environments - not to mention the life within them.</p>	<p>I31-3 The comments raise neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p> <p>However, see Response to Comment A1.2-11 (in Section V.B) regarding flooding risk.</p>
<p>3. Brooklyn Basin is not easily accessible to any public transportation or grocery store.</p> <p>Rocky's Market cannot service this large tenant community so tenants either have to drive or order grocery delivery..</p>	<p>I31-4 See Response to Comment I13.2-4 and Response to Comment O2.1-10 (in Section V.B of this chapter) which address transit service to the Project.</p> <p>The Project Modifications would increase the housing unit count from 3,100 units with the Approved Project to 3,700 units with the Project Modifications. As discussed in Chapter II of this document, after publication of the Draft SEIR, the Project Applicant elected to revise the originally proposed Project Modifications, which no longer involve expansion of the Approved Project marina.</p> <p>The commenter is directed to Table IV.B-4 in the 2009 EIR which notes that the Approved Project at buildout would generate about 27,110 daily vehicle trips and these trips include vehicle trips to and from a grocery store. The Project Modifications would generate about 2,830 daily vehicle trips per the Draft SEIR Table IV.B-1 (p IV.B-27) which represents about 10 percent of the daily vehicle trips that would be generated by</p>

### I31 Elizabeth Sher

COMMENT	RESPONSE
<p>Both of these options will increase the already dismal traffic situation, not to mention the lack of parking for any visitors to the amenities, restaurants, stores or open space</p> <p>4. Doubling the boat slips is not a necessary amenity for most low and middle income tenants. It is purely a marketing tool for higher end prospective tenants. This is not what is being promoted as increasing housing in Oakland and the Bay Area. Even more importantly this outrageous increase in boat traffic in the estuary will cause harmful environmental damage to the estuary and cause traffic problems for kayakers, swimmers, etc. For all of these reasons and more, we hope you will not allow this expansion/land grab. Thank you for considering denying the expansion.</p>	<p>the Modified Project (Approved Project plus the Project Modifications) at buildout. As noted in the Draft SEIR (p IV.B-33) the Project Modifications would occur within the same overall building envelopes as the Approved Project as well as the same Project site and the same Project site plan including streets, sidewalks, bike facilities, intersections, and waterfront access. The Approved Project as part of its Conditions of Approval provides a shuttle bus service between the site and the Lake Merritt BART Station to offset the lack of AC Transit bus service to the site (Response to Comment O2.1-10 in Section V.B of this chapter).</p> <p>The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p> <p>I31-5 See Response to Comment I12.2-2 which address weekend parking for visitors to the Project amenities. See Response to Comment I12.2-3, which addresses traffic.</p> <p>I31-6 The Revised Project Modifications no longer involve expansion of the Approved Project marina, aside from the publicly accessible landing dock near the Ninth Avenue Terminal Building. Therefore, no aspect of the Revised Project Modifications will increase in-water activity or water surface area compared to that analyzed with the Approved Project addressed in the 2009 EIR or the Project Modifications in the Draft SEIR. See Chapter II in this document and see Consolidated Response 2 regarding comments on Project Modifications evaluated in the Draft SEIR but that are no longer proposed with the Revised Project Modifications.</p> <p>The comment toward the decision makers does not address significant environmental issues or specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the Revised Project Modifications.</p>

### I32.1 Donna Smithey

COMMENT	RESPONSE
<p>We've scoured through documents, and may have missed this, but how many residential units are proposed for "towers" at 22?</p>	<p>I32.1-1 See Response to Comment I15-8.</p>

## I32.2 Donna Smithey

COMMENT	RESPONSE
In particular the Shadetree community is adversely and negatively impacted by many elements of the Brooklyn Basin project including losing its driveway access to the building courtyard when the historical driveway easement was “removed” in favor of the Brooklyn Basin developers.	I32.2-1 See Response to Comment I15-1.
Proposed designs for 5th Avenue ignore our historical community and setbacks and	I32.2-2 See Response to Comment I15-2.
... parking are badly neglected nor assessed adequately for negative impacts on Shadetree. The proposed development revised plans as reviewed in the DSEIR have ignored the impacts on this vital part of the 5th Avenue Point community.	I32.2-3 See Response to Comment I15-2.
Addition of 600 units to parcels K, L, and M:	I32.2-4 See Response to Comment I15-3.
1. Do not add 600 units to parcels K, L, and M. Increasing the number of units for parcels K, L, and M from the current proposal (after allowed unit “swaps” between parcels) from 607 to 1207 creates extreme density and will cause extensive adverse effects on streets, infrastructure, and the fragile 5th Ave Point community. If 600 additional project units are added, they should be scattered across all remaining development parcels.	
2. Failure to add additional affordable units with the increased density request. If 600 additional units are approved, the 20% should be affordable.	I32.2-5 See Response to Comment I2-2 regarding affordable housing.
3. The requested amendment to the Estuary Plan to increase unit density from 50 to 58 is an illusion since the density is applied to the entire project. This is misleading because the density for parcels K, L, and M will be vastly higher if 60 units are added to just these parcels.	I32.2-6 See Response to Comment I15-3 regarding unit density.
4. Page IV.J-10 implies that there is no displacement effect on 5th Avenue Point. This is highly erroneous. Adding market rate units does not create a trickle-down effect of more affordable units emerging within the market generally, and adding more market rate units potentially increases nearby property values significantly. Because the vast majority of 5th Avenue Point and 5th Ave Marina are controlled by one property owner, there is no way to discern if and when property values rise enough that that owner decides to sell. If that should happened, there will be massive displacement of residents and business at the heart of what makes the 5th Ave. community unique and valuable for Oakland.	I32.2-7 See Response to Comment I15-6.
Tower Relocation:	I32.2-8 See Response to Comment I15-7.
5. Relocation of a tower from either H or J to either L or M is unnecessary and creates significant infrastructure challenges and quality of life problems for current residents and businesses.	

## I32.2 Donna Smithey

COMMENT	RESPONSE
<p>6. A tower on either L or M adds an undefined number of units to the parcels. There is no informational readily available in the DSEIR or Development Plan that clearly lays out how many units are in a tower compared to an 8 story building. Is it 400? This number is important because the swap to L or M of additional tower units is above the 600 increased density request. So instead of these parcels being 1207 units, could it be 1600? This issue is not addressed at all and impacts all categories of the report from flooding to traffic to infrastructure and more.</p>	<p>I32.2-9 Same as Comment and Response to Comment I15-8.</p>
<p>7. The Shadowing and Viewpoint studies ignore Shadetree as a JLWQ property. A tower on L would place the Shadetree property in perpetual shade at all times and days of the year. Not only is this a high impact on the light for residents but precludes our current plans to use solar for most of our utility needs. The shadowing studies demonstrate the adverse effects on both Shadetree and all local residents and businesses. The Viewpoint studies completely and totally ignore the Shadetree community and all of 5th Avenue Point.</p>	<p>I32.2-10 Same as Comment and Response to Comment I15-9.</p>
<p>Roadways and Infrastructure:</p>	
<p>8. The design of the roadway, parking, landscaping, and infrastructure on 5th Avenue from Embarcadero to the water is poorly designed, ignores current uses by residents and businesses, and creates a density of traffic and “trips” that are not sustainable and have a highly negative impact on the existing community.</p>	<p>I32.2-11 Same as Comment and Response to Comment I15-10, which address the City of Oakland requirements for a traffic study.</p>
<p>9. The lack of a new traffic study that analyzes both existing conditions compared to projected, but also makes it impossible to adequately comment on this area. The DSEIR approval process should be postponed until an adequate traffic study is completed.</p>	
<p>10. Already events at the Shoreline Park are causing massive traffic and parking problems. Whatever parking is being provided is clearly inadequate,...</p>	<p>I32.2-12 Same as Comment and Response to Comment I15-11.</p>
<p>...and because there is virtually no public transportation on site, parking and roadways are overwhelmed, and local residents and businesses find that it is difficult to access their places, and already barely adequate parking is swamped. Attendees at these events have also been trespassing onto Shadetree’s property and courtyard.</p>	<p>I32.2-13 Same as Comment I15-13 and Response to Comment I15-11.</p>
<p>Marina:</p>	
<p>11. Adding addition Marina slips is wrong on every level and well refuted and addressed by many organizations and knowledgeable individuals.</p>	<p>I32.2-14 Same as Comment and Response to Comment I15-12.</p>

## I32.2 Donna Smithey

COMMENT	RESPONSE
<p>12. Section V-13, VD-D Environmental Superior Alternative, clearly states “In summary, the No Marina Expansion Alternative is considered the environmentally superior alternative as it would avoid and/or a substantially reduce new Biological Resources impact of the proposed Revised Project Modifications to the greatest extent compared to each of the other alternatives, and all meet some of the basic objectives of the Project Modifications.”</p>	<p>I32.2-15 Same as Comment and Response to Comment I15-13.</p>
<p>13. The impact on the existing 5th Avenue Marina is not clearly addressed. Will those slips be eliminated? The 5th Ave Marina plays a vital role in the artisan and cultural life of 5th Ave Point and is one of the remaining affordable boat slip locations in the Bay Area.</p>	<p>I32.2-16 Same as Comment and Response to Comment I15-13.</p>
<p>14. Currently the project proposes that the 5th Avenue Marina be brought up to “world class” standards. Would existing slip renters be relocated during construction Would the existing slip renters be allowed a right to return at affordable rates?</p>	<p>I32.2-17 Same as Comment and Response to Comment I15-13.</p>
<p>15. 5th Ave Marina plans must be made transparent, and the existing community should be involved in decision making. To quote again from the Estuary Plan regarding 5th Ave Point: <b>“Policies..., should be carefully applied so as to not adversely affect property values or inadvertently change the very essence of what makes it unique.”</b></p>	
<p>Infrastructure</p>	<p>I32.2-18 Same as Comment and Response to Comment I15-14.</p>
<p>16. Infrastructure impacts are vastly understated and completely dismiss the need for updated Sea Level Rise accommodations.</p>	
<p>17. Shadetree sites surrounded on all 4 sides by the Brooklyn Basin project, but as Shadetree needs to make its own plans for infrastructure, it has had no access to the plans for Brooklyn Basin nor any information on how infrastructure design and planning will impact Shadetree both currently and in the future.</p>	
<p>General Comments:</p> <p>The most deeply impacted communities, 5th Ave Point and Shadetree, have been ignored for planning and impact. The community benefit plan does not address these communities for support and mitigation of the Brooklyn Basin project in any substantial way.</p> <p>All approvals for the proposed Project Modifications should be postponed until an adequate community engagement process has been initiated and completed with 5th Ave Point residents, businesses and boaters.</p>	<p>I32.2-19 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

### 132.3 Donna Smithey

COMMENT	RESPONSE
<p>I am a resident of 5th Avenue Point and a member of the Shadetree Community. Shadetree is an historical artisan focused live work property at 48 5th Ave. Our property can be found on the Development Plan along 5th Avenue labeled “Not in Project”. The actual dimensions of our parcels are incorrect on that planset. While I have already submitted written comments on the DSEIR, this particular issue deserves a separate letter.</p>	<p>I32.3-1 The introductory transmittal comment is noted.</p>
<p>Late on the night of August 2nd, 2021, a fire occurred on Parcel L just adjacent to the Shadetree driveway. The flames reached over 30’ in the air. The Shadetree fire alarm system was activated, our resident Fire Wardens responded, and residents rushed to the site. Residents used over 30 fire extinguishers to put out the fire. This took approximately 20 minutes. Had the wind been coming from a different direction, Shadetree would have been in imminent danger.</p> <p>By the time the fire department arrived on the scene the flames were out though smoke was still present. Brooklyn Basin security never appeared on the scene, and no one at Shadetree has heard from the developers. Debris from the fire remains.</p> <p>Residents reported a toxic taste and many reported coughing and scratchy throats for several days. The smell of fire smoke lingered in the Shadetree building for a few days.</p> <p>The Fire Marshall and Fire Incident personnel have not done a “cause of fire” inspection, and, it seems, will not.</p> <p>This is the 3rd fire incident on Parcel L over the last as many years. Previous fires were smaller and put out by Shadetree residents, and the debris was immediately removed by the developer.</p>	<p>I32.3-2 The comment describes a fire incident on Parcel L and is noted. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications</p>
<p>Our concern is now that there be an investigation into this fire, the results of any Environmental Studies already done or to be conducted in the future should be publicly released, and any current dangers or threats be immediately mitigated. The residents of 5th Ave Point and Shadetree are justifiably concerned about the toxicity of the site, fire dangers, and other environmental hazards. The DSEIR should be revised to investigate Parcel L more extensively.</p>	<p>I32.3-3 As stated in Section IV H, <i>Hazards and Hazardous Materials</i>, of the Draft SEIR, per the requirements of the 2009 Mitigation Measures, (H.1a, H1.b, H.1c, H.1d, H.1e, H.2a, H.2b, H.2c, and H.2d) the Project Applicant has initiated the preparation of Response Plans, and Implementation Plans addressing each portion of the Project site, and received DTSC approval on these plans (DTSC, 2019). Also, the Draft SEIR contains information necessary to disclose environmental impacts from the Project Modifications. As discussed in Chapter II of this document, the Revised Project Modifications do not involve a potential tower relocation to Parcel L. All development on Parcel L No further investigation of Parcel L or any other part of the Project site is warranted. See Consolidated Response 3 regarding comments that pertain to existing conditions or the Approved Project.</p>

### I32.3 Donna Smithey

COMMENT	RESPONSE
<p>Until the issues with Parcel L are resolved, the property should be put on Fire Watch for the protection of the adjacent residents and businesses.</p> <p>Shadetree has undertaken extensive efforts and expenses to be a safe live/work space. Our residents are trained, we have a Fire Warden system, and elaborate and redundant fire alarm systems. Residents and neighbors are very shaken to have had a blaze of such size literally adjacent to our homes and business.</p>	<p>I32.3-4 The comment is noted. It raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

### I33.1 Patty St. Louis

COMMENT	RESPONSE
<p>NO MEGA MARINA -- RESPECT OUR VIEW AND USE OF THE OPEN WATER WE HAVE A RIGHT TO CLOSELY EXPERIENCE ABUNDANT WILDLIFE</p>	<p>I33.1-1 The Revised Project Modifications no longer involve expansion of the Approved Project marina, which would therefore not change existing public views. The proposed publicly accessible landing dock near the Ninth Avenue Terminal Building would add approximately 0.25 acres of water surface area instead of approximately 10 acres considered with Project Modifications addressed in the Draft SEIR. See Chapter II in this document and see Consolidated Response 2 regarding comments on Project Modifications evaluated in the Draft SEIR but that are no longer proposed with the Revised Project Modifications.</p> <p>The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>STICK TO THE PLAN -- THE ESTUARY POLICY PLAN</p>	<p>I33.1-2 See Response to Comment I4-8.</p>
<p>THIS IS NOT A MODIFICATION, IT'S A SWITCHEROO WHAT'S THE DEAL? UNVEILED AS 50/50 THIS WOULD MAKE IT 40/60</p>	<p>I33.1-3 It is unclear to what the proportions stated in the comment pertain to, so the comment is noted. Regarding the public presentation of the Proposed Modifications and the Revised Project Modifications, see Response to Comment I8-1. Overall, the modifications sought with the Revised Project Modifications are specified in Chapter II of this document.</p>
<p>9TH AVENUE IS THRIVING -- DSEIR IS WOEFULLY INCOMPLETE</p> <ul style="list-style-type: none"> <li>• BARELY A MENTION OF THE WETLAND SITE</li> <li>• NOT DESCRIPTIVE OF PRESENT CONDITIONS</li> </ul>	<p>I33.1-4 The comment alleging that the Draft SEIR is "woefully incomplete" is not specified in this comment; see subsequently individual Responses to Comments below.</p> <p>See Responses to Comments A1.2-13 and O1-2 (in Sections V.B and V.C, respectively) regarding the Clinton Basis Wetland Restoration Project and its location.</p> <p>See Response to Comment A3-2 regarding additional existing setting information, in addition to the <i>Environmental Setting</i> in Section IV.I.1 in the <i>Biological Resources</i> section of the Draft SEIR.</p>

### 133.1 Patty St. Louis

COMMENT	RESPONSE
<ul style="list-style-type: none"> <li>DOES NOT STUDY THE PREFERRED PROJECT</li> </ul>	<p>133.1-5 It is unclear what the commenter refers to as “Preferred Project.” See Response to Comment I14-2 regarding “Alternative 2 - No Marina Expansion Alternative,” which may be what is intended.</p>
<ul style="list-style-type: none"> <li>NO TRAFFIC STUDY INCLUDED</li> </ul>	<p>133.1-6 The transportation analysis was conducted in compliance with the City of Oakland Transportation Impact Review Guidelines (City of Oakland, 2017) in effect at the time of the NOP dated in 2018. These guidelines describe the transportation studies necessary to address both CEQA and non-CEQA topics. The CEQA-transportation topics are addressed in Draft SEIR Section IV.B Transportation and Circulation (p. IV.B-1 through IV.B-40) and the non-CEQA topics are addressed in Appendix C of the Draft SEIR.</p> <p>The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<ul style="list-style-type: none"> <li>WATER TRANSPORTATION TO ALAMEDA IS VERY POPULAR</li> </ul>	<p>133.1-7 The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>NO MARINA BETWEEN BERKELEY AND SAN LEANDRO IS FULL</p> <ul style="list-style-type: none"> <li>158 SLIPS ARE APPROVED, 325 ARE OVERKILL</li> </ul> <p>“THE BEST PLACE IN OAKLAND” -- REGIONAL DESTINATION</p>	<p>133.1-8 See Consolidated Response 2 regarding comments on aspects of the Project Modifications no longer proposed. As discussed in Chapter II of this document, Chapter II of this document describes that the Revised Project Modifications would further comply with the Estuary Policy Plan as the expansion of the Approved Project marina is no longer proposed.</p>
<p>RIGGING IS NOISY</p> <ul style="list-style-type: none"> <li>JAZZ, SALSA, ROLLERSKATE DANCE PARTY IS HAPPENING</li> </ul> <p>THE INNER HARBOR IS A SAFE AND QUIET PLAYGROUND</p> <ul style="list-style-type: none"> <li>PADDLE BOARDERS AND KAYAKERS ARE USING IT NOW, AS IS</li> <li>INVITING TO NOVICE SAILORS AND CAUTIOUS ADVENTURERS</li> </ul> <p>THE MARSHLAND NEEDS OPEN SPACE TO FUNCTION</p> <ul style="list-style-type: none"> <li>PELICANS AND EGRETS ARE FISHING</li> <li>PEOPLE ARE WATCHING AND TAKING PICTURES</li> </ul>	<p>133.1-9 See Consolidated Response 3 regarding comments that pertain to existing conditions or project elements not part of the Project Modifications or the Revised Project Modifications. The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

### I33.1 Patty St. Louis

COMMENT	RESPONSE
<p>OUTREACH FOR THESE COMMENTS IS POOR</p> <ul style="list-style-type: none"> <li>• OBVIOUSLY INTERESTED PARTIES ARE UNINFORMED</li> <li>• STUDIED AND REVIEWED DURING COVID</li> </ul>	<p>I33.1-10 The comment is assumed to pertain to aspects of the public notification and circulation of the Draft SEIR. See Response to Comment I5-2 regarding the Draft SEIR process pursuant to CEQA.</p>

### I33.2 Patty St. Louis

COMMENT	RESPONSE
<p>Herein please find comments on The DSEIR for the Brooklyn Basin Marina Expansion Proposal</p> <p>Please add these to the public record to be entered into the DSEIR for this project and not deflected as comments that are only shared with the developer.</p> <p>Thank you, Ms. Payne, for the skillful way you facilitated the July 21 Planning Commission meeting on the proposed marina expansion at Brooklyn Basin. I especially appreciate that you paused the meeting to clarify someone's misspoken point. It's good for us all to be clear.</p> <p>A lot of new information was brought up during that meeting and I also appreciate the 15 extra days to clarify my concerns.</p> <p>This project should never have been studied. The environment in which you are operating this review is a public process with a decades long history of extensive public input. This marina expansion project is clearly antithetical to all of the objectives set forth during that public input process. The value of public open space, public access to the water, and the public's right to give direction to the City on matters of parks and open space are woefully disregarded in the very suggestion of this megamarina. I feel strongly that the staff should not have allowed this to go through to the SEIR process.</p> <p>I request further clarification on the issue of public notice and the presentation of this project proposal.</p> <p>Specifically:</p>	<p>I33.2-1 This introductory transmittal comment is noted. <i>[Referenced photos in this Comment Letter I-33 are provided in Appendix B to this document].</i></p> <p>I33.2-2 The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p> <p>Also see Response to Comment I33.1-1 and I33.1-2 above with generally addresses the Revised Project Modification's' compliance with the Estuary Policy Plan and overarching topics mentioned in the comment.</p> <p>I33.2-3 See Response to Comment I5-2 and I8-1 regarding the Draft SEIR noticing and project introduction.</p> <p>Members of the public may access project information and request notifications on the City's website, <a href="https://www.oaklandca.gov/projects/brooklyn-basin-formerly-oak-to-ninth-mixed-use-development">https://www.oaklandca.gov/projects/brooklyn-basin-formerly-oak-to-ninth-mixed-use-development</a> .</p> <p>This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. It is noted for the record.</p>

## 133.2 Patty St. Louis

COMMENT	RESPONSE
<p>1. Was there a Oakland public meeting titled: Brooklyn Basin Marina Expansion? I am aware of only a BCDC scoping meeting.</p> <p>2. If so, was I on the list of notified parties?</p> <p>3. If not, please confirm whether or not the project was presented only to the Planning Department staff.</p> <p>4. When was the SEIR ordered by the Commission?</p> <p>I ask because there have been very few meetings on the fate of Clinton Basin and since 1997, I have attended all but one. Likewise, I personally know several people who are on your list of Oak through Ninth / Brooklyn Basin interested parties who were shocked to see the graphic I mentioned in my speaker comments suddenly being used as though it was representative of Brooklyn Basin's future. It is NOT.</p> <p>I clearly have made myself known as an interested party particularly as concerns the wetland restoration project at the Mouth of Clinton Basin. I and other interested parties received no invitation to a City of Oakland meeting to discuss the project proposal prior to the invitation to the July 21, 2021 meeting to discuss the DSEIR.</p>	<p>I33.2-4 See Response to Comment I8-1 regarding the CEQA public noticing and definition of the proposed Project Modifications, referred to as the "Brooklyn Basin Project" and subsequently the "Brooklyn Basin Marina Expansion." Public meetings noticed and held by BCDC regarding its permitting of the Project Modifications are noticed and held separately from those noticed and held by the City of Oakland, lead agency for the CEQA process.</p> <p>Members of the public may access project information and request notifications on the City's website, <a href="https://www.oaklandca.gov/projects/brooklyn-basin-formerly-oak-to-ninth-mixed-use-development">https://www.oaklandca.gov/projects/brooklyn-basin-formerly-oak-to-ninth-mixed-use-development</a> .</p> <p>City staff will add the commenter's email address to the distribution list for any future CEQA public notices for this project upon requests, as follows: Members of the public may access project information and request notifications on the City's website, <a href="https://www.oaklandca.gov/projects/brooklyn-basin-formerly-oak-to-ninth-mixed-use-development">https://www.oaklandca.gov/projects/brooklyn-basin-formerly-oak-to-ninth-mixed-use-development</a> .</p>
<p>Since 1997, I have been volunteering as the shoreline clean-up coordinator, I was the whistle blower that initiated the mitigation project that resulted in the Clinton Basin Wetland Enhancement Project and I have now officially adopted the place through the amazing City of Oakland Adopt-A-Spot program.</p> <p>I care very deeply for this place and I have served as your boots in the mud down there for more than two decades pulling tires, shopping carts, mattresses, boat demolition debris, flotsam and jetsam out of the inter-tidal zone. I am very familiar with the place over seasons and I have observed with my own eyes a vast amount of biodiversity contrary to what seems to be stated in the BIO portion of this DSEIR.</p> <p>I find it not interesting, concerning and conniving to mention that no species on the endangered list would be significantly impacted by the project and fail to give a comprehensive description of what is there now. This week, as often they do, terns and pelicans have been diving exactly where the awkward finger of docks are proposed in front of the restoration project. In one day I saw a harbor seal, a jellyfish, a ray, schools of small fish, lots of water birds, and rabbits.</p> <p>Attached are pictures of the Clinton Basin project twenty years ago and today. With \$64,000 and no maintenance program whatsoever, the shoreline has restored itself to a thriving marshland.</p>	<p>I33.2-5 See Response to Comment A3-2 (in Section V.B of this chapter) and Response to Comment O1-9 (in Section V.C of this chapter) addressing shoreline wildlife. Also see the updated <i>Biological Resources</i> analysis in Chapter II.</p> <p>The remainder of the comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## I33.2 Patty St. Louis

COMMENT	RESPONSE
<p>Your contract with the developer clearly states that they are supposed to clean up the project site and maintain our parks.</p> <p>It also states that they are supposed to hold town hall meetings on Clinton Basin and they have not.</p>	<p>I33.2-6 The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>I look forward to designing the Superior Alternative project with you.</p> <p>As the Estuary Policy Plan and the General Plan dictate you do, let's study and move forward with the building of a low cost/high gain mega-marshland wrapping the entirety of the Fifth Avenue point peninsula.</p>	<p>I33.2-7 The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>I.A.1</p> <p><i>The Project Modifications site is the same...with the addition of approximately 10 acres of water surface area.</i></p> <p>so, it's not the same</p> <p>surface area is a flat plane, obviously, boat parking occupies the depths of the water below it. The very nature of this extension of the project area into the open water space would add complications that are beyond the scope of this project and would make a change significant enough to preclude it from being described as a modification. When you have modified something beyond recognition, you no longer have a modification.</p> <p>Correct and forthcoming language: The Project Modification site differs from the Approved site by adding 16% additional overall space to the project area in the form of 10 acres out into the open water.</p> <p>Water area by its very nature is not surface area, it includes its depths.</p>	<p>I33.2-8 The Revised Project Modifications no longer involve expansion of the Approved Project marina. As described in Chapter II, the proposed publicly accessible landing dock near the Ninth Avenue Terminal Building would add approximately 0.25 acres of water surface area instead of approximately 10 acres considered with Project Modifications addressed in the Draft SEIR.</p> <p>See also Response to Comment I4-8. Also see Consolidated Response 2 regarding comments on Project Modifications evaluated in the Draft SEIR but that are no longer proposed with the Revised Project Modifications.</p>
<p>No you haven't worked with many community groups, this is not supportive of the community</p> <p>California canoe and kayak knows nothing of this and has confirmed that novice kayakers would have difficulty navigating the marina</p>	<p>I33.2-9 Regarding navigation of the marina by in-water recreation canoers/kayakers, the Revised Project Modifications no longer involve expansion of the Approved Project marina. The publicly accessible landing dock will occur near the Ninth Avenue Terminal Building, as considered in the Draft SEIR. See Consolidated Response 2 regarding comments on modifications no longer proposed.</p> <p>The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## I33.2 Patty St. Louis

COMMENT	RESPONSE
<p>Starting with the massing and development area are not changed they are increased by 10 acres!</p> <p>It's a relief to finally get a chance to speak to you about this hair-brained idea of a mega marina in our quiet Inner Harbor. Of course it would have a significant impact. It changes the whole concept of the area</p>	<p>I33.2-10 As described in Chapter II of this document, the Revised Project Modifications no longer involve expansion of the Approved Project marina. As described in Chapter II, the proposed publicly accessible landing dock near the Ninth Avenue Terminal Building would add approximately 0.25 acres of water surface area instead of approximately 10 acres considered with Project Modifications addressed in the Draft SEIR.</p> <p>Also, as assessed throughout Chapter II, the Revised Project Modifications would not result in any <i>new</i> significant impacts compared to those identified for the Approved Project in the 2009 EIR.</p>
<p>My feathers have been ruffled about this since 2018 when we were first bombarded with the idea at two simultaneously held public meetings. Apologies were made back then and accepted for that scheduling snafu.</p> <p>But it is egregious and not so easily forgiven that at those two meetings, a concept illustration was suddenly being used titled "Master Plan" with no clear explanation that what we were actually looking at was merely a proposal.</p> <p>This graphic suddenly and confoundingly replaced the Open Space with Views to the Estuary concept that we had been working with for more than two decades prior, beginning with the 1993 League of Women Voters initiative to take back our waterfront for public open space use.</p> <p>This switcheroo is confusing to people like myself who have so generously given 24 years of community input service and deceptive to those who are new to the process. I am confident that there are protocols that prevent you from presenting false or conniving information and that illustration and this DSEIR are full of false and conniving information.</p>	<p>I33.2-11 The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p> <p>Also, all exhibits shown in the Draft SEIR accurately reflect the approved and proposed projects analyzed in each environmental document.</p> <p>The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>The EIR does not <i>offer a meaningful description of the project area or reference the joint city of alameda the estuary crossing study</i></p>	<p>I33.2-12 See Response to Comment A3-2 regarding additional existing setting information, in addition to the <i>Environmental Setting</i> in Section IV.I.1 in the <i>Biological Resources</i> section of the Draft SEIR.</p> <p>Each environmental topic section in the Draft SEIR describes the topic's environmental and regulatory setting, which includes updates and changes to conditions since preparation of the 2009 EIR.</p>
<p>I cannot understand why this proposal was even entertained by an EIR as it floats so blatantly opposed to ALL of the objectives of our Estuary Policy Plan. You put the cart before the horse on this one and are wasting everyone's summer vacation reviewing it.</p>	<p>I33.2-13 The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## I33.2 Patty St. Louis

COMMENT	RESPONSE
<p>I hope that the feedback you receive makes it clear that multitudes of people would band together and stand up to prevent such a breach of the public's trust. Let's not hear of it again and let's get on with more appropriate summer time discussions like not losing the A's</p>	<p>I33.2-14 The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications</p>
<p>The wetland restoration project requires a wide berth into the open water space around it and the full depths of the channel where water birds dive. It's not wise to park boats between an anchovy and a pelican.</p> <p>The marshland is thriving as is, kayaks are abundant as is, Township Commons is being called the Best Place in Oakland. You'd be hard pressed to come now and try and draw a curtain of boat rigging between the roller skaters and the paddle boarders or drown out the fresh and fancy sounds of jazz, salsa and dance party dj's with the noisy clanking of privatized yacht parking.</p> <p>my mom is willing to go all Julia Butterfly on you and anchor herself in a canoe near the wetland and order take out until you stop this crazy idea and refocus your relationship with the Brooklyn Basin developers.</p> <p>they are our parks maintenance guys, not our open space concept designers.</p> <p>That is our job, our right, and our responsibility to protect.</p> <p>I get it, a developer's vocation is to imagine what can be built in empty spaces.</p> <p>But to ogle our Shared Public Open Space in that way is unprofessional, lecherous, creepy, and sad.</p> <p>Maybe if you spend some time there you will realize how incongruous and utterly hyperbolic 325 boat slips would be. Of course it would significantly impact the area.</p>	<p>I33.2-15 As described in Chapter II of this document, the Revised Project Modifications no longer involve expansion of the Approved Project marina, aside from the publicly accessible landing dock near the Ninth Avenue Terminal Building. Therefore, no aspect of the Revised Project Modifications will occur near wetlands. See Consolidated Response 2 regarding comments on project elements no longer proposed.</p> <p>The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>There are empty slips in every marina between San Leandro and Berkeley and we are already expecting 52 new boat neighbors in the refurbished Clinton Basin marina.</p> <p>Sadly, it shows that these developers don't see the value of the wetland habitat or of sharing open space.</p> <p>Urban wild places do not function abstractly on a developer's map.</p> <p>They act organically through the serenity we take back home to our communities and smiles which help relieve the pressures of our daily lives.</p> <p>Please reject the EIR. PLEASE REJECT the project</p> <p>[Excerpt of Brooklyn Basin Phase 3-4 Parks – South Park and Channel Park document]</p> <p>[6.6 Habitat Enhancement Project; WaterKeepers Settlement.]</p>	<p>I33.2-16 The comment does not include significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## I34 William Threlfall

COMMENT	RESPONSE
<p>The Marina Expansion Project summary indicates that the project incorporates the “Clinton Basin Wetland Restoration and Enhancement Project”, an existing Port of Oakland mitigation project on the west shore of the mouth of Clinton Basin. This Port of Oakland project was designed to improve the habitat value for shore birds, gulls, ducks, and other avian life that frequent the area. It is shown on the attached South Park Illustrative Plan.</p> <p>The original August 2005 Oak to Ninth Project DEIR included this language: “<u>Clinton Basin Wetland Restoration and Enhancement Project</u>. In addition to new and permanent open space areas, the project would maintain the existing Clinton Basin Wetland Restoration and Enhancement Project wetland restoration area at the west shore at the mouth of Clinton Basin (Figure III-6). <b>No changes are proposed to this resource as part of the project.</b>”</p>	<p>I34-1 As described in Chapter II of this document, the Revised Project Modifications no longer involve expansion of the Approved Project marina, aside from the publicly accessible landing dock near the Ninth Avenue Terminal Building. Therefore, no aspect of the Revised Project Modifications will occur near wetlands. See Consolidated Response 2 regarding comments on project elements no longer proposed.</p> <p>The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p> <p>[South Park Illustrative Plan, Response to November 2006 BCDC Design Review Comments, April 23, 2007]</p> <p>[Figure III-6, Previously Approved and Proposed Marina Modifications]</p>
<p>However, the June 2021 SEIR, if approved, will allow construction of a set of connected floating structures including marina slips and floating ramps that create a wall between the wetlands and open water. The proposed slips and ramps are highlighted in red on Figure III-6, attached. I urge consideration of the following questions about floating marina proposed in front of the wetland restoration area:</p>	
<p>Can the project design be properly reviewed without detailed information about the slips, ramps, fences, lighting, and other proposed structures?</p>	<p>I34-2 The Revised Project Modifications involves the publicly accessible landing dock proposed near the Ninth Avenue Terminal Building, not near existing wetlands. As described in Section II.C.4 and illustrated in Figure II-2, <i>Proposed Landing Dock and Water Taxi Access Layout</i>, in Chapter II of this document. The physical and operational specifics described are adequate to evaluate the potential environmental impacts of, and required mitigation measures applicable to, the modified landing dock option described in Chapter II, compared to impacts of the Approved Project in the 2009 EIR. No further detail or analysis is warranted for the Draft SEIR.</p>
<p>Are the proposed structures consistent with the conditions of DESIR Impact BIO-4, especially 2009 Mitigation Measure I.2b: Wetland Avoidance?</p>	<p>I34-3 See Consolidated Response 3 regarding comments on the Approved Project. See Response to Comment I1-1 regarding the analysis and mitigation measures regarding wetland areas considering the Revised Project Modifications.</p>
<p>How would the biological performance of the wetland and the health of its wildlife be affected by these proposed structures?</p>	<p>I34-4 See Response to Comment A3-2 (in Section V.B of this chapter) and Response to Comment O1-9 (in Section V.C of this chapter) addressing shoreline wildlife. Also see Response to Comment I1-1 regarding the analysis and mitigation measures regarding wetland areas considering the Revised Project Modifications.</p>
<p>How would the floating structures affect the ongoing deposition of silt and sand that is a design objective of the existing wetland?</p>	<p>I34-5 The publicly accessible landing dock with the Revised Project Modifications assessed in Chapter II of this document is not located near existing wetlands or Clinton Basin. Since the Approved Project marina will continue to be improved as analyzed in the 2009 EIR, the associated required dredging of contaminated sediment will still occur. Consolidated Response 3 regarding comments on the Approved Project.</p>
	<p>No aspect of the Revised Project Modifications analyzed in this document involve work in Clinton Basin or dredging.</p>

## I34 William Threlfall

COMMENT	RESPONSE
How would noise, artificial light, and physical activity associated with these structures affect wildlife?	<p>I34-6 Potential noise effects and mitigation measures on biological resources resulting from the Revised Project Modifications are discussed in Response to Comment I13.2-24 and in Chapter II of this document.</p> <p>Potential effects resulting from lighting and physical activity of the Revised Project Modifications are discussed in Response to Comment A3-2 (in Section V.B of this chapter); Response to Comment O1-9 (in Section V.C of this chapter); and Response to Comment I1-1.</p>
How would public views of open water from South Park be affected?	<p>I34-7 See Response to Comment A1.2-6 regarding views, in Section V.B of this chapter. Also see the assessment of Revised Project Modifications on public views, in Chapter II of this document.</p> <p>[South Park Illustrative Plan, Response to November 2006 BCDC Design Review Comments, April 23, 2007]</p>
<p>Would the project adversely affect or disrupt the performance and effectiveness of the existing Port of Oakland mitigation?</p> <p>See: Impact LU-4: <i>“The Project Modifications would not fundamentally conflict with any applicable habitat conservation plan or natural community conservation plan. (Criterion D)”</i></p>	<p>I34-8 See Response to Comment A1.2-13 in Section V.B of this chapter.</p>
Clearly, the proposed project treats the existing wetland very differently than the 2009 project, and the DSEIR is not correct in saying “The conclusion for the Project Modifications is the same as identified in the 2009 EIR.”	<p>I34-9 See the <i>Biological Resources</i> evaluation of the Revised Project Modifications in Chapter II of this document. Also see Response to Comment A1.2-13 (in Section V.B of this chapter) wetland mitigation measures that will pertain to the Revised Project Modifications.</p>
Thank you for considering these questions. I urge the Commission to reject any design that includes new floating marina structures near the South Park wetlands.	<p>I34-10 The comment conveys the commenter’s position on the project’s merits of the Project Modifications. It neither significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

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# CHAPTER VI

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## Responses to Public Hearing Comments

### VI.A Introduction

This chapter summarizes verbal comments received on the Draft SEIR at the City of Oakland Planning Commission meeting held on Wednesday, July 21, 2021. Responses are presented to summarized verbal comments.

As described in Chapter III, *Roster of Commenters*, each comment is identified by an alphabetic designation that corresponds to the category of commenter, such as “PH” for Draft EIR public hearing, and a number follows the alphabetic designation to designate the sequence of the commenter submissions (e.g., “PH-7” for the seventh speaker at the public hearing). Comments by discrete topic are identified by a numeric designator that reflects the numeric sequence of the topic raised (e.g., “PH-7-3” for the third topic raised by the seventh speaker).

As in Chapter IV, responses focus on comments that pertain to the adequacy of the analysis in the SEIR or to other aspects pertinent to the potential effects of the Project on the environment pursuant to CEQA. Comments that address topics beyond the purview of the SEIR or CEQA are noted as such for the public record. If comments have triggered changes to the Draft SEIR, these changes appear as part of the specific response and are consolidated in Chapter 7, *City-Initiated Updates and Errata to the Draft SEIR*, where they are listed in the order that the revision would appear in the Draft SEIR document. Some of the topics raised are addressed in the consolidated responses in Chapter 4, *Consolidated Responses*, as referenced in the responses below.

## VI.B Public Hearing

### PH.1 Patty St. Louis

COMMENT	RESPONSE
Not many community groups have been approached on this. It is not supported by the community	PH.1-1 See Response to Comment I5-2 in Chapter V, Section D.
California Canoe and Kayak had no idea about the project. California Canoe and Kayak confirmed that novice kayakers would have a difficult time navigating the marina	PH.1-2 See Response to Comment I33.2-9 in Chapter V, Section D.
The development area would not be unchanged; the project adds ten acres of public open water space which constitutes a change to the project area	
This would be a mega marina in the quiet inner harbor. It would have a significant impact because it changes the whole concept of the area	
In 2018 there were two simultaneously held public meetings which was a scheduling snafu. Egregious that at the two meetings, a concept illustration was subtly being used titled Master Plan with no clear explanation that what was being shown was merely a proposal.	
The graphic suddenly replaced the open space with views to the estuary concept that they had been working with for more than two decades. The switch was confusing to those who have given community service input and is deceptive to those who are new to the project. The illustration and the DSEIR are full of false and conniving information.	
Does not offer a meaningful description of the project area or reference the joint city of alameda crossing study.	PH.1-3 See Response to Comment I33.2-12 in Chapter V, Section D and Response to Comment A3-2 in Chapter V, Section B.
Why was the proposal even entertained by an EIR? It blatantly opposes the goals of the Estuary Policy Plan.	PH.1-4 See Response to Comment I4-8.in Chapter V, Section D.
People will stand up to prevent a breach of the public’s trust	PH.1-5 See Response to Comment I33.2-14 in Chapter V, Section D.
Wetland restoration project requires a wide berth into the open water space around it and full depths of channel for bird feeding, boats would stand in the way of this.	PH.1-6 See Response to Comment I33.2-15 in Chapter V, Section D.
Marsh is thriving as-is. Kayaks are abundant. Township commons is being called the best place in Oakland.	
Hard pressed to draw a curtain of boat-rigging between recreational activities and drown out the jazz with privatized yacht parking.	

## PH.2 Markita Vanjay

COMMENT	RESPONSE
<p>Willing to anchor themselves to canoe near the wetlands to stop the project</p> <p>Brooklyn Basin developers are parks maintenance guys not open space concept designers.</p> <p>Our job and right to protect the open space</p> <p>To ogle shared open space in that way is unprofessional, etc.</p> <p>Incongruous and hyperbolic for 325 boat slips. It would significantly impact the area. There are already empty slips and they are already expecting 52 boat neighbors in Clinton Basin marina. Developers don't see value of preserving the wetland or open space.</p> <p>Please reject the EIR and the project</p>	<p>PH.2-1 See Consolidated Response 1 as these comments do not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comments are noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p> <p>PH.2-2 The Revised Project Modifications no longer involve the Approved Project marina expansion (including the additional marina slips) but do involve the publicly-accessible landing dock near the Ninth Avenue Terminal Building, as considered in the Draft SEIR. Therefore, the Revised Project Modifications will not involve work in proximity to the wetland restoration area or adjacent open space. See Consolidated Response 2 regarding comments on Project Modifications that are no longer proposed.</p> <p>The comments do not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comments are noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## PH.3 Daniel Franco

COMMENT	RESPONSE
<p>Fire season is year round, other issues related to fire – red sky etc.</p> <p>Instead of defending wetlands, they want 325 pollution-spewing boats.</p> <p>Instead of protecting butterflies they want a skyscraper.</p> <p>Do not build these travesties.</p> <p>Build wetlands, put housing downtown near transit, not here.</p> <p>Land was meant to be set aside for critters.</p> <p>Say no to playground for rich, say yes to avian habitat, say no people being unable to evacuate during next emergency, allow fewer people to move into an area with only one escape route.</p> <p>Say no to 16% expansion.</p> <p>Stop taking the animal habitat. Immoral approval of projects. Insist on only wetlands.</p> <p>City must do the work and read the comments. Deny the request. Must soberly and critically consider public comments and not hand it off to staffers</p>	<p>PH.3-1 See Responses to Comments I13.2-1 through I13.2-8 in Chapter V, Section D.</p>

## PH.4 Emilina Dissette

COMMENT	RESPONSE
Lines on a PDF that show traffic and parking hazards that are happening on the weekends when hundreds of people come to township commons. There is no parking and people have to turn around.	PH.4-1 See Response to Comment I12.2-2 in Chapter V, Section D.
If there is an emergency there would be no evacuation route and no one could leave because so many cars block the streets.	PH.4-2 See Response to Comment I12.2-3 in Chapter V, Section D.
Brooklyn Basin Phase 1 and Phase 2 include empty lots that have not been opened to allow parking.	PH.4-3 The comment does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications. See also Consolidated Response 3.
Other phases of the project are being planned without addressing the major traffic issue that is already occurring	PH.4-4 See Response to Comment I12.2-2 and I12.2-3 in Chapter V, Section D. See also Consolidated Response 3.
If they can't address traffic in the streets how will they address traffic in the water?	PH.4-5 The comment does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.
The coast guard island has not been accounted for in the maps of the project.	PH.4-6 The maps and other exhibits included in the Draft SEIR and this document are materially consistent with those included in the 2009 EIR and encompass the surrounding context relevant to consideration of the environmental analysis for the Project Modifications and Revised Project Modifications addressed in this document. No additional exhibits are warranted. Furthermore, the comment does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications
Last traffic report prepared in 2018. There needs to be an update.	PH.4-7 See Responses to Comments I30-6 and I29-3 in Chapter V, Section D.
Need better understanding of parking.	PH.4-8 See Response to Comment I12.2-2 in Chapter V, Section D.
Tower relocation would block the sun from shadetree until 3:00 pm, at which point there isn't even enough sun in the courtyard.	PH.4-9 See Response to Comment A1.2-17 in Chapter V, Section B.

## PH.5 Ben Burke

COMMENT	RESPONSE
In 2016 Ghostship fire rocked the arts community, there was only one fire exit and 36 people died. Shadetree is a historic live-work community that has been collectively owned and run by the residents since 2017. Because of fire in 2016,	PH.5-1 The comment does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response



## PH.6 Max Matheson

COMMENT	RESPONSE
<ul style="list-style-type: none"> <li>Wealth and housing disparity</li> </ul>	comment does not specifically set forth how the SEIR omits analysis or provides inaccurate information. As a result, the City cannot further address those claims in the comment without more detailed information provided by the commenter.
<ul style="list-style-type: none"> <li>Destruction of habitat.</li> </ul>	PH.6-3 See Response to Comment O1-9 in Chapter V, Section C.
<ul style="list-style-type: none"> <li>Lack of affordable housing</li> </ul>	PH.6-4 See Response to Comment I2-2 in Chapter V, Section D.
<ul style="list-style-type: none"> <li>Traffic congestion</li> </ul>	PH.6-5 See Response to Comment I12.2-3 in Chapter V, Section D.

## PH.7 Naomi Schiff

COMMENT	RESPONSE
They have submitted a comment letter.	PH.7-1 The comment refers to Comment Letter O2.2, Oakland Heritage Alliance, in Chapter V, Section C.
Concerned with natural resources of Oakland. Concern for marsh that Port has restored on the western edge of the proposed marina area.	PH.7-2 See Response to Comment O2.1-2 in Chapter V, Section C.
Inappropriate to wrap additional boat slips around marsh and to block views from new shoreline park.	PH.7-3 See Consolidated Response 2 regarding comments received on specific Project Modifications analyzed in the Draft SEIR but that are no longer proposed. Also See Response to Comment O2.1-4 regarding the assessment of views under the Revised Project Modifications.
Sandwiching public between private dev and private boats which changes the view.	PH.7-4 See Response to Comment I29-11 in Chapter V, Section D.
Boats create pollution. There is a pervasive continuing problem in which small boats inject fuel to water.	PH.7-5 See Response to Comment A1.2-13 in Chapter V, Section B.
Inappropriate to build marina around intentional restored marsh.	PH.7-6 The Revised Project Modifications no longer involve the Approved Project marina expansion, but do involve the publicly-accessible landing dock near the Ninth Avenue Terminal Building, as considered in the Draft SEIR. Therefore, the Revised Project Modifications will not involve work in proximity to the wetland restoration area or adjacent open space. Chapter II of this document provides an evaluation of the environmental effects of the Revised Project Modifications. See also Consolidated Response 2 regarding comments on Project Modifications that are no longer proposed.
Would block coastline which seems counterintuitive since they have spent 150 years trying to get this little bit of coastline back from activities.	PH.7-7 Figure II in Chapter II, <i>Updated Project Information and Analysis</i> , of this document shows the new potential tower locations for the Approved Towers, as proposed with the Revised Project Modifications.
Curious about position of high rise.	PH.7-8 As described in the Chapter III, <i>Project Description</i> , of the Draft SEIR, given the number of units planned and partially constructed in Phases I and II of the Approved Project, 607 units are available for development on Phases III and IV under the existing approvals. Since the Phase I and Phase II Final Development Plans are approved, relocating towers

## PH.7 Naomi Schiff

COMMENT	RESPONSE
Impacts on views and shadows are substantial.	to Phases III or IV will accommodate the remaining units in addition to the proposed 600 additional residential units with the Revised Project Modifications. The analysis in Chapter II of this document adequately analyzes the potential environmental effects of potentially relocating an additional tower to Parcel M; the Revised Project Modifications no longer proposes potentially relocating a tower to Parcel L.
How does the moving of the buildings relate to emergency services, seismic safety, and impacts to neighbors?	PH.7-9 See Response to Comment O2.1-4 in Chapter V, Section C and A1.2-17 in Chapter V, Section B. PH.7-10 See Response to Comment I16-1, I12.2-3, and I13.2 in Chapter V, Section D.

## PH.8 John C. Rogers

COMMENT	RESPONSE
Incomplete SEIR.	PH.8-1 See Response to Comment I29-1 in Chapter V, Section D.
Member of 5th ave point artist community in the middle of development area.	
Infrastructure is inadequate to handle development of this size or an expansion.	PH.8-2 See Response to Comment I29-2 through I29-5 in Chapter V, Section D.
Original EIR states that all intersections around the site will be significantly impacted.	
New park is successful but does not have required infrastructure.	
No new traffic study has been done since 2018 and doesn't take into account the new transit corridors that constrict east 12th and international boulevard.	
Traffic could cause a situation where first responders are hampered by congestion that could delay response times.	
Promise of 2 lanes of traffic each way with acknowledgement that embarcadero bridge would be a bottleneck, but instead there is only one lane each way.	
Development is not done and there is already too much congestion.	
Evacuation would not be possible congestion.	
Parking has already become an issue Parking requirements are not realistic with no designated bus stop. Walking to Lake Merritt is not a reliable/safe option.	

## PH.9 Nathan Bennett

COMMENT	RESPONSE
<p>Fact about inside of the Oakland planning commission staff report dated 10/17/2018 – in the SEIR there is a project road that overrides two of the buildings at 48 5th avenue, buildings B and C of where we live. It shows that it is not in the project area; however, they are overwritten by a projected road.</p> <p>Does the City plan to displace the buildings that are there and the people that live there?</p>	<p>PH.9-1 The Revised Project Modifications do not involve the displacement of any existing properties not controlled by the Project developer. The comment does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>

## PH.10 Katherine Bell

COMMENT	RESPONSE
<p>Eric Harrison gave a lot of dates about when permission was granted to do things. It is 2021 and K Bell has not seen anything that moves this. What they're asking you to do is so crazy. People that you've spoken to before are so emotional that they can barely speak. This is a greedy grab and is immoral. There is nothing to say. There is no proof that they comply with anything</p> <p>If you look at 2005 Estuary Plan where there is a guideline to preserve the 5th avenue point community for its uniqueness</p> <p>They haven't done that. Have not taken into consideration any of it.</p>	<p>PH.10-1 The comment does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
	<p>PH.10-2 The comment does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.</p>
<p>Will be submitting a written comment.</p>	<p>PH.10-2 All written comments received on the Draft SEIR are presented in Chapter V of this document.</p>

## PH.11 Christian Dixon Phillips

COMMENT	RESPONSE
<p>The proposal includes moving a light blocking tower closer to the water in phase 3 area. This conflicts with Estuary Policy Plan.</p> <p>Shadow study ends at 3 pm.</p> <p>Needs to be revised to understand impact of new tower plus impact of placement of all buildings in phases 3 and 4.</p> <p>Tower blocks should be placed along the freeway edge to not block sunlight for residents.</p>	<p>PH.11-1 See Response to Comment A1.2-17 in Chapter V, Section B.</p>

## PH.11 Christian Dixon Phillips

COMMENT	RESPONSE
Marina expansion would have an impact to avian and marine life in a rare ecosystem (Clinton Basin).	PH.11-2 The Revised Project Modifications no longer involve the Approved Project marina expansion, but do involve the publicly-accessible landing dock near the Ninth Avenue Terminal Building, as considered in the Draft SEIR. Therefore, the Revised Project Modifications will not involve work in proximity to the wetland restoration area. See Consolidated Response 2 regarding comments on Project Modifications that are no longer proposed.
Discharge and noise from boats is inevitable.	PH.11-3 See Response to Comment I29-11 in Chapter V, Section D.
Proposal to wrap marina around protected wetland area solidifies intent to sterilize the shoreline.	PH.11-4 See Response to Comment PH.11-2 above.
Could eradicate the art community here which has a lot of history that has impacted the world. Art district and Oakland deserves respect. Place needs of residents ahead of developers.	PH.11-5 The comment does not address significant environmental issues nor specific questions about the analyses or information in the Draft SEIR that would require response pursuant to CEQA Guidelines Section 15088. The comment is noted and will be included as part of the record and made available to the decision makers prior to a final decision on the proposed Revised Project Modifications.

## PH.12 Stewart Port

COMMENT	RESPONSE
Intimate with site and marina operations. Two issues with proposal, will be submitting written comments later this week.	PH.12-1 The comment refers to Comment Letter I.27 in Chapter V, Section D.
Appendix E – where the details lie, there is mention of remediation credits for marina expansion.	PH.12-2 The comment refers to the “Updated January 2018 Brooklyn Basin Marina, Project Description” document prepared by the Project developer, which is included as Appendix E to the Draft SEIR. The document factors in information suggested in meetings held with City of Oakland and subsequently with the U.S. Army Corps of Engineers and BCDC.
Remediation credit is an admission that they can’t reduce impacts at the site, so they will atone by making things better somewhere else. Just want to remind the planning commission that they are the Oakland planning commission and not planning commission for any of the other places where the remediation is likely to wind up if the remediation credit strategy is used.	See Response to Comment A1.2-13 (in Chapter V, Section B of this document), which discusses updates to mitigation measures as a result of the Revised Project Modifications no longer involving the marina expansion (increased solid fill).
At the time the DSEIR was scoped, the 9th avenue pier had not been opened (township commons) so the DSEIR makes no mention of impacts by facilities of expanded marina (bathrooms, gatehouses, traffic, etc) to recreational activities on the pier. The pier is a rocking success...	PH.12-3 See Consolidated Response 3 regarding comments pertaining to existing conditions. Moreover, the Revised Project Modifications (600 additional units, potential tower relocation to Parcel M, and publicly-accessible landing dock) would not affect existing recreational activities on the Project site. See also Consolidated Response 2 regarding comments on Project Modifications that are no longer proposed.

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## CHAPTER VII

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# City-Initiated Updates and Errata to the Draft SEIR

### VII.A Introduction

This chapter describes changes made to the Draft SEIR in response to City staff-initiated updates or comments received on the Draft SEIR. The changes shown in this chapter update, refine, clarify, and amplify information and analyses presented in the Draft SEIR.

### VII.B Text Changes to the Draft SEIR

This section together with Chapter II summarize text changes made to the Draft EIR either in response to a comment, initiated by City staff, or in response to a revision to the Project Modifications. New text is indicated in double underline and text to be deleted is reflected by a ~~strike through~~. Changes are presented in the page order in which they appear in the Draft SEIR.

As indicated in Chapter 1, *Introduction*, the entirety of the Brooklyn Basin Marina Expansion Project Final EIR consists of the Draft SEIR, together with this Response to Comments document, other information included in this Response to Comments document, and includes all appendices. Therefore, the Draft SEIR changes presented in this chapter are incorporated in and supersede corresponding original text in the Draft SEIR.

### VII.C Implication of Changes to the Draft EIR

Under CEQA, recirculation of all or part of an EIR may be required if significant new information is added after public review and prior to certification. According to State CEQA Guidelines Section 15088.5(a), new information is not considered significant “unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project’s proponents have declined to implement.” More specifically, as discussed in Chapter 1, *Introduction*, of this document, pursuant to CEQA Guidelines Section 15088.5(a), recirculation of a Draft EIR is required only if:

- “1) a new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented;
- 2) a substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

- 3) a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project’s proponents decline to adopt it; or
- 4) the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.”

None of the changes to the Draft SEIR identified in this document meet any of the above conditions. Therefore, recirculation of any part of the Draft SEIR is not required. The information presented in the Draft SEIR and this document (the Final SEIR) support this determination by the City.

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## VII.D Changes to Chapter II, Summary

(See the revised Table II-2, *Summary of Impacts, Standard Conditions of Approval, and Mitigation Measures, and Residual Impacts* at the end of this Chapter)

## VII.E Changes to Section IV.B: Transportation and Circulation

The third paragraph on Draft SEIR p. IV.B-1 is revised as follows in Response to Comment A2-4:

### ***Existing Street and Highway System***

Existing regional ~~freeway~~ access to the Project site exists via Interstate 880 (I-880) and State Route 260. Vehicular access to the Project site is provided via the following local roadways: Embarcadero, Oak Street, 5th Avenue, 7th Street, and 8th Street. Significant changes to the existing street and highways system that have occurred since the 2009 EIR and how the Project Modifications would impact that system are described below.

The last paragraph on Draft SEIR p. IV.B-1 is revised as follows in Response to Comment A2-3:

### ***Regional Access***

Interstate 880 is an eight-lane freeway that runs in the north-south direction between Interstate 80 (I-80) near the Bay Bridge and San Jose. I-880 connects with Interstate 980 (I-980) which provides access to Downtown Oakland and the corridor plays a key role in freight and goods movement, directly serving the Port of Oakland, the fourth busiest port in the United States. The Project site is . . .

The following paragraph is added to Draft SEIR p. IV.B-3 in Response to Comment A2-3:

. . . The improvements provided enhanced walking and biking facilities and widened the roadway sufficiently to accommodate two travel lanes in each direction, although the roadway is currently striped for one travel lane in each direction.

Embarcadero is part of the route designated by the Oakland Police Department to be used by overweight trucks as part of the Heavy Container Permit Program (Municipal Code Chapter 10.53). The route extends on 3rd Street from Adeline Street to Oak Street, south on Oak Street to Embarcadero, north on 5th Avenue, and then east on 8th Street. The primary reason for the program is that heavy containerized loads that exceed Federal and or State weight limits are not allowed on State highways to protect interstate freeway bridge structures. This established program allows shippers to meet the demands of industry and to maximize both transportation efficiencies and the economic benefits afforded by utilizing the full cargo carrying capabilities of shipping containers. Drivers of overweight trucks must obtain a special permit issued by the Oakland Police Department prior to using the corridor. About 20 trucks per day use the corridor. Given the capacity of the corridors, the addition of 20 trucks per day is not anticipated to create any hazardous conditions.

Oak Street is a multi-lane ...

The following text is revised on Draft SEIR p. IV.B-6 in Response to Comment A2-5:

### ***Regional Rail Service***

~~Amtrak operates r~~Regional and interregional rail service is provided through the Oakland Jack London Square Station on 2nd Street between Harrison Street and Jackson Street. This station is about 0.8 miles west of the Project site (about a 16-minute walk). Several lines use this Jack London Square Station, including the Capitol Corridor (operated by the Capitol Corridor Joint Powers Authority or CCJPA), the San Joaquin (operated by the San Joaquin Joint Powers Authority or SJJA), and the Coast Starlight (operated by Amtrak):

The following text is revised on Draft SEIR p. IV.B-9 in Response to Comment A2-6:

### ***Existing Railroad Characteristics***

The Union Pacific Railroad (UPRR) is a freight-hauling railroad company that owns and operates the rail lines adjacent to the site. These rail lines are used both for passenger transportation by Amtrak and the Capitol Corridor Joint Powers Authority (Capitol Corridor), and freight transport by UPRR, with about 60 trains per day passing through the Oakland Jack London Square Station.

There is an at-grade crossing at 5th Avenue and the rail corridor is fenced south of 5th Avenue which restricts trespassing between rail crossings. There are three UPRR mainline tracks through the at-grade crossing. ...

## **VII.F Changes to Section IV.I: Biological Resources**

The third paragraph of 2009 Mitigation Measure I.3: *Protection of Fish and Migrating Salmonids* on Draft SEIR p. IV.I-21 is revised as follows in Response to Comment A3-5:

As identified in the LTMS, restricting dredging and other in-water construction activities to the specified work periods would avoid the direct and indirect impacts on juvenile or adult herring or salmonids that would otherwise result from dredging-related increases in turbidity or changes in water quality. Impacts of dredging operations on coho salmon,

Chinook salmon, steelhead, and Pacific herring would therefore be less than significant, provided that dredging activities are conducted within the work windows identified in the LTMS. For waters in central San Francisco Bay, the construction work window for dredging activities in Pacific herring habitat is between March 15 and November 30 (Corps, 2001). The dredging work window for salmonid species in central San Francisco Bay is June 1 through November 30. These work windows are summarized in the table below.

The first paragraph of Mitigation Measure BIO-3, Eelgrass Surveys on Draft SEIR p. IV.I-14 is revised as follows in Response to Comment A3-6:

**Mitigation Measure BIO-3: Eelgrass Surveys.**

Prior to the start of any in-water construction, the Project Applicant shall conduct a National Marine Fisheries Service and California Department of Fish and Wildlife-approved eelgrass survey in the marina expansion area consistent with the measures described in the National Marine Fisheries Service's October 2014 *California Eelgrass Mitigation Policy and Implementation Guidelines* (2014 CEMP) and include the following:

**TABLE VII-1  
SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.A Land Use</b>		
<b>Impact LU-1:</b> The Project Modifications would develop a higher density of residential uses in buildings immediately adjacent to and surrounding Fifth Avenue Point but would not result in the physical division of an existing community. (Criterion A) ( <i>Less than Significant with Mitigation</i> )	<b>2009 EIR Mitigation Measure A.1:</b> The Project Applicant shall incorporate into the Project site plan design elements that 1) address the relationship (setback, height and upper-story setbacks, etc.) of new buildings located adjacent to Fifth Avenue Point to minimize the physical division of the outparcels from the existing Oak-to-Ninth District; 2) provide safe, direct, and well-designed pedestrian and bicycle access between the outparcels and the new public open spaces, trails, and marina uses on the Project site; 3) provide appropriate landscaping and/or other feature(s) to provide appropriate buffering between the outparcels and the Project site, where necessary and feasible. The proposed Planned Waterfront Zoning District (PWD-1) standards discussed in Impact A.2 shall incorporate, as appropriate, specific design standards to address the aforementioned elements in areas abutting Fifth Avenue Point.	Less than Significant
<b>Impact LU-2:</b> The Project Modifications would not fundamentally conflict with adjacent or nearby uses. (Criterion B) ( <i>Less than Significant with Mitigation</i> )	<b>2009 EIR Mitigation Measure A.3a:</b> The Project Applicant shall implement all mitigation measures identified throughout this SEIR to address the significant physical impacts associated with the environmental changes that would occur as a result of the project, reducing each impact to less than significant, where feasible.  <b>2009 EIR Mitigation Measure A.3b:</b> The Project Applicant shall implement the specific regulations and standards of the proposed Planned Waterfront Zoning District (consistent with Mitigation Measures A.1 and A.2b), if approved. To specifically address the physical impacts resulting from the change in land use and environment in proximity to Fifth Avenue Point and adjacent residential development, the project shall adhere to the regulations and standards for allowable uses, open space, streets, setbacks, building heights and upper-story setbacks, maximum densities, maximum commercial space, pedestrian and bicycle access, and landscaping and buffering.	Less than Significant
<b>Impact LU-3:</b> The Project Modifications would not be consistent with the existing land use classification and zoning district for the Project site. (Criterion C) ( <i>Less than Significant</i> )	None required	Less than significant
<b>Impact LU-4:</b> The Project Modifications would not fundamentally conflict with any applicable habitat conservation plan or natural community conservation plan. (Criterion D) ( <i>Less than Significant with Mitigation</i> )	<del>2009 Mitigation Measure I.2b (see below)</del> <u>None required</u>	Less than Significant
<b>Impact LU-5:</b> The Project Modifications, in combination with other past, present, and reasonably foreseeable future projects within and around the Project site, would not result in a significant adverse cumulative land use, plans, and policy impact. ( <i>Less than Significant with Mitigation</i> )	<b>2009 Mitigation Measure A.1</b> (see above) <b>2009 Mitigation Measure A.3a</b> (see above) <b>2009 Mitigation Measure A.3b</b> (see above)	Less than Significant
<b>IV.B Transportation</b>		
<b>Impact Trans-1:</b> The Project Modifications 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) ( <i>Less than Significant</i> )	<b>SCA-TRANS-3 (SCA 78): Transportation and Parking Demand Management. Prior to issuance of a final inspection of the building permit.</b> <b>a. Transportation and Parking Demand Management (TDM) Plan:</b> The project applicant shall submit a TDM plan for review and approval by the City.	Less than Significant

<sup>1</sup> All 2009 Mitigation Measures remain applicable to development under the Approved Project.

**TABLE VII-1 (CONTINUED)**

**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation								
<b>IV.B Transportation (cont.)</b>										
Impact Trans-1 (cont.)	<p>i. The goals of the TDM Plan shall be the following:</p> <ul style="list-style-type: none"> <li>▪ Reduce vehicle traffic and parking demand generated by the project to the maximum extent practicable.</li> <li>▪ Achieve the following project vehicle trip reductions (VTR):</li> <li>▪ Projects generating 50 to 99 net new a.m. or p.m. peak hour vehicle trips: 10% VTR.</li> <li>▪ Projects generating 100 or more net new a.m. or p.m. peak hour vehicle trips: 20% VTR.</li> <li>▪ Increase pedestrian, bicycle, transit, and carpool/vanpool modes of travel. All four modes of travel shall be considered, as appropriate.</li> <li>▪ Enhance the City's transportation system, consistent with City policies and programs.</li> </ul> <p>ii. TDM Plan should include the following:</p> <ul style="list-style-type: none"> <li>▪ Baseline existing conditions of parking and curbside regulations within the surrounding neighborhood that could affect the effectiveness of TDM strategies, including inventory of parking space and occupancy if applicable.</li> <li>▪ Proposed TDM strategies to achieve VTR goals (see below).</li> </ul> <p>iii. For employers with 100 or more employees at the subject site, the TDM Plan shall also comply with the requirements of the Oakland Municipal Code Chapter 10.68 Employer-Based Trip Reduction Program.</p> <p>iv. The following TDM strategies must be incorporated into a TDM Plan based on a project location or other characteristics. When required, these mandatory strategies should be identified as a credit toward a project's VTR.</p> <table border="1" data-bbox="724 1008 1669 1370"> <thead> <tr> <th data-bbox="724 1008 1085 1052">Improvement</th> <th data-bbox="1085 1008 1669 1052">Required by code or when...</th> </tr> </thead> <tbody> <tr> <td data-bbox="724 1052 1085 1203"><b>Bus boarding bulbs or islands</b></td> <td data-bbox="1085 1052 1669 1203"> <ul style="list-style-type: none"> <li>• A bus boarding bulb or island does not already exist, and a bus stop is located along the project frontage; and/or</li> <li>• A bus stop along the project frontage serves a route with 15 minutes or better peak hour service and has a shared bus-bike lane curb</li> </ul> </td> </tr> <tr> <td data-bbox="724 1203 1085 1308"><b>Bus shelter</b></td> <td data-bbox="1085 1203 1669 1308"> <ul style="list-style-type: none"> <li>• A stop with no shelter is located within the project frontage, or</li> <li>• The project is located within 0.10 miles of a flag stop with 25 or more boardings per day</li> </ul> </td> </tr> <tr> <td data-bbox="724 1308 1085 1370"><b>Concrete bus pad</b></td> <td data-bbox="1085 1308 1669 1370"> <ul style="list-style-type: none"> <li>• A bus stop is located along the project frontage and a concrete bus pad does not already exist</li> </ul> </td> </tr> </tbody> </table>	Improvement	Required by code or when...	<b>Bus boarding bulbs or islands</b>	<ul style="list-style-type: none"> <li>• A bus boarding bulb or island does not already exist, and a bus stop is located along the project frontage; and/or</li> <li>• A bus stop along the project frontage serves a route with 15 minutes or better peak hour service and has a shared bus-bike lane curb</li> </ul>	<b>Bus shelter</b>	<ul style="list-style-type: none"> <li>• A stop with no shelter is located within the project frontage, or</li> <li>• The project is located within 0.10 miles of a flag stop with 25 or more boardings per day</li> </ul>	<b>Concrete bus pad</b>	<ul style="list-style-type: none"> <li>• A bus stop is located along the project frontage and a concrete bus pad does not already exist</li> </ul>	
Improvement	Required by code or when...									
<b>Bus boarding bulbs or islands</b>	<ul style="list-style-type: none"> <li>• A bus boarding bulb or island does not already exist, and a bus stop is located along the project frontage; and/or</li> <li>• A bus stop along the project frontage serves a route with 15 minutes or better peak hour service and has a shared bus-bike lane curb</li> </ul>									
<b>Bus shelter</b>	<ul style="list-style-type: none"> <li>• A stop with no shelter is located within the project frontage, or</li> <li>• The project is located within 0.10 miles of a flag stop with 25 or more boardings per day</li> </ul>									
<b>Concrete bus pad</b>	<ul style="list-style-type: none"> <li>• A bus stop is located along the project frontage and a concrete bus pad does not already exist</li> </ul>									

**TABLE VII-1 (CONTINUED)**  
**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures		Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.B Transportation (cont.)</b>			
Impact Trans-1 (cont.)	<b>Curb extensions or bulb-outs</b>	<ul style="list-style-type: none"> <li>Identified as an improvement within site analysis</li> </ul>	
	<b>Implementation of a corridor-level bikeway improvement</b>	<ul style="list-style-type: none"> <li>A buffered Class II or Class IV bikeway facility is in a local or county adopted plan within 0.10 miles of the project location; and</li> <li>The project would generate 500 or more daily bicycle trips</li> </ul>	
	<b>Implementation of a corridor-level transit capital improvement</b>	<ul style="list-style-type: none"> <li>A high-quality transit facility is in a local or county adopted plan within 0.25 miles of the project location; and</li> <li>The project would generate 400 or more peak period transit trips</li> </ul>	
	<b>Installation of amenities such as lighting; pedestrian-oriented green infrastructure, trees, or other greening landscape; and trash receptacles per the Pedestrian Master Plan and any applicable streetscape plan.</b>	<ul style="list-style-type: none"> <li>Always required</li> </ul>	
	<b>Installation of safety improvements identified in the Pedestrian Master Plan (such as crosswalk striping, curb ramps, count down signals, bulb outs, etc.)</b>	<ul style="list-style-type: none"> <li>When improvements are identified in the Pedestrian Master Plan along project frontage or at an adjacent intersection</li> </ul>	
	<b>In-street bicycle corral</b>	<ul style="list-style-type: none"> <li>A project includes more than 10,000 square feet of ground floor retail, is located along a Tier 1 bikeway, and on-street vehicle parking is provided along the project frontages.</li> </ul>	
	<b>Intersection improvements<sup>a</sup></b>	<ul style="list-style-type: none"> <li>Identified as an improvement within site analysis</li> </ul>	
	<b>New sidewalk, directional curb ramps, curb and gutter meeting current City and ADA standards</b>	<ul style="list-style-type: none"> <li>Always required</li> </ul>	
	<b>No monthly permits and establish minimum price floor for public parking<sup>b</sup></b>	<ul style="list-style-type: none"> <li>If proposed parking ratio exceeds 1:1000 sf. (commercial)</li> </ul>	
	<b>Parking garage is designed with retrofit capability</b>	<ul style="list-style-type: none"> <li>Optional if proposed parking ratio exceeds 1:1.25 (residential) or 1:1000 sf. (commercial)</li> </ul>	
	<b>Parking space reserved for car share</b>	<ul style="list-style-type: none"> <li>If a project is providing parking and a project is located within downtown. One car share space reserved for buildings between 50 – 200 units, then one car share space per 200 units.</li> </ul>	

**TABLE VII-1 (CONTINUED)**  
**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.B Transportation (cont.)</b>		
Impact Trans-1 (cont.)	<b>Paving, lane striping or restriping (vehicle and bicycle), and signs to midpoint of street section</b>	<ul style="list-style-type: none"> <li>Typically required</li> </ul>
	<b>Pedestrian crossing improvements</b>	<ul style="list-style-type: none"> <li>Identified as an improvement within site analysis</li> </ul>
	<b>Pedestrian-supportive signal changes<sup>c</sup></b>	<ul style="list-style-type: none"> <li>Identified as an improvement within operations analysis</li> </ul>
	<b>Real-time transit information system</b>	<ul style="list-style-type: none"> <li>A project frontage block includes a bus stop or BART station and is along a Tier 1 transit route with 2 or more routes or peak period frequency of 15 minutes or better</li> </ul>
	<b>Relocating bus stops to far side</b>	<ul style="list-style-type: none"> <li>A project is located within 0.10 mile of any active bus stop that is currently near-side</li> </ul>
	<b>Signal upgrades<sup>d</sup></b>	<ul style="list-style-type: none"> <li>Project size exceeds 100 residential units, 80,000 sf. of retail, or 100,000 sf. of commercial; and</li> <li>Project frontage abuts an intersection with signal infrastructure older than 15 years</li> </ul>
	<b>Transit queue jumps</b>	<ul style="list-style-type: none"> <li>Identified as a needed improvement within operations analysis of a project with frontage along a Tier 1 transit route with 2 or more routes or peak period frequency of 15 minutes or better</li> </ul>
	<b>Trenching and placement of conduit for providing traffic signal interconnect</b>	<ul style="list-style-type: none"> <li>Project size exceeds 100 units, 80,000 sf. of retail, or 100,000 sf. of commercial; and</li> <li>Project frontage block is identified for signal interconnect improvements as part of a planned ITS improvement; and</li> <li>A major transit improvement is identified within operations analysis requiring traffic signal interconnect</li> </ul>
	<b>Unbundled parking</b>	<ul style="list-style-type: none"> <li>If proposed parking ratio exceeds 1:1.25 (residential)</li> </ul>
<p>NOTES:</p> <p><sup>a</sup> Including but not limited to visibility improvements, shortening corner radii, pedestrian safety islands, accounting for pedestrian desire lines.</p> <p><sup>b</sup> May also provide a cash incentive or transit pass alternative to a free parking space in commercial properties.</p> <p><sup>c</sup> Including but not limited to reducing signal cycle lengths to less than 90 seconds to avoid pedestrian crossings against the signal, providing a leading pedestrian interval, provide a "scramble" signal phase where appropriate.</p> <p><sup>d</sup> Including typical traffic lights, pedestrian signals, bike actuated signals, transit-only signals.</p>		

TABLE VII-1 (CONTINUED)

SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.B Transportation (cont.)</b>		
Impact Trans-1 (cont.)	<p>v. Other TDM strategies to consider include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>▪ Inclusion of additional long- and short-term bicycle parking that meets the design standards set forth in chapter five of the Bicycle Master Plan, and Bicycle Parking Ordinance (chapter 17.117 of the Oakland Planning Code), and shower and locker facilities in commercial developments that exceed the requirement.</li> <li>▪ Construction of and/or access to bikeways per the Bicycle Master Plan; construction of priority Bikeway Projects, on-site signage and bike lane striping.</li> <li>▪ Installation of safety elements per the Pedestrian Master Plan (such as cross walk striping, curb ramps, count-down signals, bulb outs, etc.) to encourage convenient and safe crossing at arterials, in addition to safety elements required to address safety impacts of the project.</li> <li>▪ Installation of amenities such as lighting, street trees, trash receptacles per the Pedestrian Master Plan Update, the Master Street Tree List and Tree Planning Guidelines (which can be viewed at <a href="http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak042662.pdf">http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak042662.pdf</a> and <a href="http://www2.oaklandnet.com/oakca1/groups/pwa/documents/form/oak025595.pdf">http://www2.oaklandnet.com/oakca1/groups/pwa/documents/form/oak025595.pdf</a> respectively) and any applicable streetscape plan.</li> <li>▪ Construction and development of transit stops/shelters, pedestrian access, way finding signage, and lighting around transit stops per transit agency plans or negotiated improvements.</li> <li>▪ Direct on-site sales of transit passes purchased and sold at a bulk group rate (through programs such as AC Transit Easy Pass or a similar program through another transit agency).</li> <li>▪ Provision of a transit subsidy to employees or residents, determined by the Project Applicant and subject to review by the City, if the employees or residents use transit or commute by other alternative modes.</li> <li>▪ Provision of an ongoing contribution to service to the area between the project and nearest mass transit station prioritized as follows: 1) Contribution to AC Transit bus service; 2) Contribution to an existing area shuttle or streetcar service; and 3) Establishment of new shuttle service. The amount of contribution (for any of the above scenarios) would be based upon the cost of establishing new shuttle service (Scenario 3).</li> <li>▪ Guaranteed ride home program for employees, either through 511.org or through separate program.</li> <li>▪ Pre-tax commuter benefits (commuter checks) for employees.</li> <li>▪ Free designated parking spaces for on-site car-sharing program (such as City Car Share, Zip Car, etc.) and/or car-share membership for employees or tenants.</li> </ul>	

**TABLE VII-1 (CONTINUED)**

**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.B Transportation (cont.)</b>		
Impact Trans-1 (cont.)	<ul style="list-style-type: none"> <li>▪ Onsite carpooling and/or vanpooling program that includes preferential (discounted or free) parking for carpools and vanpools.</li> <li>▪ Distribution of information concerning alternative transportation options.</li> <li>▪ Parking spaces sold/leased separately for residential units. Charge employees for parking or provide a cash incentive or transit pass alternative to a free parking space in commercial properties.</li> <li>▪ Parking management strategies; including attendant/valet parking and shared parking spaces.</li> <li>▪ Requiring tenants to provide opportunities and the ability to work off-site.</li> <li>▪ Allow employees or residents to adjust their work schedule in order to complete the basic work requirement of five eight-hour workdays by adjusting their schedule to reduce vehicle trips to the worksite (e.g., working four, ten-hour days; allowing employees to work from home two days per week).</li> <li>▪ Provide or require tenants to provide employees with staggered work hours involving a shift in the set work hours of all employees at the workplace or flexible work hours involving individually determined work hours.</li> </ul> <p>The TDM Plan shall indicate the estimated VTR for each strategy proposed based on published research or guidelines where feasible. For TDM Plans containing ongoing operational VTR strategies, the Plan shall include an ongoing monitoring and enforcement program to ensure the Plan is implemented on an ongoing basis during project operation. If an annual compliance report is required, as explained below, the TDM Plan shall also specify the topics to be addressed in the annual report.</p> <p>b. <b>TDM Implementation – Physical Improvements:</b> For VTR strategies involving physical improvements, the project applicant shall obtain the necessary permits/approvals from the City and install the improvements prior to the completion of the project.</p> <p>c. <b>TDM Implementation – Operational Improvements:</b> For projects that generate 100 or more net new a.m. or p.m. peak hour vehicle trips and contain ongoing operational VTR strategies, the project applicant shall submit an annual compliance report for the first five years following completion of the project (or completion of each phase for phased projects) for review and approval by the City. The annual report shall document the status and effectiveness of the TDM program, including the actual VTR achieved by the project during operation. If deemed necessary, the City may elect to have a peer review consultant, paid for by the project applicant, review the annual report. If timely reports are not submitted and/or the annual reports indicate the project applicant has failed to implement the TDM Plan, the project will be considered in violation of the Conditions of Approval and the City may initiate enforcement action as provided for in these Conditions of Approval. The project shall not be considered in violation of this Condition if the TDM Plan is implemented but the VTR goal is not achieved.</p>	

**TABLE VII-1 (CONTINUED)**  
**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.B Transportation (cont.)</b>		
<b>Impact Trans-2:</b> The Project Modifications would not cause substantial additional per capita vehicle miles traveled (VMT). (Criterion B) <i>(Less than Significant)</i>	None Required	Less than Significant
<b>Impact Trans-3:</b> The Project Modifications would not substantially induce additional automobile travel by increasing physical roadway capacity in congested areas or by adding new roadways to the network. (Criterion C) <i>(Less than Significant)</i>	None required	Less than Significant
<b>Impact Trans-4:</b> The Project Modifications, in combination with other past, present, and reasonably foreseeable future projects within and around the Project site, would not result in a significant adverse cumulative transportation and circulation impact. <i>(Less than Significant)</i>	None required	Less than Significant
<b>IV.C Air Quality</b>		
<b>Impact AQ-1:</b> The Project Modifications would not result in average daily emissions of 54 pounds per day of ROG, NO <sub>x</sub> , of PM <sub>2.5</sub> or 82 pound per day of PM <sub>10</sub> during construction. (Criterion A) <i>(Less than Significant)</i>	None required	Less than Significant
<b>Impact AQ-2:</b> The Project Modifications would not generate operational average daily emissions of more than 54 pounds per day of ROG, NO <sub>x</sub> , or PM <sub>2.5</sub> or 82 pounds per day of PM <sub>10</sub> ; or result in maximum annual emissions of 10 tons per year of ROG, NO <sub>x</sub> , or PM <sub>2.5</sub> or 15 tons per year of PM <sub>10</sub> . (Criterion B) <i>(Less than Significant)</i>	None required	Less than Significant
<b>Impact AQ-3:</b> Project Modifications would not contribute to CO concentrations exceeding the CAAQS. (Criterion C) <i>(Less than Significant)</i>	None required	Less than Significant
<b>Impact AQ-4:</b> The Project Modifications would not introduce new sources of TACs nor expose unplanned residential land uses to TACs. (Criteria D and E) <i>(Less than Significant)</i>	None required	Less than Significant
<b>Impact AQ-5:</b> The Project Modifications would not create or expose sensitive receptors to substantial objectionable odors. (Criterion F) <i>(Less than Significant)</i>	None required	Less than Significant
<b>Impact AQ-6:</b> Emissions generated by Project Modifications, combined with emissions from other past, present and reasonably foreseeable projects would not result in a cumulative air quality impact. <i>(Less than )</i>	None required	Less than Significant

TABLE VII-1 (CONTINUED)

**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.D Hydrology and Water Quality</b>		
<b>Impact HYD-1:</b> The Project Modifications would not violate water quality standards, result in erosion or siltation on- or off-site, contribute substantial runoff, and/or substantially degrade water quality. (Criteria A, C, F, and G) ( <i>Less than Significant</i> )	<b>SCA HYD-2 (61): Bay Conservation and Development Commission (BCDC) Approval.</b> <i>Prior to activity requiring permit/approval from BCDC.</i> The project applicant shall 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. The project applicant shall submit evidence of the permit/approval to the City and comply with all requirements and conditions of the permit/approval.	Less than Significant
<b>Impact HYD-2:</b> The Project Modifications would not substantially deplete groundwater supplies or interfere substantially with groundwater recharge that would result in a net deficit in aquifer volume or lowering the local groundwater table. (Criterion B) ( <i>Less than Significant</i> )	None required	Less than Significant
<b>Impact HYD-3:</b> The Project Modifications would not result in substantial flooding on or offsite or create or contribute substantial runoff, which would exceed the capacity of existing or planned stormwater drainage systems. (Criteria D and E) ( <i>Less than Significant</i> )	None required	Less than Significant
<b>Impact HYD-4:</b> The Project Modifications would not expose people or structures to a significant risk of loss, injury or death involving flooding. (Criteria H, I, J, and K) ( <i>Less than Significant</i> )	<b>SCA HYD-1 (60): Structures in a Flood Zone.</b> <i>Prior to approval of construction-related permit.</i> The project shall be designed to ensure that new structures within a 100-year flood zone do not interfere with the flow of water or increase flooding. The project applicant shall 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 BFE.	Less than Significant
<b>Impact HYD-5:</b> The Project Modifications would not alter site drainage that could generate a change to flow of a creek or stream, and would not conflict with elements of the City of Oakland creek protection ordinance. (Criteria L and M) ( <i>Less than Significant with Mitigation</i> )	<b>2009 Mitigation Measure D.1:</b> The project sponsor shall comply with all NPDES requirements, RWQCB General Construction Permit requirements, and all City regulations and Creek Protection Permits requirements.	Less than Significant
<b>Impact HYD-6:</b> The Project Modifications, in combination with other past, present, and reasonably foreseeable future projects within and around the Project site, would not result in cumulative impacts with respect to hydrology and water quality. ( <i>Less than Significant with Mitigation</i> )	<b>SCA HYD-1: Structures in a Flood Zone</b> (see above) <b>2009 Mitigation Measure D.1</b> (see above)	Less than significant
<b>IV.E Cultural Resources and Tribal Cultural Resources</b>		
<b>Impact CUL-1:</b> The Project Modifications would not cause a substantial adverse change in the significance of an historical resource. (Criterion A) ( <i>Less than Significant</i> )	None required	Less than significant

TABLE VII-1 (CONTINUED)

**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.E Cultural Resources and Tribal Cultural Resources (cont.)</b>		
<p><b>Impact CUL-2:</b> The Project Modifications would not cause a substantial adverse change in the significance of an archaeological resource; directly or indirectly destroy a unique paleontological resource or site or unique geologic feature; or disturb any human remains, including those interred outside of forma cemeteries. (Criteria B, C, and D) (<i>Less than Significant</i>)</p>	None required	Less than significant
<p><b>Impact CUL-3:</b> The Project Modifications would not cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code Section 21074. (Criterion E) (<i>Less than Significant</i>)</p>	<p><b>SCA CUL-1 (SCA-32): Archaeological and Paleontological Resources – Discovery During Construction.</b> <i>During construction.</i> Pursuant to CEQA Guidelines section 15064.5(f), in the event that any historic or prehistoric subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant shall notify the City and consult with a qualified archaeologist or paleontologist, as applicable, to assess the significance of the find. In the case of discovery of paleontological resources, the assessment shall be done in accordance with the Society of Vertebrate Paleontology standards. If any find is determined to be significant, 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. Feasibility of avoidance shall be determined with consideration of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery, excavation) shall be instituted. Work may proceed on other parts of the project site while measures for the cultural resources are implemented.</p> <p>In the event of data recovery of archaeological resources, the project applicant shall submit an Archaeological Research Design and Treatment Plan (ARDTP) prepared by a qualified archaeologist for review and approval by the City. The ARDTP is required to identify how the proposed data recovery program would preserve the significant information the archaeological resource is expected to contain. The ARDTP shall identify the scientific/historic research questions applicable to the expected resource, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. The ARDTP shall include the analysis and specify the curation and storage methods. Data recovery, in general, shall be limited to the portions of the archaeological resource that could be impacted by the proposed project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practicable. Because the intent of the ARDTP is to save as much of the archaeological resource as possible, including moving the resource, if feasible, preparation and implementation of the ARDTP would reduce the potential adverse impact to less than significant. The project applicant shall implement the ARDTP at his/her expense.</p> <p>In the event of excavation of paleontological resources, the project applicant shall submit an excavation plan prepared by a qualified paleontologist to the City for review and approval. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by a qualified paleontologist, as appropriate, according to current professional standards and at the expense of the project applicant.</p> <p><b>SCA CUL-2 (SCA-33): Archaeologically Sensitive Areas – Pre-Construction Measures.</b> <i>Prior to approval of construction-related permit; during construction.</i> The project applicant shall implement either Provision A (Intensive Pre-Construction Study) or Provision B (Construction ALERT Sheet) concerning archaeological resources.</p>	Less than Significant

**TABLE VII-1 (CONTINUED)**

**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.E Cultural Resources and Tribal Cultural Resources (cont.)</b>		
Impact CUL-3 (cont.)	<p><b>Provision A: Intensive Pre-Construction Study.</b></p> <p>The project applicant shall 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. The purpose of the site-specific, intensive archaeological resources study is to identify early the potential presence of history-period archaeological resources on the project site. At a minimum, the study shall include:</p> <ol style="list-style-type: none"> <li>a. Subsurface presence/absence studies of the project site. Field studies may include, but are not limited to, auguring and other common methods used to identify the presence of archaeological resources.</li> <li>b. A report disseminating the results of this research.</li> <li>c. Recommendations for any additional measures that could be necessary to mitigate any adverse impacts to recorded and/or inadvertently discovered cultural resources.</li> </ol> <p>If the results of the study indicate a high potential presence of historic-period archaeological resources on the project site, or a potential resource is discovered, the project applicant shall hire a qualified archaeologist to monitor any ground disturbing activities on the project site during construction and prepare an ALERT sheet pursuant to Provision B below that details what could potentially be found at the project site. Archaeological monitoring would include briefing construction personnel about the type of artifacts that may be present (as referenced in the ALERT sheet, required per Provision B below) and the procedures to follow if any artifacts are encountered, field recording and sampling in accordance with the Secretary of Interior’s Standards and Guidelines for Archaeological Documentation, notifying the appropriate officials if human remains or cultural resources are discovered, and preparing a report to document negative findings after construction is completed if no archaeological resources are discovered during construction.</p> <p><b>Provision B: Construction ALERT Sheet.</b></p> <p>The project applicant shall 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 ALERT sheet shall contain, at a minimum, visuals that depict each type of artifact that could be encountered on the project site. Training by the qualified archaeologist shall be provided to the project’s prime contractor, any project subcontractor firms (including demolition, excavation, grading, foundation, and pile driving), and utility firms involved in soil-disturbing activities within the project site.</p> <p>The ALERT sheet shall state, in addition to the basic archaeological resource protection measures contained in other standard conditions of approval, all work must stop and the City’s Environmental Review Officer contacted in the event of discovery of the following cultural materials: concentrations of shellfish remains; evidence of fire (ashes, charcoal, burnt earth, fire-cracked rocks); concentrations of bones; recognizable Native American artifacts (arrowheads, shell beads, stone mortars [bowls], humanly shaped rock); building foundation remains; trash pits, privies (outhouse holes); floor remains; wells; concentrations of bottles, broken dishes, shoes, buttons, cut animal bones, hardware, household items, barrels, etc.; thick layers of burned building debris (charcoal,</p>	

TABLE VII-1 (CONTINUED)

**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.E Cultural Resources and Tribal Cultural Resources (cont.)</b>		
Impact CUL-3 (cont.)	<p>nails, fused glass, burned plaster, burned dishes); wood structural remains (building, ship, wharf); clay roof/floor tiles; stone walls or footings; or gravestones. Prior to any soil-disturbing activities, each contractor shall be responsible for ensuring that the ALERT sheet is circulated to all field personnel, including machine operators, field crew, pile drivers, and supervisory personnel. The ALERT sheet shall also be posted in a visible location at the project site.</p> <p><b>SCA CUL-3 (SCA-34): Human Remains – Discovery During Construction.</b> <i>During construction.</i> Pursuant to CEQA Guidelines section 15064.5(e)(1), 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. If the County Coroner determines that an investigation of the cause of death is required or that the remains are Native American, all work shall cease within 50 feet of the remains until appropriate arrangements are made. In the event that the remains are Native American, the City shall contact the California Native American Heritage Commission, pursuant to subdivision (c) of section 7050.5 of the California Health and Safety Code. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance, and avoidance measures (if applicable) shall be completed expeditiously and at the expense of the project applicant.</p>	
<p><b>Impact CUL-4:</b> The Project Modifications, in combination with other past, present, and reasonably foreseeable future projects within and around the Project site, would not result in significant cumulative impacts with respect to historical resources, archaeological resources, human remains, and tribal cultural resources. (Less than Significant)</p>	<p><b>SCA CUL-1 (SCA-32): Archaeological and Paleontological Resources – Discovery During Construction</b> (see above)</p> <p><b>SCA CUL-2 (SCA-33): Archaeologically Sensitive Areas – Pre-Construction Measures</b> (see above)</p> <p><b>SCA CUL-3 (SCA-34): Human Remains – Discovery During Construction</b> (see above)</p>	Less than Significant
<b>IV.F Geology and Soils</b>		
<p><b>Impact GEO-1:</b> The Project Modifications would not expose people or structures to risk of loss, injury, or death related to settlement or seismic ground shaking, liquefaction, or earthquake-induced settlement due to a major earthquake within the Project area. (Criterion A) (<i>Less than Significant</i>)</p>	None required	Less than Significant
<p><b>Impact GEO-2:</b> The Project Modifications would not result soil erosion or loss of topsoil that would create a risk to life, property or waterways. (Criterion B) (<i>Less Than Significant</i>)</p>	None required	Less than Significant
<p><b>Impact GEO-3:</b> The Project Modifications would not create substantial risks to life or property as a result of being located on expansive soils; above a well, pit, swamp, mound, tank vault, or unmarked sewer line; above landfills or unknown fill soils; or on soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems. (Criteria C, D, E, and F) (<i>Less Than Significant</i>)</p>	None required	Less than Significant

TABLE VII-1 (CONTINUED)

**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.F Geology and Soils (cont.)</b>		
<b>Impact GEO-4:</b> The Project Modifications, when combined with closely related past, present, or reasonably foreseeable development in the vicinity, would not result in significant cumulative impacts with respect to geology, soils, or seismicity. ( <i>Less than Significant</i> )	None required	Less than Significant
<b>IV.G Noise</b>		
<b>Impact NOI-1:</b> The Project Modifications would not generate construction-related noise or vibration in violation of the City of Oakland Noise Ordinance on nuisance standards or that exceeds the criteria established by the Federal Transit Administration (FTA). (Criteria A, B, and H) ( <i>Less than Significant</i> )	None required	Less than Significant
<b>Impact NOI-2:</b> The Project Modifications would result in generation of additional vehicle traffic that would not result in a 5-dBA permanent increase in existing ambient noise levels in the Project vicinity. (Criterion C) ( <i>Less than Significant</i> )	None required	Less than Significant
<b>Impact NOI-3:</b> The Project Modifications would include a landing dock to accommodate an existing water taxi service and additional marina slips to accommodate recreational vessels that would not generate noise in violation of the City of Oakland Noise Ordinance (Oakland Planning Code section 17.120.050) regarding operational noise. (Criterion D) ( <i>Less than Significant</i> )	None required	Less than Significant
<b>Impact NOI-4:</b> The Project Modifications 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) ( <i>Less than Significant</i> )	<b>SCA NOI-1 (SCA 67): Exposure to Community Noise.</b> The project applicant shall submit a Noise Reduction Plan prepared by a qualified acoustical engineer for City review and approval that contains noise reduction measures (e.g., sound-rated window, wall, and door assemblies) to achieve an acceptable interior noise level in accordance with the land use compatibility guidelines of the Noise Element of the Oakland General Plan. The applicant shall implement the approved Plan during construction. To the maximum extent practicable, interior noise levels shall not exceed the following:  a. 45 dBA: Residential activities, civic activities, hotels  b. 50 dBA: Administrative offices; group assembly activities  c. 55 dBA: Commercial activities  d. 65 dBA: Industrial activities.	Less than Significant

**TABLE VII-1 (CONTINUED)**

**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.G Noise (cont.)</b>		
<b>Impact NOI-5:</b> The Project Modifications, in combination with other past, present, and reasonably foreseeable future projects, would not cause a substantial permanent increase in ambient noise levels in the project vicinity. <i>(Less than Significant)</i>	None required	Less than Significant
<b>Impact NOI-6:</b> The water taxi component of the Project Modifications, in combination with other past, present, and reasonably foreseeable future projects, would not generate noise in violation of the City of Oakland Noise Ordinance (Oakland Planning Code section 17.120.050) regarding operational noise at future receptors of the Approved Project. (Criterion D) <i>(Less than Significant)</i>	None required	Less than Significant
<b>IV.H Hazards and Hazardous Materials</b>		
<b>Impact HAZ-1:</b> The Project Modifications would not create a significant hazard to the public or the environment through the routine transport, use, disposal, accidental release, or storage of hazardous or acutely hazardous materials. (Criteria A, B, and C) <i>(Less than Significant)</i>	None required	Less than Significant
<b>Impact HAZ-2:</b> The Project Modifications would not emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed schools. (Criterion D) <i>(Less than Significant)</i>	None required	Less than Significant
<b>Impact HAZ-3:</b> The Project Modifications would not be located on a site identified under Government Code section 65962.5. (Criterion E) <i>(No Impact)</i>	None required	Less than Significant
<b>Impact HAZ-4:</b> The Project Modifications would not result fewer than two emergency access routes for streets exceeding 600 feet in length. (Criterion F) <i>(Less than Significant)</i>	None required	Less than Significant
<b>Impact HAZ-5:</b> The Project Modifications would not fundamentally impair implementation of, or physically interfere with, an adopted emergency response plan or emergency evacuation plan. (Criterion I) <i>(Less than Significant)</i>	None required	Less than Significant
<b>Impact HAZ-6:</b> The Project Modifications, when combined with other past, present, and reasonably foreseeable cumulative development in the vicinity, would not result in cumulative hazardous materials impacts. <i>(Less than Significant)</i>	None required	Less than Significant

**TABLE VII-1 (CONTINUED)**

**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.I Biological Resources</b>		
<p><b>Impact BIO-1:</b> The Project Modifications 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) <i>(Less than Significant)</i></p>	<p><b>SCA BIO-1 (SCA 28): Bird Collision Reduction Measure.</b> The project applicant shall submit a Bird Collision Reduction Plan for City review and approval to reduce potential bird collisions to the maximum feasible extent. The Plan shall include all of the following mandatory measures, as well as applicable and specific project Best Management Practice (BMP) strategies to reduce bird strike impacts to the maximum feasible extent. The project applicant shall implement the approved Plan. Mandatory measures include <u>all</u> of the following:</p> <ul style="list-style-type: none"> <li>i. For large buildings subject to federal aviation safety regulations, install minimum intensity white strobe lighting with three second flash instead of solid red or rotating lights.</li> <li>ii. Minimize the number of and co-locate rooftop-antennas and other rooftop structures.</li> <li>iii. Monopole structures or antennas shall not include guy wires.</li> <li>iv. Avoid the use of mirrors in landscape design.</li> <li>v. Avoid placement of bird-friendly attractants (i.e., landscaped areas, vegetated roofs, water features) near glass unless shielded by architectural features taller than the attractant that incorporate bird friendly treatments no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule), as explained below.</li> <li>vi. Apply bird-friendly glazing treatments to no less than 90 percent of all windows and glass between the ground and 60 feet above ground or to the height of existing adjacent landscape or the height of the proposed landscape. Examples of bird-friendly glazing treatments include the following: <ul style="list-style-type: none"> <li>– Use opaque glass in window panes instead of reflective glass.</li> <li>– Uniformly cover the interior or exterior of clear glass surface with patterns (e.g., dots, stripes, decals, images, abstract patterns). Patterns can be etched, fritted, or on films and shall have a density of no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).</li> <li>– Install paned glass with fenestration patterns with vertical and horizontal mullions no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).</li> <li>– Install external screens over non-reflective glass (as close to the glass as possible) for birds to perceive windows as solid objects.</li> <li>– Install UV-pattern reflective glass, laminated glass with a patterned UV-reflective coating, or UV-absorbing and UV-reflecting film on the glass since most birds can see ultraviolet light, which is invisible to humans.</li> <li>– Install decorative grilles, screens, netting, or louvers, with openings no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).</li> <li>– Install awnings, overhangs, sunshades, or light shelves directly adjacent to clear glass which is recessed on all sides.</li> <li>– Install opaque window film or window film with a pattern/design which also adheres to the “two-by-four” rule for coverage.</li> </ul> </li> </ul>	<p>Less than Significant</p>

**TABLE VII-1 (CONTINUED)**

**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.I Biological Resources (cont.)</b>		
Impact BIO-1 (cont.)	<p>vii. Reduce light pollution. Examples include the following:</p> <ul style="list-style-type: none"> <li>– Reduce perimeter lighting whenever possible.</li> <li>– Extinguish night-time architectural illumination treatments during bird migration season (February 15 to May 15 and August 15 to November 30).</li> <li>– Install time switch control devices or occupancy sensors on non-emergency interior lights that can be programmed to turn off during non-work hours and between 11:00p.m. and sunrise.</li> <li>– Install full cut-off, shielded, or directional lighting to minimize light spillage, glare, or light trespass.</li> <li>– Do not use beams of lights during the spring (February 15 to May 15) or fall (August 15 to November 30) migration.</li> </ul> <p>viii. Develop and implement a building operation and management manual that promotes bird safety. Example measures in the manual include the following:</p> <ul style="list-style-type: none"> <li>– Donation of discovered dead bird specimens to an authorized bird conservation organization or museums (e.g., UC Berkeley Museum of Vertebrate Zoology) to aid in species identification and to benefit scientific study, as per all federal, state and local laws.</li> <li>– Distribution of educational materials on bird-safe practices for the building occupants. Contact Golden Gate Audubon Society or American Bird Conservancy for materials.</li> <li>– Asking employees to turn off task lighting at their work stations and draw office blinds, shades, curtains, or other window coverings at end of work day.</li> <li>– Install interior blinds, shades, or other window coverings in windows above the ground floor visible from the exterior as part of the construction contract, lease agreement, or CC&amp;Rs.</li> <li>– Schedule nightly maintenance during the day or to conclude before 11 p.m., if possible.</li> </ul>	
<p><b>Impact BIO-2:</b> Project Modifications would not have a substantial adverse effect, either directly or through habitat modifications, on special-status aquatic species. (Criterion A) <i>(Less than Significant with Mitigation)</i></p>	<p><b>Mitigation Measure BIO-2: Fish and Marine Mammal Protection During Pile Driving.</b> 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 shall be implemented during construction. This plan shall provide detail on the sound attenuation system, detail methods used to monitor and verify sound levels during pile driving activities (if required based on projected in-water noise levels), and describe best management practices to reduce impact pile-driving in the aquatic environment to an intensity level less than 183 dB (sound exposure level, SEL) impulse noise level for fish at a distance of 33 feet, and 160 dB (root mean square pressure level, RMS) impulse noise level. The plan shall incorporate, but not be limited to, the following best management practices:</p> <ul style="list-style-type: none"> <li>• All in-water construction shall be conducted within the established environmental work window between June 1 and November 30, designed to avoid potential impacts to fish species.</li> <li>• A soft start technique to impact hammer pile driving shall be implemented, at the start of each work day or after a break in impact hammer driving of 30 minutes or more, to give fish and marine mammals an opportunity to vacate the area.</li> </ul>	Less than Significant

TABLE VII-1 (CONTINUED)

SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.I Biological Resources (cont.)</b>		
Impact BIO-2 (cont.)	<ul style="list-style-type: none"> <li>• A cushion block will be used during impact hammer pile installation.</li> <li>• If during the use of an impact hammer, established National Marine Fisheries Service pile driving thresholds are exceeded, a bubble curtain or other sound attenuation method as described in the National Marine Fisheries Service-approved sound attenuation monitoring plan shall be utilized to reduce sound levels below the criteria described above. If National Marine Fisheries Service sound level criteria are still exceeded with the use of attenuation methods, a National Marine Fisheries Service-approved biological monitor shall be available to conduct surveys before and during pile driving to inspect the work zone and adjacent waters for marine mammals. The monitor shall be present as specified by the National Marine Fisheries Service during impact pile driving and ensure that:                             <ul style="list-style-type: none"> <li>– The safety zones established in the sound monitoring plan for the protection of marine mammals are maintained.</li> <li>– Work activities are halted when a marine mammal enters a safety zone and resumed only after the animal has been gone from the area for a minimum of 15 minutes.</li> </ul> </li> </ul>	
<p><b>Impact BIO-3:</b> Construction activities required for the Project Modifications would not result in a substantial adverse effect 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. (Criterion B) <i>(Less than Significant with Mitigation)</i></p>	<p><b>Mitigation Measure BIO-3: Eelgrass Surveys.</b> Prior to the start of any in-water construction, the Project Applicant conduct a National Marine Fisheries Service <u>and California Department of Fish and Wildlife</u>-approved eelgrass survey consistent with the measures described in the National Marine Fisheries Service’s October 2014 California Eelgrass Mitigation Policy and Implementation Guidelines (2014 CEMP) and include the following:</p> <ul style="list-style-type: none"> <li>• Before in-water construction activities may occur within the marine environment, eelgrass surveys shall be conducted within the construction footprint consistent within the methods outlined within CEMP guidance (NFMS, 2014).</li> <li>• If eelgrass beds are observed adjacent to the construction footprint, but direct impact is avoidable during construction activities, the avoidance and minimization activities outlined in CEMP guidance shall be implemented during all in-water construction work (NFMS, 2014).</li> <li>• If it is determined that direct impact to eelgrass is unavoidable during construction activities, appropriate mitigation consistent with NMFS 2014 Guidance, and commensurate with the level of impact expected, shall be implemented (NFMS, 2014).</li> </ul>	Less than Significant
<p><b>Impact BIO-4:</b> Project Modifications would not result in a substantial adverse effect on potentially 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. (Criterion C) <i>(Less than Significant with Mitigation)</i></p>	<p><del><b>2009 Mitigation Measure 1.2a: Corps-Verified Wetland Delineation.</b> A preliminary identification of potentially jurisdictional areas was conducted in 2004 (LSA, 2004), and the project sponsor submitted the draft potentially jurisdictional wetland delineation to the Corps in July 2005. The project sponsor shall obtain Corps verification of the preliminary identification of jurisdictional areas prior to submitting permit applications. A verified wetland delineation would be required prior to the submittal of regulatory permit applications.</del></p> <p><b>2009 Mitigation Measure 1.2b: Wetland Avoidance.</b> Section 404 first requires that projects avoid or minimize adverse effects on jurisdictional waters to the extent practicable. To the extent feasible, the final project design shall minimize effects on wetlands and other waters in accordance with Section 4</p>	Less than Significant

**TABLE VII-1 (CONTINUED)**  
**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.I Biological Resources (cont.)</b>		
Impact BIO-4 (cont.)	<p><del>04 of the Clean Water Act. Areas that are avoided shall be subject to Best Management Practices (BMPs), as described in Mitigation Measure 1.2.d below. Such measures shall include installation of silt fencing, straw wattles, or other appropriate erosion and sediment control methods or devices. Equipment used for the removal of debris and concrete riprap along the estuary edge will be operated from land using backhoes and cranes. Construction operations along Clinton Basin and Shoreline Park shall be barge-mounted or shall involve water-based equipment such as scows, derrick barges, and tugs.</del></p> <p><del>Additionally, the existing restoration project at the southwest end of Clinton Basin, implemented by the Port of Oakland, shall be protected during construction activities. The extent of this area shall be clearly marked by a qualified biologist prior to the start of any grading or construction activities and a buffer zone established. All construction personnel working in the vicinity of the restoration area shall be informed of its location and buffer zone.</del></p> <p><b>2009 Mitigation Measure 1.2c: Obtain Regulatory Permits and other Agency Approvals.</b> Prior to the start of construction activities for the project, the project applicant shall obtain all required permit approvals from the Corps, the RWQCB, BCDC, and all other agencies with permitting responsibilities for construction activities within jurisdictional waters of other jurisdiction areas. Permit approvals and certifications shall include but not be limited to Section 404/Section 10 permits from the Corps, Section 401 Water Quality Certification from the RWQCB, and BCDC permit.</p> <ul style="list-style-type: none"> <li>• Section 404/Section 10 Permits. Permit approval from the Corps shall be obtained for the placement of dredge or fill material in waters of the U.S., if any, within the interior of the project site, pursuant to Section 404 of the federal Clean Water Act.</li> </ul> <p>Construction along the estuary edge below MHW elevation will be considered dredging by the Corps and will require a Section 10 permit. In addition, dredging of Clinton Basin will also require a Section 10 permit.</p> <ul style="list-style-type: none"> <li>• <i>Section 401 Water Quality Certification.</i> Approval of Water Quality Certification (WQC) and/or Waste Discharge Requirements (WDRs) shall be obtained from the RWQCB for work within jurisdictional waters. Preparation of the Section 401 Water Quality Certification applications will require an application and supporting materials including construction techniques, areas of impact, and project schedule.</li> <li>• <i>BCDC Permit.</i> Permit approval from BCDC shall be obtained for placement of solid material, pilings, floating structures, boat docks, or other fill in the Bay, and/or dredging or other extraction of material from the Bay and within the 100-foot shoreline band inland from mean high tide line along the length of the project site. Project activities subject to this permit approval would include dredging for rebuilding the marina in Clinton Basin and replacement of the 5th Avenue Marina with a new marina that would contain approximately 170 boat slips. The proposed project would include the removal of approximately 33,780 square feet of solid Bay fill as part of the shoreline design and the placement of 74,110 square feet of solid Bay fill for the creation of a village green at Clinton Basin. The project would also include the removal of approximately 129,920 square feet</li> </ul>	

TABLE VII-1 (CONTINUED)

SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.I Biological Resources (cont.)</b>		
Impact BIO-4 (cont.)	<p>of pile-supported fill with the removal of a portion of the Ninth Avenue Terminal wharf. Additionally, floating fill would be required to create the two proposed marinas. The project would be required to comply with all BCDC permit conditions, which typically include requirements to construct, guarantee, and maintain public access to the Bay; specified construction methods to assure safety or to protect water quality; and mitigation requirements to offset the adverse environmental impacts of the project.</p> <p><b>2009 Mitigation Measure I.2d: Best Management Practices (BMPs).</b> The project applicant shall implement standard BMPs to maintain water quality and control erosion and sedimentation during construction, as required by compliance with the General National Pollution Discharge Elimination System (NPDES) Permit for Construction Activities and established by Mitigation Measure D.1 to address impacts on water quality. Mitigation measures would include, but would not be limited to, installing silt fencing along the edges of the project site to protect estuarine waters, locating fueling stations away from potential jurisdictional features, and isolating construction work areas from the identified jurisdictional features. The project applicant shall also implement BMPs to avoid impacts on water quality resulting from dredging activities within the Bay, as identified in the Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region (LTMS) (Corps, 2001). These BMPs include silt fencing and gunderbooms or other appropriate methods for keeping dredged materials from leaving the project site.</p> <p><b>2009 Mitigation Measure BIO-4.2e: Compensatory Mitigation.</b> The project applicant shall provide compensatory mitigation for temporary impacts to, and permanent loss of, waters of the U.S., including wetlands, as required by regulatory permits issued by the USACE, RWQCB, and BCDC. Measures shall include but not be limited to 1) onsite mitigation through wetland creation or enhancement and a supporting, 2) development of a Mitigation and Monitoring Plan, and or 3) additional wetland creation or enhancement or offsite mitigation.</p> <p><b>1) Onsite Mitigation through Wetland Creation or Enhancement.</b> The project applicant shall further enhance the shoreline from Lake Merritt Channel to Clinton Basin. The primary objective of the enhancement shall be to improve the habitat value for shorebirds, gulls, ducks, and other avian life that frequent the area. Components of the restoration plan shall include 1) restoration of the tidal marsh, 2) enhancement of roosting areas for shorebirds and water birds, and 3) increase in habitat diversity. Shoreline enhancements shall include removal of debris, including concrete riprap, and excavation of the shoreline at Channel Park to create marsh vegetation along this area. Excavation shall provide a shoreline slope that falls between the MTL elevation (approximately -2.4 mean sea level) to the MHW<sup>2</sup>) to allow for the colonization of marsh habitat and the creation of high marsh habitat.</p> <p><b>Mitigation and Monitoring Program.</b> Prior to the start of construction or in coordination with regulatory permit conditions, the project applicant shall prepare and submit for approval to the <del>City Corps, RWQCB, BCDC and CDFG</del> a mitigation and monitoring program to support onsite mitigation. <u>The program shall that outline the mitigation obligations for temporary and permanent impacts to waters of the U.S. resulting from construction and/or operation of the small watercraft dock, including wetlands, identified in this EIR.</u> The program shall include baseline information from existing conditions, anticipated habitat to be enhanced, thresholds of success, monitoring and reporting requirements, and site-specific plans to compensate for <u>over-water structures and</u></p>	

TABLE VII-1 (CONTINUED)

SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.I Biological Resources (cont.)</b>		
Impact BIO-4 (cont.)	<p><del>shading wetland losses resulting from the project. The Oak to Ninth Project Brooklyn Basin Small Watercraft Dock Mitigation and Monitoring Plan shall include, but not be limited to, the following:</del></p> <ul style="list-style-type: none"> <li>• <del>Clearly stated objectives and goals consistent with regional habitat goals.</del></li> <li>• <del>Location, size, and type of mitigation wetlands proposed.</del></li> </ul> <p>A functional assessment of affected jurisdictional waters to ensure that the EPA's "no net loss of wetland value" standard is met. The functional assessment shall also ensure that the mitigation provided is commensurate with the adverse impacts on Bay resources <del>in accordance with BCDC mitigation policies.</del> The assessment will provide sufficient technical detail in the <u>mitigation</u> project design including, <del>at a minimum,</del> an engineered grading plan and water control structures, methods for conserving or stockpiling topsoil, a planting program including removal of exotic species, a list of all species to be planted, sources of seeds and/or plants, timing of planting, plant locations and elevations on the mitigation site base map, and <u>or</u> maintenance techniques.</p> <ul style="list-style-type: none"> <li>• Documentation of performance, monitoring, and adaptive management standards that provide a mechanism for making adjustments to the mitigation site. Performance and monitoring standards shall indicate success criteria to be met within 5 years for vegetation, animal use, removal of exotic species, and hydrology. Adaptive management standards shall include contingency measures that shall outline clear steps to be taken if and when it is determined, through monitoring or other means, that the enhancement or restoration techniques are not meeting success criteria.</li> <li>• Documentation of the necessary long-term management and maintenance requirements, and provisions for sufficient funding.</li> </ul> <p><del>-or-</del></p> <p><b>2) Additional Wetland Creation or Enhancement or Offsite Mitigation.</b> <del>If permanent and temporary impacts on jurisdictional waters cannot be compensated for onsite through the restoration of wetland features incorporated within proposed open space and park areas, the</del> <u>The project applicant shall negotiate additional compensatory mitigation for temporary and permanent impacts to waters of the U.S. resulting from construction and/or operation of the small watercraft dock these losses with the applicable regulatory agencies. Potential options include the creation of additional wetland acreage onsite or the purchase of offsite mitigation.</u></p>	
<p><b>Impact BIO-5:</b> The Project Modifications would not substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites. (Criterion D) (Less than Significant with Mitigation)</p>	<p><b>2009 Mitigation Measure I.3: Protection of Fish and Migrating Salmonids.</b> The project applicant shall implement measures for protection of salmonids and Pacific herring during dredging projects and for indirect impacts on the San Francisco Bay "Essential Fish Habitat" (EFH) that are identified in the <i>Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region</i> (LTMS) (Corps, 2001).</p> <p><i>The Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region</i> (LTMS) (Corps, 2001) identifies specific work windows and Best Management Practices (BMPs) to protect salmonids and Pacific herring during dredging projects and to reduce indirect impacts to the San Francisco Bay EFH. The LTMS was developed during formal consultation among the NMFS, USFWS, and CDFG to address impacts on sensitive fisheries and designated critical habitats under their respective jurisdictions and to standardize mitigation for dredging projects. The</p>	Less than Significant

**TABLE VII-1 (CONTINUED)**

**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation																																																																																																											
<b>IV.I Biological Resources (cont.)</b>																																																																																																													
Impact BIO-5 (cont.)	<p>Biological Opinion (BO) resulting from the LTMS presents specific restrictions on the timing and design of dredging and disposal projects. As the LTMS states, if the dredging project can be accomplished during the identified work windows, the project is authorized for incidental take under the federal Endangered Species Act of 1973, as amended. The LTMS serves as the federal and state pathway for determining potential impacts of dredging and dredge disposal projects on fish species, with timing of construction as the single significance criterion.</p> <p>As identified in the LTMS, restricting dredging and other in-water construction activities to the specified work periods would avoid the direct and indirect impacts on juvenile or adult herring or salmonids that would otherwise result from dredging-related increases in turbidity or changes in water quality. Impacts of dredging operations on coho salmon, Chinook salmon, steelhead, and Pacific herring would therefore be less than significant, provided that dredging activities are conducted within the work windows identified in the LTMS. For waters in central San Francisco Bay, the construction work window for dredging activities in Pacific herring habitat is between March 1 and November 30 (Corps, 2001). The dredging work window for salmonid species in central San Francisco Bay is June 1 through November 30. These work windows are summarized in the table below.</p> <p style="text-align: center;"><b>2009 MITIGATION MEASURE I.3 TABLE</b> <b>CONSTRUCTION WORK WINDOWS FOR IN-WATER PILE-DRIVING AND OTHER IN-WATER ACTIVITIES</b></p> <table border="1" data-bbox="730 857 1663 1295"> <thead> <tr> <th rowspan="2">Fish Species</th> <th rowspan="2">Work Activity</th> <th colspan="12">Construction Work Windows for Project Activities, by Month</th> </tr> <tr> <th>Jan</th> <th>Feb</th> <th>Mar</th> <th>Apr</th> <th>May</th> <th>Jun</th> <th>Jul</th> <th>Aug</th> <th>Sep</th> <th>Oct</th> <th>Nov</th> <th>Dec</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Pacific herring</td> <td>Pile-driving</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>(W)</td> <td></td> </tr> <tr> <td>Other In-Water Activities</td> <td></td> <td></td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td></td> </tr> <tr> <td rowspan="2">Chinook salmon</td> <td>Pile-driving</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>(W)</td> <td></td> </tr> <tr> <td>Other In-Water Activities</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td></td> </tr> <tr> <td rowspan="2">Steelhead</td> <td>Pile-driving</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>(W)</td> <td></td> </tr> <tr> <td>Other In-Water Activities</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td></td> </tr> </tbody> </table> <p>“W” indicates work window when the identified construction activities will minimize impacts to fisheries, in accordance with specific guidance provided by the LTMS (USACE, 2001) for dredging and dredge disposal related activities. “(W)” indicates possible work window. Frank Filice with the San Francisco Department of Public Works indicated that a letter from NMFS (on another project) established a June 1 to November 30 work window for pile-driving activities (Filice, personal communication). The actual project construction work window will be determined by the USACE in consultation with NMFS during the permitting phase of the project.</p>	Fish Species	Work Activity	Construction Work Windows for Project Activities, by Month												Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Pacific herring	Pile-driving						W	W	W	W	W	(W)		Other In-Water Activities			W	W	W	W	W	W	W	W	W		Chinook salmon	Pile-driving						W	W	W	W	W	(W)		Other In-Water Activities						W	W	W	W	W	W		Steelhead	Pile-driving						W	W	W	W	W	(W)		Other In-Water Activities						W	W	W	W	W	W		
Fish Species	Work Activity			Construction Work Windows for Project Activities, by Month																																																																																																									
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec																																																																																																
Pacific herring	Pile-driving						W	W	W	W	W	(W)																																																																																																	
	Other In-Water Activities			W	W	W	W	W	W	W	W	W																																																																																																	
Chinook salmon	Pile-driving						W	W	W	W	W	(W)																																																																																																	
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Steelhead	Pile-driving						W	W	W	W	W	(W)																																																																																																	
	Other In-Water Activities						W	W	W	W	W	W																																																																																																	

**TABLE VII-1 (CONTINUED)**  
**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.I Biological Resources (cont.)</b>		
Impact BIO-5 (cont.)	<p>Implementation of BMPs and adherence to construction timing as outlined in the LTMS would reduce impacts on special-status fish species. As feasible, BMPs, including silt curtains and gunderbooms, shall be implemented to isolate the work area and prevent silt and sediment from entering the estuary.</p> <p>Potential impacts resulting from pile-driving activities in the estuary would be avoided or reduced to a less-than-significant level by either avoiding pile-driving activities between November 1 and June 1 or assuring that pile-driving would result in noise levels below 150 decibels at 10 meters. Proposed construction work windows for pile-driving activities are also presented in the table below.</p> <p>Any pile-driving work occurring outside of these work windows would be conducted in accordance with NMFS directives and Corps permits to reduce potential impacts on fish species.</p> <p>The quantity of in-water features (such as pilings and pier structures) under the proposed project would be comparable to existing conditions, therefore an increase in the number of predatory fish is not expected. Similarly, the composition of fish species using the shallow-water aquatic habitats is not expected to change following project implementation.</p>	
<b>Impact BIO-6:</b> The Project Modifications would not fundamentally conflict with any applicable habitat conservation plan or natural community conservation plan. (Criterion E) (Less than Significant with Mitigation)	<del>2009 Mitigation Measure I.2b (see above)</del> <u>None required</u>	Less than Significant
<b>Impact BIO-7:</b> The Project Modifications would not fundamentally conflict with the City of Oakland Tree Protection Ordinance or Creek Protection Ordinance. (Criteria F and G) (Less than Significant)	None required	Less than Significant
<b>Impact BIO-8:</b> The Project Modifications, in conjunction with other foreseeable development in the City and along its shoreline, would not result in impacts on wetlands, other waters of the U.S., and special-status species. (Less than Significant with Mitigation)	<p><del>2009 Mitigation Measure I.2a (see above)</del></p> <p><del>2009 Mitigation Measure I.2b (see above)</del></p> <p><del>2009 Mitigation Measure I.2c (see above)</del></p> <p><del>2009 Mitigation Measure I.2d (see above)</del></p> <p><del>2009 Mitigation Measure I.2e (see above)</del></p> <p><u>Mitigation Measures BIO-4 (see above)</u></p> <p><del>2009 Mitigation Measure I.3 (see above)</del></p> <p><b>Mitigation Measure BIO-2: Fish and Marine Mammal Protection During Pile Driving (see above)</b></p> <p><b>Mitigation Measure BIO-3: Eelgrass Surveys (see above)</b></p>	Less than Significant

**TABLE VII-1 (CONTINUED)**

**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.J Population and Housing</b>		
<b>Impact POP-1:</b> The Project Modifications would not induce substantial population growth in a manner not contemplated in the General Plan, either directly or indirectly, such that additional infrastructure is required but the impacts of such were not previously considered or analyzed (Criterion A) (Less than Significant)	None required	Less than Significant
<b>Impact POP-2:</b> The Project Modifications would not directly or indirectly displace substantial numbers of existing people or housing units necessitating the construction of replacement housing elsewhere. (Criteria B and C) (Less than Significant)	None required	Less than Significant
<b>Impact POP-3:</b> The Project Modifications, in combination with other past, present, and reasonably foreseeable future projects, would not induce substantial population growth in a manner not contemplated in the General Plan and would not result in the displacement of a substantial numbers of people or housing units. (Less than Significant)	None required	Less than Significant
<b>IV.K Aesthetics, Shadow, and Wind</b>		
<b>Impact AES-1:</b> The Project Modifications would not have a substantial adverse effect on a public scenic vista. (Criterion A) (Less than Significant)	None required	Less than Significant
<b>Impact AES-2:</b> The Project Modifications would not substantially degrade the existing visual character or quality of the site and its surroundings. (Criterion C) (Less than Significant)	None required	Less than Significant
<b>Impact AES-3:</b> The Project Modifications would create a new source of light, but would not substantially or adversely affect day or nighttime views in the area. (Criterion D) (Less than Significant)	<b>SCA AES-1 (SCA 19). Lighting.</b> <i>Prior to building permit final.</i> Proposed new exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.	Less than Significant
<b>Impact AES-4:</b> The Project Modifications would not cast shadow that would substantially impair a nearby use reliant on sunlight, including the following functions: a building using passive solar heat collection, solar collectors for hot water heating, or photovoltaic solar collectors; the beneficial use of any public or quasi-public open space; a historic resource. (Criteria E, F, G, and H) (Less than Significant)	None required	Less than Significant

**TABLE VII-1 (CONTINUED)**

**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.K Aesthetics, Shadow, and Wind (cont.)</b>		
<b>Impact AES-5:</b> The Project Modifications 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) (Less than Significant)	<b>SCA AES-1 (SCA 19): Lighting</b> (see above)	Less than Significant
<b>Impact AES-6:</b> The Project Modifications would not create winds that exceed 36 mph for more than one hour during daylight hours during the year. (Criterion J) (Less than Significant)	None required	Less than Significant
<b>Impact AES-7:</b> The Project Modifications, combined with cumulative development in the Project vicinity and citywide, would not result in significant cumulative impact related to scenic vistas, visual character, light sources, shadow, or wind. (Less than Significant)	<b>SCA AES-1 (SCA 19): Lighting</b> (see above)	Less than Significant
<b>IV.L Public Services and Recreation</b>		
<b>Impact PS-1:</b> The Project Modifications would not involve or require new or physically altered governmental facilities in order to maintain acceptable service ratios, response times, or other performance objectives for fire protection and emergency medical services. (Criterion A.i) (Less than Significant)	None required	Less than Significant
<b>Impact PS-2:</b> The Project Modifications would not result in an increase in demand for police services that would require new or physically altered police facilities in order to maintain acceptable service ratios, response times, or other performance objectives. (Criterion A.ii) (Less than Significant)	None required	Less than Significant
<b>Impact PS-3:</b> The Project Modifications would not result in an increase in new students for public schools at a level that would require new or physically altered school facilities in order to maintain acceptable performance objectives. (Criterion A.iii) (Less than Significant)	None required	Less than Significant
<b>Impact PS-4:</b> The Project Modifications would not result in an increase in demand for libraries at a level that would require new or physically altered library facilities in order to maintain acceptable service ratios. (Criterion A.iv) (Less than Significant)	None required	Less than Significant

TABLE VII-1 (CONTINUED)

**SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>**

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.L Public Services and Recreation (cont.)</b>		
<b>Impact PS-5:</b> The Project Modifications would not result in an increase in demand for maritime emergency services and law enforcement at a level that would require new or physically altered governmental facilities to maintain acceptable performance objectives. (Criterion A.iv) (Less than Significant)	None required	Less than Significant
<b>Impact PS-6:</b> The Project Modifications would not result in an increase in demand for parks and recreational services at a level that would generate substantial physical deterioration or require the construction of new or physically altered facilities in order to maintain service ratios. (Criteria B and C) (Less than Significant)	None required	Less than Significant
<b>Impact PS-7:</b> The Project Modifications, in combination with other past, present, and reasonably foreseeable future projects within and around the Project site, would not result in significant cumulative impacts with respect to public services including recreation. (Less than Significant)	None required	Less than Significant
<b>IV.M Utilities and Service Systems</b>		
<b>Impact UTL-1:</b> The Project Modifications would not generate water demand that exceeds water supplies available from existing entitlements and resources. (Criterion C) (Less Than Significant)	None required	Less than Significant
<b>Impact UTL-2:</b> The Project Modifications 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) (Less than Significant)	<b>SCA UTL-1 (SCA 87): Sanitary Sewer System.</b> <i>Prior to approval of construction-related permit.</i> The project applicant shall prepare and submit a Sanitary Sewer Impact Analysis to the City for review and approval in accordance with the City of Oakland Sanitary Sewer Design Guidelines. The Impact Analysis shall include an estimate of pre-project and post-project wastewater flow from the project site. In the event that the Impact Analysis indicates that the net increase in project wastewater flow exceeds City-projected increases in wastewater flow in the sanitary sewer system, the project applicant shall pay the Sanitary Sewer Impact Fee in accordance with the City's Master Fee Schedule for funding improvements to the sanitary sewer system.	Less than Significant
<b>Impact UTL-3:</b> The Project Modifications would not require or result in construction of new storm water drainage facilities or expansion of existing facilities, construction of which could cause significant environmental effects exceed the capacity of the City's stormwater drainage facilities. (Criterion B) (Less than Significant)	None required	Less than Significant

TABLE VII-1 (CONTINUED)

SUMMARY OF IMPACTS, STANDARD CONDITIONS OF APPROVAL, AND MITIGATION MEASURES, AND RESIDUAL IMPACTS APPLICABLE TO THE REVISED PROJECT MODIFICATIONS<sup>1</sup>

Impacts, Criterion, and Significance	Standard Conditions of Approval and Mitigation Measures	Level of Significance After Application of Standard Conditions of Approval and Mitigation
<b>IV.M Utilities and Service Systems (cont.)</b>		
<b>Impact UTL-4:</b> The Project Modifications 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) (Less Than Significant)	<b>SCA UTL-2 (SCA 84): Recycling Collection and Storage Space.</b> <i>Prior to approval of construction-related permit.</i> The project applicant shall comply with the City of Oakland Recycling Space Allocation Ordinance (chapter 17.118 of the Oakland Planning Code). The project drawings submitted for construction-related permits shall contain recycling collection and storage areas in compliance with the Ordinance. For residential projects, at least two (2) cubic feet of storage and collection space per residential unit is required, with a minimum of ten (10) cubic feet. For nonresidential projects, at least two (2) cubic feet of storage and collection space per 1,000 square feet of building floor area is required, with a minimum of ten (10) cubic feet.	Less than Significant
<b>Impact UTL-5:</b> The Project Modifications would not result in a determination by the energy provider that serves the Project site that it does not have adequate capacity to serve the Project Modification's projected demand in addition to the providers' existing commitments, and would not violate applicable federal, state, or local statutes and regulations relating to energy standards. (Criteria G and H) (Less Than Significant)	None required	Less than Significant
<b>Impact UTL-6:</b> The Project Modifications, in combination with other past, present, and reasonably foreseeable future projects within and around the Project area, would not result in significant cumulative impacts with respect to utilities and service systems. (Less than Significant)	<b>SCA UTL-1 (SCA 87): Sanitary Sewer System</b> (see above)	Less than Significant
<b>IV.N Greenhouse Gas Emissions</b>		
<b>Impact GHG-1:</b> The Project Modifications would not involve a stationary source that would produce total emissions of more than 10,000 metric tons of CO <sub>2</sub> e annually. (Criterion A) (Less than Significant)	None required	Less than Significant
<b>Impact GHG-2:</b> The Project Modifications not involve a land use development that fails to demonstrate consistency with the 2030 Equitable Climate Action Plan (ECAP) (Criterion A) (Less than Significant)	<b>SCA GHG-1 (SCA 41): Project Compliance with the Equitable Climate Action Plan (ECAP) Consistency Checklist.</b> <i>Requirement.</i> The project applicant shall implement all the measures in the Equitable Climate Action Plan (ECAP) Consistency Checklist that was submitted during the Planning entitlement phase.  a. For physical ECAP Consistency Checklist measures to be incorporated into the design of the project, the measures shall be included on the drawings submitted for construction-related permits.  b. For physical ECAP Consistency Checklist measures to be incorporated into the design of the project, the measures shall be implemented during construction.  c. For ECAP Consistency Checklist measures that are operational but not otherwise covered by these SCAs, including but not limited to the requirement for transit passes or additional Transportation Demand Management measures, the applicant shall provide notice of these measures to employees and/or residents and post these requirements in a public place such as a lobby or work area accessible to the employees and/or residents.	Less than Significant

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Appendix A  
**Standard Conditions of  
Approval Mitigation Monitoring  
and Reporting Program**



# APPENDIX A

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## Standard Conditions of Approval and Mitigation Monitoring and Reporting Program

This Standard Conditions of Approval and Mitigation Monitoring and Reporting Program (SCAMMRP) is based on the SEIR prepared for the Brooklyn Basin Marina Expansion Project, as revised in the Response to Comments/Final SEIR (Revised Project Modifications).

This SCAMMRP is in compliance with Section 15097 of the CEQA Guidelines, which requires that the Lead Agency “adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects.” The SCAMMRP lists SCAs and mitigation measures that apply to the Revised Project Modifications. As indicated in their title, 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.<sup>1</sup> The SCAs and some of the mitigation measures are from the Draft SEIR, as amended in the Final SEIR.

SCAs are considered “environmental protection measures” that would minimize potential adverse effects that could result from implementation of the Revised Project Modifications, to ensure the conditions are implemented and monitored. All of the environmental topics and potential effects addressed by the SCAs and mitigation measures are included in this SCAMMRP. This SCAMMRP also identifies the mitigation monitoring requirements for each mitigation measure and SCA.

To the extent that there is any inconsistency between any mitigation measures and/or SCAs, the more restrictive conditions shall govern; to the extent any mitigation measure and/or SCA identified in the SEIR were inadvertently omitted, they are automatically incorporated herein by reference.

- The first column of the SCAMMRP table identifies the mitigation measure or SCA applicable to that topic in the Draft SEIR. While a mitigation measure or SCA can apply to more than one topic, it is listed in its entirety only under its primary topic (as indicated in the mitigation or SCA designator). The SCAs are numbered to specifically apply to the Revised Project

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<sup>1</sup> The Brooklyn Basin Project was previously called the Oak to Ninth Project. For the purpose of this Supplemental EIR (SEIR) analysis, the 2009 EIR 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 Avenue 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.

Modifications and this SEIR; however, the SCAs as presented in the City's *Standard Conditions of Approval and Uniformly Applied Development Standards* document are included in parenthesis for cross-reference purposes.<sup>2</sup>

- The second column identifies the monitoring schedule or timing applicable to the Revised Project Modifications.
- The third column names the party responsible for monitoring the required action for the Revised Project Modifications.

The Project Applicant is responsible for compliance with any recommendations identified in City-approved technical reports, all applicable mitigation measures adopted, and with all SCAs set forth herein at its sole cost and expense, unless otherwise expressly provided in a specific mitigation measure or condition of approval, and subject to the review and approval of the City of Oakland. Overall monitoring and compliance with the mitigation measures will be the responsibility of the Bureau of Planning, and Zoning Inspections Division. Prior to the issuance of a demolition, grading, and/or construction permit, the Project Applicant shall pay the applicable mitigation and monitoring fee to the City in accordance with the City's Master Fee Schedule.

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<sup>2</sup> Dated December 16, 2020 as amended.

Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/Monitoring	
	Schedule	Responsibility
<b>General</b>		
<p><b>SCA GEN-1 (Standard Condition Approval 15) Regulatory Permits and Authorizations from Other Agencies</b></p> <p><u>Requirement:</u> The project applicant shall obtain all necessary regulatory permits and authorizations from applicable resource/regulatory agencies including, but not limited to, the Regional Water Quality Control Board, Bay Area Air Quality Management District, Bay Conservation and Development Commission, California Department of Fish and Wildlife, U. S. Fish and Wildlife Service, and Army Corps of Engineers and shall comply with all requirements and conditions of the permits/authorizations. The project applicant shall submit evidence of the approved permits/authorizations to the City, along with evidence demonstrating compliance with any regulatory permit/authorization conditions of approval.</p>	Prior to activity requiring permit/ authorization from regulatory agency.	City of Oakland Bureau of Planning and applicable regulatory agency with jurisdiction
<b>IV.A Land Use</b>		
<p><b>2009 EIR Mitigation Measure A.1:</b> The Project Applicant shall incorporate into the Project site plan design elements that 1) address the relationship (setback, height and upper-story stepbacks, etc.) of new buildings located adjacent to Fifth Avenue Point to minimize the physical division of the outparcels from the existing Oak-to-Ninth District; 2) provide safe, direct, and well-designed pedestrian and bicycle access between the outparcels and the new public open spaces, trails, and marina uses on the Project site; 3) provide appropriate landscaping and/or other feature(s) to provide appropriate buffering between the outparcels and the Project site, where necessary and feasible. The proposed Planned Waterfront Zoning District (PWD-1) standards discussed in Impact A.2 shall incorporate, as appropriate, specific design standards to address the aforementioned elements in areas abutting Fifth Avenue Point.</p>	Prior to approval of Final Development Plans and specifications for the respective Development Parcel	City of Oakland Bureau of Planning
<p><b>2009 EIR Mitigation Measure A.3a:</b> The Project Applicant shall implement all mitigation measures identified throughout this SEIR to address the significant physical impacts associated with the environmental changes that would occur as a result of the project, reducing each impact to less than significant, where feasible.</p>	Throughout implementation of the project	City of Oakland Bureau of Planning
<p><b>2009 EIR Mitigation Measure A.3b:</b> The Project Applicant shall implement the specific regulations and standards of the proposed Planned Waterfront Zoning District (consistent with Mitigation Measures A.1 and A.2b), if approved. To specifically address the physical impacts resulting from the change in land use and environment in proximity to Fifth Avenue Point and adjacent residential development, the project shall adhere to the regulations and standards for allowable uses, open space, streets, setbacks, building heights and upper-story stepbacks, maximum densities, maximum commercial space, pedestrian and bicycle access, and landscaping and buffering.</p>	Throughout implementation of the project by administration of the adopted Design Guidelines and the design review process in the Development Agreement	City of Oakland Bureau of Planning
<b>IV.B Transportation</b>		
<p><b>SCA TRA-3 (Standard Condition of Approval 78) Transportation and Parking Demand Management</b></p> <p><b>a. Transportation and Parking Demand Management (TDM) Plan Required</b></p> <p><u>Requirement:</u> The project applicant shall submit a Transportation and Parking Demand Management (TDM) Plan for review and approval by the City.</p> <p>i. The goals of the TDM Plan shall be the following:</p> <ul style="list-style-type: none"> <li>Reduce vehicle traffic and parking demand generated by the project to the maximum extent practicable.</li> </ul>	<p>a. Prior to approval of planning application</p> <p>b. Prior to building permit final</p> <p>c. Ongoing</p>	<p>a. City of Oakland Bureau of Planning</p> <p>b. City of Oakland Bureau of Building</p> <p>c. City of Oakland Department of Transportation</p>

Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/Monitoring													
	Schedule	Responsibility												
<b>IV.B Transportation (cont.)</b>														
<ul style="list-style-type: none"> <li>• Achieve the following project vehicle trip reductions (VTR):                             <ul style="list-style-type: none"> <li>– Projects generating 50-99 net new a.m. or p.m. peak hour vehicle trips: 10 percent VTR</li> <li>– Projects generating 100 or more net new a.m. or p.m. peak hour vehicle trips: 20 percent VTR</li> </ul> </li> <li>• Increase pedestrian, bicycle, transit, and carpool/vanpool modes of travel. All four modes of travel shall be considered, as appropriate</li> <li>• Enhance the City’s transportation system, consistent with City policies and programs.</li> </ul> <p>ii. The TDM Plan should include the following:</p> <ul style="list-style-type: none"> <li>• Baseline existing conditions of parking and curbside regulations within the surrounding neighborhood that could affect the effectiveness of TDM strategies, including inventory of parking spaces and occupancy if applicable.</li> <li>• Proposed TDM strategies to achieve VTR goals (see below).</li> </ul> <p>iii. For employers with 100 or more employees at the subject site, the TDM Plan shall also comply with the requirements of Oakland Municipal Code Chapter 10.68 Employer-Based Trip Reduction Program.</p> <p>iv. The following TDM strategies <b>must</b> be incorporated into a TDM Plan based on a project location or other characteristics. When required, these mandatory strategies should be identified as a credit toward a project’s VTR</p>														
<table border="1"> <thead> <tr> <th>Improvement</th> <th>Required by code or when...</th> </tr> </thead> <tbody> <tr> <td><b>Bus boarding bulbs or islands</b></td> <td> <ul style="list-style-type: none"> <li>• A bus boarding bulb or island does not already exist and a bus stop is located along the project frontage; and/or</li> <li>• A bus stop along the project frontage serves a route with 15 minutes or better peak hour service and has a shared bus-bike lane curb</li> </ul> </td> </tr> <tr> <td><b>Bus shelter</b></td> <td> <ul style="list-style-type: none"> <li>• A stop with no shelter is located within the project frontage, or</li> <li>• The project is located within 0.10 miles of a flag stop with 25 or more boardings per day</li> </ul> </td> </tr> <tr> <td><b>Concrete bus pad</b></td> <td> <ul style="list-style-type: none"> <li>• A bus stop is located along the project frontage and a concrete bus pad does not already exist</li> </ul> </td> </tr> <tr> <td><b>Curb extensions or bulb-outs</b></td> <td> <ul style="list-style-type: none"> <li>• Identified as an improvement within site analysis</li> </ul> </td> </tr> <tr> <td><b>Implementation of a corridor-level bikeway improvement</b></td> <td> <ul style="list-style-type: none"> <li>• A buffered Class II or Class IV bikeway facility is in a local or county adopted plan within 0.10 miles of the project location; and</li> <li>• The project would generate 500 or more daily bicycle trips</li> </ul> </td> </tr> </tbody> </table>	Improvement	Required by code or when...	<b>Bus boarding bulbs or islands</b>	<ul style="list-style-type: none"> <li>• A bus boarding bulb or island does not already exist and a bus stop is located along the project frontage; and/or</li> <li>• A bus stop along the project frontage serves a route with 15 minutes or better peak hour service and has a shared bus-bike lane curb</li> </ul>	<b>Bus shelter</b>	<ul style="list-style-type: none"> <li>• A stop with no shelter is located within the project frontage, or</li> <li>• The project is located within 0.10 miles of a flag stop with 25 or more boardings per day</li> </ul>	<b>Concrete bus pad</b>	<ul style="list-style-type: none"> <li>• A bus stop is located along the project frontage and a concrete bus pad does not already exist</li> </ul>	<b>Curb extensions or bulb-outs</b>	<ul style="list-style-type: none"> <li>• Identified as an improvement within site analysis</li> </ul>	<b>Implementation of a corridor-level bikeway improvement</b>	<ul style="list-style-type: none"> <li>• A buffered Class II or Class IV bikeway facility is in a local or county adopted plan within 0.10 miles of the project location; and</li> <li>• The project would generate 500 or more daily bicycle trips</li> </ul>		
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Standard Conditions of Approval/Mitigation Measures		Mitigation Implementation/Monitoring	
		Schedule	Responsibility
<b>IV.B Transportation (cont.)</b>			
<b>Improvement</b>	<b>Required by code or when...</b>		
<b>Implementation of a corridor-level transit capital improvement</b>	<ul style="list-style-type: none"> <li>A high-quality transit facility is in a local or county adopted plan within 0.25 miles of the project location; and</li> <li>The project would generate 400 or more peak period transit trips</li> </ul>		
<b>Installation of amenities such as lighting; pedestrian-oriented green infrastructure, trees, or other greening landscape; and trash receptacles per the Pedestrian Master Plan and any applicable streetscape plan.</b>	<ul style="list-style-type: none"> <li>Always required</li> </ul>		
<b>In-street bicycle corral</b>	<ul style="list-style-type: none"> <li>A project includes more than 10,000 square feet of ground floor retail, is located along a Tier 1 bikeway, and on-street vehicle parking is provided along the project frontages.</li> </ul>		
<b>Intersection improvements<sup>3</sup></b>	<ul style="list-style-type: none"> <li>Identified as an improvement within site analysis</li> </ul>		
<b>New sidewalk, curb ramps, curb and gutter meeting current City and ADA standards</b>	<ul style="list-style-type: none"> <li>Always required</li> </ul>		
<b>No monthly permits and establish minimum price floor for public parking<sup>4</sup></b>	<ul style="list-style-type: none"> <li>If proposed parking ratio exceeds 1:1000 sf. (commercial)</li> </ul>		
<b>Parking garage is designed with retrofit capability</b>	<ul style="list-style-type: none"> <li>Optional if proposed parking ratio exceeds 1:1.25 (residential) or 1:1000 sf. (commercial)</li> </ul>		
<b>Parking space reserved for car share</b>	<ul style="list-style-type: none"> <li>If a project is providing parking and a project is located within downtown. One car share space reserved for buildings between 50 – 200 units, then one car share space per 200 units.</li> </ul>		
<b>Paving, lane striping or restriping (vehicle and bicycle), and signs to midpoint of street section</b>	<ul style="list-style-type: none"> <li>Typically required</li> </ul>		
<b>Pedestrian crossing improvements</b>	<ul style="list-style-type: none"> <li>Identified as an improvement within site analysis</li> </ul>		
<b>Pedestrian-supportive signal changes<sup>5</sup></b>	<ul style="list-style-type: none"> <li>Identified as an improvement within operations analysis</li> </ul>		
<b>Real-time transit information system</b>	<ul style="list-style-type: none"> <li>A project frontage block includes a bus stop or BART station and is along a Tier 1 transit route with 2 or more routes or peak period frequency of 15 minutes or better</li> </ul>		

<sup>3</sup> Including but not limited to visibility improvements, shortening corner radii, pedestrian safety islands, accounting for pedestrian desire lines.

<sup>4</sup> May also provide a cash incentive or transit pass alternative to a free parking space in commercial properties.

<sup>5</sup> Including but not limited to reducing signal cycle lengths to less than 90 seconds to avoid pedestrian crossings against the signal, providing a leading pedestrian interval, provide a “scramble” signal phase where appropriate.

Standard Conditions of Approval/Mitigation Measures		Mitigation Implementation/Monitoring	
		Schedule	Responsibility
<b>IV.B Transportation (cont.)</b>			
<b>Improvement</b>	<b>Required by code or when...</b>		
<b>Relocating bus stops to far side</b>	<ul style="list-style-type: none"> <li>A project is located within 0.10 mile of any active bus stop that is currently near-side</li> </ul>		
<b>Signal upgrades<sup>6</sup></b>	<ul style="list-style-type: none"> <li>Project size exceeds 100 residential units, 80,000 sf. of retail, or 100,000 sf. of commercial; and</li> <li>Project frontage abuts an intersection with signal infrastructure older than 15 years</li> </ul>		
<b>Transit queue jumps</b>	<ul style="list-style-type: none"> <li>Identified as a needed improvement within operations analysis of a project with frontage along a Tier 1 transit route with 2 or more routes or peak period frequency of 15 minutes or better</li> </ul>		
<b>Trenching and placement of conduit for providing traffic signal interconnect</b>	<ul style="list-style-type: none"> <li>Project size exceeds 100 units, 80,000 sf. of retail, or 100,000 sf. of commercial; and</li> <li>Project frontage block is identified for signal interconnect improvements as part of a planned ITS improvement; and</li> <li>A major transit improvement is identified within operations analysis requiring traffic signal interconnect</li> </ul>		
<b>Unbundled parking</b>	<ul style="list-style-type: none"> <li>If proposed parking ratio exceeds 1:1.25 (residential)</li> </ul>		
<p>v. Other TDM strategies to consider include, but are not limited to, the following:</p> <ul style="list-style-type: none"> <li>Inclusion of additional long-term and short-term bicycle parking that meets the design standards set forth in chapter five of the Bicycle Master Plan and the Bicycle Parking Ordinance (chapter 17.117 of the Oakland Planning Code), and shower and locker facilities in commercial developments that exceed the requirement.</li> <li>Construction of and/or access to bikeways per the Bicycle Master Plan; construction of priority bikeways, on-site signage and bike lane striping.</li> <li>Installation of safety elements per the Pedestrian Master Plan (such as crosswalk striping, curb ramps, count down signals, bulb outs, etc.) to encourage convenient and safe crossing at arterials, in addition to safety elements required to address safety impacts of the project.</li> </ul>			

<sup>6</sup> Including typical traffic lights, pedestrian signals, bike actuated signals, transit-only signals

Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/Monitoring	
	Schedule	Responsibility
<b>IV.B Transportation (cont.)</b>		
<ul style="list-style-type: none"> <li>• Installation of amenities such as lighting, street trees, and trash receptacles per the Pedestrian Master Plan, the Master Street Tree List, Tree Planting Guidelines (which can be viewed at <a href="http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak042662.pdf">http://www2.oaklandnet.com/oakca1/groups/pwa/documents/report/oak042662.pdf</a> and <a href="http://www2.oaklandnet.com/oakca1/groups/pwa/documents/form/oak025595.pdf">http://www2.oaklandnet.com/oakca1/groups/pwa/documents/form/oak025595.pdf</a>, respectively), and any applicable streetscape plan.</li> <li>• Construction and development of transit stops/shelters, pedestrian access, way finding signage, and lighting around transit stops per transit agency plans or negotiated improvements.</li> <li>• Direct on-site sales of transit passes purchased and sold at a bulk group rate (through programs such as AC Transit Easy Pass or a similar program through another transit agency).</li> <li>• Provision of a transit subsidy to employees or residents, determined by the project applicant and subject to review by the City, if employees or residents use transit or commute by other alternative modes.</li> <li>• Provision of an ongoing contribution to transit service to the area between the project and nearest mass transit station prioritized as follows: 1) Contribution to AC Transit bus service; 2) Contribution to an existing area shuttle service; and 3) Establishment of new shuttle service. The amount of contribution (for any of the above scenarios) would be based upon the cost of establishing new shuttle service (Scenario 3).</li> <li>• Guaranteed ride home program for employees, either through 511.org or through separate program.</li> <li>• Pre-tax commuter benefits (commuter checks) for employees.</li> <li>• Free designated parking spaces for on-site car-sharing program (such as City Car Share, Zip Car, etc.) and/or car-share membership for employees or tenants.</li> <li>• On-site carpooling and/or vanpool program that includes preferential (discounted or free) parking for carpools and vanpools.</li> <li>• Distribution of information concerning alternative transportation options.</li> <li>• Parking spaces sold/leased separately for residential units. Charge employees for parking, or provide a cash incentive or transit pass alternative to a free parking space in commercial properties.</li> <li>• Parking management strategies including attendant/valet parking and shared parking spaces.</li> <li>• Requiring tenants to provide opportunities and the ability to work off-site.</li> <li>• Allow employees or residents to adjust their work schedule in order to complete the basic work requirement of five eight-hour workdays by adjusting their schedule to reduce vehicle trips to the worksite (e.g., working four, ten-hour days; allowing employees to work from home two days per week).</li> <li>• Provide or require tenants to provide employees with staggered work hours involving a shift in the set work hours of all employees at the workplace or flexible work hours involving individually determined work hours.</li> </ul> <p>The TDM Plan shall indicate the estimated VTR for each strategy, based on published research or guidelines where feasible. For TDM Plans containing ongoing operational VTR strategies, the Plan shall include an ongoing monitoring and</p>		

Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/Monitoring	
	Schedule	Responsibility
<b>IV.B Transportation (cont.)</b>		
<p>enforcement program to ensure the Plan is implemented on an ongoing basis during project operation. If an annual compliance report is required, as explained below, the TDM Plan shall also specify the topics to be addressed in the annual report.</p> <p><b>b. TDM Implementation – Physical Improvements</b></p> <p><u>Requirement:</u> For VTR strategies involving physical improvements, the project applicant shall obtain the necessary permits/ approvals from the City and install the improvements prior to the completion of the project.</p> <p><b>c. TDM Implementation – Operational Strategies</b></p> <p><u>Requirement:</u> For projects that generate 100 or more net new a.m. or p.m. peak hour vehicle trips and contain ongoing operational VTR strategies, the project applicant shall submit an annual compliance report for the first five years following completion of the project (or completion of each phase for phased projects) for review and approval by the City. The annual report shall document the status and effectiveness of the TDM program, including the actual VTR achieved by the project during operation. If deemed necessary, the City may elect to have a peer review consultant, paid for by the project applicant, review the annual report. If timely reports are not submitted and/or the annual reports indicate that the project applicant has failed to implement the TDM Plan, the project will be considered in violation of the Conditions of Approval and the City may initiate enforcement action as provided for in these Conditions of Approval. The project shall not be considered in violation of this Condition if the TDM Plan is implemented but the VTR goal is not achieved.</p>		
<b>IV.D Hydrology and Water Quality</b>		
<p><b>SCA HYD-1 (Standard Condition Approval 60): Structures in a Flood Zone.</b> Prior to approval of construction-related permit. The project shall be designed to ensure that new structures within a 100-year flood zone do not interfere with the flow of water or increase flooding. The project applicant shall 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 BFE.</p>	Prior to approval of construction-related permit	City of Oakland Bureau of Building
<p><b>SCA HYD-2 (Standard Condition Approval 61): Bay Conservation and Development Commission (BCDC) Approval.</b> Prior to activity requiring permit/approval from BCDC. The project applicant shall 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. The project applicant shall submit evidence of the permit/approval to the City and comply with all requirements and conditions of the permit/approval.</p>	Prior to activity requiring permit/approval from BCDC	BCDC; evidence of approval submitted to Bureau of Planning
<p><b>2009 Mitigation Measure D.1:</b> The project sponsor shall comply with all NPDES requirements, RWQCB General Construction Permit requirements, and all City regulations and Creek Protection Permits requirements.</p>	Prior to issuance of a grading permit for each phase of the project.	City of Oakland Bureau of Planning and Bureau of Building

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	Schedule	Responsibility
<b>IV.E Cultural Resources and Tribal Cultural Resources</b>		
<p><b>SCA CUL-1 (Standard Condition of Approval 32): <i>Archaeological and Paleontological Resources – Discovery During Construction</i></b></p> <p><u>Requirement:</u> Pursuant to CEQA Guidelines section 15064.5(f), in the event that any historic or prehistoric subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the Project applicant shall notify the City and consult with a qualified archaeologist or paleontologist, as applicable, to assess the significance of the find. In the case of discovery of paleontological resources, the assessment shall be done in accordance with the Society of Vertebrate Paleontology standards. If any find is determined to be significant, 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. Feasibility of avoidance shall be determined with consideration of factors such as the nature of the find, project design, costs, and other considerations. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery, excavation) shall be instituted. Work may proceed on other parts of the project site while measures for the cultural resources are implemented.</p> <p>In the event of data recovery of archaeological resources, the Project applicant shall submit an Archaeological Research Design and Treatment Plan (ARDTP) prepared by a qualified archaeologist for review and approval by the City. The ARDTP is required to identify how the proposed data recovery program would preserve the significant information the archaeological resource is expected to contain. The ARDTP shall identify the scientific/historic research questions applicable to the expected resource, the data classes the resource is expected to possess, and how the expected data classes would address the applicable research questions. The ARDTP shall include the analysis and specify the curation and storage methods. Data recovery, in general, shall be limited to the portions of the archaeological resource that could be impacted by the proposed project. Destructive data recovery methods shall not be applied to portions of the archaeological resources if nondestructive methods are practicable. Because the intent of the ARDTP is to save as much of the archaeological resource as possible, including moving the resource, if feasible, preparation and implementation of the ARDTP would reduce the potential adverse impact to less than significant. The Project applicant shall implement the ARDTP at his/her expense.</p> <p>In the event of excavation of paleontological resources, the Project applicant shall submit an excavation plan prepared by a qualified paleontologist to the City for review and approval. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by a qualified paleontologist, as appropriate, according to current professional standards and at the expense of the Project applicant.</p>	During construction	City of Oakland Bureau of Building
<p><b>SCA CUL-2 (Standard Condition of Approval 33): <i>Archaeologically Sensitive Areas – Pre-Construction Measures</i></b></p> <p><u>Requirement:</u> The project applicant shall implement either Provision A (Intensive Pre-Construction Study) or Provision B (Construction ALERT Sheet) concerning archaeological resources.</p> <p><b>Provision A: Intensive Pre-Construction Study.</b></p> <p>The project applicant shall 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. The purpose of the site-specific, intensive archaeological resources study is to identify early the potential presence of history-period archaeological resources on the project site. At a minimum, the study shall include:</p> <ol style="list-style-type: none"> <li>a. Subsurface presence/absence studies of the project site. Field studies may include, but are not limited to, auguring and other common methods used to identify the presence of archaeological resources.</li> <li>b. A report disseminating the results of this research.</li> </ol>	Prior to approval of construction-related permit; During construction	City of Oakland Bureau of Planning and Bureau of Building

Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/Monitoring	
	Schedule	Responsibility
<b>IV.E Cultural Resources and Tribal Cultural Resources (cont.)</b>		
<p>c. Recommendations for any additional measures that could be necessary to mitigate any adverse impacts to recorded and/or inadvertently discovered cultural resources.</p> <p>If the results of the study indicate a high potential presence of historic-period archaeological resources on the project site, or a potential resource is discovered, the project applicant shall hire a qualified archaeologist to monitor any ground disturbing activities on the project site during construction and prepare an ALERT sheet pursuant to Provision B below that details what could potentially be found at the project site. Archaeological monitoring would include briefing construction personnel about the type of artifacts that may be present (as referenced in the ALERT sheet, required per Provision B below) and the procedures to follow if any artifacts are encountered, field recording and sampling in accordance with the Secretary of Interior’s Standards and Guidelines for Archaeological Documentation, notifying the appropriate officials if human remains or cultural resources are discovered, and preparing a report to document negative findings after construction is completed if no archaeological resources are discovered during construction.</p> <p><b>Provision B: Construction ALERT Sheet.</b></p> <p>The project applicant shall 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 ALERT sheet shall contain, at a minimum, visuals that depict each type of artifact that could be encountered on the project site. Training by the qualified archaeologist shall be provided to the project’s prime contractor, any project subcontractor firms (including demolition, excavation, grading, foundation, and pile driving), and utility firms involved in soil-disturbing activities within the project site.</p> <p>The ALERT sheet shall state, in addition to the basic archaeological resource protection measures contained in other standard conditions of approval, all work must stop and the City’s Environmental Review Officer contacted in the event of discovery of the following cultural materials: concentrations of shellfish remains; evidence of fire (ashes, charcoal, burnt earth, fire-cracked rocks); concentrations of bones; recognizable Native American artifacts (arrowheads, shell beads, stone mortars [bowls], humanly shaped rock); building foundation remains; trash pits, privies (outhouse holes); floor remains; wells; concentrations of bottles, broken dishes, shoes, buttons, cut animal bones, hardware, household items, barrels, etc.; thick layers of burned building debris (charcoal, nails, fused glass, burned plaster, burned dishes); wood structural remains (building, ship, wharf); clay roof/floor tiles; stone walls or footings; or gravestones. Prior to any soil-disturbing activities, each contractor shall be responsible for ensuring that the ALERT sheet is circulated to all field personnel, including machine operators, field crew, pile drivers, and supervisory personnel. The ALERT sheet shall also be posted in a visible location at the project site.</p>		
<p><b>SCA CUL-3 (Standard Condition of Approval 34): Human Remains – Discovery During Construction</b></p> <p><u>Requirement:</u> Pursuant to CEQA Guidelines section 15064.5(e)(1), 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. If the County Coroner determines that an investigation of the cause of death is required or that the remains are Native American, all work shall cease within 50 feet of the remains until appropriate arrangements are made. In the event that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of section 7050.5 of the California Health and Safety Code. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance, and avoidance measures (if applicable) shall be completed expeditiously and at the expense of the Project applicant.</p>	During construction	City of Oakland Bureau of Building

Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/Monitoring	
	Schedule	Responsibility
<b>IV.G Noise</b>		
<p><b>SCA NOI-1 (Standard Condition of Approval 67): Exposure to Community Noise.</b> The project applicant shall submit a Noise Reduction Plan prepared by a qualified acoustical engineer for City review and approval that contains noise reduction measures (e.g., sound-rated window, wall, and door assemblies) to achieve an acceptable interior noise level in accordance with the land use compatibility guidelines of the Noise Element of the Oakland General Plan. The applicant shall implement the approved Plan during construction. To the maximum extent practicable, interior noise levels shall not exceed the following:</p> <ul style="list-style-type: none"> <li>a. 45 dBA: Residential activities, civic activities, hotels</li> <li>b. 50 dBA: Administrative offices; group assembly activities</li> <li>c. 55 dBA: Commercial activities</li> <li>d. 65 dBA: Industrial activities.</li> </ul>	Prior to approval of construction-related permit	City of Oakland Bureau of Planning and Bureau of Building
<b>IV.I Biological Resources</b>		
<p><b>SCA BIO-1 (Standard Condition of Approval 28): Bird Collision Reduction Measure.</b> The project applicant shall submit a Bird Collision Reduction Plan for City review and approval to reduce potential bird collisions to the maximum feasible extent. The Plan shall include all of the following mandatory measures, as well as applicable and specific project Best Management Practice (BMP) strategies to reduce bird strike impacts to the maximum feasible extent. The project applicant shall implement the approved Plan. Mandatory measures include <u>all</u> of the following:</p> <ul style="list-style-type: none"> <li>i. For large buildings subject to federal aviation safety regulations, install minimum intensity white strobe lighting with three second flash instead of solid red or rotating lights.</li> <li>ii. Minimize the number of and co-locate rooftop-antennas and other rooftop structures.</li> <li>iii. Monopole structures or antennas shall not include guy wires.</li> <li>iv. Avoid the use of mirrors in landscape design.</li> <li>v. Avoid placement of bird-friendly attractants (i.e., landscaped areas, vegetated roofs, water features) near glass unless shielded by architectural features taller than the attractant that incorporate bird friendly treatments no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule), as explained below.</li> <li>vi. Apply bird-friendly glazing treatments to no less than 90 percent of all windows and glass between the ground and 60 feet above ground or to the height of existing adjacent landscape or the height of the proposed landscape. Examples of bird-friendly glazing treatments include the following: <ul style="list-style-type: none"> <li>– Use opaque glass in window panes instead of reflective glass.</li> <li>– Uniformly cover the interior or exterior of clear glass surface with patterns (e.g., dots, stripes, decals, images, abstract patterns). Patterns can be etched, fritted, or on films and shall have a density of no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).</li> <li>– Install paned glass with fenestration patterns with vertical and horizontal mullions no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).</li> <li>– Install external screens over non-reflective glass (as close to the glass as possible) for birds to perceive windows as solid objects.</li> </ul> </li> </ul>	Prior to approval of construction-related permit	City of Oakland Bureau of Planning and Bureau of Building

Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/Monitoring	
	Schedule	Responsibility
<b>IV.I Biological Resources (cont.)</b>		
<ul style="list-style-type: none"> <li>– Install UV-pattern reflective glass, laminated glass with a patterned UV-reflective coating, or UV-absorbing and UV-reflecting film on the glass since most birds can see ultraviolet light, which is invisible to humans.</li> <li>– Install decorative grilles, screens, netting, or louvers, with openings no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).</li> <li>– Install awnings, overhangs, sunshades, or light shelves directly adjacent to clear glass which is recessed on all sides.</li> <li>– Install opaque window film or window film with a pattern/design which also adheres to the “two-by-four” rule for coverage.</li> </ul> <p>vii. Reduce light pollution. Examples include the following:</p> <ul style="list-style-type: none"> <li>– Reduce perimeter lighting whenever possible.</li> <li>– Extinguish night-time architectural illumination treatments during bird migration season (February 15 to May 15 and August 15 to November 30).</li> <li>– Install time switch control devices or occupancy sensors on non-emergency interior lights that can be programmed to turn off during non-work hours and between 11:00p.m. and sunrise.</li> <li>– Install full cut-off, shielded, or directional lighting to minimize light spillage, glare, or light trespass.</li> <li>– Do not use beams of lights during the spring (February 15 to May 15) or fall (August 15 to November 30) migration.</li> </ul> <p>viii. Develop and implement a building operation and management manual that promotes bird safety. Example measures in the manual include the following:</p> <ul style="list-style-type: none"> <li>– Donation of discovered dead bird specimens to an authorized bird conservation organization or museums (e.g., UC Berkeley Museum of Vertebrate Zoology) to aid in species identification and to benefit scientific study, as per all federal, state and local laws.</li> <li>– Distribution of educational materials on bird-safe practices for the building occupants. Contact Golden Gate Audubon Society or American Bird Conservancy for materials.</li> <li>– Asking employees to turn off task lighting at their work stations and draw office blinds, shades, curtains, or other window coverings at end of work day.</li> <li>– Install interior blinds, shades, or other window coverings in windows above the ground floor visible from the exterior as part of the construction contract, lease agreement, or CC&amp;Rs.</li> </ul> <p>Schedule nightly maintenance during the day or to conclude before 11 p.m., if possible.</p>		
<p><b>Mitigation Measure BIO-2: Fish and Marine Mammal Protection During Pile Driving.</b> 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 shall be implemented during construction. This plan shall provide detail on the sound attenuation system, detail methods used to monitor and verify sound levels during pile driving activities (if required based on projected in-water noise levels), and describe best management practices to reduce impact pile-driving in the aquatic environment to an intensity level less than 183 dB (sound exposure level, SEL) impulse noise level for fish at a distance of 33 feet, and 160 dB (root mean square pressure level, RMS) impulse noise level. The plan shall incorporate, but not be limited to, the following best management practices:</p> <ul style="list-style-type: none"> <li>–</li> </ul>	<p>Prior to approval of construction-related permit; ongoing during construction activities</p>	<p>NMFS; evidence of approval submitted to City of Oakland Bureau of Planning</p>

Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/Monitoring	
	Schedule	Responsibility
<b>IV.I Biological Resources (cont.)</b>		
<ul style="list-style-type: none"> <li>All in-water construction shall be conducted within the established environmental work window between June 1 and November 30, designed to avoid potential impacts to fish species.</li> <li>A soft start technique to impact hammer pile driving shall be implemented, at the start of each work day or after a break in impact hammer driving of 30 minutes or more, to give fish and marine mammals an opportunity to vacate the area.</li> <li>A cushion block will be used during impact hammer pile installation.</li> <li>If during the use of an impact hammer, established National Marine Fisheries Service pile driving thresholds are exceeded, a bubble curtain or other sound attenuation method as described in the National Marine Fisheries Service-approved sound attenuation monitoring plan shall be utilized to reduce sound levels below the criteria described above. If National Marine Fisheries Service sound level criteria are still exceeded with the use of attenuation methods, a National Marine Fisheries Service-approved biological monitor shall be available to conduct surveys before and during pile driving to inspect the work zone and adjacent waters for marine mammals. The monitor shall be present as specified by the National Marine Fisheries Service during impact pile driving and ensure that:                             <ul style="list-style-type: none"> <li>The safety zones established in the sound monitoring plan for the protection of marine mammals are maintained.</li> <li>Work activities are halted when a marine mammal enters a safety zone and resumed only after the animal has been gone from the area for a minimum of 15 minutes.</li> </ul> </li> </ul>		
<p><b>Mitigation Measure BIO-3: Eelgrass Surveys.</b> Prior to the start of any in-water construction, the Project Applicant conduct a National Marine Fisheries Service and California Department of Fish and Wildlife and California Department of Fish and Wildlife - approved eelgrass survey consistent with the measures described in the National Marine Fisheries Service's October 2014 California Eelgrass Mitigation Policy and Implementation Guidelines (2014 CEMP) and include the following:</p> <ul style="list-style-type: none"> <li>Before in-water construction activities may occur within the marine environment, eelgrass surveys shall be conducted within the construction footprint consistent within the methods outlined within CEMP guidance (NFMS, 2014).</li> <li>If eelgrass beds are observed adjacent to the construction footprint, but direct impact is avoidable during construction activities, the avoidance and minimization activities outlined in CEMP guidance shall be implemented during all in-water construction work (NFMS, 2014).</li> <li>If it is determined that direct impact to eelgrass is unavoidable during construction activities, appropriate mitigation consistent with NMFS 2014 Guidance, and commensurate with the level of impact expected, shall be implemented (NFMS, 2014).</li> </ul>	Prior to approval of construction-related permit; on-going during construction activities	NMFS; evidence of approval submitted to City of Oakland Bureau of Planning
<p><b>2009 Mitigation Measure I.2c: Obtain Regulatory Permits and other Agency Approvals.</b> Prior to the start of construction activities for the project, the project applicant shall obtain all required permit approvals from the Corps, the RWQCB, BCDC, and all other agencies with permitting responsibilities for construction activities within jurisdictional waters of other jurisdiction areas. Permit approvals and certifications shall include but not be limited to Section 404/Section 10 permits from the Corps, Section 401 Water Quality Certification from the RWQCB, and BCDC permit.</p> <ul style="list-style-type: none"> <li>Section 404/Section 10 Permits. Permit approval from the Corps shall be obtained for the placement of dredge or fill material in waters of the U.S., if any, within the interior of the project site, pursuant to Section 404 of the federal Clean Water Act.</li> <li>Construction along the estuary edge below MHW elevation will be considered dredging by the Corps and will require a Section 10 permit. In addition, dredging of Clinton Basin will also require a Section 10 permit.</li> </ul>	Prior to approval of Final Development Plans; on-going during construction activities for that part of the site adjacent to the shoreline or otherwise potentially affected applicable land and water areas (i.e., stormwater or construction runoff and erosion)	City of Oakland Bureau of Planning and Bureau of Building; City of Oakland Public Works Department

Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/Monitoring	
	Schedule	Responsibility
<b>IV.I Biological Resources (cont.)</b>		
<ul style="list-style-type: none"> <li>Section 401 Water Quality Certification. Approval of Water Quality Certification (WQC) and/or Waste Discharge Requirements (WDRs) shall be obtained from the RWQCB for work within jurisdictional waters. Preparation of the Section 401 Water Quality Certification applications will require an application and supporting materials including construction techniques, areas of impact, and project schedule.</li> <li>BCDC Permit. Permit approval from BCDC shall be obtained for placement of solid material, pilings, floating structures, boat docks, or other fill in the Bay, and/or dredging or other extraction of material from the Bay and within the 100-foot shoreline band inland from mean high tide line along the length of the project site. Project activities subject to this permit approval would include dredging for rebuilding the marina in Clinton Basin and replacement of the 5th Avenue Marina with a new marina that would contain approximately 170 boat slips. The proposed project would include the removal of approximately 33,780 square feet of solid Bay fill as part of the shoreline design and the placement of 74,110 square feet of solid Bay fill for the creation of a village green at Clinton Basin. The project would also include the removal of approximately 129,920 square feet of pile-supported fill with the removal of a portion of the Ninth Avenue Terminal wharf. Additionally, floating fill would be required to create the two proposed marinas.</li> </ul> <p>The project would be required to comply with all BCDC permit conditions, which typically include requirements to construct, guarantee, and maintain public access to the Bay; specified construction methods to assure safety or to protect water quality; and mitigation requirements to offset the adverse environmental impacts of the project.</p>		
<p><b>2009 Mitigation Measure I.2d: Best Management Practices (BMPs).</b> The project applicant shall implement standard BMPs to maintain water quality and control erosion and sedimentation during construction, as required by compliance with the General National Pollution Discharge Elimination System (NPDES) Permit for Construction Activities and established by Mitigation Measure D.1 to address impacts on water quality. Mitigation measures would include, but would not be limited to, installing silt fencing along the edges of the project site to protect estuarine waters, locating fueling stations away from potential jurisdictional features, and isolating construction work areas from the identified jurisdictional features. The project applicant shall also implement BMPs to avoid impacts on water quality resulting from dredging activities within the Bay, as identified in the Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region (LTMS) (Corps, 2001). These BMPs include silt fencing and gunderbooms or other appropriate methods for keeping dredged materials from leaving the project site.</p>	On-going during all construction activities on the project site	City of Oakland Bureau of Planning and Bureau of Building; City of Oakland Public Works Department
<p><b>Mitigation Measure BIO-4: Compensatory Mitigation.</b> The project applicant shall provide compensatory mitigation for temporary impacts to, and permanent loss of, waters of the U.S., including wetlands. Measures shall include but not be limited to 1) onsite mitigation through wetland creation or enhancement and supporting Mitigation and Monitoring Plan, or 2) additional wetland creation or enhancement or offsite mitigation.</p> <p>1) <b>Onsite Mitigation through Wetland Creation or Enhancement.</b> The project applicant shall further enhance the shoreline from Lake Merritt Channel to Clinton Basin. The primary objective of the enhancement shall be to improve the habitat value for shorebirds, gulls, ducks, and other avian life that frequent the area. Components of the restoration plan shall include 1) restoration of the tidal marsh, 2) enhancement of roosting areas for shorebirds and water birds, and 3) increase in habitat diversity. Shoreline enhancements shall include removal of debris, including concrete riprap, and excavation of the shoreline at Channel Park to create marsh vegetation along this area. Excavation shall provide a shoreline slope that falls between the MTL elevation (approximately -2.4 mean sea level) to the MHW”) to allow for the colonization of marsh habitat and the creation of high marsh habitat.</p> <p><b>Mitigation and Monitoring Program.</b> Prior to the start of construction or in coordination with regulatory permit conditions, the project applicant shall prepare and submit for approval to the City a mitigation and monitoring program to support</p>	On-going during all construction activities on the project site	City of Oakland Public Works Department; City of Oakland Bureau of Planning and Bureau of Building

Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/Monitoring	
	Schedule	Responsibility
<b>IV.I Biological Resources (cont.)</b>		
<p>onsite mitigation. The program shall outline the mitigation obligations for temporary and permanent impacts to waters of the U.S. resulting from construction and/or operation of the small watercraft dock. The program shall include baseline information from existing conditions, anticipated habitat to be enhanced, thresholds of success, monitoring and reporting requirements, and site-specific plans to compensate for over-water structures and shading. The Brooklyn Basin Small Watercraft Dock Mitigation and Monitoring Plan shall include, but not be limited to, the following:</p> <ul style="list-style-type: none"> <li>Clearly stated objectives and goals consistent with regional habitat goals.</li> <li>Location, size, and type of mitigation proposed.</li> <li>A functional assessment of affected jurisdictional waters to ensure that the EPA's "no net loss of wetland value" standard is met. The functional assessment shall also ensure that the mitigation provided is commensurate with the adverse impacts on Bay resources. The assessment will provide sufficient technical detail in the mitigation project design including an engineered grading plan and water control structures, methods for conserving or stockpiling topsoil, a planting program including removal of exotic species, a list of all species to be planted, sources of seeds and/or plants, timing of planting, plant locations and elevations on the mitigation site base map, and/or maintenance techniques.</li> <li>Documentation of performance, monitoring, and adaptive management standards that provide a mechanism for making adjustments to the mitigation site. Performance and monitoring standards shall indicate success criteria to be met within 5 years for vegetation, animal use, removal of exotic species, and hydrology. Adaptive management standards shall include contingency measures that shall outline clear steps to be taken if and when it is determined, through monitoring or other means, that the enhancement or restoration techniques are not meeting success criteria.</li> <li>Documentation of the necessary long-term management and maintenance requirements, and provisions for sufficient funding.</li> </ul> <p>-or-</p> <p>2) <b>Additional Wetland Creation or Enhancement or Offsite Mitigation.</b> The project applicant shall negotiate additional compensatory mitigation for temporary and permanent impacts to waters of the U.S. resulting from construction and/or operation of the small watercraft dock with the applicable regulatory agencies. Potential options include the creation of additional wetland acreage onsite or the purchase of offsite mitigation.</p>		
<p><b>2009 Mitigation Measure I.3: Protection of Fish and Migrating Salmonids.</b> The project applicant shall implement measures for protection of salmonids and Pacific herring during dredging projects and for indirect impacts on the San Francisco Bay "Essential Fish Habitat" (EFH) that are identified in the <i>Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region</i> (LTMS) (Corps, 2001).</p> <p><i>The Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region</i> (LTMS) (Corps, 2001) identifies specific work windows and Best Management Practices (BMPs) to protect salmonids and Pacific herring during dredging projects and to reduce indirect impacts to the San Francisco Bay EFH. The LTMS was developed during formal consultation among the NMFS, USFWS, and CDFG to address impacts on sensitive fisheries and designated critical habitats under their respective jurisdictions and to standardize mitigation for dredging projects. The Biological Opinion (BO) resulting from the LTMS presents specific restrictions on the timing and design of dredging and disposal projects. As the LTMS states, if the dredging project can be accomplished during the identified work windows, the project is authorized for incidental take under the federal Endangered</p>		

Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/Monitoring																																																																																																												
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<b>IV.I Biological Resources (cont.)</b>																																																																																																													
<p>Species Act of 1973, as amended. The LTMS serves as the federal and state pathway for determining potential impacts of dredging and dredge disposal projects on fish species, with timing of construction as the single significance criterion.</p> <p>As identified in the LTMS, restricting dredging and other in-water construction activities to the specified work periods would avoid the direct and indirect impacts on juvenile or adult herring or salmonids that would otherwise result from dredging-related increases in turbidity or changes in water quality. Impacts of dredging operations on coho salmon, Chinook salmon, steelhead, and Pacific herring would therefore be less than significant, provided that dredging activities are conducted within the work windows identified in the LTMS. For waters in central San Francisco Bay, the construction work window for dredging activities in Pacific herring habitat is between March 15 and November 30 (Corps, 2001). The dredging work window for salmonid species in central San Francisco Bay is June 1 through November 30. These work windows are summarized in the table below.</p> <p style="text-align: center;"><b>2009 MITIGATION MEASURE I.3 TABLE</b>  <b>CONSTRUCTION WORK WINDOWS FOR IN-WATER PILE-DRIVING AND OTHER IN-WATER ACTIVITIES</b></p> <table border="1"> <thead> <tr> <th rowspan="2">Fish Species</th> <th rowspan="2">Work Activity</th> <th colspan="12">Construction Work Windows for Project Activities, by Month</th> </tr> <tr> <th>Jan</th> <th>Feb</th> <th>Mar</th> <th>Apr</th> <th>May</th> <th>Jun</th> <th>Jul</th> <th>Aug</th> <th>Sep</th> <th>Oct</th> <th>Nov</th> <th>Dec</th> </tr> </thead> <tbody> <tr> <td rowspan="2">Pacific herring</td> <td>Pile-driving</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>(W)</td> <td></td> </tr> <tr> <td>Other In-Water Activities</td> <td></td> <td></td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td></td> </tr> <tr> <td rowspan="2">Chinook salmon</td> <td>Pile-driving</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>(W)</td> <td></td> </tr> <tr> <td>Other In-Water Activities</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td></td> </tr> <tr> <td rowspan="2">Steelhead</td> <td>Pile-driving</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>(W)</td> <td></td> </tr> <tr> <td>Other In-Water Activities</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td>W</td> <td></td> </tr> </tbody> </table> <p>“W” indicates work window when the identified construction activities will minimize impacts to fisheries, in accordance with specific guidance provided by the LTMS (USACE, 2001) for dredging and dredge disposal related activities.</p> <p>“(W)” indicates possible work window. Frank Filice with the San Francisco Department of Public Works indicated that a letter from NMFS (on another project) established a June 1 to November 30 work window for pile-driving activities (Filice, personal communication). The actual project construction work window will be determined by the USACE in consultation with NMFS during the permitting phase of the project.</p> <p>Implementation of BMPs and adherence to construction timing as outlined in the LTMS would reduce impacts on special-status fish species. As feasible, BMPs, including silt curtains and gunderbooms, shall be implemented to isolate the work area and prevent silt and sediment from entering the estuary.</p>	Fish Species	Work Activity	Construction Work Windows for Project Activities, by Month												Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Pacific herring	Pile-driving						W	W	W	W	W	(W)		Other In-Water Activities			W	W	W	W	W	W	W	W	W		Chinook salmon	Pile-driving						W	W	W	W	W	(W)		Other In-Water Activities						W	W	W	W	W	W		Steelhead	Pile-driving						W	W	W	W	W	(W)		Other In-Water Activities						W	W	W	W	W	W		<p>On-going during all construction activities on the project site</p>	<p>City of Oakland Bureau of Planning and Bureau of Building</p>
Fish Species			Work Activity	Construction Work Windows for Project Activities, by Month																																																																																																									
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Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/Monitoring	
	Schedule	Responsibility
<b>IV.I Biological Resources (cont.)</b>		
<p>Potential impacts resulting from pile-driving activities in the estuary would be avoided or reduced to a less-than-significant level by either avoiding pile-driving activities between November 1 and June 1 or assuring that pile-driving would result in noise levels below 150 decibels at 10 meters. Proposed construction work windows for pile-driving activities are also presented in the table below.</p> <p>Any pile-driving work occurring outside of these work windows would be conducted in accordance with NMFS directives and Corps permits to reduce potential impacts on fish species.</p> <p>The quantity of in-water features (such as pilings and pier structures) under the proposed project would be comparable to existing conditions, therefore an increase in the number of predatory fish is not expected. Similarly, the composition of fish species using the shallow-water aquatic habitats is not expected to change following project implementation.</p>		
<b>IV.K Aesthetics, Shadow, and Wind</b>		
<p><b>SCA AES-1 (Standard Condition of Approval 19): <i>Lighting</i></b></p> <p>Proposed new exterior lighting fixtures shall be adequately shielded to a point below the light bulb and reflector to prevent unnecessary glare onto adjacent properties.</p>	Prior to building permit final	City of Oakland Bureau of Building
<b>IV.M Utilities and Service Systems</b>		
<p><b>SCA UTIL-1 (Standard Condition of Approval 87) <i>Sanitary Sewer System</i></b></p> <p><u>Requirement:</u> The Project applicant shall prepare and submit a Sanitary Sewer Impact Analysis to the City for review and approval in accordance with the City of Oakland Sanitary Sewer Design Guidelines. The Impact Analysis shall include an estimate of pre-Project and post-Project wastewater flow from the Project site. In the event that the Impact Analysis indicates that the net increase in Project wastewater flow exceeds City-projected increases in wastewater flow in the sanitary sewer system, the Project applicant shall pay the Sanitary Sewer Impact Fee in accordance with the City's Master Fee Schedule for funding improvements to the sanitary sewer system.</p>	Prior to approval of construction-related permit.	City of Oakland Public Works Department, Department of Engineering and Construction
<p><b>SCA UTIL-2 (Standard Condition of Approval 84) <i>Recycling Collection and Storage Space</i></b></p> <p><u>Requirement:</u> The Project applicant shall comply with the City of Oakland Recycling Space Allocation Ordinance (chapter 17.118 of the Oakland Planning Code). The Project drawings submitted for construction-related permits shall contain recycling collection and storage areas in compliance with the Ordinance. For residential projects, at least two cubic feet of storage and collection space per residential unit is required, with a minimum of ten cubic feet. For nonresidential projects, at least two cubic feet of storage and collection space per 1,000 square feet of building floor area is required, with a minimum of ten cubic feet.</p>	Prior to approval of construction-related permit.	City of Oakland Bureau of Planning and Bureau of Building

Standard Conditions of Approval/Mitigation Measures	Mitigation Implementation/Monitoring	
	Schedule	Responsibility
<b>IV.N Greenhouse Gas Emissions</b>		
<p><b>SCA GHG-1 (Standard Condition of Approval 41): Project Compliance with the Equitable Climate Action Plan (ECAP) Consistency Checklist. Requirement.</b> The project applicant shall implement all the measures in the Equitable Climate Action Plan (ECAP) Consistency Checklist that was submitted during the Planning entitlement phase.</p> <p>a. For physical ECAP Consistency Checklist measures to be incorporated into the design of the project, the measures shall be included on the drawings submitted for construction-related permits.</p> <p>b. For physical ECAP Consistency Checklist measures to be incorporated into the design of the project, the measures shall be implemented during construction.</p> <p>c. For ECAP Consistency Checklist measures that are operational but not otherwise covered by these SCAs, including but not limited to the requirement for transit passes or additional Transportation Demand Management measures, the applicant shall provide notice of these measures to employees and/or residents and post these requirements in a public place such as a lobby or work area accessible to the employees and/or residents.</p>	<p>a. Prior to approval of construction-related permit</p> <p>b. During construction</p> <p>c. Ongoing</p>	<p>City of Oakland Bureau of Planning</p>

Appendix B  
**Comment Letters Received on  
the Draft Supplemental EIR**



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**From:** Sinha, Shruti@BCDC <shruti.sinha@bcdc.ca.gov>  
**Sent:** Wednesday, July 21, 2021 2:48 PM  
**To:** Payne, Catherine  
**Subject:** RE: Brooklyn Basin Marina Expansion Project DSEIR Comments

Hi Catherine,

A1.1-1 | We first became aware that the DSEIR was available when Save the Bay emailed us about it. Our administrative secretary does not recall receiving your official Notice of Availability. I have asked her to check again and confirm when she goes into the office tomorrow.

Our administrative team is generally diligent about relaying official notices; perhaps this one slipped. We receive official correspondence addressed to BCDC by email at [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) and by post at 375 Beale Street, Suite 510, San Francisco, 94105. Mail sometimes gets sent to one of our old addresses, or gets sidelined if specifically addressed to a person who is currently working remotely.

We apologize if the error was on our part and hope you will consider granting the time extension for submitting comments.

Sincerely,  
Shruti Sinha

**Shruti Sinha | Shoreline Development Analyst**  
San Francisco Bay Conservation and Development Commission  
375 Beale Street, Suite 510, San Francisco, CA 94105  
Direct: (415) 352-3654 | Main Office: (415) 352-3600  
Email: [shruti.sinha@bcdc.ca.gov](mailto:shruti.sinha@bcdc.ca.gov)

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**From:** Payne, Catherine <CPayne@oaklandca.gov>  
**Sent:** Wednesday, July 21, 2021 1:51 PM  
**To:** Sinha, Shruti@BCDC <shruti.sinha@bcdc.ca.gov>  
**Subject:** Re: Brooklyn Basin Marina Expansion Project DSEIR Comments

Hello. I have an affidavit indicating the Notice of Availability was sent to BCDC on June 10, 2021. Can you please confirm that BCDC did not receive the NOA? Thank you,

**Catherine Payne, Acting Development Planning Manager**  
**City of Oakland, Bureau of Planning**  
**Phone/cell: (510) 915-0577**  
**Email: [cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov)**

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**From:** Sinha, Shruti@BCDC <[shruti.sinha@bcdc.ca.gov](mailto:shruti.sinha@bcdc.ca.gov)>  
**Sent:** Wednesday, July 21, 2021 12:06 PM  
**To:** Payne, Catherine <[CPayne@oaklandca.gov](mailto:CPayne@oaklandca.gov)>  
**Subject:** Brooklyn Basin Marina Expansion Project DSEIR Comments

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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Dear Catherine,

I am a permit analyst for the San Francisco Bay Conservation and Development Commission (BCDC). I am BCDC's project manager for Brooklyn Basin-related projects and would like to submit comments on the DSEIR. We only recently received notice of this comment opportunity through a third party and need some more time to prepare our comments. Would you be willing to grant us a one-week time extension (August 2) to submit our comments? It would be greatly appreciated.

Kind regards,  
Shruti Sinha

**Shruti Sinha | Shoreline Development Analyst**  
San Francisco Bay Conservation and Development Commission  
375 Beale Street, Suite 510, San Francisco, CA 94105  
Direct: (415) 352-3654 | Main Office: (415) 352-3600  
Email: [shruti.sinha@bcdc.ca.gov](mailto:shruti.sinha@bcdc.ca.gov)

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**From:** Malan, Margie@BCDC <margie.malan@bcdc.ca.gov>  
**Sent:** Tuesday, August 10, 2021 3:24 PM  
**To:** CPayne@oaklandca.gov  
**Cc:** state.clearinghouse@opr.ca.gov; Sinha, Shruti@BCDC  
**Subject:** Brooklyn Basin Marina Expansion Project DSEIR Comments  
**Attachments:** 2021.08.10\_Brooklyn Basin DSEIR Comments.docx.pdf

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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Dear Ms. Payne,

A1.2-1 | On behalf of Shruti Sinha, attached is a letter to you regarding Brooklyn Basin Marina Expansion Project DSEIR Comments. BCDC Permit No. 2006.007.03.

If you have any questions, please contact Shruti at tel: 415-352-3654 or by email: [shruti.sinha@bcdc.ca.gov](mailto:shruti.sinha@bcdc.ca.gov).

Sincerely,

**Margie F. Malan, Legal Secretary**

San Francisco Bay Conservation and Development Commission (BCDC)

Bay Area Metro Center

375 Beale St, Suite 510, San Francisco, CA 94105

Direct: (415) 352-3675

Main: (415) 352-3600

Email: [margie.malan@bcdc.ca.gov](mailto:margie.malan@bcdc.ca.gov)

Website: [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

# San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

## ***Via Email Only***

August 10, 2021

Catherine Payne  
Acting Development Planning Manager  
City of Oakland, PBC, Development Planning Division  
250 Frank H Ogawa Plaza, Suite 2214  
Oakland, California, 94612  
Email: [cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov)

**SUBJECT: BROOKLYN BASIN MARINA EXPANSION PROJECT DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT SCH No. 2004062013 (BCDC Permit No. 2006.007.03)**

Dear Ms. Payne,

A1.2-2 Thank you for the opportunity to comment on the Brooklyn Basin Marina Expansion Project (Expansion Project) Draft Supplemental Environmental Impact Report (DSEIR) on proposed project modifications to the 2009 Oak-to-Ninth Project that may affect public access to the San Francisco Bay and shoreline. This opportunity allows the San Francisco Bay Conservation and Development Commission (BCDC or Commission) to comment on aspects of the Expansion Project that we would be required to approve or deny through the exercise of our own regulatory authority under the McAteer-Petris Act and the California Code of Regulations.

A1.2-3 **I. PROJECT DESCRIPTION SUMMARY**

**Applicants.** Zarsion-OHP 1, LLC., Port of Oakland, City of Oakland

**Project.** The Expansion Project is proposed as a modification of the previously approved 64.2-acre project analyzed under the 2009 Oak-to-Ninth Avenue Environmental Impact Report (2009 EIR). The project modifications include a residential density increase of 600 units (for a project site total of up to 3,700 units), an update to the parking ratios, expansion of the approved marina infrastructure and operation (including increasing the number of slips by 158), increase in site area by approximately 10 acres of water surface to accommodate the expanded marina, and accommodations for an existing water taxi/shuttle service currently operating in San Francisco Bay.



A1.2-3  
cont.

**Location.** The Expansion Project site is bounded by Fallon Street and Jack London Square to the west, Embarcadero and Interstate 880 (I-880) to the north, the Oakland Estuary to the south, and 10th Avenue (generally) to the east. Estuary Park, the southern portion of Lake Merritt Channel (the channel), Clinton Basin, and the Ninth Avenue Terminal are included in the Project site, but approximately 4.72 acres of privately-held parcels along 5th Avenue are not included. The Project site consists of Alameda County Assessor’s Parcel Numbers (APNs) 018-0430-001-14, 018-0460-004-06, -08, and -11, and 018-0465-002-06, -12, -15, -27, -29, and -30.

A1.2-4

**II. BCDC’S ROLE**

**Permitting Authority.** The McAteer-Petris Act of 1965 “empowers the Commission to issue or deny permits, after public hearings, for any proposed project that involves placing fill, extracting materials or making any substantial change in use of any water, land or structure” within its jurisdiction (California Government Code (CGC) § 66604). Note that “substantial change in use” includes projected changes to the type of use as well as intensity of use, e.g., substantial increase or decrease in population density or occurrence of an activity.

**BCDC Permit No. 2006.007.00.** On February 4, 2011, the Commission issued Permit No. 2006.007.00 for the “Brooklyn Basin Oak-to-Ninth Project” (Approved Project). Since 2011, this permit has been administratively amended on three separate occasions. The Expansion Project, as described in the DSEIR, would require a material amendment to the current BCDC permit, involving a public hearing and vote by the Commission. The concerns expressed in this letter will be among the factors considered when and if the Expansion Project proponents apply for an amendment to their permit.

A1.2-5

**III. LAND USE, PLANS, AND POLICIES**

Generally speaking, the Commission’s permitting process attempts to balance development with natural resource conservation and maximum feasible public access. The Bay Plan policies listed in this letter are not exhaustive. Our intention is to identify a selection of relevant policies which the DSEIR has not already acknowledged or considered in all applicable contexts, or which have been updated since the 2009 EIR.

**Bay Plan Policies on Public Access.**

- **Policy 1.** A proposed fill project should increase public access to the Bay to the maximum extent feasible, in accordance with the policies for Public Access to the Bay.
- **Policy 2.** In addition to the public access to the Bay provided by waterfront parks, beaches, marinas, and fishing piers, maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, wildlife area, or other use, except in cases where public access would be clearly inconsistent with the project because of public safety considerations or

A1.2-5  
cont.

significant use conflicts, including unavoidable, significant adverse effects on Bay natural resources. In these cases, in lieu access at another location preferably near the project should be provided. If in lieu public access is required and cannot be provided near the project site, the required access should be located preferably near identified vulnerable or disadvantaged communities lacking well-maintained and convenient public access in order to foster more equitable public access around the Bay Area.

#### **Bay Plan Policies on Recreation.**

- **Policy 3(a).** Recreational facilities, such as waterfront parks [and] marinas... should be consistent with the public access policies that address wildlife compatibility and disturbance.
- **Policy 3(b).** Marinas should be allowed at any suitable site on the Bay. Unsuitable sites are those that tend to fill up rapidly with sediment and require frequent dredging; have insufficient upland; contain valuable tidal marsh, or tidal flat, or important subtidal areas; or are needed for other water-oriented priority uses.
- **Policy 4(b).** In waterfront parks and wildlife refuges with historic buildings... physical and visual access corridors between inland public areas, vista points, and the shoreline should be created, preserved, or enhanced. Corridors for Bay-related wildlife should also be created, preserved and enhanced where needed and feasible.

**Marina Expansion.** While removal of existing docks in the Brooklyn Basin project area is authorized by the permit, construction of the proposed new docks would require additional BCDC approval. Among other factors, our analysis would scrutinize impacts to Bay views and the tidal marsh along South Park.

A1.2-6

**Increased Residential Density and Tower Relocation.** When analyzing the impacts of increasing density by 600 units in Phases III and IV and relocating the towers from Parcels H and J to Parcels L and M, the DSEIR considers only the net effect on the project (the overall quantitative difference between the Approved Project and the Expansion Project). However, BCDC would need to evaluate each modification individually for maximum feasible public access and natural resource conservation. In addition to requiring approximate equivalency in the amount of fill that is added and removed throughout the overall project site, we would also require qualitative analysis of how each type of fill would impact its immediate surroundings. For example, although swapping a tower from Parcel H or J to Parcel L may not change the overall density burden of the project, its closer proximity to the tidal marsh along South Park may be more detrimental to wildlife or Bay views than there was previously. In the final SEIR (FSEIR), the preparers should also evaluate the impacts of each proposed modification individually within their respective proximal surroundings.

A1.2-7 | **Water Taxi Accommodations.** The DSEIR does not identify the ferry service that is currently operating or is expected to operate in the Brooklyn Basin. While BCDC is involved in discussions to potentially permit ferry services at various other Bay Area locations, we have not had specific discussions with ferry operators in the Brooklyn Basin. Any contemplation of fill for water taxi accommodations should include pursuit of a BCDC permit to operate that service.

#### IV. HYDROLOGY AND WATER QUALITY

A1.2-8 | **Bay Plan Water Surface Area and Volume Policies.**

- **Policy 1.** The surface area of the Bay and the total volume of water should be kept as large as possible in order to maximize active oxygen interchange, vigorous circulation, and effective tidal action. Filling and diking that reduce surface area and water volume should therefore be allowed only for purposes providing substantial public benefits and only if there is no reasonable alternative.
- **Policy 2.** Water circulation in the Bay should be maintained, and improved as much as possible. Any proposed fills, dikes, or piers should be thoroughly evaluated to determine their effects upon water circulation and then modified as necessary to improve circulation or at least to minimize any harmful effects.

#### **Bay Plan Water Quality Policies.**

- **Policy 1.** Bay water pollution should be prevented to the greatest extent feasible. The Bay's tidal marshes, tidal flats, and water surface area and volume should be conserved and, whenever possible, restored and increased to protect and improve water quality.
- **Policy 2.** Water quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board's Water Quality Control Plan, San Francisco Bay Basin [...].
- **Policy 3.** New projects should be sited, designed, constructed and maintained to prevent or, if prevention is infeasible, to minimize the discharge of pollutants into the Bay [...].

A1.2-9 | **Water Surface Area.** The marina expansion would require an additional 10 acres of water surface to be added to the Approved Project site. This means water that currently benefits from circulation would be at risk of deoxygenation, which may have an adverse impact on aquatic wildlife and vegetation. The FSEIR should analyze the impact that the placement of slips and boats will have on water circulation and the natural resources that rely on it. Per Water Surface Area and Volume Policy 1, the FSEIR should also analyze alternatives to the marina expansion

A1.2-10 | that could make more efficient use of the water surface area.

A1.2-11 | **Sea Level Rise and Groundwater.** The DSEIR identified sea level rise as a flood risk and, using projections based on current tidal data and FEMA flood maps, concluded that sea level rise would not significantly impact the proposed Expansion Project. The preparers should note, however, that sea level rise threatens water quality not only through overland flooding, but also through possible groundwater contamination caused by saltwater incursions into fresh groundwater reservoirs. The FSEIR should include an analysis of the risk to groundwater contamination and groundwater rise caused by rising sea levels.

## V. BIOLOGICAL RESOURCES

A1.2-12 | **Bay Plan Policies for Tidal Marshes and Tidal Flats.**

- **Policy 1.** Tidal marshes and tidal flats should be conserved to the fullest possible extent.
- **Policy 2.** Any proposed fill, diking, or dredging project should be thoroughly evaluated to determine the effect of the project on tidal marshes and tidal flats, and designed to minimize, and if feasible, avoid any harmful effects.
- **Policy 6.** Any habitat project should include clear and specific long-term and short-term biological and physical goals, success criteria, a monitoring program, and as appropriate, an adaptive management plan. Design and evaluation of the project should include an analysis of: (a) how the project's adaptive capacity can be enhanced so that it is resilient to sea level rise and climate change; (b) the impact of the project on the Bay's and local embayment's sediment transport and budget; (c) localized sediment erosion and accretion; (d) the role of tidal flows; (e) potential invasive species introduction, spread, and their control; (f) rates of colonization by vegetation; (g) the expected use of the site by fish, other aquatic organisms and wildlife; (h) an appropriate buffer, where feasible, between shoreline development and habitats to protect wildlife and provide space for marsh migration as sea level rises; (i) site characterization; (j) how the project adheres to regional restoration goals; (k) whether the project would be sustained by natural processes; and (l) how the project restores, enhances, or creates connectivity across Bay habitats at a local, sub-regional, and/or regional scale.
- **Policy 8.** The level of design; amount, duration, and extent of monitoring; and complexity of the adaptive management plan required for a habitat project should be consistent with the purpose, size, impact, level of uncertainty, and/or expected lifespan of the project. Habitat projects should have a funding strategy for monitoring and adaptive management [...].

A1.2-13 | **Marina Expansion Along South Park Wetland.** The marina expansion would place a long, 10-slip dock for the largest boats (up to 80 feet in length) along the wetland area in South Park (West). Although wetland enhancement in the South Park (West) subarea is a condition of BCDC Permit No. 2006.007.03, the DSEIR does not specifically outline the Applicants' current or future plan for wetland enhancement in this area. The report states that while the Port of



A1.2-13  
cont.

Oakland once maintained a program for this wetland called the Wetland Enhancement Project, there is currently no community or regulatory plan for it. The DSEIR lists a number of 2009 Mitigation Measures for wetland protection and restoration, including “The Oak to Ninth Project Mitigation and Monitoring Plan”, but does not indicate whether the Applicants have ever used those measures and, if so, which ones. Nor does it indicate the efficacy of any measures that may or may not have been taken. For this reason, the FSEIR should provide information on the Applicants’ program for the wetland enhancement and mitigation requirements and their progress.

A1.2-14

**Tower Relocation.** The proposed relocation of one tower to Parcel L would place high population density in very close proximity to a tidal flat. The FSEIR should analyze the impact of the proposed tower on this wetland.

## VI. AESTHETICS, SHADOW, AND WIND

A1.2-15

### Bay Plan Policies on Appearance, Design, and Scenic Views.

- **Policy 1.** [T]he shores of the Bay should be developed in accordance with the Public Access Design Guidelines.
- **Policy 2.** All bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore.
- **Policy 4.** Structures and facilities that do not take advantage of or visually complement the Bay should be located and designed so as not to impact visually on the Bay and shoreline.
- **Policy 8.** Shoreline developments should be built in clusters, leaving open area around them to permit more frequent views of the Bay. Developments along the shores of tributary waterways should be Bay-related and should be designed to preserve and enhance views along the waterway, so as to provide maximum visual contact with the Bay.
- **Policy 10.** Towers, bridges, or other structures near or over the Bay should be designed as landmarks that suggest the location of the waterfront when it is not visible, especially in flat areas. But such landmarks should be low enough to assure the continued visual dominance of the hills around the Bay.
- **Policy 14.** Views of the Bay from vista points and from roads should be maintained by appropriate arrangements and heights of all developments and landscaping between the view areas and the water.

A1.2-16

**Marina Along Township Commons.** Using visual simulations of four viewpoints to evaluate the visual impact of the marina expansion, the preparers concluded that the addition of masted boats along the shoreline, while “noticeable,” would have a less-than-significant impact. They further concluded that the boats could even be viewed as a beneficial effect given their consistency with the existing “maritime character” of the project site. However, the visual simulations for the marina are not adequate in scale or proximity to capture the impacts of the marina on the adjacent park spaces or view corridors. Thus, the methodology used for the DSEIR is insufficient to dispel concerns that the proposed marina expansion would substantially degrade the existing visual character or quality of the site and its surroundings.

Additionally, while the Ninth Street Terminal was historically used for commercial shipping purposes, the current character of the shoreline is defined by an open water vista. The former Ninth Street Terminal has been converted to a successful waterfront park called Township Commons. The park sits partially over the Bay and provides sweeping vistas of the Bay across areas of open water. Park visitors who have enjoyed this attractive vista for nearly a year may find the appearance of tall masts clustered along the entire length of the wharf an obstruction that degrades the visual character of the park. Thus, the preparers should engage the local community in quantitative and qualitative studies to determine the visual impact of the marina expansion.

**Effect of Marina Expansion on View Corridors.** The BCDC permit for the Approved Project requires six dedicated view corridors throughout the Brooklyn Basin project site (as shown in Figure IV.A.1). Using the visual simulations described above, the DSEIR concludes that the look of clustered masts along the shoreline would not obstruct Bay views, and thus would not obstruct any of the dedicated view corridors. We have two contentions with this conclusion. Firstly, image location 15 is not framed on the center of the view corridor where the pathway opens up a view to the water. The visual simulations should reflect impacts to the view corridors. Secondly, the preparers’ conclusion makes the subjective assumption that the addition of clustered masts would not in fact be considered an obstruction. As discussed above, the masts could constitute a significant change in the character of the view, which may currently be valued by the public for its open nature. The FSEIR should give more consideration to the potential change in visual character from an open view of the water to a view dominated by marina infrastructure and boats. If this could be found to constitute a substantial adverse effect on the public scenic vista, the alignment of the docks shown in Figure III-6 would be considered an obstruction to the view corridors.

**Location of Towers.** BCDC has an interest in restoring, protecting, and enhancing visual public access to the Bay regardless of whether view corridors have been specifically dedicated for that purpose. The clustering of the towers may impact Bay views from public areas further inland where the public currently appreciates views of the Bay. Additionally, as shown in Figure III-4, the orientation of the proposed tower in Parcel M aligns the long side of the building parallel to the water. This could have a walling-off effect to the water rather than creating a visual



A1.2-16  
cont.

landmark that increases views of or attention to the Bay from surrounding areas. The DSEIR includes shadow studies of the proposed towers, but does not include 5 PM in the shading analysis. In the FSEIR, the preparers should also include visual simulations of the proposed towers from shoreline and inland locations.

A1.2-17

A1.2-18

**Design Alternatives.** For the reasons discussed above, the FSEIR should offer design alternatives for the marina expansion and tower relocation with BCDC’s policies for Appearance, Design, and Scenic Views, and Tidal Marshes and Tidal Flats in mind.

A1.2-19

Once again, thank you for providing BCDC an opportunity to comment on the Brooklyn Basin Marina Expansion Project. We hope these comments aid you in preparing the final SEIR. If you have any questions regarding this letter or the Commission’s policies and permitting process, please do not hesitate to contact me at (415) 352-3654 or via email [shruti.sinha@bcdc.ca.gov](mailto:shruti.sinha@bcdc.ca.gov).

Sincerely,

DocuSigned by:  


SHRUTI SINHA

Shoreline Development Analyst  
San Francisco Bay Conservation and Development Commission  
Bay Area Metro Center  
375 Beale St., Suite 510  
San Francisco, CA 94105  
Tel: 415-352-3654  
Email: [shruti.sinha@bcdc.ca.gov](mailto:shruti.sinha@bcdc.ca.gov)

cc. State Clearinghouse, [state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)

SS/mm

---

**From:** Luo, Yunsheng@DOT <Yunsheng.Luo@dot.ca.gov>  
**Sent:** Friday, July 23, 2021 1:54 PM  
**To:** cpayne@oaklandca.gov  
**Cc:** Leong, Mark@DOT; OPR State Clearinghouse  
**Subject:** Brooklyn Basin Marina Expansion Project, SEIR  
**Attachments:** Brooklyn Basin Marina Expansion Project Caltrans.pdf

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Good afternoon Catherine,

Thank you for the opportunity to review the SEIR for the Brooklyn Basin Marina Expansion Project. Attached please find the comment letter for this project. Please feel free to reach out if you have any questions. Thank you and have a wonderful weekend!

Best,

Yunsheng Luo  
Associate Transportation Planner  
Local Development - Intergovernmental Review (LD-IGR)  
Caltrans, District 4  
Work Cell: 510-496-9285

*For early coordination and project circulation, please reach out to [LDIGR-D4@dot.ca.gov](mailto:LDIGR-D4@dot.ca.gov)*

*For information about Caltrans' land use and transportation environmental review guidances, please visit the [SB-743 Implementation website](#).*

## California Department of Transportation

DISTRICT 4  
OFFICE OF TRANSIT AND COMMUNITY PLANNING  
P.O. BOX 23660, MS-10D | OAKLAND, CA 94623-0660  
[www.dot.ca.gov](http://www.dot.ca.gov)



July 23, 2021

SCH #: 2004062013  
GTS #: 04-ALA-2017-00592  
GTS ID: 6308  
Co/Rt/Pm: ALA/880/30.37

Catherine Payne, Acting Development Planning Manager  
City of Oakland, PBD, Development Planning Division  
250 Frank Ogawa Plaza, Suite 2114  
Oakland, CA 94612

### Re: Brooklyn Basin Marina Expansion Project – Supplemental Environmental Impact Report (SEIR)

Dear Catherine Payne:

- A2-1 Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for this project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the June 2021 Draft SEIR.
- A2-2 **Project Understanding**  
The proposed project is to modify the previously approved 64.2-acre project analyzed under the 2009 Oak-to-Ninth Avenue EIR. The project modifications include a residential density increase of 600 units (for a total up to 3,700 units), an update to the parking ratios to current zoning code requirements in other zoning districts, and an expansion of the approved marina infrastructure and operation including increasing the number of slips by 158, and incorporation provisions with the marina improvements to accommodate an existing water taxi/shuttle service currently operating on the San Francisco Bay. This project site is in close vicinity of Interstate (I)-880.
- A2-3 **Freight Movement**  
*Page IV.B-1:* Given the high levels of freight activity around and adjacent to the proposed project area, the identification and discussion of all local, State, and federally designated truck routes should be provided and described in this section. Particularly, an acknowledgement of the Joint Port-City of Oakland Heavyweight Container Permit Program along 3rd Street, Oak Street, and Embarcadero West should

- ↑
- A2-3 cont. | be verified and discussed in terms of safety as well as existing and forecast throughput volumes.
- A2-4 | In addition, please clarify why conventional highway State Route (SR)-260 is considered a freeway. The California Streets and Highways Code, Section 23.5 defines a freeway as a highway in respect to which the owners of abutting lands have no right or easement of access to or from their abutting lands or in respect to which such owners have only limited or restricted right or easement of access.
- A2-5 | *Page IV.B-6:* While the intercity Coast Starlight is operated by Amtrak, the two intercity/commuter passenger rail services, Capitol Corridor and San Joaquins are State-supported and are not operated by Amtrak. Instead, Capitol Corridor is operated by the Capitol Corridor Joint Powers Authority (CCJPA) and San Joaquins are operated by the San Joaquin Joint Powers Authority (SJJPA). Please use the correct terminology when describing intercity and commuter train operations as well as proper service titles.
- A2-6 | *Page IV.B-9:* There is no consideration provided in the SEIR with respect to the considerable amount of freight train traffic traveling through the project area. With the Port of Oakland, the eighth busiest container seaport in the United States handling 99% of containerized goods in Northern California, this section could be improved in recognition of the high levels of freight rail traffic demand traveling along the Union Pacific Railroad corridor and project area.
- A2-7 | **Safety**  
With the proposed project being located along and adjacent to a highly active passenger and freight rail corridor, issues relating to trespassing between rail crossings and along rail corridors are increasingly becoming a critical safety need. The proposed project should address existing safety issues along rail corridors and propose mitigations against future safety issues as the rail services are expected to grow and increase the potential for conflict among pedestrians, bicyclists and motorists. To ensure the safety of children who may attend nearby schools and other developments adjacent to the rail corridor, please consider implementing anti-trespassing measures within and adjacent to the project area.
- A2-8 | **Sea Level Rise**  
The effects of sea level rise may have impacts on transportation facilities located in the project area. Executive Order (EO) S-13-08 directs State agencies planning construction projects in areas vulnerable to sea level rise to begin planning for potential impacts by considering a range of sea level rise scenarios for years 2050 and 2100. Higher water levels may increase erosion rates, change environmental characteristics that affect material durability, lead to increased groundwater levels
- ↓

A2-8  
cont.

and change sediment movement along shores and at estuaries and river mouths, as well as affect soil pore pressure at dikes and levees on which transportation facilities are constructed. All these factors must be addressed through geotechnical and hydrological studies conducted in coordination with Caltrans.

Caltrans encourages multi-agency collaboration with partner agencies to achieve multi-benefit approaches to protect bayfront development, infrastructure, and assets from sea level rise and other climate change impacts. Partnership can help distribute potential mitigation costs while balancing environmental justice concerns to achieve equitable adaptation solutions. Accordingly, Caltrans has identified the State Transportation Network (STN) segment of I-880, which is adjacent to the northeast boundary of the project site, as a priority segment in the Caltrans Adaptation Priorities Report 2020 ([APR 2020 link](#)). The APR 2020 uses exposure and consequence criteria metrics to develop recommendations for adaptation prioritization of STN assets in the nine-county Bay Area region and defines implications of climate change impacts like sea level rise on Caltrans' assets and the traveling public. The APR 2020 is a preliminary report Caltrans will rely upon for continued efforts to assess opportunities to commit to implementable adaptation solutions, pending the availability of funding to address sea level rise and other climate change impacts.

### **Construction-Related Impacts**

Project work that requires movement of oversized or excessive load vehicles on State roadways, and/or travel lane closures on I-880 requires a transportation permit that is issued by Caltrans. To apply, visit: <https://dot.ca.gov/programs/traffic-operations/transportation-permits>. Prior to construction, coordination may be required with Caltrans to develop a Transportation Management Plan (TMP) to reduce construction traffic impacts to the STN.

### A2-9 | **Lead Agency**

As the Lead Agency, the City of Oakland is responsible for all project mitigation, including any needed improvements to the STN. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

### A2-10 | **Equitable Access**

If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the

A2-11 | project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.

A2-12 | **Encroachment Permit**

Please be advised that any permanent work or temporary traffic control that encroaches onto I-880 requires a Caltrans-issued encroachment permit. As part of the encroachment permit submittal process, you may be asked by the Office of Encroachment Permits to submit a completed encroachment permit application package, digital set of plans clearly delineating the State Right of Way, digital copy of signed, dated and stamped (include stamp expiration date) traffic control plans, this comment letter, your response to the comment letter, and where applicable, the following items: new or amended Maintenance Agreement (MA), approved Design Standard Decision Document (DSDD), approved encroachment exception request, and/or airspace lease agreement. Your application package may be emailed to [D4Permits@dot.ca.gov](mailto:D4Permits@dot.ca.gov).

To download the permit application and to obtain more information on all required documentation, visit <https://dot.ca.gov/programs/traffic-operations/ep/applications>.

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Yunsheng Luo at [Yunsheng.Luo@dot.ca.gov](mailto:Yunsheng.Luo@dot.ca.gov). Additionally, for future notifications and requests for review of new projects, please email [LDIGR-D4@dot.ca.gov](mailto:LDIGR-D4@dot.ca.gov).

Sincerely,



MARK LEONG  
District Branch Chief  
Local Development - Intergovernmental Review

c: State Clearinghouse

**From:** [Wilkins, Eric@Wildlife](mailto:Wilkins_Eric@Wildlife)  
**To:** [Cpayne@oaklandca.gov](mailto:Cpayne@oaklandca.gov)  
**Cc:** [Ota, Becky@Wildlife](mailto:Ota_Becky@Wildlife); [Wilkins, Eric@Wildlife](mailto:Wilkins_Eric@Wildlife); [Aarreberg, Arn@Wildlife](mailto:Aarreberg_Arn@Wildlife); [Amezcuca, Reyna@BCDC](mailto:Amezcuca_Reyna@BCDC); [Fernandez, Xavier@Waterboards](mailto:Fernandez_Xavier@Waterboards); [Wildlife CEQA Comment Letters](#); [state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov)  
**Subject:** CDFW Comments Brooklyn Basin Marina Expansion Project Draft Supplemental Environmental Impact Report  
**Date:** Monday, July 26, 2021 12:49:47 PM  
**Attachments:** [image001.jpg](#)  
[ltr\\_SEIR\\_BrooklynBasinMarina\\_210726.pdf](#)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Ms. Payne,

A3-1 ↓ Please find attached California Department of Fish and Wildlife comments on the Brooklyn Basin Marina Expansion Project Draft Supplemental Environmental Impact Report. If you have any questions please contact Arn Aarreberg at [Arn.Aarreberg@Wildlife.ca.gov](mailto:Arn.Aarreberg@Wildlife.ca.gov).

Thank you,

Eric Wilkins - Senior Environmental Scientist Supervisor  
California Department of Fish and Wildlife  
Marine Region - Environmental Review and Water Quality Project  
3196 South Higuera St. Suite A, San Luis Obispo, CA, 93401  
office-(805) 594-6172/cell-(831) 901-9887  
[Eric.Wilkins@wildlife.ca.gov](mailto:Eric.Wilkins@wildlife.ca.gov)  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

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State of California – Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Marine Region  
1933 Cliff Drive, Suite 9  
Santa Barbara, CA 93109  
[wildlife.ca.gov](http://wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



July 26, 2021

Catherine Payne  
Acting Development Planning Manager  
City of Oakland, PBC, Development Planning Division  
250 Frank Ogawa Plaza, Suite 2114  
Oakland, CA 94612  
[Cpayne@oaklandca.gov](mailto:Cpayne@oaklandca.gov)

**BROOKLYN BASIN MARINA EXPANSION PROJECT (PROJECT)  
DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (SEIR)  
SCH No. 2004062013**

Dear Ms. Payne,

A3-1  
cont.

The California Department of Fish and Wildlife (Department) received a SEIR from the City of Oakland for the Project pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.<sup>1</sup>

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

**DEPARTMENT ROLE**

The Department is California’s Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, Section 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines Section 15386, subd. (a).) The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, Section 1802.) Similarly, for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. The Department is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of California, and ensuring fisheries are sustainably managed under the Marine Life Management Act.

<sup>1</sup> CEQA is codified in the California Public Resources Code in section 21000 et seq. The “CEQA Guidelines” are found in Title 14 of the California Code of Regulations, commencing with section 15000.

Catherine Payne, Acting Development Planning Manager  
City of Oakland, PBC, Development Planning Division

July 26, 2021

Page 2

A3-1  
cont.

The Department is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). The Department may need to exercise regulatory authority as provided by the Fish and Game Code. Implementation of the Project as proposed may result in take<sup>2</sup> as defined by State law of any species protected under the California Endangered Species Act (Fish & Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

**PROJECT DESCRIPTION SUMMARY**

**Proponent:** Zarsion-OHP 1, LLC.

**Objective:** The Project proposes the Brooklyn Basin Marina Expansion Project (Project Modifications) as a modification of the previously approved 64.2-acre project (Approved Project) analyzed under the 2009 Oak-to-Ninth Avenue Environmental Impact Report (2009 EIR). The Project Modifications include a residential density increase of 600 units and an update to the parking ratios to current zoning code requirements in other zoning districts. Project Modifications also include an expansion of the approved marina infrastructure and operation including increasing the number of slips by 158 and incorporating provisions with the marina improvements to accommodate an existing water taxi/shuttle service currently operating on San Francisco Bay.

**Location:** The Project site is bounded by Fallon Street and Jack London Square to the west, Embarcadero and Interstate 880 (I-880) to the north, the Oakland Estuary to the south, and 10<sup>th</sup> Avenue (generally) to the east. Estuary Park, the southern portion of Lake Merritt Channel (the channel), Clinton Basin, and the Ninth Avenue Terminal are included in the Project site, but approximately 4.72 acres of privately-held parcels along 5th Avenue are not included. The Project site consists of Alameda County Assessor’s Parcel Numbers (APNs) 018-0430-001-14, 018-0460-004-06, 08, and 11, and 018-0465-002-06, 12, 15, 27, 29, and 30.

**MARINE BIOLOGICAL SIGNIFICANCE**

The San Francisco Bay-Delta is the second largest estuary in the United States and supports numerous aquatic habitats and biological communities. It encompasses 479 square miles, including shallow mudflats. This ecologically significant ecosystem supports both state and federally threatened and endangered species and sustains important commercial and recreational fisheries.

A3-2

State and Federally Listed and Commercially/Recreationally Important Species Protected species under the State and Federal Endangered Species Acts that could potentially be present near Project activities include:

<sup>2</sup> Take is defined by Fish and Game Code Section 86 as to “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.”

Catherine Payne, Acting Development Planning Manager  
City of Oakland, PBC, Development Planning Division

July 26, 2021

Page 3

A3-2  
cont.

- Chinook salmon (*Oncorhynchus tshawytscha*), state and federally threatened (Spring-run), state and federally endangered (Winter-run)
- Steelhead (*Oncorhynchus mykiss*), federally-threatened (Central California Coast and Central Valley ESUs)
- Green sturgeon (*Acipenser medirostris*), federally-threatened (southern DPS)
- Longfin smelt (*Spirinchus thaleichthys*), state-threatened
- Brown pelican (*Pelecanus occidentalis californicus*), state fully protected
- California least tern (*Sternula antillarum browni*), state and federally endangered and state fully protected
- American peregrine falcon (*Falco peregrines anatum*), state fully protected

Several species with important commercial and recreational fisheries value that could potentially be impacted by Project activities include:

- Dungeness crab (*Cancer magister*),
- Pacific herring (*Clupea pallasii*),
- Rockfish (*Sebastes* spp.),
- California halibut (*Paralichthys californicus*)
- Surfperches (*Embiotocidae*).

## COMMENTS AND RECOMMENDATIONS

The Department offers the comments and recommendations below to assist the City of Oakland in adequately identifying and/or mitigating the Project's potential impacts on fish and wildlife (biological) resources.

A3-3

### Longfin Smelt

**Comment:** Longfin smelt, state listed as threatened, is not discussed nor are potential impacts to the species analyzed within the SEIR. Longfin smelt have the potential to be present within the Project area and may be impacted by Project related activities such as dredging and pile driving. There are no approved work windows to avoid longfin smelt presence and it is assumed that the species could be present year round.

**Recommendations:** The Department recommends the SEIR include the following:

- A discussion on the potential impacts to longfin smelt from Project activities and potential avoidance and minimization measures.
- A discussion on whether the 2009 EIR analyzed the potential impacts to longfin smelt.

A3-4

### Impacts to State Listed Species

**Comment:** The Project proposes to drive approximately 162 steel piles using an impact hammer. Of the pile sizes listed, the 85 18-inch diameter piles pose the highest potential to exceed hydroacoustic thresholds which the Department has determined may cause take of state listed species. These thresholds, as described by the Fisheries

Catherine Payne, Acting Development Planning Manager  
City of Oakland, PBC, Development Planning Division  
July 26, 2021

Page 4

A3-4  
cont.

Hydroacoustic Working Group, in which the Department is a signatory, are 206 dB peak sound pressure, 187 dB accumulated sound exposure level (SEL) for fish over 2 grams, and 183 dB accumulated SEL for fish under 2 grams.

The hydroacoustic analysis presented within the SEIR does indicate that exceedances of the 183 dB accumulated sound exposure level may occur. This exceedance could result in take of state listed species, specifically longfin smelt and spring and winter run Chinook salmon.

**Recommendations:** The Department recommends the following:

- Consult with the Department for incidental take coverage via a 2081(b) Incidental Take Permit (Fish and Game Code Section 2081) for longfin smelt and spring and winter run Chinook salmon.
- Utilize a vibratory hammer to the maximum extent feasible for driving piles to refusal prior to utilizing an impact hammer to reach desired pile depth.
- Utilize a bubble curtain during all impact pile driving.

A3-5

#### **Work Windows**

**Comment:** The work window for Pacific herring described within the SEIR is incorrect. The SEIR states that the construction work window for dredging is March 1 to November 30. The correct work window for dredging and other in-water activities, related to potential impacts to Pacific herring, is March 15 through November 30. However, the pile driving work window of June 1 through November 30 is correct.

**Recommendations:** The Department recommends updating the work window, for Pacific herring, in the final SEIR to reflect the correct work window of March 15 through November 30 for dredging and other in-water activities.

A3-6

#### **Eelgrass (*Zostera marina*) Surveys**

**Comment:** The Department is in agreement with **Mitigation Measure BIO-3: Eelgrass Surveys** which describes the process in which pre- and post-construction eelgrass surveys would be conducted in accordance with the conditions and recommendations outlined within the National Marine Fisheries Service (NMFS) *California Eelgrass Mitigation Policy*. However, the mitigation measure only describes providing the surveys to NMFS staff for review and approval.

**Recommendations:** The Department recommends that Mitigation Measure BIO-3 should be edited in the final SEIR to include the Department as a required reviewing agency. All eelgrass surveys conducted for the Project should be provided to the Department, as well as NMFS and the other permitting agencies, for review and approval prior to conducting in-water Project activities.

A3-7

#### **Project Timeline**

**Comment:** There does not appear to be an exact Project timeline listed within the SEIR. It appears that some components of the Approved Project have already been

Catherine Payne, Acting Development Planning Manager  
City of Oakland, PBC, Development Planning Division

July 26, 2021

Page 5

A3-7 cont. initiated. It is not clear exactly when and for how long the Project Modifications will be undertaken and completed.

**Recommendations:** The Department recommends that the final SEIR include a specific timeline for Project components that have already been started or completed and when the phases of the Project Modifications will be initiated and completed, specifically the proposed expansion of marina infrastructure.

A3-8 **ENVIRONMENTAL DATA**

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDDB). Information on submitting data to the CNDDDB can be found at: <https://wildlife.ca.gov/Data/CNDDDB/Submitting-Data>.

A3-9 **FILING FEES**

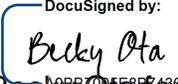
The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by the Department. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

**CONCLUSION**

The Department appreciates the opportunity to comment on draft SEIR to assist the City of Oakland in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Arn Aarreberg, Environmental Scientist at (707) 791-4195, [Arn.Aarreberg@wildlife.ca.gov](mailto:Arn.Aarreberg@wildlife.ca.gov)

Sincerely,

DocuSigned by:  
  
Becky Ota for

Craig Shuman, D. Env  
Marine Regional Manager

ec: Becky Ota, Program Manager  
Department of Fish and Wildlife  
([Becky.Ota@wildlife.ca.gov](mailto:Becky.Ota@wildlife.ca.gov))

Catherine Payne, Acting Development Planning Manager  
City of Oakland, PBC, Development Planning Division

July 26, 2021

Page 6

Eric Wilkins, Senior Environmental Scientist  
Department of Fish and Wildlife  
([Eric.Wilkins@wildlife.ca.gov](mailto:Eric.Wilkins@wildlife.ca.gov))

Arn Aarreberg, Environmental Scientist  
Department of Fish and Wildlife  
([Arn.Aarreberg@wildlife.ca.gov](mailto:Arn.Aarreberg@wildlife.ca.gov))

Reyna Amezcua  
San Francisco Bay Conservation and Development Commission  
([reyna.amezcua@bcdc.ca.gov](mailto:reyna.amezcua@bcdc.ca.gov))

Xavier Fernandez  
San Francisco Bay Regional Water Quality Control Board  
([xavier.fernandez@waterboards.ca.gov](mailto:xavier.fernandez@waterboards.ca.gov))

Habitat Conservation Program Branch CEQA Program Coordinator  
California Department of Fish and Wildlife  
[ceqacommentletters@wildlife.ca.gov](mailto:ceqacommentletters@wildlife.ca.gov)

State Clearinghouse (SCH No. 2004062013)  
([state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov))

---

**From:** Crescentia Brown  
**Sent:** Thursday, July 29, 2021 1:49 PM  
**To:** Vollmann, Peterson  
**Cc:**  
**Subject:** FW: Mitel voice message from SOLARES ANTHONY, +19518056462 for mailbox 2251  
**Attachments:** GDLTQCO8Y.wav  
  
**Importance:** High

A4.1-1 | Pete, This call from the Coast Guard came in on one of our mail office lines Monday, and our marketing team picked it up. Unfortunately, I'm just now getting to it. Perhaps he called you also. The message simply says he wants to express concerns. We think its most appropriate for the City (you) to speak with him, but let me know if you think otherwise. We did not received DEIR comments from the Coast Guard.

Crescentia Brown  
Project Manager  
Oakland Waterfront Ballpark District EIR Celebrating 50 Years of Work that Matters!

ESA | Environmental Planning  
180 Grand Avenue - Suite 1050  
Oakland, CA 94612  
Working From Home at 415.722.0966 (cell)

-----Original Message-----

From: Mitel Voice Mail [mailto:administrator@esassoc.com]  
Sent: Monday, July 26, 2021 3:09 PM  
To: Lisa Kenneweg <LKenneweg@esassoc.com>  
Subject: Mitel voice message from SOLARES ANTHONY, +19518056462 for mailbox 2251  
You have received a voice mail message from SOLARES ANTHONY, +19518056462 for mailbox 2251.  
Message length is 00:00:27. Message size is 217 KB.

---

**From:** Solares, Anthony I LT USCG (USA) <Anthony.I.Solares@uscg.mil>  
**Sent:** Wednesday, July 28, 2021 2:52 PM  
**To:** cpayne@oaklandca.gov  
**Cc:** tlimon.opc@gmail.com; jfearnopc@gmail.com; cmanusopc@gmail.com; vsugrueopc@gmail.com; D11-SMB-SectorSF-WaterwaySafety  
**Subject:** Coast Guard Response to Brooklyn-Basin-Marina

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Good afternoon,

A4.2-1 | From a National Security perspective, with regards to passage of the Maritime Security Cutters, large (WMSL), the Coast Guard has concern with access in an out of the proposed project site. The proposed construction encroaches on the federal channel, which would reduce clearance for law enforcement vessel transits (inbound/outbound). This project would also likely negatively impact recreational vessels that transit the area. We provide this response on Coast Guard concerns to alleviate financial constraints down the line and before construction.

Very Respectfully,

LT Tony Solares  
USCG Sector San Francisco  
Waterways Safety Branch  
(415) 399-3585

---

**From:** Wines, Brian@Waterboards <Brian.Wines@waterboards.ca.gov>  
**Sent:** Thursday, July 15, 2021 8:53 AM  
**To:** cpayne@oaklandca.gov  
**Cc:** state.clearinghouse@opr.ca.gov; Katerina Galacatos  
**Subject:** Brooklyn Basin Marina Expansion Project DSEIR Comments SCH No. 2004062013  
**Attachments:** R2\_BrooklynBasinMarinaExpansionProject\_Oakland\_DSEIR\_2004062013  
\_CEQAcommentletterwith2015Order.pdf

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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Dear Ms. Payne

Please see the attached CEQA comment letter on the Brooklyn Basin Marina Expansion Project DSEIR from the San Francisco Bay Regional Water Quality Control Board.

Let me know if you have any questions about our comments.

Brian Wines  
Water Resource Control Engineer  
San Francisco Bay Regional Water Quality Control Board

---

## San Francisco Bay Regional Water Quality Control Board

*Sent via electronic mail: No hard copy to follow*

July 15, 2021

City of Oakland, PBD, Development Planning Division  
Attn: Catherine Payne, Acting Development Planning Manager  
250 Frank Ogawa Plaza, Suite 2114  
Oakland, CA 94612

*Via email to: cpayne@oaklandca.gov*

**Subject: Brooklyn Basin Marina Expansion Project DSEIR Comments  
SCH No. 2004062013**

Dear Ms. Payne:

A5-1 | San Francisco Bay Regional Water Quality Control Board (Water Board) staff appreciates the opportunity to review the *Draft Supplemental Environmental Impact Report for the Brooklyn Basin Marina Expansion Project* (DSEIR). The DSEIR evaluates the potential environmental impacts associated with expanding the Brooklyn Basin Marina (Expansion Project) in Oakland.

**Project Summary.** The Expansion Project site is bounded by Fallon Street and Jack London Square to the west, Embarcadero and Interstate 880 to the north, the Oakland Estuary to the south, and 10th Avenue to the east. Estuary Park, the southern portion of Lake Merritt Channel, Clinton Basin, and the Ninth Avenue Terminal are included in the Project site.

Zarsion-OHP 1, LLC (Project Applicant) proposes the Expansion Project as a modification of the previously approved 64.2-acre Oak to Ninth Project (Original Project) analyzed under a 2009 EIR. The modifications to the Original Project include: a residential density increase of 600 units (for a Project site total of up to 3,700 units); an update to the parking ratios to current zoning code requirements in other zoning districts; an expansion of the approved marina infrastructure and operation including increasing the number of boat slips by 158 (from the current 167) and water surface area coverage by approximately 10 acres (from the current 7.95 acres approved by the City of Oakland, but not by the Water Board); and incorporating provisions with the marina improvements to accommodate an existing water taxi/shuttle service currently operating on San Francisco Bay.

A5-2 | **Summary of Water Board Comments.** In 2015, the Water Board issued Waste Discharge Requirements and Clean Water Act Section 401 Water Quality Certification

JIM McGRATH, CHAIR | MICHAEL MONTGOMERY, EXECUTIVE OFFICER

A5-2  
cont.

(Order) for the Original Project, which was subsequently renamed the Brooklyn Basin Project. The Order, not including its attachments, is enclosed with this letter. Neither the 7.95 acres of water surface impacts for marina facilities that have been approved by the City of Oakland (City) subsequent to the Order's adoption, nor the proposal to further expand the water surface impacts by 10 acres for the Expansion Project are consistent with the Order's mitigation requirements. In addition, mitigation required by the Order appears to be about three years delayed and the Discharger named in the WDRs and Certification does not appear to have been submitting stormwater treatment plans for the Original Project to the Water Board for review prior to construction, as the Order requires. As such, the DSEIR is inconsistent with the Water Board's Order. While the Board could consider amending the Order to incorporate proposed Project changes, that amendment would need to require mitigation sufficient to address the Project's impacts to waters of the State. The DSEIR does not appear to provide sufficient mitigation for the Expansion Project's impacts to waters of the State. As part of identifying sufficient mitigation, the DSEIR should use as the environmental baseline a condition in which the Clinton Basin marina is not present at the site.

**Comment 1. As part of the mitigation required for the Oak to Ninth Project's impacts to waters of the State, the Order required the permanent removal of marina facilities from the Project site.**

A5-3

The Water Board's Order for the Original Project (Order No. R2-2015-0005, CIWQS Place ID No. 748052) was adopted on January 21, 2015. Mitigation for the Original Project's impacts to waters of the State is discussed in Order Findings 34 and 35 and Provisions C.11.c and C.20.c. Required mitigation for the Original Project included the permanent removal of 0.59 acres of floating fill, which was to consist of removing the existing Clinton Basin marina. Table A in Order Attachment 2 specifies that the floating fill in Clinton Basin was to be removed during Phase II of the Original Project, sometime between 2016 and 2018.

The Order required the complete and permanent removal of floating fill from the Original Project site. Therefore, the proposal to implement the City's approved installation of 7.95 acres of marina facilities and expand the marina facilities by an additional 10 acres is not consistent with the Order's requirements.

A5-4

In addition, the 0.59 acres of floating fill at the Clinton Basin Marina should have been removed at least three years ago. According to DSEIR Section IV, the floating fill is still present in Clinton Basin.

A5-5

**Comment 2. The status of compliance with Order Provision C.23 is not clear.**

At the time that the Order was adopted, the Water Board had been provided with preliminary designs for post-construction stormwater treatment measures for each phase of the Original Project. Order Provision C.23 required that:

No later than 90 days prior to the start of construction for each of the four phases of the Project, the Discharger shall submit final plans for the post-construction stormwater treatment measures for the impervious surfaces that are to be created in that phase of the Project to the Executive Officer for

A5-5  
cont.

review and approval. Stormwater treatment measures shall be consistent with the designs and phasing in Attachment 3 to this Order and findings 38, 39, and 40. Construction of each Project phase shall not start until the Executive Officer has approved the final designs for the post-construction stormwater treatment measures to be constructed for that phase (Note: "Construction of a phase" does not include work that is solely necessary to implement the RP/RAP described in Finding 6 of this Order).

In 2017, Water Board staff reviewed revisions to the stormwater treatment plans for Phases 1 and 2. These revised stormwater plans had been submitted for review by the City, but had not been provided to the Water Board until we became aware of and requested them. Water Board staff should be provided with any subsequent revisions to stormwater treatment plans for our review. Failure to receive Water Board approval of final stormwater treatment plans prior to construction of each Original Project phase would be a violation of the Order.

A5-6

**Comment 3. For the purpose of assessing potential impacts to waters of the State during the permitting of any new marina facilities at the Expanded Project site, the baseline is the absence of existing floating fill.**

Potential impacts on special status species habitat as a result of marina expansion are discussed in Impact BIO-2 on DSEIR pages IV:1-8 through IV:1-13. This discussion acknowledges that:

The marina expansion component of the Project Modifications would result in a net increase in the area of over-water structures and shading. The shading of the water column and benthic habitat as a result of overwater structure installation has the potential to reduce the quality of fish habitat within the area shaded by the structure. Overwater shading has been demonstrated to reduce the growth rates and establishment of aquatic vegetation, decrease primary productivity, alter predator-prey dynamics, compromise the invertebrate community by changing the species composition, and reduce the overall density of benthic invertebrates (Helfman, 1981; Glasby, 1999; Struck et al., 2004; Stutes et al., 2006)

In addition to the habitat issues noted in the DSEIR, near-shore habitat is especially valuable to rearing fish, who find refuge from predation in near-shore waters.

The size of the floating fill impact is described as follows in the DSEIR:

Current shading due to over-water structures in the Project area can be attributed to the existing unusable marina in Clinton Basin, which spans approximately 28,150 square feet. Following installation of the proposed marina expansion (which would include removal of the existing marina in Clinton Basin), the area of shading by over-water structures would increase by approximately 86,225 square feet, for a total area of approximately 114,375 square feet.

For the purpose of permitting any expansion of the marina, the baseline condition is the absence of any floating fill, since all floating fill in Clinton Basin was required to be

A5-6  
cont.

removed by the Order and this removal was to have been completed in 2018. Also, the Order does not allow the replacement or expansion of the Clinton Basin marina. Any requested modifications to the Order must address both the delayed provision of the mitigation provided by the removal of the existing Clinton Basin marina and the mitigation necessary for all new floating fill.

A5-7

**Comment 4. The discussion of the need to obtain a permit from the Water Board does not acknowledge that the proposed Expansion Project is not consistent with the requirements of the existing Water Board Order for the Brooklyn Basin Project.**

In the discussion of Impact BIO-4, the DSEIR acknowledges that the proposed Expansion Project will require a permit from the Water Board (p. IV:1-17). As noted above in Comment 1, the Order for the Original Project required the permanent removal of all floating fill at the Project site. Implementation of the proposed Expansion Project cannot occur until the Order has been revised. As the Order was adopted by the Water Board at a public meeting, any modifications to the Order similarly must be considered by the Water Board, following a public review period of at least 30 days. Any modifications must include measures to compensate for delayed mitigation and for any elements of the Original Project that have been constructed without Order-required pre-construction approval from the Water Board's Executive Officer.

A5-8

**Comment 5. The proposed shoreline mitigation is out-of-kind and may not be legally feasible.**

The DSEIR proposes the following mitigation measures for the proposed Expansion Project's impacts to jurisdictional waters:

The project applicant shall further enhance the shoreline from Lake Merritt Channel to Clinton Basin. The primary objective of the enhancement shall be to improve the habitat value for shorebirds, gulls, ducks, and other avian life that frequent the area. Components of the restoration plan shall include 1) restoration of the tidal marsh, 2) enhancement of roosting areas for shorebirds and water birds, and 3) increase in habitat diversity. Shoreline enhancements shall include removal of debris, including concrete riprap, and excavation of the shoreline at Channel Park to create marsh vegetation along this area. Excavation shall provide a shoreline slope that falls between the MTL elevation (approximately -2.4 mean sea level) to the MHW) to allow for the colonization of marsh habitat and the creation of high marsh habitat (p. IV:1-18).

As discussed above in Comment 3, the proposed installation of the new marina will impact habitat for fish. Since the proposed mitigation measures will primarily benefit shorebirds, the proposed mitigation is out-of-kind. Consistent with the Water Board's policies directing that mitigation preferably be in-kind and on-site, and where it is not, that a greater amount of mitigation be provided, if the mitigation measures are used to offset the impacts associated with new marina work, it necessarily will have to be provided at a greater than 1 to 1 ratio.

A5-9 | Mitigation features are required to be placed under some form of perpetual restrictive covenant (e.g., conservation easement, deed restriction) to ensure their permanence. During the Order's development, it was determined that the site's shoreline consisted of public lands that are subject to the jurisdiction of the State Lands Commission. The State Lands Commission was not able to allow proposed mitigation sites along the shoreline to be placed under a restrictive covenant that met the requirements of the U.S. Army Corps of Engineers or the Water Board. Because of this, proposed shoreline habitat enhancements could not be included in the mitigation measures required by the Order. The proposed mitigation measures in the DSEIR appear to be identical to the mitigation measures that were found to be infeasible in the development of the Order. Please confirm that any proposed shoreline mitigation projects can be placed under appropriate restrictive covenants.

If the proposed mitigation measures along the shoreline of the Expansion Project cannot be placed under an appropriate restrictive covenant, alternate mitigation must be developed to compensate for the deferred removal of the Clinton Basin marina and for the proposed new marina facilities at the Expansion Project.

A5-10 | **Conclusion.** We encourage the City and the Project Applicant to coordinate with the Water Board to address outstanding mitigation required by the Order, potential delayed implementation of Order requirements, and to discuss the feasibility of amending the existing Order to allow construction of the proposed marina. Any amendment of the Order will require mitigation sufficient to compensate for the deferred removal of the Clinton Basin marina and for implementation of the proposed new marina.

If you have any questions, please contact me at (510) 622-5680 or via e-mail to [brian.wines@waterboards.ca.gov](mailto:brian.wines@waterboards.ca.gov).

Sincerely,



Brian Wines  
Water Resource Control Engineer  
South and East Bay Watershed Section

Attachment: Order No. R2-2015-0005

cc: State Clearinghouse ([state.clearinghouse@opr.ca.gov](mailto:state.clearinghouse@opr.ca.gov))  
Corps, Katerina Galactos ([katerina.galactos@usace.army.mil](mailto:katerina.galactos@usace.army.mil))

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**ORDER No. R2-2015-0005**

**WASTE DISCHARGE REQUIREMENTS and WATER QUALITY CERTIFICATION for:  
ZARSION-OHP 1, LLC  
OAK TO NINTH AVENUE PROJECT  
OAKLAND, ALAMEDA COUNTY**

The California Regional Water Quality Control Board, San Francisco Bay Region (hereinafter the Regional Water Board), finds that:

1. Zarsion-OHP 1, LLC, (Discharger) has applied to the Regional Water Board for authorization to construct a mixed-use project consisting of a multi-family, urban residential neighborhood with a retail component (Project) on the 64-acre Oak to Ninth Avenue Project Site (Project Site), located along the Oakland Estuary and the Embarcadero, east of Jack London Square and south of Interstate 880 (Approximate Latitude and Longitude: N 27°47' 15" E 122°12'30"; See Figure 1. *Regional Location Map*, and Figure 2. *Project Location Map*, in Attachment 1 to this Order) in the City of Oakland. About 33 acres of the Project Site will be developed with park and open space, including the existing Estuary Park and Aquatic Center west of the Lake Merritt Channel, and about 24 acres of the Project Site will be developed with about 3,100 residential dwelling units and 200,000 square feet of ground floor retail/commercial space. New public streets, with a total surface area of about 9 acres, will be constructed to provide access to the Project Site.
2. The Project Site consists of 64 acres of waterfront property that are currently owned by the Port of Oakland. The irregularly shaped site is bordered by the Embarcadero and Interstate 880 on the north, the Lake Merritt Channel on the west, and the Oakland Inner Harbor and the Brooklyn Basin on the south and east, as shown in Figure 4. *Existing Conditions*, in Attachment 1 to this Order. The site is currently occupied by a variety of commercial and maritime buildings. Existing land uses include a concrete plant, bulk container storage, and commercial businesses. Recent land uses have included fabricated steel storage, trucking, and a compressed gas distribution facility. A former power plant building has been demolished, and only the foundations and subsurface cooling water tunnels remain. The Ninth Avenue Terminal Shed, a large, one-story, pile-supported warehouse, is located on the east side of the site and occupies the majority of the southeast property line.
3. The Discharger plans to redevelop the Project Site into a mixed-use, waterfront, multi-family, urban residential neighborhood with a retail component surrounded by interconnecting open space (See Figure 5. *Proposed Conditions*, in Attachment 1 to this Order). The proposed open space plan includes a continuous system of pedestrian and bike trails along the site's waterfront and adds a connection for the Bay Trail system. Zarsion OHP I, LLC, and its successors will own the development parcels, and the City of Oakland (City) will own the open space and major streets. (Note: The cross-hatched area between the proposed Channel Park and the proposed South Park in Figure 5. *Proposed Conditions*, in Attachment 1 to this Order, which is labeled "NOT A PART OF PROPOSED PROJECT", is not part of the Project Site. This area is referred to in Project documents as the "Out Parcel.")

4. The Project Site is underlain by fill, and most of the fill surface is developed or landscaped in some fashion. Habitat types present at the Project Site include developed areas, landscaped areas, non-native grassland, ruderal vegetation, and barren areas. Shoreline habitats are mostly artificial in nature. The most common shoreline types are rip-rap, concrete bank, eroding fill, and wharf. Smaller segments of the shoreline are characterized by cordgrass stands or a sandy substrate (See Figure 3. *Existing Habitats and Jurisdictional Features*, in Attachment 1 to this Order).
5. Historic Bay maps indicate that a large portion of the Project Site was once occupied by a large, natural marsh that was bordered on the west by the natural drainage of the Lake Merritt Channel, on the south by San Antonio Creek (now Oakland Inner Harbor), and on the east and north by tidal waters and/or bays associated with the San Antonio Creek watershed. During the late 1800s and early 1900s, most of the Project Site was filled, and the filled areas were subsequently developed for commercial, industrial, and marine-related uses. Additional fill activities occurred in 1944 and between 1953 and 1998. Between the initial filling of the Project Site and into the 1970s, the primary land uses were lumberyards, break-bulk cargo handling, chemical mixing and storage, petroleum product storage in aboveground bulk tank farms, ship repair, compressed gas manufacturing, sand and gravel operations, food warehouses, and trucking operations.
6. The Discharger has been evaluating soil and groundwater contamination at the site since 2002 and, in 2010, executed a California Land Reuse and Redevelopment Act agreement, covering about 34 acres of the Project Site that will be commercially developed, and a Voluntary Cleanup Agreement, covering 30 acres of the site that will be owned by the City and used as parks, with the California Department of Toxic Substances Control (DTSC). A summary of the findings of the soil, soil gas, and groundwater investigations, remedial action objectives and remedial alternatives evaluated to address contamination, site-specific remediation goals, and proposed response actions for the Project Site are presented in the *Final Response Plan/Remedial Action Plan (RP/RAP)* (June 30, 2010, prepared by EKI). The RP/RAP was approved by DTSC in a letter to Oakland Harbor Partners, LLC, dated July 20, 2010 (DTSC Envirostor I.D. No. 70000109). The Discharger will implement the RP/RAP for the development parcels and the open space areas.
7. The measures described in the RP/RAP that will be implemented by the Discharger to protect human health and the environment include: excavation of soils and removal of groundwater in identified source areas of contamination; covering the entire Project Site with at least 2 feet of clean fill overlain by buildings, roads, landscaping, or other facilities, with a marker layer installed to identify the boundary between clean fill and in-place soils; vapor control systems on all buildings and facilities to control potential impacts to indoor air quality; and groundwater monitoring to ensure that the upland remedial measures have been effective at protecting surface water quality.
8. Under current conditions, the water quality of receiving waters adjacent to the Project Site may be impacted by the following exposure routes: the entrainment of contaminated soil particles or other materials in surface water runoff; or the discharge of contaminated groundwater to waters of the State via the existing stormwater infrastructure, including the existing stormwater outfalls at the Project Site (See the red "X"s in Figure 4. *Existing*

*Conditions*, in Attachment 1 to this Order). See the tables in Attachment 4 to this Order for a summary of chemicals found in groundwater and soils at the Project Site.

9. The Project will control the two potential sources of water quality impairment presented in Finding 8 by placing all residual soil contamination under a minimum of two feet of clean fill material and by replacing the existing stormwater infrastructure with new stormwater infrastructure. The new stormwater infrastructure will protect receiving water quality by isolating stormwater runoff from the Project from residual contamination in site soils and by providing water quality treatment for post-construction stormwater runoff from impervious surfaces on the Project Site. Post-construction stormwater treatment for all phases of the Project shall be consistent with the requirements of the Regional Water Board's Municipal Regional Stormwater NPDES Permit (Order No. R2-2009-0074; NPDES Permit No. CAS612008). The current post-construction stormwater treatment proposal for the Project is included in Attachment 3 to this Order; the Regional Water Board has reviewed this treatment proposal and considers it to be consistent with the requirements of Order No. R2-2009-0074. Construction of each Project phase shall not start until the Executive Officer of the Regional Water Board has approved the final designs for the post-construction stormwater treatment measures to be constructed for that phase.
10. The shoreline of the Project Site will be armored to prevent clean soil layers from being eroded by wave action. Rock riprap bank armoring will be installed along about 1,800 linear feet of shoreline at the South Park Clinton Basin. New rock riprap armoring will range from 10 to 20 inches in diameter and will be placed directly over existing rock armoring or subgrade. Where possible, rock will be placed in tidal areas at low tide when the surface is exposed. Where rock must be placed at deeper contours, it will be placed either from a barge with a skip bucket or from land with a long-reach excavator. Each bucket load will contain about 2 to 3 cubic yards of rock and will be placed slowly, rather than dumped. About 1,200 linear feet of shoreline at Channel Park and 700 linear feet of shoreline at South Park West will be armored with the placement of revetment or similar protection.
11. The Project Site is comprised of 12 parcels, identified as Parcels A, B, C, D, E, F, G, H, J, L, and M in Project documents, and the existing Estuary Park. The Project will be developed in four separate phases, as illustrated in Figure 1. *Phasing Plan, Brooklyn Basin – Oak to 9<sup>th</sup> Development Plan* in Attachment 2 to this Order, which also identifies the locations of the 12 parcels. Implementation of the four phases will occur over about 14 years, with construction planned to start in 2014 and conclude in about 2022. (Note: work at the existing Estuary Park, which is described as Phase IA in Project documentation, consists of remediation work to be performed at the Existing Estuary Park, east of the Embarcadero and north of the Lake Merritt Channel. Work in Phase IA does not include any impacts requiring approval from the Regional Water Board and is not addressed in this Order.) The Project will impact about 5,350 linear feet of shoreline, as shown in Figure 2. *Shoreline Phasing, Shoreline Improvement Plan*, in Attachment 2 to this Order). The names that the Project has assigned to each of the shoreline segments that will be modified, as well as the project phase in which modification will be implemented are presented in Figure 2. *Shoreline Phasing, from Oak to Ninth Avenue Development, Proposed Shoreline Improvements*, in Attachment 2 to this Order. The impacts to the shoreline in each of the four Project phases are summarized below:

- Phase I (Parcels A, B, C, F, and G) will impact 1,350 linear feet of shoreline (Station 42+50 to Station 56+00 along the Project shoreline) (See Figure 8. *Oak to Ninth Avenue Development, Proposed Shoreline Improvements, Ninth Avenue Wharf* (Moffat & Nichol; September 2010), in Attachment 2 to this Order).
- Phase II (Parcels D, E, H, and J) will impact 2,150 linear feet of shoreline (Station 21+00 to Station 42+50 along the Project shoreline) (See Figure 6. *Oak to Ninth Avenue Development, Proposed Shoreline Improvements, South Park – Clinton Basin*, and Figure 5, *Oak to Ninth Avenue Development, Proposed Shoreline Improvements, Shoreline Park – West*, (Moffat & Nichol; September 2010), in Attachment 2 to this Order).
- Phase III (Parcels K and L) will impact 650 linear feet of shoreline (Station 14+50 to Station 21+00 along the Project shoreline) (See Figure 5. *Oak to Ninth Avenue Development, Proposed Shoreline Improvements, South Park – West* (Moffat & Nichol; September 2010), in Attachment 2 to this Order).
- Phase IV (Parcel M) will impact 1,200 linear feet of shoreline (Station 0+00 to Station 12+00 along the Project shoreline) (See Figure 4. *Oak to Ninth Avenue Development, Proposed Shoreline Improvements, Channel Park* (Moffat & Nichol; September 2010), in Attachment 2 to this Order).

12. **Phase I (Parcels A, B, C, F, G).** This phase will include the following activities:

- a. Demolition of an 88,000 square foot manufacturing and storage building, a 78,400 square foot warehouse building, about 160,000 square feet of the Ninth Avenue Terminal Shed Building, and about 134,000 square feet of pile-supported pier structure and trestle at the existing timber wharf at the future location of Shoreline Park West, while the remaining wharf will be retrofitted to resist seismic loads;
- b. Implementation of the RP/RAP under the regulatory oversight of DTSC, per Finding 6, above;
- c. Construction of a portion of Shoreline Park to the south of parcels A, B, C and D, including all landscaping, pier renovation, construction of bike paths, construction of pedestrian walk ways, and construction of Bay Trail connections. At the Ninth Avenue Wharf component of Shoreline Park, the retained portion of the wharf will be seismically retrofitted. Eighty 60-inch diameter steel piles will be driven through openings cut through the existing deck along the landward edge of the wharf. The piles will be driven in groups of four, and a single concrete cap will provide the structural connection between each group of four piles. All but 14 of the steel piles will be installed above mean high high water (MHHW). The remaining 14 piles will be installed above the mean tide line (MTL) and work on these piles will be scheduled when tides are below the MTL. Pile driving equipment will work from land, and piles will be installed using both vibratory and impact hammers. A new 42-inch diameter stormwater outfall will also be constructed, and repairs will be made to the rock riprap bank armoring (See Figure 8. *Oak to Ninth Avenue Development, Proposed Shoreline Improvements, Ninth Avenue Wharf*, and Figure 13. *Shoreline Park – West, Typical Cross Sections*, (Moffat & Nichol; September 2010), and Figure 20. *Shoreline Park – Outfall # 5*, in Attachment 2 to this Order);

- d. Construction of site improvements, including grading, underground wet and dry utility installation, and construction of streets, bike paths, pedestrian trails, sidewalks, and landscaping;
- e. Renovation of a minimum of 20,000 square feet of the existing 9th Avenue Terminal Shed Building as a mixed-use, commercial/cultural resource building;
- f. Installation of a temporary eight-foot wide asphalt Bay Trail for Phase II and Phase III of the Project.

13. **Phase II (Parcels D, E, H, J, and Shoreline of Parcel M).** This phase will include the following activities:

- a. Implementation of the RP/RAP under the regulatory oversight of DTSC, per Finding 6, above;
- b. Construction of site improvements, including grading, underground wet and dry utility installation, and construction of streets, bike paths, pedestrian trails, Bay Trail connections, sidewalks, and landscaping;
- c. Construction of the remainder of Shoreline Park, including landscaping, construction of bike paths, construction of pedestrian walk ways, construction of Bay Trail connections, and the reconstruction of rock riprap bank armoring in front of the existing bulkhead at the Timber Wharf (See Figure 7. *Oak to Ninth Avenue Development, Proposed Shoreline Improvements, Shoreline Park – West*, and Figure 13. *Shoreline Park – West, Typical Cross Sections*, (Moffat & Nichol; September 2010), in Attachment 2 of this Order);
- d. Construction of portions of Clinton Basin, including the following actions: demolition of existing docks, piles and gangways; driving of concrete piles along the west and east sides of the basin; construction of cast-in-place concrete pile caps; driving of sheet piles along the north side of the basin; excavation and backfill operations to the subgrade for new bank armoring; installation of rock riprap armoring, installation of storm drain outfalls; installation of precast concrete planks, cutoff wall, and fascia; and the construction of a cast-in-place concrete slab (See Figure 6. *Oak to Ninth Avenue Development, Proposed Shoreline Improvements, South Park – Clinton Basin*, Figure 12. *Alternative 1 – Vertical Sheet Pile Bulkhead (Sheet Pile Option Shown – North Segment Only)*, (Moffat & Nichol; September 2010), Figure 14. *Impacts (At Bay Bottom), South Park - Clinton Basin, Surface Area Affected (At Bay Bottom)*, Figure 15. *Mitigation (At Bay Bottom), South Park - Clinton Basin, Surface Area Affected (At Bay Bottom)*, Figure 16. *Section A-A, South Park – Clinton Basin*, Figure 17. *Section B-B, South Park – Clinton Basin*, and Figures 18. *Outfall Profiles, Outfall # 2: Clinton Basin West*, and Figure 19. *Outfall Profiles, Outfall # 3: Clinton Basin North and Outfall # 4: Clinton Basin East*, in Attachment 2 to this Order);
- e. Along a portion of the shoreline at the South Park Clinton Basin open public space area, the Project will construct a new 30-foot wide concrete boardwalk. The concrete boardwalk will be a pile-supported structure using precast concrete and cast-in-place concrete elements. About 150 concrete piles will be required to support the boardwalk, oriented in three rows parallel to the shoreline. Each pile will be 18-inch square or 18-inch octagonal in cross-section and about 65 feet long. A land-based or barge-mounted impact hammer will be used to install the concrete piles. Of the estimated 150 piles, 88 will be located below MHHW. Most of the piles located

below MHHW can be driven when the shoreline is exposed at low tide. However, some piles will be installed in shoreline areas below mean lower low water (MLLW). Cast-in-place elements of the boardwalk will consist of pile caps (transverse), cutoff walls, and slabs (finished surface). The boardwalk deck will be constructed of concrete with a surface area of about 41,750 square feet;

- f. Construction of bank armoring at Channel Park, including the following actions: excavation of bank to stable sub-grade (including construction of an earth berm along the Bay edge where feasible, to keep the work area dry), installation of a geomembrane over the stable slope; placement of imported soil fill over the geomembrane; installation of geotextile fabric over the imported fill soil; placement of shoreline revetment; and the removal of the temporary soil berm along the shoreline (See Figure 4. *Oak to Ninth Avenue Development, Shoreline Improvements, Channel Park*, Figure 9. *Oak to Ninth Avenue Development, Shoreline Improvements, Channel Park – Typical Cross Sections* (Moffat & Nichol; September 2010), and Figure 10. *Oak to Ninth Avenue Development Project, Shoreline Improvements, South Park (West) – Typical Cross Section* (Moffat & Nichol; September 2010), in Attachment 2 of this Order);
- g. Construction of new 36-inch diameter stormwater outfalls in the new bank armoring along the basin (See Figure 18. *Outfall Profiles, Outfall # 2: Clinton Basin West*, and Figure 19. *Outfall Profiles, Outfall #4, Clinton Basin East*, in Attachment 2 to this Order). A new outfall will also be constructed through the vertical sheet pile at the northern shoreline of Clinton Basin; the end of this outfall pipe will be cut approximately flush with the wall, with a backflow prevention gate installed at the pipe end (See Figure 19. *Outfall Profiles, Outfall #3, Clinton Basin North*, in Attachment 2 to this Order).

14. **Phase III (Parcels K and L).** This phase will include the following activities:

- a. Demolition of about 46,000 square feet of marine, storage, service, manufacturing, and industrial uses;
- b. Implementation of the RP/RAP under the regulatory oversight of DTSC, per Finding 6, above;
- c. Construction of site improvements at South Park (West), including: landscaping; construction of bike paths; construction of pedestrian walk ways, and construction of Bay Trail connections;
- d. Construction of site improvements, including grading, underground wet and dry utility installation, and construction of streets, bike paths, pedestrian trails, sidewalks, and landscaping;
- e. Construction of bank armoring at South Park (West) including the following actions: excavation of bank to stable sub-grade (including construction of an earth berm along the Bay edge where feasible, to keep the work area dry), installation of a geomembrane over the stable slope; placement of imported soil fill over the geomembrane; installation of geotextile fabric over the imported fill soil; placement of shoreline revetment; and the removal of the temporary soil berm along the shoreline (See Figure 5. *Oak to Ninth Avenue Development, Proposed Shoreline Improvements, South Park - West*, Figure 10. *Oak to Ninth Avenue Development Project, Shoreline Improvements, South Park (West) – Typical Cross Section*, and Figure 13. *Shoreline Park - West, Typical Cross Sections* (Moffat & Nichol; September 2010), in Attachment 2 of this Order);

- f. Construction of a new 24-inch diameter stormwater outfall in the bank armoring at Channel Park (See Figure 18. *Outfall Profiles, Outfall #1, Channel Park*, in Attachment 2 of this Order).
15. **Phase IV (Parcel M Uplands).** This phase will include the following activities:
  - a. Demolition of onsite structures;
  - b. Implementation of the RP/RAP under the regulatory oversight of DTSC, per Finding 6, above;
  - c. Construction of Channel Park, including landscaping, construction of bike paths, construction of pedestrian walk ways and construction of Bay Trail connections;
  - d. Site improvements including grading, underground wet and dry utility installation, and construction of streets, bike paths, pedestrian trails, sidewalks, and landscaping;
  - e. Installation of a temporary Bay Trail upon termination/expiration of the Berkeley Ready Mix lease, but no earlier than June 1, 2016.
16. Habitat types at the Project Site include developed areas, landscaped areas, non-native grassland, ruderal vegetation, and barren areas. Shoreline habitats are mostly artificial in nature, consisting of rock rip-rap, concrete bank, eroding fill, and wharf. Stands of cordgrass are present in a few locations, mostly located along the western shoreline of Clinton Basin (See the Figure 3. *Existing Habitats and Jurisdictional Features*, in Attachment 1 to this Order). These cordgrass stands are too small to support populations of tidal marsh wildlife species (e.g., salt marsh common yellowthroat, marsh wren), but they provide foraging habitat for some species of waterbirds and cover for common wildlife species that occur in the adjacent uplands.
17. Project impacts to jurisdictional waters total 1.86 acres. These impacts include the following fill: Bay waters (1.84 acres) during Phase II, a seasonal wetland (0.014 acre) during Phase III, and a drainage ditch (0.003 acre) during Phase II. Project impacts to Bay waters are presented in Table 3: *Impact Construction Schedule*, in Attachment 2 to this Order (in the column “Decrease in Bay Surface Area at mean high water (MHW) [net]”). The 1.84 acres of Bay water fill will consist of placing fill in 0.92 acre of open waters to create new uplands and placing 0.92 acres of fill in open waters to create new shoreline revetments, associated with reconfiguration of Clinton Basin in Phase II of the Project (See Figure 6. *Oak to Ninth Avenue Development, Proposed Shoreline Improvements, South Park – Clinton Basin*, Figure 12. *Alternative 1 – Vertical Sheet Pile Bulkhead (Sheet Pile Option Shown – North Segment Only)*, (Moffat & Nichol; September 2010), Figure 14. *Impacts (At Bay Bottom), South Park - Clinton Basin, Surface Area Affected (At Bay Bottom)*, Figure 15. *Mitigation (At Bay Bottom), South Park - Clinton Basin, Surface Area Affected (At Bay Bottom)*, Figure 16. *Section A-A, South Park – Clinton Basin*, and Figure 17. *Section B-B, South Park – Clinton Basin*, in Attachment 2 to this Order). As is described in Finding 19, 0.50 acres of Bay fill will be removed when existing revetments are removed. Therefore, offsite mitigation is being required for net fill of 1.36 acres of fill, consisting of 1.34 acres of Bay fill and 0.017 acres of wetland and drainage ditch.
18. The Project will create 0.69 acres of open waters by removing upland soils, resulting in a net decrease of Bay Surface Area (at MHW) of 0.65 acre (solid fill) when compared with the net amount of 1.34-acres of Bay water impacts. Upland soil will be removed in the following increments: 0.04 acre at South Park (Clinton Basin) in Phase II of the Project; 0.64 acre at Channel Park in Phase II of the Project; and 0.01 acre at South Park (West) in Phase III of the

Project (see the far right column in Table 3: *Impact Construction Schedule*, in Attachment 2 to this Order, as well as Figures 4, 5, 6, 9, and 10 from *Oak to Ninth Avenue Development, Proposed Shoreline Improvements* (Moffat & Nichol; September 2010), Figure 14. *Impacts (At Bay Bottom)*, Figure 15. *Mitigation (At Bay Bottom)*, and the Figure 2. *Shoreline Phasing*, in Attachment 2 to this Order). Table 3: *Impact Construction Schedule*, in Attachment 2 to this Order, summarizes Bay excavation and fill quantities associated with each Project phase.

19. Armoring of currently un-armored sections of shoreline and rehabilitation of existing bank armoring will result in an increase of 0.42 acre of new shoreline revetment at the following locations: 0.35 acre (1,020 LF) at South Park (Clinton Basin) in Phase II of the Project; 0.02 acre (170 LF) at Channel Park in Phase II of the Project; and 0.05 acre (250 LF) along South Park (West) in Phase III of the Project. The rehabilitation of 1.13 acres of existing, deteriorating bank revetments will occur at the following locations: 0.01 acre (50 LF) at Shoreline Park (Ninth Avenue Wharf) in Phase I of the Project; 0.35 acre (560 LF) at Shoreline Park (West) in Phase II of the Project; 0.39 acres (1,340 LF) at South Park (Clinton Basin) in Phase II of the Project; 0.29 acre (1,200 LF) at Channel Park in Phase II of the Project; and 0.09 acre (700 LF) at South Park (West) in Phase III of the Project. Summaries of dredge and fill quantities for shoreline stabilization are presented in Table 1: *Construction Quantities*, and Table 3: *Impact Construction Schedule*, in Attachment 2 to this Order.
20. Fill of Bay waters in the Oakland Inner Harbor is an unavoidable impact of the Project. Along the Project's shoreline, the amount of new fill is the minimum necessary to provide bank stabilization. The majority of the Project's permanent impacts to open water will be associated with construction of the new shoreline promenade and the new Gateway Park at Clinton Basin. Bay fill will be used to stabilize and straighten the shoreline in order to create a uniform promenade edge around the marina. The existing eastern end of Clinton Basin will be filled to increase the size of the new Gateway Park, which will provide necessary space for public access between the end of Clinton Basin and the Embarcadero roadway. At present, the available space between Clinton Basin and the Embarcadero roadway limits movement between Project components constructed in Phase II and Phase III of the Project (See Figure 6. *Oak to Ninth Avenue Development, Proposed Shoreline Improvements, South Park – Clinton Basin*, Figure 12. *Alternative 1 – Vertical Sheet Pile Bulkhead (Sheet Pile Option Shown – North Segment Only)*, Figure 14. *Impacts (At Bay Bottom), South Park - Clinton Basin, Surface Area Affected (At Bay Bottom)*, Figure 15. *Mitigation (At Bay Bottom), South Park - Clinton Basin, Surface Area Affected (At Bay Bottom)*, Figure 16. *Section A-A, South Park – Clinton Basin*, Figure 17. *Section B-B, South Park – Clinton Basin*, in Attachment 2 to this Order). In July 2010, the Project design was modified to reduce Bay fill in Clinton Basin by 1.17 acres, from 1.71 acres to 0.54 acre, as shown in Table 2: *Permit Related Quantities*, in Attachment 2 to this Order. This reduction was accomplished by moving the proposed riprap shoreline on the western and eastern edges of Clinton Basin landward by 26.5 feet and the southern edge of Gateway Park landward by 63.75 feet.
21. The Discharger filed an application for Clean Water Act section 401 Water Quality Certification and Waste Discharge Requirements (WDRs) with the Regional Water Board on December 8, 2009. The application was subsequently completed by additional information submitted on September 30, 2010, November 29, 2010, October 15, 2013, and August 5, 2014.

22. The Discharger has applied to the U.S. Army Corps of Engineers (Corps) (Corps File No. 297020S) for an individual permit under section 404 of the Clean Water Act (33 U.S.C. § 1344), as amended, and section 10 of the Rivers and Harbors Act of 1899 (33 USC § 403), as amended. The Corps issued a Public Notice for the Project on September 5, 2012, (Corps File No. 29702S) but has not issued a permit for the Project at this time.
23. On July 16, 2012, the United States Fish & Wildlife Service (USFWS) provided informal consultation for the Project's potential impacts to the California least tern, under the authority of Section 7 of the Endangered Species Act (ESA) (Reference No. 81420-2011-I-0652). USFWS determined that the Project may affect, but is not likely to adversely affect California least tern. This determination was based on: (1) the three-mile distance of the Project Site from the closest known California least tern breeding colony; (2) scheduling dredging activities outside of the California least tern breeding season; (3) the lack of California least tern breeding habitat within the Project Site; and (4) the historic and current disturbed conditions of the sites.
24. The National Marine Fisheries Service (NMFS) provided consultation for the Project's impacts to listed species under the authority of Section 7 of the ESA, as amended (16 U.S.C. 1531 *et seq.*), and the Essential Fish Habitat (EFH) provisions of the Magnuson Stevens Fishery Conservation and Management Act, in the January 13, 2013, consultation on the Project (Reference No. 2011102282). The NMFS consultation evaluated the Project for potential adverse effects to threatened central California coast (CCC) steelhead, threatened green sturgeon, and designated critical habitat. The NMFS consultation concluded that, because of man-made changes to the Oakland Estuary, it no longer provides rearing habitat for CCC steelhead and, therefore, steelhead juveniles and adults are unlikely to occur in the vicinity of the Project during their seasonal migration through San Francisco Bay. For green sturgeon, the NMFS consultation concluded that there is a potential for fish to be impacted by demolition or construction impacts on water quality. The Project's demolition activities, construction of shoreline stabilization measures, placement of in-water fill, and pile driving activities will disturb the substrate and are likely to result in temporary increases in turbidity and re-suspension of contaminated sediments in the adjacent water column. Based on sediment data collected near the Project Site (See the tables in Attachment 4 to this Order), several contaminants of concern (e.g., PCBs PAHs, and copper) in sediment at the Project Site are present at concentrations above bio-accumulation triggers for Dredged Material Testing Thresholds for San Francisco Bay Area Sediments (Regional Water Board, May 2000 staff report, *Beneficial Reuse of Dredged Materials: Sediment Screening and Testing Guidelines*, or most current revised version). Any toxic metals and organics absorbed or adsorbed to fine-grained particulates in sediment may become biologically available to organisms either in the water column or through food chain processes. Although construction activities may be confined to a localized area, tides and currents can have a significant influence on the dispersal of suspended sediments and contaminants into adjacent areas. Increased levels of turbidity and contaminated sediments can affect listed fish species by disrupting normal feeding behavior, reducing growth rates, increasing stress levels, reducing respiratory functions, and other physiological impacts. To minimize impacts associated with turbidity and contaminants, the Discharger shall use silt curtains and/or sediment berms during excavation activities, cut piles at the mudline if they break off during extraction and only

schedule excavation and backfill activities during periods of low tide. With the implementation of these measures, NMFS anticipates that green sturgeon will not be exposed to suspended contaminated sediments and turbidity at levels that would result in significant behavioral and physical impacts. With implementation of the measures in provisions 7, 8, 9, and 10, NMFS has determined that the proposed project is not likely to adversely affect CCC steelhead, green sturgeon, or designated critical habitat.

25. Clinton Basin is known to contain sediments with high concentrations of contaminants of concern (e.g., PCBs PAHs, copper), and this significantly reduces the value of the area for foraging fish. Post-construction, the amount of area with contaminated sediments in the Clinton Basin will be reduced from pre-project levels, although an area of about 0.4 acres in the Clinton Basin containing contaminated sediment will be exposed during construction and remain exposed after construction is completed (*i.e.*, no revetment will be placed on top of these areas). The Project's creation of 0.64 acres of open water and mudflat habitat along 1,200 linear feet of Channel Park and the creation of 0.55 acres of tidal and open water habitat along the shoreline at Channel Park and South Park West are expected to provide uncontaminated areas with high habitat complexity and increased prey abundance for listed fish. The NMFS consultation concluded that, although forage resources for fish that feed on the benthos are expected to be temporarily reduced within different portions of the Project area during the various phases of multi-year construction activities, the forage area that will be lost comprises a small proportion of the total forage available to green sturgeon in the action area. In the long term, the restoration of open water and mudflat habitat is anticipated to increase the amount of natural cover and prey available to CCC steelhead and green sturgeon in the action area.
26. The Project's placement of 88 18-inch square or 18-inch octagonal concrete piles below MHHW at the new concrete boardwalk along Clinton Basin may affect green sturgeon through exposure to high underwater sound levels. The Project's placement of 14 steel piles for the Ninth Avenue Terminal Wharf at the mean tide line has the potential to injure or kill fish that may be exposed to high levels of elevated underwater sound pressure waves generated from the use of impact hammers to drive steel piles. However, the Project's NMFS consultation (see prior finding) states that hydroacoustic data collected from similar projects in the San Francisco Bay Area indicate that the use of an impact hammer to install the project's 18-inch concrete piles at the boardwalk will not result in sound levels that injure or kill fish. Disturbance and noise associated with preparations for pile driving will likely startle green sturgeon in the project vicinity and result in temporary dispersion from the action area. Because green sturgeon are benthically oriented, and are likely to detect vibrations in the substrate associated with construction, initial piling placement, pile driver set-up, and pile driving, they are not expected to remain within the area or enter into the area during pile driving. For green sturgeon that react behaviorally to the sound produced by pile driving, adequate water depths and carrying capacity in the open water area of the adjacent Oakland Estuary and Central San Francisco Bay provide fish sufficient area to disperse. For the seismic retrofit of the Ninth Avenue Terminal Wharf, all piles will be installed above the water line. Because the characteristic impedance of air is much lower than that of water, a sound source located above the water surface has less effect than under the water. High sound associated with the installation of steel piles at the wharf is expected to be attenuated by surrounding air

and avoid the creation of high underwater sound levels. Thus, for green sturgeon, the NMFS consultation concluded that the potential effects of high underwater sound levels associated with pile driving are expected to be insignificant.

27. Shallow nearshore and intertidal shoreline habitat will be permanently impacted by shading from the 0.84 acres of new boardwalk around Clinton Basin, with the greatest impacts anticipated along the southeast shoreline, due to its orientation relative to sun light. Shading by overwater structures has the potential to reduce the growth of submerged aquatic vegetation, decrease primary productivity, alter predator-prey interactions, change invertebrate assemblages, and reduce the density of benthic invertebrates. Removal of overwater structures at the Ninth Avenue Wharf and Shoreline Park West will reduce shading to EFH by 3.08 acres, and 0.59 acres of floating fill in Clinton Basin will also be removed. The NMFS consultation concluded that, overall, the Project will result in a significant net decrease in shading of EFH.
28. Habitat in the Project area will benefit from the removal of creosote-treated timber piles. Creosote, a distillate of coal tar, is a complex chemical mixture, up to 80 percent of which is comprised of polycyclic aromatic hydrocarbons, a class of chemical compounds that are acutely toxic to aquatic life. About 1,200 timber piles will be removed at Shoreline Park West, many of them treated with creosote. Piles shall be removed entirely or cut at the mudline.
29. The NMFS consultation determined that eelgrass and other submerged aquatic vegetation were not known to occur at the site. However, other ecologically important habitat-forming species were identified at the site, including native oysters (*Ostrea lurida*), which have been observed on creosote pilings, and the native brown rockweed (*Fucus distichus*), which has been documented in abundance along the rip-rap shorelines proposed for realignment, excavation, fill, and re-armoring. *Fucus* is a structuring algae that supports high productivity and biodiversity in the intertidal zone.
30. Development of the Project will reduce the amount of impervious surfaces at the Project Site, but impervious surfaces associated with proposed structures, parking lots, and streets will indirectly impact beneficial uses of the Lake Merritt Channel and the Oakland Inner Harbor through the discharge of urban runoff pollutants (e.g., oil and grease, heavy metals, pathogens, nutrients, pesticides). The Project will mitigate the impacts of stormwater runoff through implementation of the post-construction stormwater control measures described in provisions 21 through 26 and in Attachment 3 to this Order.
31. Impacts to the beneficial uses of the Lake Merritt Channel or Oakland Inner Harbor could also result from the discharge of sediments, construction wastes, or contaminated groundwater during construction. The Project will mitigate these potential impacts through the implementation of the best management practices (BMPs) described in provisions 7, 8, and 10 and by managing groundwater as described in provisions 31 and 32 and in Attachment 4 to this Order.
32. The Project will remove a net amount of 2.24 acres of shadow fill from the Project Site; this net amount results from the removal of 3.08 acres of shadow fill and the creation of 0.84 acres of shadow fill as part of the Project design. Removal of shadow fill will create more open water habitat for shorebirds, waterfowl, marine mammals, and other species that do not use

Bay waters under large piers. The 3.08 acres of shadow fill associated with the Ninth Avenue Wharf will be removed in Phase I of the Project: 1.48 acres of this shadow fill will be removed by dismantling the existing pier at the southwest corner of Shoreline Park (See Figure 8. *Oak to Ninth Avenue Development, Proposed Shoreline Improvements, Ninth Avenue Wharf*, and Figure 1. *Shoreline Phasing*), and 1.60 acres of this shadow fill will be removed at the western portion of the future Shoreline Park (See Figure 7. *Oak to Ninth Avenue Development, Proposed Shoreline Improvements, Shoreline Park – West*, and Figure 2. *Shoreline Phasing* in Attachment 2 of this Order). The Project will create 0.84 acres of new shadow fill under the new boardwalks at Clinton Basin in Phase II of the Project (See Figure 16. *Section A-A, South Park – Clinton Basin*, and Figure 17. *Section B-B, South Park – Clinton Basin*, in Attachment 2 to this Order).

33. The Project will remove 0.59 acres of floating fill in Clinton Basin when the existing marina is removed in Phase II of the Project.

### ***Mitigation Plan***

34. As part of mitigation for the Project's impacts to open waters and wetlands, the Discharger will provide offsite mitigation through the purchase of 1.4 acres of credits at the San Francisco Bay Wetland Mitigation Bank (Bank) (Corps File No. 2008 00046S). Mitigation credits through the Bank will offset a cumulative impact total of 1.36 acres to existing open waters (1.34 acres), a seasonal wetland (0.003 acres), and a drainage ditch (0.014 acres) as described in Finding 17.
35. As described in findings 32 and 33, the Project will remove a net amount of 2.24 acres of shadow fill from the Project Site; this net amount is resultant from the removal of 3.08 acres of shadow fill and the creation of 0.84 acres of shadow fill as part of the project design. Removal of shadow fill will create more open water habitat for shorebirds, waterfowl, marine mammals, and other species that do not use Bay waters under large piers. The Project will also remove 0.59 acres of floating fill from the Project Site.
36. As described in Finding 28, the Project will remove about 1,200 timber piles at Shoreline Park West, many of them treated with creosote.
37. As described in Finding 18, the Project will create 0.69 acres of new open Bay waters and/or mudflats in Phase I (0.64 acres along the shoreline of Channel Park), Phase II (0.04 acres at South Park), and Phase III (0.01 acres at South Park) of the Project.

### ***Post-Construction Stormwater Management***

38. Stormwater at the Project Site currently flows untreated directly to the Lake Merritt Channel and the Oakland Inner Harbor over land and via localized existing storm drain systems. The portion of the site to the east of Clinton Basin currently discharges untreated runoff through a piped storm drain system that outfalls at multiple locations along the shoreline (See the red "X"s in Figure 4. *Existing Condition*, in Attachment 1 to this Order). The area of the site between Clinton Basin and the Lake Merritt Channel does not have a significant amount of piped drainage and appears to primarily drain overland to the Lake Merritt Channel and the Oakland Inner Harbor; a concrete batch plant, a marina and automotive parts and service centers currently occupy this area. The Estuary Park area is served by a combination of piped

stormwater and overland runoff that discharges directly to the Lake Merritt Channel and the Oakland Inner Harbor.

The Project will reduce the amount of impervious surface area at the site by increasing open space areas, which will include several new parks, in addition to the existing Estuary Park that will remain as open space. The project will remove 14 of 21 outfalls (See Figure 4. *Existing Condition*, in Attachment 1 to this Order) and all of the open drain outfalls through the piers. The outfalls serving the Estuary Park area (Phase IA of the Project) are the only existing outfalls that will remain in use. The Project will construct 5 new outfalls to the Oakland Inner Harbor at the locations identified in Figure 5. *Proposed Conditions*, in Attachment 1 to this Order and Figure 4. *Stormwater Quality Control Plan*, in Attachment 3 to this Order. These outfalls are identified as follows: Outfall 1 – Channel Park; Outfall 2 – Clinton Basin West; Outfall 3 – Clinton Basin North; Outfall 4 – Clinton Basin East; and Outfall 5 – Shoreline Park. Outfalls 1 to 4 are located in areas with proposed shoreline improvements. Outfall 5 is located in an area where no shoreline improvements are proposed and therefore will require construction of a concrete outfall structure within existing bank armoring. Refer to figures 18, 19, and 20 in Attachment 2 to this Order for designs of the five new outfalls.

39. The Discharger submitted a report titled, *Oak to Ninth Avenue Project Stormwater Quality Management Plan*, (BKF Engineers, revised September 24, 2010), which describes the stormwater treatment BMPs for post-construction stormwater runoff from the Project's impervious surfaces. Stormwater treatment controls will be constructed concurrently with each phase of the Project, so that treatment is provided for each completed phase. The stormwater treatment BMPs will be constructed as described in Appendix A in Attachment 3 to this Order. Any changes to the BMPs in Attachment 3 to this Order must be submitted to the Executive Officer of the Regional Water Board for review and approval at least 90 days before construction starts on the phase of the Project that will be treated by the altered BMP proposal. Construction of that phase of the Project shall not commence until the Executive Officer has approved the altered BMP proposal (Construction consists of any disturbance of the site surface that is not directly related to the implementation of the RP/RAP described in Finding 6 of this Order).
40. Post-construction stormwater treatment controls will be implemented according to the following phases and as shown on the attached Stormwater Quality Control Plan (See Figure 1. *Stormwater Quality Control Plan* in Appendix A of Attachment 3 to this Order). Stormwater runoff from Phase I (Parcels A, B, C, F, G), identified as Impervious Area D, will be treated with a combined extended detention/bioretention area (identified as Treatment Area D in the summary of post-construction stormwater treatment in Attachment 3 to this Order and illustrated in Figure 5). Stormwater runoff from Phase II (Parcels D, E, H, and J), identified as Impervious Area C, will be treated using a bioretention area (Treatment Area C and illustrated in Figure 4 in Attachment 3 to this Order). Stormwater runoff from Phase III (Parcels K and L), identified as Impervious Area B, will be treated using a bioretention area (Treatment Area B and illustrated in Figure 3 in Attachment 3 to this Order). Stormwater runoff from Phase IV (Parcel M), identified as Impervious Area A, will be treated using a bioretention area (Treatment Area A and illustrated in Figure 2 in Attachment 3 to this Order). The locations of the four treatment areas for each of the four phases are illustrated in Figure 4. *Stormwater Quality Control Plan* in Appendix A in Attachment 3 to this Order.

Details of the treatment measures are illustrated in Figure 6 and Figure 7 in Attachment 3 to this Order.

### ***Regional Water Board Jurisdiction***

41. The Regional Water Board has determined to regulate the proposed discharge of fill materials into waters of the State by issuance of WDRs pursuant to section 13263 of the California Water Code (Water Code) and section 3857 of title 23 of the California Code of Regulations (23 CCR), in addition to issuing certification pursuant to 23 CCR §3859. The Regional Water Board considers WDRs necessary to adequately address impacts and mitigation to beneficial uses of waters of the State from the Project, to meet the objectives of the California Wetlands Conservation Policy (Executive Order W-59-93), and to accommodate and require appropriate changes to the Project.
42. The Regional Water Board provided public notice of the application and this Order on November 21, 2014.
43. This Order is effective only if the Discharger pays all of the required fees conditioned under 23 CCR and in accordance with Provision 27.

### ***Ownership of Project Property***

44. On April 9, 2013, the Discharger and Oakland Harbor Partners, LLC, signed the *Assignment and Assumption of Project Materials (Oak to Ninth-Brooklyn Basin)*. By signing this document and making the payments stipulated in the document, the Discharger acquired all of Oakland Harbor Partners, LLC's right, title, and interest in the Oak to Ninth/Brooklyn Basin project (the Project), including all rights under the following agreements, entitlements, and work products: the Purchase and Sale Agreement with the Port of Oakland; the Tideland Trust Exchange Agreement with the Port and the California State Lands Commission; all local land use entitlements related to the Project, including the Development Agreement with the City of Oakland; and all Project work products, including plans, contracts and permit applications. Subsequent to this initial transfer, the Discharger closed escrow on the Project property under the terms of the Purchase and Sale Agreement and the Exchange Agreement on June 10, 2013.

### ***Regulatory Framework***

45. The Water Quality Control Plan for the San Francisco Bay Basin (Basin Plan) is the Regional Water Board's master water quality control planning document. It designates beneficial uses and water quality objectives for waters of the State, including surface waters and groundwater. It also includes implementation plans to achieve water quality objectives. The Basin Plan was duly adopted by the Regional Water Board and approved by the State Water Resources Control Board, Office of Administrative Law, and U.S. EPA, where required.
46. The following water bodies are adjacent to the Project Site: Lake Merritt Channel; Oakland Estuary; Brooklyn Basin; and Clinton Basin. With the exception of the Lake Merritt Channel, these water bodies are part of the Oakland Inner Harbor. Figure 2. *Phasing Plan, Brooklyn Basin – Oak to 9<sup>th</sup> Development Plan* in Attachment 2 to this Order shows the locations of these water bodies with respect to the Project Site. The Basin Plan identifies the beneficial uses of the Oakland Inner Harbor as estuarine habitat (EST), wildlife habitat (WILD), water

contact recreation (REC1), non-contact water recreation (REC2), and navigation (NAV). The Basin Plan identifies the beneficial uses of the Lake Merritt Channel as ocean, commercial, and sport fishing (COMM), estuarine habitat (EST), wildlife habitat (WILD), water contact recreation (REC1), and non-contact water recreation (REC2). Potential project-related impacts to each of these six beneficial uses are discussed below.

47. Potential impacts to ocean, commercial, and sport fishing (COMM) are not likely to be significant. Although some areas of the shoreline will be inaccessible to fishing during Project construction activities along the shoreline, the Project will not have locally significant impacts on the amount of water accessible to fishing. The Project may also have long-term benefits on fishing by reducing the amount of contamination reaching the Lake Merritt Channel from historic contamination and urban runoff.
48. The Project is likely to have temporary impacts to estuarine habitat (EST) and wildlife habitat (WILD). Construction activities (e.g., excavation, soil stockpiling, boring, pile-driving, grading, dredging) would generate loose, erodible soils that, if not properly managed, could be washed into the Lake Merritt Channel or the Oakland Inner Harbor, increasing turbidity and potentially interfering with fish navigation and feeding behavior, as well as introducing any pollutants entrained with the sediment particles into waters of the State. Increased sound pressure levels from pile-driving could also injure, stun, or kill fish in the Oakland Inner Harbor. These potential, temporary impacts shall be minimized and/or avoided through the implementation of applicable BMPs, in accordance with provisions 6, 7, 8, 9, 10, 21, 22, 31, and 32.

Without appropriate mitigation measures, the project could potentially result in impacts to the California least tern. USFWS' informal consultation for the Project (Reference No. 81420-2011-I-0652; July 16, 2012) determined that the Project may affect, but is not likely to adversely affect, California least tern. This determination was based on: (1) the three-mile distance of the Project Site from the closest known California least tern breeding colony; (2) scheduling dredging activities during the August 1 to February 28 work window, which is outside of the California least tern breeding season; (3) the lack of California least tern breeding habitat within the Project Site; and (4) the historic and current disturbed conditions of the sites.

Without appropriate mitigation measures, the Project could result in impacts to threatened green sturgeon and designated critical habitat. The NMFS consultation for the Project concluded that there is a potential for fish to be impacted by demolition or construction impacts on water quality. About 1 acre of aquatic habitat (below MHW) along the Project Site shorelines will be subject to major construction activities, resulting in disturbance and permanent alteration of habitat. Algal and benthic invertebrate communities will be impacted. Soft estuarine mud, which will be disturbed through excavation, fill, and sediment disturbance during piling removal, provides habitat for important prey resources for fish. Rates of benthic recovery range from several months to several years for estuarine muds. Therefore, forage resources for fish that feed on the benthos are expected to be temporarily reduced within different portions of the Project area during the various phases of multi-year construction activities.

To minimize impacts associated with demolition and construction activities, the Discharger shall use silt curtains and/or sediment berms during excavation activities, cut piles at the

mudline if they break off during extraction and only schedule excavation and backfill activities during periods of low tide. With the implementation of these measures, the NMFS consultation concluded that green sturgeon will not be exposed to suspended contaminated sediments and turbidity at levels that would result in significant behavioral and physical impacts (See provisions 7, 8, and 10). Permanent impacts of the Project may benefit estuarine habitat and wildlife habitat by isolating residual contamination at the site from contact with waters of the State, removing 2.24 net acres of over-water shading, removing 0.59 acres of floating fill, removing treated wood pilings, and providing water quality treatment for stormwater runoff from the developed site. The potential creation of up to 0.69 acres of new open water and mudflat habitat along the shoreline of Channel Park and South Park is also likely to improve estuarine habitat and wildlife habitat.

49. The Project will reduce opportunities for water contact recreation (REC1), because the Project will remove the Clinton Basin marina.
50. The Project will benefit non-contact water recreation (REC2), because the Project will increase opportunities for public access to the shoreline at the site, including completion of a portion of the Bay Trail.
51. The Project will have no impacts to Navigation (NAV).
52. The Basin Plan Wetland Fill Policy (policy) establishes that there is to be no net loss of wetland acreage and no net loss of wetland value when the project and any proposed mitigation are evaluated together and that mitigation for wetland fill projects is to be located in the same area of the Region, whenever possible, as the project. The policy further establishes that wetland disturbance should be avoided whenever possible, and, if not possible, should be minimized, and only after avoidance and minimization of impacts should mitigation for lost wetlands be considered.
53. The goals of the California Wetlands Conservation Policy (Executive Order W-59-93, signed August 23, 1993) include ensuring “no overall loss” and achieving a “...long-term net gain in the quantity, quality, and permanence of wetland acreage and values...” Senate Concurrent Resolution No. 28 states that “[i]t is the intent of the legislature to preserve, protect, restore, and enhance California’s wetlands and the multiple resources which depend on them for benefit of the people of the State.” Section 13142.5 of the Water Code requires that the “highest priority shall be given to improving or eliminating discharges that adversely affect wetlands, estuaries, and other biologically sensitive areas.”
54. This Order applies to the permanent fill and indirect impacts to waters of the State associated with the Project, which is comprised of the components listed in findings 11 through 15. Construction of the Project will result in the net permanent placement of fill in 1.34 acres of jurisdictional open waters, consisting of open water in the Oakland Inner Harbor, and in 0.017 acres of seasonal wetlands in uplands.
55. The Discharger has submitted a Clean Water Act section 404 Alternatives Analysis and supplemental information to show that appropriate effort was made to avoid and then to minimize wetland and stream disturbance, as required by the Basin Plan. The Corps approved the Alternatives Analysis on December 10, 2013.
56. The California Environmental Quality Act (CEQA) requires all discretionary projects approved by public agencies to be in full compliance with CEQA, and requires a lead agency

(in this case, the City) to prepare an appropriate environmental document for such projects. The City prepared and certified the *Environmental Impact Report for the Oak to Ninth Mixed Use Development* (EIR) on June 20, 2006, State Clearinghouse No. 2004062013, and filed a Notice of Determination (NOD) with the Alameda County Clerk on June 23, 2006. The EIR found that significant impacts related to the filling of a small wetland and open waters of San Francisco Bay would be mitigated to less than significant levels by the creation of new open water or mudflats and the removal of shadow fill over Bay waters. Subsequent to the certification of the EIR, it was determined that created tidal marshes on public trust lands could not be preserved in perpetuity through a deed restriction or conservation easement. Therefore, Project impacts will be offset through the purchase of 1.4 acres of mitigation credits from the San Francisco Bay Wetland Mitigation Bank. The EIR also identified potentially significant impacts related to water quality from the Project but concluded that these impacts could be mitigated to less than significant levels through the mitigation measures identified in the EIR, such as compliance with the requirements of construction stormwater permits and municipal stormwater permits, issued by the State Water Resources Control Board and the Regional Water Board as National Pollutant Discharge Elimination System (NPDES) permits.

57. The Alameda County Superior Court Order in Case No. RG06-280345 and Case No. RG06-280471 found that the EIR, consisting of the Draft EIR, the Final EIR, and the Addendum to the EIR, prepared and certified by the City and the Oakland Redevelopment Agency in 2006 for the Oak to Ninth Avenue Project failed to comply with CEQA for the following reasons: it did not include a sufficient cumulative impact analysis for the land use section and for the population and housing section; the cumulative impact analyses for geology and seismicity, noise from traffic, hazardous materials, biological resources, visual quality, public services and recreation facilities, and utilities did not sufficiently consider the impact of the project when added to other closely related past and present projects; the traffic analysis relied on an improper ratio theory to evaluate cumulative impacts; and the seismic risk mitigation measures and findings were not supported by sufficient analysis or substantial evidence in the record. Of the subject areas subject to evaluation in the revised analysis for the EIR, only impacts to biological resources are within the jurisdictional purview of the Regional Water Board.
58. The assessment of impacts to biological resources in the revised EIR concluded that the cumulative impacts of past, present, and reasonably foreseeable future projects are not likely to have significant unmitigable impacts to biological resources. In part, this conclusion was based on the requirement for present and reasonably foreseeable future projects to implement mitigation measures consistent with the following regulations, laws, and policies to avoid adverse effects to existing biological resources: the federal and State Endangered Species Acts; the federal Clean Water Act; the City of Oakland Creek Protection Ordinance; and the City of Oakland Oak Tree Protection and Tree Preservation Removal Ordinance. Mitigation measures identified for the Project are typical of the types of mitigation measures required for all development projects located adjacent to wetlands or other jurisdictional waters and that involve construction activities near or in such waters. The mitigation measures that are most relevant to the Project include: avoidance; best management practices; and compensatory mitigation. Avoidance includes the avoidance of resources such as wetlands, special status species habitat, or trees with nesting birds during project design, construction, and operation;

and periods when those activities shall not occur to avoid direct and indirect impacts to certain species, based on behaviors of such species (e.g., breeding periods of certain bird species). Best management practices include standard measures to minimize impacts to waters of the State during construction and operation of the Project (See provisions 6 through 10 of this Order). Compensatory mitigation is provided to address temporary and permanent impacts to waters of the State; this mitigation provides for the replacement of impacted aquatic resources, as is described in greater detail in findings 34, 35, 36, and 37 and provisions 11 and 20 of this Order.

59. The City certified the revised EIR on January 20, 2009, and filed an NOD for the revised EIR with the Alameda County Clerk on January 22, 2009.
60. The Regional Water Board, as a responsible agency under CEQA, has considered the revised EIR, together with the record before the Regional Water Board, including public comments, and finds that the significant environmental impacts of the proposed activities, which are within the Regional Water Board's purview and jurisdiction, have been identified and mitigated to less than significant levels. Specifically, significant impacts from fill of open water and a small wetland and significant impacts to water quality will be mitigated through the mitigation requirements set forth in the EIR and this Order. Further, since certification of the EIR, changes have been incorporated into the Project such that the Project now results in 1.17 acres less of open water fill than was previously proposed by the Discharger and evaluated in the EIR; this reduction lessens the impacts from the fill of open water.
61. Pursuant to 23 CCR sections 3857 and 3859, the Regional Water Board is issuing WDRs and Water Quality Certification for the proposed Project.
62. The Regional Water Board has notified the Discharger and interested parties of its intent to issue WDRs and Water Quality Certification for the Project.
63. The Regional Water Board, in a public meeting, heard and considered all comments pertaining to this Order.

IT IS HEREBY ORDERED that Zarsion-OHP I, LLC., in order to meet the provisions contained in Division 7 of the Water Code and regulations adopted thereunder, shall comply with the following, pursuant to authority under Water Code sections 13263 and 13267:

**A. Discharge Prohibitions**

1. The direct discharge of wastes, including rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plains, is prohibited.
2. The discharge of floating oil or other floating materials from any Project activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
3. The discharge of silt, sand, clay, or other earthen materials from any Project activity in quantities sufficient to cause deleterious bottom deposits, turbidity, or discoloration in surface waters is prohibited.
4. The open water and wetland fill activities subject to these requirements shall not cause a nuisance as defined in Water Code §13050(m).
5. The discharge of decant water from the Project's fill sites and stockpile or storage areas to surface waters or surface water drainage courses is prohibited, except as conditionally allowed following the submittal of a discharge plan or plans as described in the Provisions.
6. The groundwater in the vicinity of the Project shall not be degraded as a result of the placement of fill for the Project.
7. The discharge of materials other than stormwater, which are not otherwise regulated by a separate NPDES permit or allowed by this Order, to waters of the State is prohibited.
8. The discharge of drilling muds to waters of the State, or to where such muds could be discharged to waters of the State, is prohibited.
9. The discharge of earthen fill, construction material, concrete, aggregate, rock rip-rap, and/or other fill materials to waters of the State is prohibited, except as expressly allowed herein.

**B. Receiving Waters Limitations**

1. The discharge shall not cause the following conditions to exist in waters of the State at any place:
  - a. Floating, suspended, or deposited macroscopic particulate matter or foam in concentrations that cause nuisance or adversely affect beneficial uses;
  - b. Bottom deposits or aquatic growths to the extent that such deposits or growths cause nuisance or adversely affect beneficial uses;
  - c. Alteration of temperature, turbidity, or apparent color beyond present natural background levels;
  - d. Visible, floating, suspended, or deposited oil or other products of petroleum origin; and
  - e. Toxic or other deleterious substances to be present in concentrations or quantities which will cause deleterious effects on wildlife, waterfowl, or other aquatic biota, or

which render any of these unfit for human consumption, either at levels created in the receiving waters or as a result of biological concentration.

2. The discharge shall not cause nuisance, or adversely affect the beneficial uses of the receiving water.
3. The discharge shall not cause the following limits to be exceeded in waters of the State at any one place within one foot of the water surface:
  - a. Dissolved Oxygen: 5.0 mg/L, minimum  
The median dissolved oxygen concentration for any three consecutive months shall not be less than 80% of the dissolved oxygen content at saturation. When natural factors cause concentrations less than that specified above, then the discharges shall not cause further reduction in ambient dissolved oxygen concentrations.
  - b. Dissolved Sulfide: 0.1 mg/L, maximum
  - c. pH: The pH shall not be depressed below 6.5 nor raised above 8.5, nor caused to vary from normal ambient pH by more than 0.5 pH units.
  - d. Un-ionized Ammonia: 0.025 mg/L as N, annual median; and  
0.16 mg/L as N, maximum
  - e. Nutrients: Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.
4. There shall be no violation of any water quality standard for receiving waters adopted by the Regional Water Board or the State Water Resources Control Board.

**C. Provisions**

1. The Discharger shall comply with all Prohibitions, Receiving Water Limitations, and Provisions of this Order immediately upon adoption of this Order or as provided below.
2. The Discharger shall submit copies to the Regional Water Board of all necessary approvals and/or permits for the Project, including its associated mitigation, from applicable government agencies, including, but not limited to the City, the Corps, the Bay Conservation and Development Commission (BCDC), and the East Bay Municipal Utilities District (EBMUD). Copies shall be submitted to the Regional Water Board within 60 days after issuance of any permit or other approval.
3. In addition to the requirements of this Order, the Discharger shall comply with any other more stringent requirements imposed by the Corps, BCDC, and the City.
4. Construction shall not commence on any phase of the Project until all required documents, reports, plans, and studies required in the Provisions associated with that phase of the Project have been submitted to the Executive Officer or the Regional Water Board and found acceptable by the Executive Officer or the Regional Water Board.

5. Prior to placing any imported fill material along the shoreline of the Project Site, including all placement of fill in areas below the top of bank, the Discharger shall submit written documentation that the chemical concentrations in the imported fill soil are in compliance with the protocols specified in:
- The Dredged Material Management Office (DMMO) guidance document, *Guidelines for Implementing the Inland Testing Manual in the San Francisco Bay Region* (Corps Public Notice 01-01, or most current version) with the exception that the water column bioassay simulating in-bay unconfined aquatic disposal shall be replaced with the modified effluent elutriate test, as described in Appendix B of the Inland Testing Manual, for both water column toxicity and chemistry (DMMO suite of metals only); and,
  - Regional Water Board May 2000 staff report, *Beneficial Reuse of Dredged Materials: Sediment Screening and Testing Guidelines*, or most current revised version.

Regional Water Board staff shall review and approve data characterizing the quality of all material proposed for use as fill prior to placement of fill at any of the shoreline improvement areas at the Project Site. Modifications to these procedures may be approved on a case-by-case basis, pending the Discharger's ability to demonstrate that the imported fill material is unlikely to adversely impact beneficial uses.

#### ***Construction Best Management Practices (BMPs)***

6. To be protective of the California least tern colony on the former Alameda Naval Air Station, located about three miles west of the Project Site, and to be consistent with the USFWS informal consultation for the Project, dredging activities may only occur during the August 1 to February 28 work window, which is outside of the California least tern breeding season.
7. To place fill over a 0.90 acre section of Clinton Basin at the site of the Gateway Park, steel sheet piles will be installed across the channel using a vibratory pile driver to enclose the fill site. Fill materials shall be carefully placed behind the sheet pile and shall not be dumped or dropped directly into open waters. To prevent fish from being trapped behind the bulkhead, a 15-foot-wide gap shall be left in the sheetpile while the gravel and rock filling is taking place. A turbidity curtain shall be used to minimize the discharge of suspended sediment. The curtain shall be deployed with sufficient space at the bottom to enable fish to move out of the area and discourage fish from entering the area. Prior to the full closure of the bulkhead, a seine shall be used by a biological monitor to guide any remaining fish out of the work site to open water in the Oakland Estuary. The gap in the bulkhead shall be sealed with more sheet piles immediately after seining, and filling will then be completed.
8. The Discharger shall implement the following measures to avoid negative impacts to aquatic organisms and habitat during construction:
- a. All in-water construction work will be limited to the period between June 1 and December 1.
  - b. To the maximum extent possible, work in tidal areas will be completed at low tide so as to minimize in-water work. To isolate earthwork activities from the tidal

waters of the Oakland Estuary, a temporary berm of existing fill materials will be left on the outboard edge of the shore, or work will occur during low tide periods. If a temporary berm is used, it will be removed upon completion of the work by excavating from the top of slope down to the existing mean tide line. Berm removal shall be completed at low tide.

- c. During demolition of overwater structures, fixed or floating platforms shall be installed beneath work sites to prevent material and debris from falling into the water.
  - d. Where necessary to conduct in-water grading work involving either excavation or placement of fill in tidal waters, a weighted silt curtain suspended from a floating boom shall be emplaced in the estuary around the perimeter of the work site. The curtain is intended to simultaneously exclude fish from active work areas and reduce turbidity in the estuary. A biological monitor shall be onsite whenever the turbidity curtains are being installed or moved, and inspect the curtained work areas prior to work commencing.
  - e. A biological monitor shall be on site during construction activities below the elevation of MHHW at the Gateway Park construction site.
  - f. Pile driving in Clinton Basin for the boardwalk shall occur at low tide when inundation of the near shore area is shallow or when the Bay floor at the pile driving location is fully exposed, whenever possible. Piles driven in waters greater than 1 foot in depth shall be driven using the soft-start procedure; piles shall be driven with the least force necessary; a wood cushion shall be placed between the impact hammer and pile top; and only one impact hammer shall be operated at a time.
  - g. Stormwater control measures, such as the installation of silt fences, shall be used to control or eliminate sediment discharges and other potential pollutants from entering the waterway during construction. These measures will be implemented according to a Storm Water Pollution Prevention Plan (SWPPP) in compliance with the statewide Construction General Permit (see provisions 21 and 22) and City of Oakland Creek Protection Permit.
9. New pilings installed for the Project shall be made of inert material (e.g., concrete) that will not leach contaminants into the waters of the Oakland Inner Harbor.
10. The Discharger shall implement the following Essential Fish Habitat (EFH) Conservation Recommendations, which were presented in the NMFS consultation to avoid, minimize, or otherwise offset anticipated adverse effects to EFH from contaminant exposure, sediment disturbance, shading, disturbance to existing native algae and permanent loss of subtidal habitat associated with Project construction:
- a. The Discharger shall develop a remedial action plan to minimize the exposure of aquatic organisms to contaminants associated with residual chemical concentrations in newly exposed sediment for each phase of Project construction. Remedial action plans shall be submitted to the Executive Officer at least 30 days prior to initiation of excavation activities along the shoreline of the Project Site for review and approval.
  - b. The Discharger shall minimize the disturbance of contaminated sediment during piling removal. If piles break and/or cannot be removed entirely, pilings shall be cut *at* the mudline, rather than *below* the mudline.

- c. To reduce impacts to EFH from shading at the Project Site, the Discharger shall incorporate light transmitting materials or design features into the new boardwalk along the southeast shoreline of Clinton Basin, to achieve a target of between 5 and 40 percent light transmittance.
- d. Where replacement of existing rip-rap and other hard intertidal structures is planned, the Discharger shall take actions to preserve the *Fucus* currently growing along the shoreline edges, as recommended in the Assessment of the Habitat Value of Pier Pilings (Zabin 2011) (See Attachment 5).

### ***Compensatory Mitigation***

11. To provide mitigation for the Project's impacts to waters of the State, the Discharger shall provide the following mitigation measures in conformance with the schedule in Table 3, *Impact/Mitigation Construction Schedule*, in Attachment 2 to this Order:
  - a. Purchase 1.4 acres of mitigation credits from the Bank as described in Finding 34;
  - b. Remove a net minimum of 2.24 acres of shadow fill from Bay waters as described in Finding 35;
  - c. Remove a minimum of 0.59 acres of floating fill from Clinton Basin as described in Finding 35;
  - d. Remove about 1,200 timber piles at Shoreline Park West, many of them treated with creosote, as described in Finding 36);
  - e. Create a minimum of 0.69 acres of new open water and/or mudflats, as described in findings 18 and 37; and
  - f. Document attaining at least 5 percent light transmittance in the new boardwalk constructed along the southeast shoreline of Clinton Basin.
12. Not later than 90 days prior to the start of construction for each phase of the Project (defined as site grading that is not solely related to the implementation of the RP/RAP described in Finding 6 of this Order), the Discharger shall submit final plans for the creation of each area of proposed open water and/or mudflat to be created in that phase of the Project to the Executive Officer for review and approval. Construction of each Project phase shall not start until the Executive Officer has approved the final mitigation plan for that phase.
13. As-built plans for each area of open water and/or mud flat created as mitigation for the Project's impacts to waters of the State site shall be prepared and submitted to the Executive Officer within six weeks of the completion of construction of each area of open water and/or mudflat. As-built plans shall be accompanied by an as-built report that describes any changes to the approved plans that were necessary during creation of open water and/or mudflat, as well as a technical justification for any design changes that were necessary in the field.
14. Within six weeks of completing the removal of any portion of shadow fill that is required by this Order as mitigation for Project impacts to waters of the State, the Discharger shall submit a report documenting the removal of the shadow fill to the Executive Officer.
15. Within six weeks of completing the removal of any creosote-treated timber pilings from the Project site that is required by this Order as mitigation for Project impacts to waters of the State, the Discharger shall submit a report documenting the removal of the timber pilings, including an estimate of the number of pilings completely removed and the number of pilings cut off at the mudline, to the Executive Officer.

16. Within six weeks of completing the boardwalk along the shore of Clinton Basin, the Discharger shall submit a report documenting the attainment of a minimum of 5 percent light transmittance in the boardwalk along the shoreline of Clinton Basin to the Executive Officer.

### ***Monitoring and Reporting***

17. All technical and monitoring reports required pursuant to this Order (e.g., provisions 5, 10, 11, 12, 13, 14, 15, 16, 18, 20, 22, 23, 24, and 25) are being required pursuant to section 13267 of the Water Code. Failure to submit reports in accordance with schedules established by this Order or failure to submit a report of sufficient technical quality acceptable to the Executive Officer may subject the Discharger to enforcement action pursuant to section 13268 of the Water Code.
18. Annual reports shall be submitted to the Regional Water Board by January 31 following each year of Project construction, until the required mitigation features have been implemented. Reports shall include an assessment of the amount of open water and/or mudflats created in each year of Project implementation, the amount of shadow fill removed and/or created in each year of Project implementation, the amount of creosote treated piles that have been removed in each year of Project implementation, and the amount of boardwalks along the shoreline of Clinton Basin that have been constructed with at least 5 percent light transmittance in each year of Project implementation. Reports shall include a description of the methods used to implement mitigation features and representative photographs of each mitigation feature. Reporting may be discontinued when all of the mitigation measures in findings 34 through 37 and Provision 20 have been implemented.

### ***Electronic Reporting Format***

19. In addition to print submittals, all reports submitted pursuant to this Order must be submitted as electronic files in PDF format. The Regional Water Board has implemented a document imaging system, which is ultimately intended to reduce the need for printed report storage space and streamline the public file review process. Documents in the imaging system may be viewed, and print copied made, by the public, during file reviews conducted at the Regional Water Board's office. All electronic files, whether in PDF or spreadsheet format, shall be submitted via email (only if the file size is less than 3 MB) or on CD. CD submittals may be included with the print report.

### ***Notice of Mitigation Completion***

20. Mitigation for impacts to open waters will be satisfied through documentation of the completion of the mitigation measures specified in Provision 11, in conformance with the schedule in Table 3, *Impact/Mitigation Construction Schedule*, in Attachment 2 to this Order:
  - a. Purchase of 1.4 acres of mitigation credits from the Bank; proof of such purchase shall be submitted to the Executive Officer no later than March 1, 2015;
  - b. Removal of a net minimum of 2.24 acres of shadow fill from Bay waters;
  - c. Removal of a minimum of 0.59 acres of floating fill from Clinton Basin;
  - d. Creation of a minimum of 0.69 acres of open waters and/or mudflats; and
  - e. Documentation of attaining at least 5 percent light transmittance in the new boardwalk constructed along the shoreline of Clinton Basin.

***Project Site Stormwater Management***

21. The Discharger shall comply with the General Permit for Discharges of Storm Water Associated with Construction Activity (Construction General Permit Order No. 2012-0006-DWQ; NPDES Permit No. CAS000002).
22. The Discharger shall prepare and implement a site-specific Stormwater Pollution Prevention Plan (SWPPP) for the construction of each phase of the Project, in accordance with the requirements, provisions, limitations, and prohibitions of the General Construction Permit for discharges of stormwater associated with construction activity. Construction of each phase shall not commence until the Executive Officer has approved the SWPPP for that phase.
23. No later than 90 days prior to the start of construction for each of the four phases of the Project, the Discharger shall submit final plans for the post-construction stormwater treatment measures for the impervious surfaces that are to be created in that phase of the Project to the Executive Officer for review and approval. Stormwater treatment measures shall be consistent with the designs and phasing in Attachment 3 to this Order and findings 38, 39, and 40. Construction of each Project phase shall not start until the Executive Officer has approved the final designs for the post-construction stormwater treatment measures to be constructed for that phase (Note: "Construction of a phase" does not include work that is solely necessary to implement the RP/RAP described in Finding 6 of this Order).
24. As-built plans for the post-construction stormwater treatment feature for each phase of the Project shall be prepared and submitted to the Regional Water Board within six weeks of the completion of construction and planting of each post-construction stormwater treatment feature. As-built plans shall be accompanied by an as-built report that describes any changes to the approved plans that were necessary during construction of the stormwater treatment feature, as well as a technical justification for any design changes that were necessary in the field. The technical justification must demonstrate that the constructed treatment measure is consistent with the requirements of Regional Water Board Order No. R2-2009-0074 (see Attachment 3 to this Order).
25. The Discharger, or its successors, is required to ensure that the post-construction stormwater treatment BMPs described in the *Oak to Ninth Avenue Project Stormwater Quality Management Plan*, (BKF Engineers, revised September 24, 2010 (see Attachment 3 to this Order), or any alterations of those BMPs that receive approval from the Executive Officer are monitored, inspected, and maintained in perpetuity. Any transfer of this responsibility from the Discharger to another party must be approved by the Executive Officer before the responsibility may be transferred to another party. The City has conditioned the project (COA #38 of Exhibit C to City Approval Documents) to establish a Community Facilities District (CFD) or other similar funding mechanism for maintenance of parks, open space, and public right-of-way. Source control measures (e.g., marking of storm rain inlets, street sweeping, requirements for pesticide/fertilizer application, isolation of waste storage areas from stormwater runoff) and the maintenance of post-construction stormwater treatment BMPs (e.g., bioretention areas and detention areas) shall be among the Project Site maintenance items included as part of the CFD that is required prior to approval of the final map of the first phase of the Project. Before transferring any of the Discharger's responsibilities that are specified in the Provisions of this Order to a CDF, or similar entity, the Discharger shall submit the terms of such a transfer of responsibility to the Executive Officer for review and

approval. Upon approval of any such transfer of responsibility, the Discharger may apply to have this Order amended to reflect such a transfer of responsibilities for the implementation of source control measures and to ensure the monitoring, inspection, and maintenance of the post- construction stormwater treatment BMPs in perpetuity.

26. The *City of Oakland Source Control Measures to Limit Stormwater Pollution* (See Appendix B in Attachment 3 to this Order) shall be implemented at the Project Site, as appropriate for each Project phase.

### ***Fees***

27. This Order combines WDRs and Clean Water Act section 401 Water Quality Certification provisions. The application fee and annual fees shall reflect this, and consist of the following:  
The fee amount for the WDRs and Water Quality Certification shall be in accordance with the current fee schedule, per CCR Division 3, Chapter 9, Article 1, section 2200(a)(3), based on the discharge size. The full application fee for the Project's fill of 1.36 acres of waters of the State is \$7,711, which must be paid in full to the Regional Water Board by February 1, 2015. After the initial year, annual fees in accordance with CCR Division 3, Chapter 9, Article 1, section 2200(a)(3) shall be billed annually to the Discharger until Project implementation is completed. The fee payment shall indicate the Order number, WDID number, and the applicable year.

### ***General Provisions***

28. The Discharger shall comply with all the Prohibitions, Effluent and Receiving Water Limitations, and Provisions of this Order immediately upon adoption of this Order or as provided in this Order.
29. All reports pursuant to these Provisions shall be prepared by professionals registered in the State of California.
30. The Discharger shall immediately notify the Regional Water Board by telephone and e-mail whenever an adverse condition occurs as a result of this discharge. Such a condition includes, but is not limited to, a violation of the conditions of this Order, a significant spill of petroleum products or toxic chemicals, or damage to control facilities that would cause noncompliance. Pursuant to Water Code §13267(b), a written notification of the adverse condition shall be submitted to the Regional Water Board within two weeks of occurrence. The written notification shall identify the adverse condition, describe the actions necessary to remedy the condition, and specify a timetable, subject to the modifications of the Regional Water Board, for the remedial actions.
31. Should discharges of otherwise uncontaminated groundwater contaminated with suspended sediment be required from the Project Site, where such discharges are not otherwise covered by an applicable NPDES permit, such discharges may be considered covered by the General Permit, following the submittal of a discharge/treatment plan, acceptable to the Executive Officer, at least 30 days prior to such a discharge.
32. Excavation dewatering may be performed in open excavation areas that extend below the water table both during remedial activities and during construction activities. All extracted groundwater will be either hauled offsite to a facility approved by DTSC, discharged to

EBMUD facilities, or discharged to a storm sewer or directly to surface water under an NPDES permit. At the time any specific phase of the Project is undertaken that will involve groundwater extraction, an analysis will be made as to whether it is cost effective and appropriate to discharge to EBMUD or to surface water. The procedures for discharging to EBMUD facilities or for discharging to surface water under an NPDES permit are generally described in Attachment 4 to this Order.

33. The Discharger shall notify the Regional Water Board in writing at least 30 days prior to the actual start date for each phase of the Project (i.e., prior to the start of grading or other construction activity for any Project component that is not solely related to the remediation of existing contamination at the Project Site).
34. The Discharger shall at all times fully implement and comply with the engineering plans, specifications, and technical reports that were submitted with its application for Water Quality Certification and the report of waste discharge, as well as any engineering plans, specifications, and technical reports that are subsequently submitted to the Regional Water Board in order to comply with this Order.
35. The Discharger is considered to have full responsibility for correcting any and all problems that arise in the event of a failure that results in an unauthorized release of waste or wastewater.
36. The discharge of any hazardous, designated, or non-hazardous waste as defined in Title 23, Division 3, Chapter 15 of the California Administrative Code, shall be disposed of in accordance with applicable state and federal regulations.
37. The Discharger shall remove and relocate any wastes that are discharged at any sites in violation of this Order.
38. In accordance with Water Code §13260, the Discharger shall file with the Regional Water Board a report of any proposed change in ownership or any material change in the character, location, or quantity of this waste discharge. Any proposed material change in the discharge requires approval by the Regional Water Board after a hearing under Water Code §13263. Material change includes, but is not be limited to, all significant new soil disturbances, all proposed expansion of development, or any change in drainage characteristics at the Project Site. For the purpose of this Order, this includes any proposed change in the boundaries of the area of wetland/waters of the State to be filled and mitigated.
39. The following standard conditions apply to this Order:
  - a. Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code §13330 and 23 CCR §3867.
  - b. Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR §3855(b) and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

- c. Certification is conditioned upon total payment of any fee required pursuant to 23 CCR §3833 and owed by the Discharger.
40. The Discharger shall maintain a copy of this Order and all relevant plans and BMPs at the Project Site so as to be available at all times to site operating personnel and agencies.
41. The Discharger shall permit the Regional Water Board or its authorized representatives at all times, upon presentation of credentials:
  - a. Entry onto Project premises, including all areas on which water body fill or water body mitigation is located or in which records are kept.
  - b. Access to copy any records required to be kept under the terms and conditions of this Order.
  - c. Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this Order.
  - d. Sampling of any discharge or surface water covered by this Order.
42. This Order does not authorize commission of any act causing injury to the property of another or of the public; does not convey any property rights; does not remove liability under federal, State, or local laws, regulations or rules of other programs and agencies, nor does this Order authorize the discharge of wastes without appropriate permits from other agencies or organizations.
43. The Regional Water Board will consider rescission of this Order upon Project completion and the Executive Officer's acceptance of notices of completion of mitigation for all mitigation, creation, and enhancement projects required or otherwise permitted now or subsequently under this Order.
44. This WDRs and Water Quality Certification is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Water Code section 13330 and 23 CCR §3867.
45. The Regional Water Board may add to or modify the conditions of this Order, as appropriate, to implement any new or revised water quality standards and implementation plans adopted or approved pursuant to the Porter-Cologne Water Quality Control Act or section 303 of the Clean Water Act.
46. This Order is not transferable.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete and correct copy of an Order adopted by the California Regional Water Quality Control Board, San Francisco Bay Region on January 21, 2015.

---

Bruce H. Wolfe  
Executive Officer

Site No. 02-01-C1070  
CIWQS Place ID Number 748052  
CIWQS Regulatory Measure ID Number 394145  
Corps File No. 29702S

Attachments:

- 1: Project Site Location, Existing Project Site Conditions, and Proposed Project Site Conditions
- 2: Project Phasing, Project Shoreline Improvement Designs, Construction Quantities Table, and Table of Permitted Fill Quantities
- 3: Post Construction Stormwater Treatment Measures for the Project Site
- 4: Groundwater and Soil Contamination Levels at the Project Site and Protocols for Discharging Contaminated Groundwater During Project Construction
- 5: Assessment of the Habitat Value of Pier Pilings (Zabin, 2011)

---

**From:** East Bay CC <ebcc@goldengateaudubon.org>  
**Sent:** Tuesday, August 10, 2021 4:19 PM  
**To:** cpayne@oaklandca.gov  
**Subject:** Golden Gate Audubon Comments on Brooklyn Basin SDEIR (PUD06010-R02-ER01)  
**Attachments:** GGAS Brooklyn Basin SDEIR comments 8.10.21.pdf

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Hi Catherine Payne,

On behalf of the Golden Gate Audubon Society, please accept the attached comments for the Brooklyn Basin Marina Expansion Project SDEIR.

Sincerely,  
Laura Cremin



*inspiring people to protect  
Bay Area birds since 1917*

August 10, 2021

Emailed to: [cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov)

**Subject: Brook Brooklyn Basin Marina Expansion Draft Supplemental Environmental Impact Report, SCH# 2004062013**

Dear Oakland Planning Commission,

O1-1 | On behalf of the Golden Gate Audubon Society (GGAS), please accept these comments on the Brook Brooklyn Basin Marina Expansion Project (Project). GGAS is a 104-year-old non-profit organization with over 7,000 members who are dedicated to protecting native bird populations and their habitats.

O1-2 | **Inadequacy of the Project Description and Existing Conditions**  
The SDEIR Project Description does not include Clinton Basin Wetland Restoration and Enhancement Project within the Project Boundary. The Approved Project, however, does include the Wetlands Restoration within the boundary of the Project Site (See Figure III-2 of 2006 FEIR). The Biological Resources section is therefore inadequate because the supporting studies assumed that this feature was outside the Project Site. Components of the Marina Expansion slips (ramps, fences, other structures) are not described.

O1-3 |

The Oak to Ninth Project DEIR (2005) included this language:

“Clinton Basin Wetland Restoration and Enhancement Project. In addition to new and permanent open space areas, the project would maintain the existing Clinton Basin Wetland Restoration and Enhancement Project wetland restoration area at the west shore at the mouth of Clinton Basin (Figure III-6). **No changes are proposed to this resource as part of the project.**”

The Marina Expansion would change resources because the slips and ramps wrap around the Wetland Restoration Area and vessels have operational impacts. See comparison of the figures below.



**GOLDEN GATE AUDUBON SOCIETY**

2530 San Pablo Avenue, Suite G, Berkeley, CA 94702

phone 510.843.2222

web [www.goldengateaudubon.org](http://www.goldengateaudubon.org)

email [ggas@goldengateaudubon.org](mailto:ggas@goldengateaudubon.org)

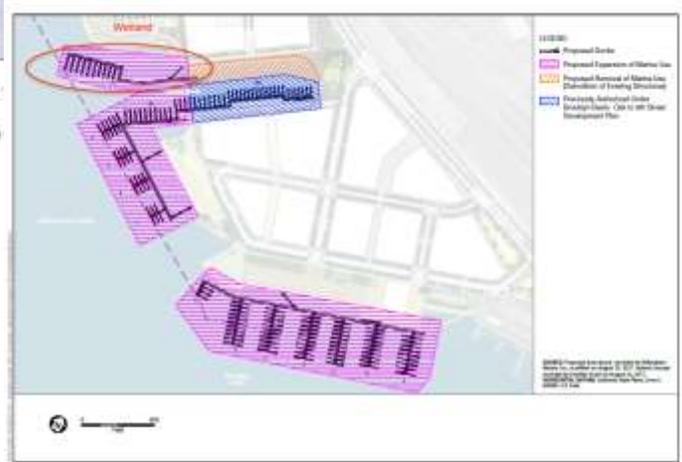
O1-3  
cont.

Appendix A  
Design Review Board  
April 9, 2018  
Brooklyn Basin



### SOUTH PARK ILLUSTRATION

RESPONSE TO NOVEMBER 2008 RCD DESIGN REVIEW COMMENTS



SOURCE: Author/ESA, Inc.

Waterfront Marina Expansion Project



Figure B-6  
Previously Approved and Proposed Marina Modifications

O1-4

### Alternatives Analysis

The adoption of the **Alternative 2, No Marina Expansion** would substantially reduce environmental damage. GGAS urges the Commission to either adopt the environmentally superior alternative (which is Alternative 2) or request a modified design to the Marina Expansion component of the project that does not include new floating marina structures in front of the South Park Wetlands.

Per CEQA *Guidelines* Section 15021(a)(2), CEQA established a duty for public agencies to avoid or minimize environmental damage where feasible, (2) A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.

O1-4  
cont.

As stated in Section V pg. 13, “the No Marina Expansion Alternative would avoid and/or substantially reduce new Biological Resources impacts of the Project Modifications compared to the other alternatives, and still meet some of the basic objectives of the Project Modifications.”

Given the duty to minimize environmental damage where feasible and that Alternative 2 would meet all objectives of the Approved Project and align with the Estuary Policy Plan, without needlessly sacrificing wetland habitat or opportunities for the public to observe biologically rich waters. The Approved Project already allows 167 slips on the project site, which are in locations that would not have significant impacts to biological resources. As proposed in the DSEIR, the addition of 157 more slips that wrap around the shoreline would create new impacts beyond the threshold of what is reasonable to accommodate and are not compatible with use – including ablating functions of the existing Clinton Basin Wetland Restoration and Enhancement Project and precluding future restoration. Alternative 2 promotes stewardship of existing resources and does not lose investments and gains made restoring mudflats. Alternative 2 would keep soft edges on the Bay Trail side of the Clinton Basin, while boats and slips would be allowed at the existing hard edge side to minimize impacts. Every decision contributes towards the wider-scale goal of restoring the Lake Merritt Channel and surrounding Oakland Estuary, and every decision is critical at *this* point in the face of immense loss of biodiversity. The Oakland Estuary is a site of global significance for migratory shorebirds, and although the site is in a heavily modified area of the coast, birds have come to critically rely on this habitat as they face increasing pressure from climate change, development, and other threats.

O1-5

Additionally, The Marina Expansion Project Objectives would actually conflict with the Project Objective to “Provide a significant amount of open space and water-oriented activities accessible to the general public to encourage the public to interact with the Oakland Estuary both visually and recreationally” and “Provide new permanent and accessible open space areas and extend pedestrian walkways along the estuary in order to meet the passive recreational needs of local residents and visitors, and to complement the existing and proposed surrounding urban fabric while enhancing the waterfront access experience for visitors and employees to the area.” The addition of slips in the Marina Expansion are for private purposes and do not provide opportunities that are accessible to the general public, but do degrade existing viewsheds to the waterfront.

O1-6

*The alternatives analysis description is inadequate because:*

The analysis underrepresents the environmental benefits of choosing Alternative 2, given that the Project Alternative has more significant impacts and unstudied impacts to Biological Resources and to Land Use Policy than are described in this section or in Table V-1. These impacts are described in detail below.

O1-7

**Aesthetics**

Comments from the Oakland Heritage Alliance on Aesthetic Impacts are incorporated by reference.

## Biological Resources

- O1-8 | *Biological Resources at or Near the Project Site not adequately studied.*  
Pg.IV.I-1 states that existing conditions and current status of special-status species was based on the 2018 Brooklyn Basin Marina Project Description. This report (pg. 3) states that the wetland enhancement project (referring to Clinton Basin Wetland Restoration and Enhancement Project [Wetland Restoration Area]) is outside of the project area. Figure 1 of this report and Figure III-4 of the DSEIR actually do show the Wetland Restoration Area within the project boundary of the Proposed Expansion of Marina use. Further, the DSEIR Project Description does not include the Wetland Restoration, which is an oversight because the Approved Project does include this feature (see Figure II-2 and Project Description of FEIR, 2006). This analysis should be recompleted to understand impacts and mitigation measures, particularly the Phase 5 slips that would wrap around the Wetland Restoration Area.
- O1-9 | Impact BIO-1  
*Updates to presence of special-status species and adverse impacts to special-status birds and migratory birds through habitat modification*  
California Least Tern is listed as a Federal- and State- Endangered Species. Page 16 of the 2018 (Anchor) Brooklyn Basin Marina Project Description states that Least Tern has no recorded occurrences within the project area. According to E-Bird (<https://ebird.org/hotspot/L6567620>) observations at the Brookly Basin, Least Tern was last observed in Brookly Basin on July 23, 2021. While Least Tern suitable breeding habitat is not expected to occur in the Project Site, there is a major protected breeding site located across the Oakland Estuary channel and approximately 3 miles west in the NAS Alameda Airport. Least Terns are frequently observed foraging for fish to feed their chicks in the Oakland Estuary and at Oakland mudflats during the breeding season. The area of boat slips covering open water should be analyzed for its potential to reduce foraging (including access to smelt and anchovies – see <https://baecc.org/pdf/sfbaygoals031799.pdf> and <https://www.ebparks.org/civicax/filebank/blobdload.aspx?BlobID=23562>). The Long Term Management Strategy (LTMS) makes recommendations for work for least tern during March through July 31 within 3 miles of active nesting areas. While construction impacts (e.g. pile driving noise, sediment) are discussed, there is no analysis of operational impacts for wildlife that forage in open waters (e.g. slips will cover large areas of previously open water, and activity of boats will cause disturbance that precludes foraging). See photos attached below of birds foraging over open waters within Clinton Basin. Vessel operations are stated to only have a minor increase to existing conditions, however the number of vessels will double, so this claim is not substantiated and is only analyzed for impacts to fish, not migratory birds.
- O1-10 | Raptor species that were observed in Brooklyn Basin E-bird Hotspot include Peregrine Falcon, Osprey, Cooper’s Hawk, and Red-tailed Hawk. Mitigation Measures BIO-1.4.b Preconstruction Surveys should specify pre-construction nesting bird surveys of trees and vegetation within ¼ mile (typical non-disturbance buffer for raptors), unless the analysis is updated to show that there is no suitable nesting habitat between 500-ft and ¼ mile (current measure only specifies a 500-ft survey buffer).

- O1-11 | *Construction Impacts – work seasons unclear*  
 Within the project description of the DSEIR, the Project Phasing and Construction is difficult to understand (see pg. III-20) - what is the length of “constructed over five seasons rather than one” – is that five consecutive seasons or five years? In the 2018 (Anchor) Brooklyn Basin Marina Project Description, it appears that each season is considered to be one in-water work period that would occur between June 1 – November 30.
- Cumulative Impacts not considered: Five consecutive seasons may be considered permanent impacts*  
 Five consecutive construction seasons of in-water work may not meet the definition of temporary impacts, since there would not be a return to the baseline environment within the calendar year or season; five years of temporal impacts can be considered permanent to wildlife. This should be considered when applying for in-water work permits to the resource agencies.
- O1-12 | *Mitigation Measure SCA BIO-1*  
 Thank you for incorporating the mitigation measures SCA Bio-1 Bird Collision Reduction Measure required by AB 734 for bird safe buildings (the City of Oakland’s Bird Safety Measures). Please do contact Golden Gate Audubon Society for educational materials that can be distributed to building occupants.
- O1-13 | Impact Bio-4  
*Mitigation Measure 1.2 b: Wetland Avoidance – Project Design may conflict with mitigation measure – but not enough information to make conclusions*  
 The Mitigation Measure 1.2b states” the existing restoration project at the southwest end of Clinton Basin, implemented by the Port of Oakland, shall be protected during construction activities. The extent of this area shall be clearly marked by a qualified biologist prior to the start of any grading or construction activities and a buffer zone established. All construction personnel working in the vicinity of the restoration area shall be informed of its location and buffer zone.”
- The Phase 5 boat slips are so close to the Wetland Enhancement Area that it seems they would be within the buffer zone itself. Impacts from the Phase 5 boat slips should be further described and analyzed.
- O1-14 | *Mitigation Measures 1.2a, 1.2b, 1.2c, 1.2d, and 1.2e requiring an updated wetland delineation and associated wetland avoidance.*  
 Without a recent wetland delineation (only wetland delineation is non-verified conducted in 2004, and in the last 17 years many definitions changes to what constitutes jurisdictional features for Waters of the State and Waters of the US), it is unclear how habitat types were determined. The study references a 2001 (PWA) study of the Wetland Restoration Area is unlikely to be used by threatened or endangered species due to the small extent of tidal marsh in the vicinity. The vegetation and potential habitat of the Wetland Restoration Area should be characterized as part of the EIR, since it has not been studied in 20 years.
- It is clear that the Marina Expansion was designed without considering the location of existing wetlands – which violates the “avoid” first rule of the Clean Water Act.

- O1-14 cont. *Mitigation Measure 1.2e: Compensatory Mitigation – criteria for off-site mitigation and mitigation calculations*  
 Supporting documents suggest that off-site mitigation will be purchased from mitigation banks, which conflicts with the mitigation measure.  
 2018 (Anchor) Brooklyn Basin Marina, pg 24: To offset unavoidable impacts resulting from an increase in solid fill, the project proponent proposes purchasing credits from an approved mitigation or conservation bank.
- Any statements about purchasing credits should be modified to be consistent with MM 1.2e – whereby compensatory mitigation is achieved first onsite, then offsite if necessary. Any offsite locations should be as close to the location of impacts as possible, and enhance areas identified in Lake Merritt Estuary Plan and Restoration Plan for Lake Merritt around Clinton Basin. Purchase of off-site credits is not consistent with these Plans. According to the Oakland Estuary Plan, the basic premise of the plan and its preceding efforts is that the Estuary is a resource of citywide and regional significance. This area cannot be viewed as a single-purpose district isolated from the city, but rather as a diverse and multifaceted place that connects the city and the bay.
- O1-15 *Area of permanent impacts and shading:* The 2018 Report states that mitigation credits will be purchased for solid fill. It appears the areas of the slips are not included in this calculation – but do represent a new permanent impact (despite not being solid fill) and should be mitigated for accordingly for loss of open water space as well as shading.
- Temporary versus permanent impacts.* As noted above, construction over 5 consecutive in-water work seasons may constitute permanent impacts to wildlife, not temporary. The mitigation ratios should be determined with this in mind.
- Impact BIO-5  
 The conclusion (pg. IV.I-22) that “No new significant environmental effects...would result from changes in the Project due to Project Modifications” is not substantiated. “Temporary impacts” would occur for five consecutive years, so it is possible this represents a permanent loss of temporary stopover habitat.
- O1-16 Operational impacts of vessels were not analyzed in this section in regards to migratory birds, and as stated above, is inadequately analyzed in section BIO-1. The Marina Expansion would create 158 additional slips for watercrafts that are 40 – 80-ft long. Operating these vehicles would result in disturbance by flushing birds and disrupting foraging, and additional noise and light that could also interfere with native and migratory birds.
- A 2012 USGS Report Assessing Habitat Displacement of Rafting Waterbirds in San Francisco Bay States:  
 “The main way in which human recreational activities negatively impact birds is by restricting their access to resources that would otherwise be exploited (Gill 2007). Boat traffic can adversely affect waterbirds by causing them to flush from foraging sites (Mori et al. 2001, Knapton et al. 2000, Huffman 1999) resulting in habitat displacement. Disturbance can cause waterbirds to expend more energy flying and spend less time

O1-16  
cont.

feeding, reducing body condition and the ability to migrate and reproduce (Belanger and Bedard 1990, Haramis et al. 1986, Bell and Austin 1985). Repeated disturbance may cause waterbirds to shift distribution patterns, forage in less preferred habitats, or emigrate (Havera et al. 1992). Responses to human presence can greatly depend on species, bird densities, individual body condition, foraging conditions in the impact area, type of disturbance and other parameters (Borgmann 2011, Gill 2007, Yasue 2005), and much remains to be learned about how these factors can interact to influence waterbird responses.

There is not information in the DSEIR about how open water is used by birds (no winter surveys) or discussion about what activities influence main waterbird species.

O1-17 | **Land Use Planning**

*Inconsistencies with Estuary Policy Plan and Open Space, Conservation and Recreation (OSCAR) Element of the General Plan*

Pg. IV.A-9 states that: “The Project Modifications would not alter Approved Project improvements to shoreline conditions and natural areas for potential habitats along the estuary and the Lake Merritt Channel frontages of the Project site (EPP SA-Objectives 1 and 5) or wetland modifications (EPP Policy OAK-1.1).

The proposed Phase 5 boat slips would directly interfere with the Wetland Enhancement Area – so potential habitat along the estuary would be altered and may conflict with the Estuary Plan and the OSCAR.

The Open Space, Conservation and Recreation Element of the General Plan includes Objective CO-8 to conserve wetlands so they may continue to provide habitat for fish and wildlife. Action CO-8.1.2 calls for the establishment of buffers or mandatory setbacks on the perimeter of wetlands. Policy CO-8.2 calls for limitation on “recreational uses within wetland “parks” to activities that are consistent with the fragile environmental characteristics of the areas” with an “emphasis in most wetland areas...on passive uses and resource protection, Action CO-9.1.4 limits “recreational uses on publicly-owned open space lands to those which have minimal impacts on rare, threatened, or endangered species.”

This discussion should be reevaluated to include this impact – without analysis (particularly about buffering wetlands), the slips could be a significant impact that has not been avoided.

O1-18 | **Impact LU-4**

As discussed above Mitigation Measure BIO-I.2b Wetland Avoidance does not adequately mitigate for impacts to the Wetland Restoration Area – therefore, there is a conflict with this Port of Oakland Project that should be avoided. This section should identify and describe what the Port of Oakland requirements are for maintaining the Wetland Restoration Area into the future and how the Marina Expansion is consistent.

**Conclusion**

O1-19 | Thank you for considering these comments and for all of your work towards a healthy, equitable, and biodiverse future for Oakland. Please notify us of any actions or materials pursuant to this dEIR.

Thank you for your attention and consideration.

Respectfully,

*Laura Cremin*

Laura Cremin  
Golden Gate Audubon Society, Vice President  
East Bay Conservation Committee, Chair

Below: Photographs of shorebirds foraging in open waters of Clinton Basin



References:

- Belanger, L. and J. Bedard. 1990. Energetic cost of man-induced disturbance to staging Snow Geese. *Journal of Wildlife Management* 54:36-41.
- Bell, D.V., and L. W. Austin. 1985. The game fishing season and its effects on overwintering wildfowl. *Biological Conservation* 33:65-80.
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([http://www.sfbjv.pyxisweb.net/index.php?option=com\\_jdownloads&Itemid=60&view=viewcategory&catid=43](http://www.sfbjv.pyxisweb.net/index.php?option=com_jdownloads&Itemid=60&view=viewcategory&catid=43))
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- U.SGS Western Ecological Research Center. 2012. Assessing Habitat Displacement of Rafting Waterbirds in San Francisco Bay: Learning from the 34th America's Cup Race.

**From:** [naomi@17th.com](mailto:naomi@17th.com)  
**To:** [Tom Limon](#); [Clark Manus](#); [jfearnopc@gmail.com](mailto:jfearnopc@gmail.com); [SShiraziOPC@gmail.com](mailto:SShiraziOPC@gmail.com); [Amanda Monchamp](#); [Leo Raylynch](#); [vsugrueopc@gmail.com](mailto:vsugrueopc@gmail.com)  
**Cc:** [Payne, Catherine](#); [Gilchrist, William](#); [Manasse, Edward](#)  
**Subject:** Oakland Heritage Alliance comment: Draft SEIR PUD06010-R02-ER01 Brooklyn Basin  
**Date:** Monday, July 19, 2021 9:49:06 AM  
**Attachments:** [7-19-2021\\_Bklyn Basin EIR Supplement—OHA.pdf](#)

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Dear Planning Commissioners and Staff,

Attached please find comments on the Brooklyn Basin project expansion, draft SEIR. Thank you for your consideration!

Naomi Schiff  
for Oakland Heritage Alliance

-----  
**Naomi Schiff**

**238 Oakland Avenue**

**Oakland, CA 94611**

510-835-1819

Cell: 510-910-3764

Email: [Naomi@17th.com](mailto:Naomi@17th.com)



June 1, 2021

(By electronic transmission)  
City of Oakland Planning Commission

Dear Chairperson Limon and Planning Commissioners,

O2.1-1 | Oakland Heritage Alliance appreciates the opportunity to comment on the proposed revisions to the Brooklyn Basin/Ninth Avenue Terminal project, in particular the addition of 10 acres of marina facilities.

For the reasons explained below, OHA submits that further study and analysis is needed on the following impacts before the City can consider the Supplement DEIR and the proposed project modification:

#### PROPOSED MARINA RELOCATION AND EXPANSION

O2.1-2 | **The Finding that the Marina Relocation and Expansion Would Have a “Less Than Significant” Impact on Biological Resources in the Port of Oakland Marsh Restoration Area Is Unanalyzed, Unstudied, and Unsupported (BIO)**

The DEIR summarily states that the project modifications will have a less than significant impact on biological resources (BIO), and specifically “would not substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites” (BIO-5), and “would not fundamentally conflict with any applicable habitat conservation plan or natural community conservation plan” (BIO-6).

The Port of Oakland created the Marsh Restoration Area in 2001 as part of a wetland enhancement project that included “the creation of a tidal channel, the creation of a tidal marsh and the enhancement of roosting areas for shore and water birds.”

The August 2005 Oak to Ninth Project DEIR confirmed that “the project would maintain the existing Clinton Basin Wetland Restoration and Enhancement Project wetland restoration area at the west shore at the mouth of Clinton Basin (Figure III-6). No changes are proposed to this resource as part of the project.”

The DEIR assumes, without study or evidence, that placement of boat slips directly offshore from the Restoration Area could not have any impact on the shore and water birds who roost there. The project proponent has not provided the City with any study, expert report, or other competent evidence to support a no significance finding, and to OHA’s knowledge, the City has no evidence in the record to support such a finding.

O2.1-2  
cont.

For example:

- Shore and water birds consume fish and mollusks from the estuary. The placement of boats and associated human activity, including noise and oil discharges, could potentially interfere with fish and mollusk circulation in the estuary adjacent to the Restoration Area and adversely affect the sustainability of the area as a roosting area for shore and water birds, as contemplated when the preserve was established.
- Some water birds, such as cormorants, require ample water surface area to take off. The proposed marina installation could potentially interfere with the flight patterns of such birds and the continued viability of the Restoration Area as a bird habitat.
- Wave generation due to the proposed relocation and expansion of the marina could adversely affect the restored marsh area.

Because clear potentially adverse impacts of the proposed marina relocation and expansion on the Restoration Area remain unstudied and unknown, the no impact finding is speculative and without evidentiary support. The impacts of placing boat slips directly offshore from the Restoration Area must be studied and assessed before any boat slips can be placed there, nor can the City evaluate the benefits of the environmentally superior alternative without evidence of the impact of the proposed marina placement on the Restoration Area.

O2.1-3

OHA is unable to consider or propose any modification of the proposed marina expansion and relocation without such a study and evidence. When an appropriate study of the impacts of the placement of boat docks on the Restoration Area is submitted, OHA will review it and provide comments if an alternative placement of boat slips that would not adversely affect the Restoration Area is feasible.

#### AESTHETIC IMPACTS

O2.1-4

**The Finding that the Marina Relocation and Expansion Would have a “Less Than Significant” Aesthetic Impact on the Visual Character and Quality of the Shoreline Park Is Unanalyzed, Unstudied, and Unsupported (AES)**

When the Brooklyn Basin Project was proposed over 15 years ago, then known as the Oak to Ninth Project, the project proponent and the City promised the public that the project would transform an unused and underused industrial site into a bayfront public park with unobstructed Bay views. That public benefit was a leading justification for approving a 3,100 unit private development with limited street and transit access and access to public services, such as schools and emergency services. The demolition of most of the Ninth Avenue Terminal was justified in major part by the promise of a large bayside open space as a public park and venue for concerts and other events that would link the isolated and relatively inaccessible Shoreline Park recreationally to the rest of Oakland. Public access to the Bay, views of the Bay, and the continuation of the Bay Trail were prominent elements of this plan. To protect the public

- ↑
- O2.1-4 cont. character of the park, the marina was confined to the largely privatized part of Clinton Basin that is surrounded by residential development.
- The proposed marina expansion and relocation now proposes to surround Shoreline Park with private development—a marina—that interferes with unobstructed views of the Bay and substantially diminishes the bayfront character of the park, contrary to the original promises of the City and the project proponent to the citizens of Oakland. Surrounding the park with a marina would “substantially degrade the existing visual character or quality of the site” as a public park (AES-3) and “have a substantial adverse effect on a public scenic vista.” (AES-1.)
- O2.1-5 Viewpoint 11, from the Bay Trail, shows that views of the San Francisco skyline “would remain visible though partially obscured.” (P. IV.K-9.) However, the DEIR provides no viewpoint looking west from Shoreline Park toward the San Francisco skyline. Presumably, that view would be at least “partially obscured,” but the DEIR provides no analysis from that point in the park, which unlike the singular point on the Bay Trail, is a public bayside gathering place.
- O2.1-6 Still, Viewpoint 15B illustrates how the proposed marina relocation and expansion would degrade views of the bay and distant views from Shoreline Park, even looking south toward Alameda. (Figure IV. K-5.) The DEIR acknowledges that “the Project Modifications’ marina expansion would result in a noticeable increase in marina infrastructure and use by various types of watercraft that would be visible from both within the Project site and from surrounding viewpoints.” (P. IV.K-5.) This “noticeable increase” will significantly degrade the bayside character of Shoreline Park by and interfere with views of the Bay and remote views of the San Francisco skyline.
- The proposed marina relocation and expansion breaks the promise the City and the project proponent made to the public that Shoreline Park would be a public park, integrated with the Bay, provided unobstructed views of the Bay and points distant, with a character separate and protected from the surrounding private residential development. The proposal will demonstrably “substantially degrade the existing visual character or quality of the site” as a public park and “have a substantial adverse effect on a public scenic vista,” directly contrary to the unsubstantiated claim that the proposed project would have no substantial adverse impact.

MITIGATIONS

- O2.1-7 Oakland’s long-term monitoring of mitigations subsequent to approval of EIR documents and conditions of approval is often inadequate. We are aware of numerous breaches, for example, blockages of the Bay Trail. Indicate who is monitoring mitigations, for how long, and how they will be enforced.
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- ↓

↑  
O2.1-8  
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Small as it is, we would appreciate adherence to this mitigation measure, and to all the mitigation program measures. With the large size of this development we request that the monitoring program be thorough, robust, and that there be a procedure for ensuring it is carried out.

HOUSING

O2.1-9 | We recommend that if 600 units are to be added, 150 affordable units should be included in the project, proportionate to how the affordable housing was included in the original project.

TRANSIT

O2.1-10 | This site remains unserved by transit. The references to its pedestrian design and transit prioritization make little sense when there is no bus service, and when a substandard at-grade crossing of many railroad tracks faces any pedestrian who wishes to reach BART or the rest of the city. The comments in the draft supplement do not comport with reality.

Sincerely,



Mary Harper  
President

cc: William Gilchrist, Ed Manasse, Robert Merkamp, Catherine Payne, Karen August and Betty Marvin, Bureau of Planning/Zoning  
Attachment: Google Street View image



SF skyline from Shoreline Park: View of Bay Bridge and San Francisco would be hidden by boats and masts.

**From:** [Naomi Schiff](#)  
**To:** [Catherine Payne](#)  
**Subject:** CASE NO: PUD06010-R02-ER01 CEQA STATE CLEARINGHOUSE NUMBER: 2004062013  
**Date:** Sunday, August 8, 2021 5:11:06 PM  
**Attachments:** [7-19-2021 Bklyn Basin EIR Supplement—OHA.pdf](#)

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[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

-----  
Dear Catherine,

Attached is the OHA comment letter, which is the same as what was submitted to the Planning Commission, except we've corrected the submission date.

Thank you,

Naomi Schiff  
Board Member, Oakland Heritage Alliance

-----  
Naomi Schiff  
510-835-1819 (land)  
510-910-3764 (cell)  
238 Oakland Ave.  
Oakland, CA 94611  
[naomi@17th.com](mailto:naomi@17th.com)



August 8, 2021

(By electronic transmission)  
Catherine Payne  
City of Oakland, Bureau of Planning

Dear Ms. Payne,

O2.2-1 | Oakland Heritage Alliance appreciates the opportunity to comment on the proposed revisions to the Brooklyn Basin/Ninth Avenue Terminal project, in particular the addition of 10 acres of marina facilities.

For the reasons explained below, OHA submits that further study and analysis is needed on the following impacts before the City can consider the Supplement DEIR and the proposed project modification:

O2.2-2 | PROPOSED MARINA RELOCATION AND EXPANSION

**The Finding that the Marina Relocation and Expansion Would Have a “Less Than Significant” Impact on Biological Resources in the Port of Oakland Marsh Restoration Area Is Unanalyzed, Unstudied, and Unsupported (BIO)**

The DEIR summarily states that the project modifications will have a less than significant impact on biological resources (BIO), and specifically “would not substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites” (BIO-5), and “would not fundamentally conflict with any applicable habitat conservation plan or natural community conservation plan” (BIO-6).

The Port of Oakland created the Marsh Restoration Area in 2001 as part of a wetland enhancement project that included “the creation of a tidal channel, the creation of a tidal marsh and the enhancement of roosting areas for shore and water birds.”

The August 2005 Oak to Ninth Project DEIR confirmed that “the project would maintain the existing Clinton Basin Wetland Restoration and Enhancement Project wetland restoration area at the west shore at the mouth of Clinton Basin (Figure III-6). No changes are proposed to this resource as part of the project.”

The DEIR assumes, without study or evidence, that placement of boat slips directly offshore from the Restoration Area could not have any impact on the shore and water birds who roost there. The project proponent has not provided the City with any study, expert report, or other competent evidence to support a no significance finding, and to OHA’s knowledge, the City has no evidence in the record to support such a finding.

For example:

O2.2-2  
cont.

- Shore and water birds consume fish and mollusks from the estuary. The placement of boats and associated human activity, including noise and oil discharges, could potentially interfere with fish and mollusk circulation in the estuary adjacent to the Restoration Area and adversely affect the sustainability of the area as a roosting area for shore and water birds, as contemplated when the preserve was established.
- Some water birds, such as cormorants, require ample water surface area to take off. The proposed marina installation could potentially interfere with the flight patterns of such birds and the continued viability of the Restoration Area as a bird habitat.
- Wave generation due to the proposed relocation and expansion of the marina could adversely affect the restored marsh area.

Because clear potentially adverse impacts of the proposed marina relocation and expansion on the Restoration Area remain unstudied and unknown, the no impact finding is speculative and without evidentiary support. The impacts of placing boat slips directly offshore from the Restoration Area must be studied and assessed before any boat slips can be placed there, nor can the City evaluate the benefits of the environmentally superior alternative without evidence of the impact of the proposed marina placement on the Restoration Area.

O2.2-3

OHA is unable to consider or propose any modification of the proposed marina expansion and relocation without such a study and evidence. When an appropriate study of the impacts of the placement of boat docks on the Restoration Area is submitted, OHA will review it and provide comments if an alternative placement of boat slips that would not adversely affect the Restoration Area is feasible.

O2.2-4

#### AESTHETIC IMPACTS

#### **The Finding that the Marina Relocation and Expansion Would have a “Less Than Significant” Aesthetic Impact on the Visual Character and Quality of the Shoreline Park Is Unanalyzed, Unstudied, and Unsupported (AES)**

When the Brooklyn Basin Project was proposed over 15 years ago, then known as the Oak to Ninth Project, the project proponent and the City promised the public that the project would transform an unused and underused industrial site into a bayfront public park with unobstructed Bay views. That public benefit was a leading justification for approving a 3,100 unit private development with limited street and transit access and access to public services, such as schools and emergency services. The demolition of most of the Ninth Avenue Terminal was justified in major part by the promise of a large bayside open space as a public park and venue for concerts and other events that would link the isolated and relatively inaccessible Shoreline Park recreationally to the rest of Oakland. Public access to the Bay, views of the Bay, and the continuation of the Bay Trail were prominent elements of this plan. To protect the public

O2.2-4  
cont. ↑ character of the park, the marina was confined to the largely privatized part of Clinton Basin that is surrounded by residential development.

The proposed marina expansion and relocation now proposes to surround Shoreline Park with private development—a marina—that interferes with unobstructed views of the Bay and substantially diminishes the bayfront character of the park, contrary to the original promises of the City and the project proponent to the citizens of Oakland. Surrounding the park with a marina would “substantially degrade the existing visual character or quality of the site” as a public park (AES-3) and “have a substantial adverse effect on a public scenic vista.” (AES-1.)

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O2.2-8  
cont.

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Small as it is, we would appreciate adherence to this mitigation measure, and to all the mitigation program measures. With the large size of this development we request that the monitoring program be thorough, robust, and that there be a procedure for ensuring it is carried out.

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O2.2-9

We recommend that if 600 units are to be added, 150 affordable units should be included in the project, proportionate to how the affordable housing was included in the original project.

#### TRANSIT

O2.2-10

This site remains unserved by transit. The references to its pedestrian design and transit prioritization make little sense when there is no bus service, and when a substandard at-grade crossing of many railroad tracks faces any pedestrian who wishes to reach BART or the rest of the city. The comments in the draft supplement do not comport with reality.

Sincerely,



Mary Harper  
President

cc: William Gilchrist, Ed Manasse, Robert Merkamp, Catherine Payne, Karen August and Betty Marvin, Bureau of Planning/Zoning  
Attachment: Google Street View image



SF skyline from Shoreline Park: View of Bay Bridge and San Francisco would be hidden by boats and masts.

**From:** [Naomi Schiff](#)  
**To:** [Catherine Payne](#)  
**Cc:** [Tom Limon](#); [Amanda Monchamp](#); [Jonathan Fearn](#); [Clark Manus](#); [vsugrueopc@gmail.com](#); [SShiraziOPC@gmail.com](#); [lraylynch@yahoo.com](#); [Nikki Fortunato Bas, Councilmember, District 2](#); [Kaplan, Rebecca](#); [City Councilmember Dan Kalb](#); [Carroll Fife](#); [ngallo@oaklandca.gov](#); [Thao, Sheng](#); [Loren Taylor](#); [treid@oaklandca.gov](#)  
**Subject:** Comment letter on Brooklyn Basin draft SEIR PUD06010-R02-ER01  
**Date:** Tuesday, August 10, 2021 12:38:21 PM  
**Attachments:** [Schiff comment BB SEIR Aug 10 2021.pdf](#)

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[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

-----  
Dear Ms. Payne,

Please find attached a comment letter regarding the draft SEIR. Thank you!

Naomi Schiff

-----  
Naomi Schiff  
510-835-1819 (land)  
510-910-3764 (cell)  
238 Oakland Ave.  
Oakland, CA 94611  
naomi@17th.com

NAOMI SCHIFF

238 Oakland Avenue

Oakland, California

Land 510-835-1819 • Cell 510-910-3764 • naomi@17th.com

August 10, 2021

By electronic submission

Catherine Payne

City of Oakland, Bureau of Planning

Re: Brooklyn Basin Draft SEIR PUD06010-R02-ER01

CEQA State Clearinghouse Number: 2004062013

Dear Ms. Payne,

Please accept these comments concerning the restored marsh area and the water views from public areas.

- O2.3-1 | The SEIR draft is strangely dismissive of the marsh restoration area, even though the developer, no doubt recognizing the contamination issues, has now decided not to build at the western edge of Clinton Basin, if I understand correctly. This wetland restoration area was created after a 2000 agreement to remedy contamination that arose as a result of the Port's activities in boat-dismantling at the site.). (See Attachments 1 and 2)
- O2.3-2 | Soft edges are critical. Just in the last week, a major article appeared in *The New Yorker* (<https://www.newyorker.com/magazine/2021/08/09/the-seas-are-rising-could-oysters-protect-us>), discussing a more enlightened approach to coastlines than simply hardening them. This is not new. For well more than a decade, the California State Coastal Conservancy and related agencies have been using science and experimentation to come up with approaches to protect our coastlines ([http://www.sfbaylivingshorelines.org/sf\\_shorelines\\_about.html](http://www.sfbaylivingshorelines.org/sf_shorelines_about.html)) and come up with recommendations. Notable to me was the minimal mention of Oakland in the 2019 report *State of the Estuary* (<https://www.sfestuary.org/wp-content/uploads/2019/10/State-of-the-Estuary-Report-2019.pdf>). We should be leaders in these efforts, not only resorting to concrete. The SEIR does not consider that the project should support and expand upon these ongoing SF Bay resilience projects.
- O2.3-3 | Oakland can do more with our opportunities. This SEIR must address protecting, enhancing, and nurturing the wetland area between Clinton Basin and along Sixth Ave. The above information, plus the attachments I am including below, should be considered, much more comprehensive further study undertaken, and alternatives provided to support the marsh rather than rendering it ineffective.
- O2.3-4 | I spent one morning, about two and a half hours, at the restoration area, recently, and was impressed at the amount and variety of bird and plant life (Attachment 3). I wasn't equipped to wade in and look at subtidal natural resources, but those resources must also be investigated as part of the SEIR. Can rays, fish, shellfish, microorganisms, and aquatic mammals continue to use this shore? Or must it be devoted to intermittently-used shoreline-obstructing watercraft, much of it motorized, emitting pollutants, noise, and generating wakes?
- O2.3-5 | My observation of other marinas in our area is that most of the boats are stationary at least 90% of the time, with occasional dockside cocktail hours, and that the access to them is gated, such that the public is blocked from the water and recreational muscle-powered crafts are pushed out away from shore and



O2.3-5  
cont.

↑  
into the waterway. The expanded marina plan would sandwich the much-boasted-about public park areas between private residential development and private marina development. Wasn't one of the attractions the wide view of water expanses? That was the initial rationale for removing 89% of Ninth Avenue Terminal. See attachment 4, an illustration showing how a marina would block the water view.

O2.3-6

The public, residents, and wildlife would benefit from a modest stretch of soft shore, and people should be able to continue to enjoy views from parks, unencumbered by idle masts and looming motorized watercraft.

O2.3-7

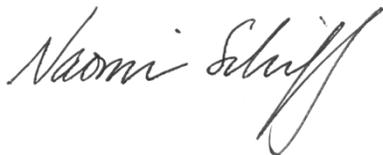
The study of both these issues is incomplete. There are already boat marinas in Alameda and Oakland. Let us not further privatize our trustland public areas, intended for public use under the original Estuary

O2.3-8

Policy Plan. Please study all the locations shown in Attachment 4 and 5 and simulate views as they would be seen with marina facilities—especially the curved trestle area, Shoreline Park, view of San Francisco, and the marsh restoration area. Oakland has obstructed access to the coastline along much of its edge. Do not block these long stretches of water views.

I look forward to a thoroughgoing analysis of continued restoration and gentle treatment at the marsh restoration, to alternatives that do not cut it off from open water, and alternatives that preserve more public uses of public lands and views from them. The SEIR is woefully insufficient and inadequate in these respects.

Sincerely,



Naomi Schiff

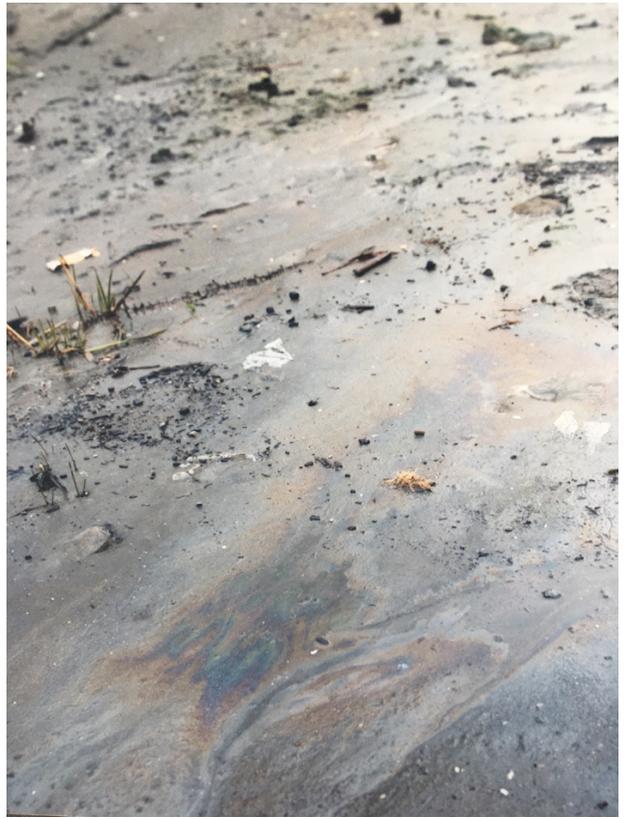
Resident

Attachments:

1. Moby-Dick Fuel Spill
2. Oakland Port Settles Claim for Fuel Spill
3. A living marsh, photos from 7-25-2021
4. Simulation of views from Shoreline Park with and without marina
5. Water views without marina. Please use these locations to simulate views with marina facilities, especially the curved trestle area, Shoreline Park, and the Marsh Restoration area.

cc: Oakland Planning Commission, Oakland City Council, BCDC Design Review Committee, BCDC Board

ATTACHMENT 1: Moby-Dick Fuel Spill



# Oakland Port Settles Claim For Fuel Spill / Funds will be used to restore habitats

Rick DeVecchio, Chronicle Staff Writer

Sep. 22, 2000 Updated: Aug. 6, 2012 2:53 p.m.

**2000-09-22 04:00:00 PDT OAKLAND** -- The Port of Oakland will pay \$110,000 to settle environmental damage claims stemming from a boat salvaging operation that went haywire, under a settlement with the bay watchdog group WaterKeepers Northern California.

Crews were dragging a derelict workboat called the [Moby Dick](#) from an Oakland Estuary inlet in March when they damaged the vessel, spilling fuel and threatening the environment with such contaminants as lead paint chips and battery acid. Crews also trenched the shoreline in an attempt to float the boat ashore.

The incident outraged residents in the Clinton Basin neighborhood, south of Jack London Square. Residents said the port had a history of breaking up boats in the area without proper environmental controls.

WaterKeepers responded with a lawsuit under the federal Clean Water Act, demanding that the port pay for the environmental damage and come up with rules to prevent such accidents in the future.

"Our investigation found that the port had a history of smashing derelict vessels along that shoreline," said [Jonathan Kaplan](#), the [BayKeeper](#) for WaterKeepers Northern California, which started the investigation after receiving a hot line call from a Clinton Basin resident.

"It wasn't just because of that one boat," he said, "but because of an ongoing practice of smashing boats.

"Local residents reported a half- dozen to a dozen other boats over the last five years."

Under the settlement, the port will pay \$30,000 for projects to improve and restore native wetland habitats and to study nonpoint source pollution or for public [education](#) on such pollution in San Francisco Bay.

Of the remaining settlement money, \$65,000 will go to a local environmental project, to be defined in cooperation with WaterKeepers. The project will include habitat restoration and improved procedures to remove vessels. The port also will pay \$15,000 to the regional water board for staff costs in a related state enforcement action in the Moby Dick case.

In addition to the settlement, the port will pay \$15,000 for WaterKeepers' legal fees.

Also, the port will use experts to guide future salvaging, meet with Clinton Basin residents twice yearly, coordinate at least two beach cleanups in the area every year for five years and hand out a fact sheet on proper boat salvaging to marinas and boatyards in all nine Bay Area counties.

The settlement mirrors new policies adopted by the [Port Commission](#) on Sept. 5.

"There's an exciting outcome here," Kaplan said. "The port has decided that rather than fight our claims they want to make up for past wrongs and be a good neighbor."

Kaplan said the Moby Dick incident was the result of an oversight. "It was the right hand not knowing what was the left was doing," he said.

ATTACHMENT 3: A living marsh, all photos taken morning of July 25, 2021

ATTACHMENT 4: View from Shoreline Park without marina



View from Shoreline Park with marina



5. Water views without marina. Please use these locations to simulate views with marina facilities and new structures—especially Shoreline Park, the curved trestle, the Marsh Restoration area, and the SF skyline.







**From:** [Naomi Schiff](#)  
**To:** [Catherine Payne](#)  
**Cc:** [Tom Limon](#); [Amanda Monchamp](#); [Jonathan Fearn](#); [Clark Manus](#); [vsugrueopc@gmail.com](mailto:vsugrueopc@gmail.com); [SSHiraziOPC@gmail.com](mailto:SSHiraziOPC@gmail.com); [lraylynch@yahoo.com](mailto:lraylynch@yahoo.com); [Nikki Fortunato Bas, Councilmember, District 2](#); [Kaplan, Rebecca](#); [City Councilmember Dan Kalb](#); [Carroll Fife](#); [ngallo@oaklandca.gov](mailto:ngallo@oaklandca.gov); [Thao, Sheng](#); [Loren Taylor](#); [treid@oaklandca.gov](mailto:treid@oaklandca.gov)  
**Subject:** Comment letter, Brooklyn Basin draft SEIR PUD06010-R02-ER01 PLEASE REPLACE: PAGES MISSING  
**Date:** Tuesday, August 10, 2021 2:28:19 PM  
**Attachments:** [Schiff comment BB SEIR.pdf](#)

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[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

-----  
Dear Ms. Payne, the earlier PDF I sent was incomplete. Please use the attached instead. Thank you so much!

Naomi Schiff

NAOMI SCHIFF

238 Oakland Avenue

Oakland, California

Land 510-835-1819 • Cell 510-910-3764 • naomi@17th.com

August 10, 2021

By electronic submission

Catherine Payne

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CEQA State Clearinghouse Number: 2004062013

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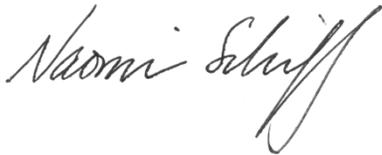
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Sincerely,



Naomi Schiff  
Resident

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cc: Oakland Planning Commission, Oakland City Council, BCDC Design Review Committee, BCDC Board

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"Our investigation found that the port had a history of smashing derelict vessels along that shoreline," said [Jonathan Kaplan](#), the [BayKeeper](#) for WaterKeepers Northern California, which started the investigation after receiving a hot line call from a Clinton Basin resident.

"It wasn't just because of that one boat," he said, "but because of an ongoing practice of smashing boats.

"Local residents reported a half- dozen to a dozen other boats over the last five years."

Under the settlement, the port will pay \$30,000 for projects to improve and restore native wetland habitats and to study nonpoint source pollution or for public [education](#) on such pollution in San Francisco Bay.

Of the remaining settlement money, \$65,000 will go to a local environmental project, to be defined in cooperation with WaterKeepers. The project will include habitat restoration and improved procedures to remove vessels. The port also will pay \$15,000 to the regional water board for staff costs in a related state enforcement action in the Moby Dick case.

In addition to the settlement, the port will pay \$15,000 for WaterKeepers' legal fees.

Also, the port will use experts to guide future salvaging, meet with Clinton Basin residents twice yearly, coordinate at least two beach cleanups in the area every year for five years and hand out a fact sheet on proper boat salvaging to marinas and boatyards in all nine Bay Area counties.

The settlement mirrors new policies adopted by the [Port Commission](#) on Sept. 5.

"There's an exciting outcome here," Kaplan said. "The port has decided that rather than fight our claims they want to make up for past wrongs and be a good neighbor."

Kaplan said the Moby Dick incident was the result of an oversight. "It was the right hand not knowing what was the left was doing," he said.

ATTACHMENT 3: A living marsh, all photos taken morning of July 25, 2021







































ATTACHMENT 4: View from Shoreline Park without marina



View from Shoreline Park with marina



5. Water views without marina. Please use these locations to simulate views with marina facilities and new structures—especially Shoreline Park, the curved trestle, the Marsh Restoration area, and the SF skyline.







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**From:** Eric Buescher <eric@baykeeper.org>  
**Sent:** Tuesday, August 10, 2021 9:22 AM  
**To:** cpayne@oaklandca.gov  
**Subject:** Brooklyn Basin SEIR Comment Letter  
**Attachments:** SF Baykeeper - Brooklyn Basin Letter to Oakland Planning Commission - 2021-08-10.pdf

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Ms. Payne,  
Please find attached a comment letter from San Francisco Baykeeper to the Oakland Planning Commission regarding the SEIR for the Brooklyn Basin project expansion. Please let me know if you need anything further or have any issues with the attachment.

Regards,  
Eric

--



*Keeping an eye on the Bay since 1989*

**Eric Buescher, Senior Staff Attorney (he/him)**

San Francisco Baykeeper 1736 Franklin St #800 | Oakland, CA 94612  
Office: 510-735-9700 | Mobile: 720-560-6295

[baykeeper.org](http://baykeeper.org)



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August 10, 2021

City of Oakland Planning Commission  
Submitted via email to: [cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov)

Re: Comments on Draft SEIR for Brooklyn Basin Project Changes

Dear Chairperson Limon and Planning Commissioners:

- O3-1 | I write on behalf of San Francisco Baykeeper (“Baykeeper”) regarding the proposed expansion of the Brooklyn Basin development project and marina (“Project”). Baykeeper submits these comments on behalf of its approximately 5,000 members and supporters who live and/or recreate in and around the San Francisco Bay Area. Baykeeper’s mission is to defend San Francisco Bay from the biggest threats and hold polluters and government agencies accountable to create healthier communities and help wildlife thrive. Our team of scientists and lawyers investigate pollution via aerial and on-the-water patrols, strengthen regulations through policy advocacy, and enforce environmental laws on behalf of the public.
- O3-2 | In March 2000, the Port of Oakland was attempting to drag a workboat named “Moby Dick” from the Oakland Estuary inlet when it was damaged, spilling lead paint, battery acid, and other harmful materials into the Bay. As a result of this incident, and according to reports from the surrounding community, about half a dozen or more similar ones, Baykeeper filed a lawsuit against the Port of Oakland. The litigation was resolved with the Port agreeing to pay \$110,000 in mitigation and fees. A majority of the funds the Port paid were used to promote environmentally beneficial projects and education, including habitat and wetlands restoration projects in the area and a restored shoreline at the site.
- O3-3 | Through the settlement, Baykeeper has a vested interest in this site and in maintaining the beneficial results for the Bay and the Oakland community that came from the agreement. The restored marsh at the site has resulted in significant beneficial impacts for the Bay and recreational users of the area, has enhanced the availability of public space for the community, and has helped the species that rely on these marshes to thrive. Therefore, Baykeeper is concerned about the Project and newly proposed changes at the site. For example, as recently documented by the Oakland Heritage Alliance, the restored area is now used by many species of shore and water birds for feeding and habitat:



O3-3  
cont.

As Table II-1 in the SEIR (copied below) describes, the proposed changes to the Project are significant. The magnitude of the changes belies the Project Sponsor’s conclusion that no environmental impacts would occur. The conclusory assessment is not supported by any evidence, technical assessment, or expert analysis, and is belied by the magnitude of the marina expansion and a common-sense analysis of the potential damage that such an expansion would likely cause.

O3-4

As approved, the Project would create 3,100 housing units, 8 acres of in-water development, 167 recreational boat slips between 40 and 80 feet in length. The proposed changes would add 600 housing units, cause a 240% increase in the in-water acreage used by the marina, and would roughly double the number of recreational boat slips at the expanded marina.

Land Use	Approved Project	Project Modifications	Total
<b>Residential</b>			
Units	3,100 units	600 units	3,700 units
Towers: Building Envelope / Phase	5 towers of 240 feet/ Phases I and II	5 towers of 240 feet/designated tower site relocated from Phase II to Phase III or IV	5 towers of 240 feet/ Phases I and III or IV
Parking	3,100 spaces <sup>a</sup>	450 spaces <sup>b</sup>	3,160 spaces <sup>c</sup>
<b>Retail<sup>d</sup></b>			
Area	200,000 sf	No change	200,000 sf
Parking	400 spaces	No change	400 spaces
<b>Marina</b>			
In-Water Acreage	7.95 acres	10 acres	17.95 acres
Slips/Vessel Size	167	158	325 slips
Water Taxi Landing Dock	0	1	1
Parking	34 spaces	Add 31 spaces	65 spaces

O3-5

This massive marina expansion requires a thorough environmental review based on actual data and an informed evaluation of the impacts of the proposed expansion on the restored marsh, shoreline community, and the wildlife species that use the area.

- The environmental reviews of the Project to date provide no substantive or objective analysis of the impact of the expanded marina on the wildlife species in the area, or the flora and fauna they rely upon. This alone is a deficiency that must be corrected before approval of the expanded marina and project can go forward.
- While the developer has indicated they do not intend to build marina slips on the restored marsh areas, they have not analyzed the impact of having 300 boats using the water adjacent to the restored marsh. Such an analysis is needed to properly and adequately evaluate the impact of the proposed changes to the Project.



O3-6 | ○ Further, the reviews to date also lack analysis of the equitable (or inequitable) nature of the creation of new housing, new recreational facilities, and new boat slips. The Port must ensure that housing in the area is affordable and that the water remains accessible to the Clinton Basin community, not just people wealthy enough to buy the new homes and/or who own large boats. Accessibility also requires ensuring that human powered crafts (paddleboards, kayaks, etc...) are able to safely use the area without being overwhelmed by the wake created by the increase in motorized boats in the area.



O3-7 | ○ Finally, there is insufficient analysis to determine whether and to what extent the marina might be used for live aboard purposes, and the impact that would have both on the affordability of housing in the area or the impact on the Bay that could be posed by an increase in the number of people living aboard vessels docked in the expanded marina.

O3-8 | Simply concluding that a 240% expansion in the size of the marina combined with a doubling in the number of boat slips and an increase in the number of housing units at the Project will have no impact on the environment does not comply with CEQA. Adopting the changes to the Project without requiring and reviewing actual data and expert scientific analysis is also not consistent with good stewardship of the Bay.

O3-9 | Baykeeper urges the Port to require additional information and analysis from the Project Sponsor. It would also seem prudent to gather more information from the community who will be most immediately impacted by the Project. We strongly recommend that the Port ensure that the environmental impacts of the massive expansion of the marina does not harm or undo the restored marsh and shoreline that the Port and other stakeholders worked so hard to create and protect as part of the settlement of the litigation two decades ago.

Thank you for your time and consideration. If you should have any questions, please do not hesitate to contact me at [eric@baykeeper.org](mailto:eric@baykeeper.org).

Sincerely,

Eric Buescher  
Senior Staff Attorney



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**From:** Igor Tregub <itregub@gmail.com>  
**Sent:** Tuesday, August 10, 2021 3:00 PM  
**To:** Catherine Payne  
**Cc:** Tom Limon; Amanda Monchamp; Jonathan Fearn; Clark Manus; vsugrueopc@gmail.com; SShiraziOPC@gmail.com; Iraylynch@yahoo.com; Nikki Fortunato Bas, Councilmember, District 2; Kaplan, Rebecca; City Councilmember Dan Kalb; Carroll Fife; ngallo@oaklandca.gov; Thao, Sheng; Loren Taylor; treid@oaklandca.gov  
**Subject:** Sierra Club Comments on Brooklyn Basin SEIR  
**Attachments:** Sierra Club SEIR Comments - Brooklyn Basin SEIR.pdf

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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Dear Planning Commission Chair Limon, Members of the Planning Commission, and Staff Secretary Payne,

Please find our subject comment letter attached. Thank you for your consideration.

Respectfully,  
Igor Tregub he/him, on behalf of the  
Sierra Club



August 10, 2021

Planning Commission Chair Tom Limon  
Members of the Oakland Planning Commission  
c/o Catherine Payne  
City of Oakland, Bureau of Planning

**RE: Comments on the Brooklyn Basin Draft SEIR PUD 06010-R02-ER01 (CEQA State Clearinghouse Number: 2004062013)**

Dear Chairperson Limon and Planning Commissioners:

The Sierra Club respectfully submits the following comments on the Brooklyn Basin Draft Supplemental Environmental Impact Report. We wish to support the remarks previously submitted by SF Baykeeper and Naomi Schiff. In particular, we request that additional alternatives should be studied, as we believe that they may be environmentally superior to the recommended project alternative. More robust alternatives for muscle-powered craft used by members who may not rent slips should be considered.

Consistent with comments previously received, we also request that this SEIR:

- O4-3 | (1) Address protecting, enhancing, and nurturing the wetland area between Clinton Basin and along Sixth Avenue;
- O4-4 | (2) Provide a superior environmental alternative to the expanded marina plan which, as presented, sandwich the public park areas between private residential development and private marina development;
- O4-5 | (3) Provide a superior environmental alternative that includes a stretch of soft shore, which would allow members of the public to continue to enjoy unencumbered views from parks;

Furthermore, we concur with comments provided by SF Baykeeper that:

- O4-6 | (1) The environmental reviews of the Project to date provide no substantive or objective analysis of the impact of the expanded marina on the wildlife species in the area, or the flora and fauna they rely upon. This alone is a deficiency that must be corrected before approval of the expanded marina and project can go forward.
- O4-7 | (2) While the developer has indicated they do not intend to build marina slips on the restored marsh areas, they have not analyzed the impact of having 300 boats using the water adjacent to the restored marsh. Such an analysis is needed to properly and adequately evaluate the impact of the proposed changes to the Project.

- O4-8 | (3) The reviews to date also lack analysis of the equitable (or inequitable) nature of the creation of new housing, new recreational facilities, and new boat slips. The Port must ensure that housing in the area is affordable and that the water remains accessible to the Clinton Basin community, not just people wealthy enough to buy the new homes and/or who own large boats. Accessibility also requires ensuring that human powered crafts (paddleboards, kayaks, etc...) are able to safely use the area without being overwhelmed by the wake created by the increase in motorized boats in the area.
- O4-9 | (4) There is insufficient analysis to determine whether and to what extent the marina might be used for live aboard purposes, and the impact that would have both on the affordability of housing in the area or the impact on the Bay that could be posed by an increase in the number of people living aboard vessels docked in the expanded marina.
- O4-10 | We join with the referenced submitters in urging the Port to require additional analysis from the Project Sponsor as well as to further consult directly impact community stakeholders. We also urge the Port to ensure that the environmental impacts of this project does not adversely impact the condition of the recently restored marsh and shoreline.

Thank you for your consideration of our and others' comments.

Respectfully,



Igor Tregub, Chair

Sierra Club Northern Alameda County Group

---

**From:** info@waterfrontaction.org  
**Sent:** Saturday, July 31, 2021 11:38 AM  
**To:** cpayne@oaklandca.gov  
**Subject:** Brooklyn Basin Marina Project DSEIR Comments  
**Attachments:** marina\_expansion\_deir.pdf

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Dear Planning Commissioners and Staff,

Attached please find comments from Waterfront Action on the proposed Brooklyn Basin marina project expansion draft SEIR.

Thank you for your consideration.

Sandra Threlfall  
Waterfront Action

July 30, 2021

Catherine Payne  
City of Oakland, Planning and Building Dept. Development Planning Division  
250 Frank Ogawa Plaza, Suite 2114  
Oakland, CA 94612  
**Attn. Brooklyn Basin Marina Expansion Project DSEIR Comments**

Dear Ms. Payne:

Waterfront Action's input is focused on the need for regulatory permits and agency approvals, particularly from BCDC:

O5-1 | **Impact BIO-4:** *Protect Project Modifications would not result in a substantial adverse effect on potentially 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.*

This impact is deemed “Less than significant”. However, the proposed marina expansion has not been heard by BCDC and agency approval cannot be assumed. The DSEIR should reflect this uncertainty.

O5-2 | Impact BIO-4 includes **2009 Mitigation Measure I.2c: Obtain Regulatory Permits and other Agency Approvals**. The following excerpts from the [minutes of the April 8, 2019 BCDC Design Review Board meeting](#) reveal comments by the public and board during the public hearing on the proposed marina expansion. They also highlight the fact that the proposed marina is not yet authorized by BCDC and the Design Review Board intends to review any such proposal:

- Ms. Alschuler stated her assumption that there is no marina around Shoreline Park but only at the Clinton Basin location and the existing marina at the end of Fifth Avenue.
- Ms. Gaffney stated the current BCDC permit does not authorize a marina. It authorizes the removal of the docks in Clinton Basin. She agreed that the exhibits indicate that a marina would be planned at a future date but it has not yet been authorized.
- Daniel Franco stated that is getting to be a bigger point – it spits in the face of any sane definition of wetlands to say that the tiny wetlands, which is less than one acre, will be able to survive as a wetlands when there is a mega marina built around it.



O5-2  
cont.

- Sandra Threlfall distributed a handout to the Board and stated the existing mitigation area at the top of Clinton Basin has a proposed marina around it with more slips for ships. This is not logical.
- Ms. Alschuler suggested beginning with what the Board was given to review - the two parks. She asked if the marina is major enough to come back to the Board for review and what the timing looks like in relation to building the parks. Mr. Van Ness stated BCDC and Board review will be required for any marina proposal.
- Ms. Alschuler stated concern about the marina and stated the need for the Board to see more information as they are revised.
- Ms. Alschuler stated there was public comment about the marina. The Board will ask to review the plan again if there is a marina added.
- Ms. Alschuler stated the Board may need to see this project again if the design evolves in a dramatic way. The Board would especially be interested in the resolution of the marina.

These public comments are directly relevant to the marina expansion considered in the DSEIR.

Thank you for your consideration of this input.

Sincerely,



Sandra Threlfall  
Executive Director

Ref: BCDC Design Review Board Meeting & Public Hearing, April 8, 2019  
<https://www.bcdc.ca.gov/drb/2019/0408Minutes.pdf>

**From:** [Baddy](#)  
**To:** [cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov)  
**Subject:** Brooklyn Basin expansion plans SEIR  
**Date:** Tuesday, August 10, 2021 11:56:25 PM

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

To: The Oakland Planning Commission,

I'm writing this letter in regards to the proposed expansion plans and recent SEIR that Brooklyn Basin has exposed to the public, the major points being: 1) Endangerment of protected wetlands, 2) Tower move, 3) Addition of 600 additional units, and 4) Increased traffic congestion/lack of parking.

- 11-1 | 1) Brooklyn Basin's plan to build a marina at the head of 5th Avenue Point will not protect the protected wildlife area, it will in all likelihood destroy it. It is absurd to think you could build a marina adjacent to a protected wetland! Take a look up and down the estuary at all the marinas, the fancier they are the more trash, oil, pollution etc. is collecting at the shoreline. This is just at the surface, you don't need an imagination to see the worst.
- 11-2 | 2) I am a resident of Shadetree, adjacent to the parcel where they would like to move their 20+ story tower, this tower would cast an immense shadow over us, most of the day, every day. Their shade study ends at 3pm, WTF?!? Might as well end at 3am.... This would prevent us from growing just about anything, and completely prevent us from implementing our planned solar PV/solar hot water projects, in addition to our existing small PV systems, and even down to our solar garden lights! This is just 1 example of how wrong this is.
- 11-3 | 3) Adding an additional 600 units to Brooklyn Basin is just plain not sustainable to the community! Not to mention an additional 158 boat slips. Their reasoning? Something like: "market research has shown people want smaller units" or however they put it. I call shenanigans on that! Plain and simple greed folks, they got their foot in the door, now "please accept our gift of this wonderful wool pullover". They at least need to stick to their plan. You think this whole development isn't the end of us down here? Traffic and parking is ALREADY bad enough, which leads to:
- 11-4 | 4) There are 3 two- lane streets leading to/from this neighborhood, 600 more units + 158 boat slips, at least 3x the people, probably 2x plus the cars, no public transportation and this adds up to, pardon my French, One Giant Clusterf#%k! There's no way around it...Then .75 parking spaces? How many people will just not pay the extra parking fees and just "park on the street"? Unbelievable...
- 11-5 |
- 11-6 | BUT, I have a solution! Doesn't take a smart guy to figure out this one: If, by their own reasoning, market research shows that people want enough of "less space" to be able add 600 units, then simply eliminate those 600 units! Imagine ALL the money they would save by NOT building an entire 20+ story building! I am such a solution machine, they should hire me!

Thanks for listening,  
Tim Anderson  
48 5th Ave.  
Oakland, CA 94606

--

zombies were people too!

**From:** [JoAnna Ben-Yisrael](#)  
**To:** [cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov)  
**Subject:** Brooklyn Basin marina expansion  
**Date:** Tuesday, July 20, 2021 1:26:01 PM

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Ms. Payne,

I am writing to you as a citizen of Oakland, asking you to deny the expansion plan to the Brooklyn Basin Marina.

Two words:

Moby Dick

- 12-1 | The wetlands these developers purport to build this high-rise on, those wetlands are payment to the city of Oakland and it's residents, for the disastrous harm already perpetrated upon them from the dismantling of the Moby Dick years ago.

**Those wetlands were granted protection from development *in perpetuity*.**

Wetlands have a very important balancing job to do as our climate grows more treacherous. Living in a tsunami warning zone it's a critical job. We need more wetlands protected, not less.

- 12-2 | Residents of Oakland need affordable

- 12-3 | housing that doesn't block out the sun.

- 12-4 | Please do not approve yet another scope creep plan. We don't need more slips, we don't need more boats, and we don't need our shoreline developed further. We need the wetlands to remain intact.

Sincerely,

JoAnna Ben-Yisrael

**From:** [Marion Borst](#)  
**To:** [cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov); [lschaaf@oaklandca.gov](mailto:lschaaf@oaklandca.gov)  
**Subject:** Concern  
**Date:** Wednesday, July 14, 2021 8:59:50 AM

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To Whom it May Concern;

13-1 | It has come to my attention that the proposed plans for the waterfront at Brooklyn Basin have changed to include a plan that does not value the long term concerns of or citizens or our planet. The new proposal seems to eliminate one of the last wetland areas in the whole estuary and focus on profit. I really think this new plan is unacceptable.

13-2 | I am a home owner, small biz owner, and landlord in oakland. I do not believe this is a good use of my taxes to be changing this plan. I feel blindsided and unheard. The original plan allows our world to have one small part of nature remaining. Think about protecting what is left of our world and your part in it.

Sincerely;

Marion Borst  
4740 Congress Ave  
Oakland, Ca 94601  
[marionborst@aol.com](mailto:marionborst@aol.com)

**From:** [JOHN BOWERS](#)  
**To:** [cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov)  
**Subject:** Brooklyn Basin Marina Expansion Project DSEIR  
**Date:** Monday, August 9, 2021 1:39:25 PM  
**Attachments:** [Brooklyn.Basin.docx](#)

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[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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Dear Ms. Payne,

Please find attached hereto my comments on the above-referenced planning document.

Thank you.

John Bowers

1433 Hampel St.  
Oakland, CA 94602

August 9, 2021

To: City of Oakland Planning Commission

C/o: Catherine Payne, Acting Development Planning Manager

Via: Email ([cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov))

Re: Brooklyn Basin Marina Expansion Project DSEIR

Dear Ms. Payne and Commissioners:

I4-1 | In the late 1990's I served as a member of an ad hoc advisory group convened by the Port of Oakland (Port). I did so in my capacity as a member of the East Bay Conservation Committee, a constituent body of the Golden Gate Audubon Society (GGAS). The GGAS is a chapter of the National Audubon Society (NAS). Both the GGAS and the NAS have as one of their principal purposes the protection of natural resources that function as habitat for migratory and non-migratory waterfowl and other avian species.

I4-2 | The purpose of this advisory group was to provide advice to the Port on a project to restore wetland habitat values to a roughly one acre area on the southwester shoreline of Clinton Basin, now commonly referred to as a part of Brooklyn Basin, near where the waters of Clinton Basin commingle with the waters of the Oakland-Alameda Estuary. The Port elected to undertake this project as an environmental remediation project required by the Regional Water Quality Control Board (RWQCB) as an alternative to the payment of a significant fine that the RWQCB had assessed against the Port for the discharge of hydrocarbon pollution into the waters of Clinton Basin. This discharge occurred in the course of an undertaking by the Port to remove and dismantle from such waters a vessel (the "Moby-Dick") that had run aground in the nearshore area.

The Port hired an environmental consultant to design the restored wetland. After the consultant developed plans for the restoration project and the advisory group concurred in the plans, the Port undertook to construct the restored wetland, hereinafter referred to as the Clinton Basin Wetland Restoration Project, or CBWRP) in accordance with the approved plans. The project included removal of several tons of rock revetment to restore the shoreline to a natural condition. As such, the CBWRP represents one of only stretches of natural shoreline along the entire length of the Oakland-Alameda Estuary from Emeryville to San Leandro Bay. Wetland vegetation, including salt grass, pickleweed, and marsh gumplant, was planted. An elevated area to serve as a waterbird roosting and resting area was created. Protection of this elevated area was and is provided by a channel that was dredged around it that allows for the inflow of Clinton Basin waters at high tides.

I4-3 | The CBWRP lies at the southern end of an aerial flyway between Lake Merritt and the Estuary. Waterbirds use the Lake Merritt Channel as a guidepost as they migrate back and forth between these two heavily used destination points. As a result, one can observe many of the same species of birds at or near the CBWRP as one can observe at Lake Merritt. Waterfowl species that GGAS members have from time to time observed at or in close proximity offshore from the CBWRP include, but are by no means limited to, great and snowy egrets, brown and white pelicans, killedeer, greater and lesser scaup, double-crested cormorants, Canada geese, least (an endangered specie) and forester's terns, and great blue heron.

14-4 The DSEIR for the marina expansion project at Brooklyn Basin is seriously deficient in a number of respects. Among the most prominent of these deficiencies are the following: 1) Failure to even acknowledge the existence of the CBWRP and thus to properly characterize the environmental setting of the proposed marina expansion project, 2) failure to identify and evaluate the adverse effects the proposed marina expansion project will have on the environmental values of the CBWRP, 3) failure to identify and evaluate the feasibility of measures by which the adverse environment effects of the project on the CBWRP might be mitigated, and 4) failure to analyze degree to which proposed project does or does not conform to applicable policies of Estuary Policy Plan, a component of Oakland's General Plan.

14-5 **I. Failure to Acknowledge Existence of the CBWRP and Thus to Properly Characterize the Environmental Setting of the Project.**

In Section III.D the DSEIR purports to identify the existing conditions of and thus the environmental setting in which the proposed project will be undertaken. However, nowhere does the DSEIR, in section III.D or otherwise, even acknowledge the existence of the CBWRP, let alone describe its features and properties.

14-6 **II. Failure to Identify and Evaluate the Adverse Effects the Proposed Project Will Have On the CBWRP.**

The proposed project proposes to place a raft of boat slips direct offshore from, and in close proximity to, the CBWRP. The mere presence of a physical structure such as a set of docks and boat moorings in close proximity to wildlife habitat cannot help but degrade the quality of that habitat. Furthermore, human use of the docks and moorings will exponentially increase the level of disturbance that is inflicted on any immediately adjacent wildlife habitat area such as the CBWRP. As one who has for many years engaged in the sport of sailing, I can personally attest to the verbal and equipment (e.g., rigging) noise and commotion that occurs when disembarking and returning from an outing in a sailboat. Similar levels of disturbance of wildlife habitat can be expected to occur in connection with the use of motorboats. Natural resource science has confirmed the adverse effects that recreational activity such as boating can have on nearby wildlife habitat.<sup>1</sup>

14-7 **III. Failure to Identify and Evaluate the Feasibility of Measures By Which the Adverse Effects of the Proposed Project On the CBWRP Might Be Mitigated.**

In light of the fact that the DSEIR does not identify or analyze any adverse effects of the project on the CBWRP, including but not limited to the ones discussed in the immediately preceding paragraph, it comes as no surprise that the DSEIR also fails to identify or evaluate the feasibility of measures by which such non-acknowledged effects might be mitigated, including complete avoidance. However, there are two obvious measures by which the above-identified adverse effects might be mitigated. The first is to completely eliminate from the project the raft of docks and moorings that the project proposes to locate immediately offshore the CBWRP. The second measure is to relocate the subject docks and moorings to a different part of the project site.

14-8 **IV. Failure to Identify and Apply Applicable Provisions of the Estuary Policy Plan.**

Policies of the Estuary Policy Plan (EPP, pp. 83, 86 - 88) that are applicable to project components, such as the docks and moorings that the project proposes to locate in close proximity to the CBWRP, include but are not necessarily limited to the following:

<sup>1</sup> See generally staff background report entitled "Public Access and Wildlife," [www.BCDC.ca.gov/InformationResources/Library/BackgroundReportsOnPolicyIssues](http://www.BCDC.ca.gov/InformationResources/Library/BackgroundReportsOnPolicyIssues).

↑  
I4-8 cont. Policy OAK-1: "It is important to focus first on preserving the intrinsic qualities of the shoreline and to insure that environmental values of [Oak-to-Ninth] site are not compromised."

Policy OAK-1.1: "**Encourage the preservation and enhancement of wetland areas.** Wetlands should be protected by such treatments as setting back trails from the shoreline, installing suitable buffer planting to prevent disruption to nesting and resting areas, and seasonal routing of pedestrians to avoid sensitive habitats."

It is important to note that the foregoing policies are in the section of the EPP that is expressly applicable to the Oak-to-Ninth/Brooklyn Basin geographic area of Oakland. They confirm the importance that the City attaches to the protection of wetland resources within its borders in general, and in Brooklyn Basin in particular.

I4-9 | In light of the serious deficiencies in the DSEIR identified in these comments, I respectfully submit that the City should decline to approve or certify it.

Thank you for your consideration of these comments.

Sincerely,

John Bowers

---

**From** kristin bowman  
**Sent** Sunday, July 18, 2021 3:01  
**To:** cpayne@oaklandca.go  
**Subject** Brooklyn  
Basin

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments you recognize the sender and expect the message.

Hello Catherine,

- 15-1 | I recently learned about the proposed marina for Brooklyn Basin and I want to express my deep opposition to this plan. Brooklyn Basin has become a regional destination for people who want to enjoy the open water views of the estuary. A marina would destroy the experience of the open water for people who do not have the means to buy a boat. A simple picnic, or dancing, roller skating, walking at this unique location along the water provides peace of mind and a healthy outlet during such a difficult time. It has been a great success, do not destroy this free experience for people.
- 15-2 | I just heard about this proposal at my recent visit. My concern is not many people know about this proposal and therefore they have not been given an opportunity to respond. What type of outreach has been done to inform people? Has it been put on Nextdoor throughout Oakland neighborhoods?
- I would like to request an extended comment period to give time for proper outreach and receive feedback.
- 15-3 | Please put me on the mailing list to receive updates on this matter.

Sincerely,  
Kristin Bowman  
Oakland Resident - Maxwell Park

---

**From** Lisa Broggi  
**Sent** Wednesday, July 21, 2021 2:15  
**To** cpayne@oaklandca.go  
**Subject** NO BROOKLYN BASIN MARINA EXPANSION  
PROJECT

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments you recognize the sender and expect the message.

Hello,

16-1 | I wanted to use my voice to request that the Marina Expansion Project for Brooklyn Basin be denied. This project will encroach on a marsh area that should be preserved both for the natural world but also as a public space for enjoyment.

16-2 | There is so much change happening in Oakland and we must be diligent to preserve wildlife zones and public spaces. I appreciate your time.

Warmly,  
Lisa Broggi

---

**From:** Benjamin Burke <ben@benjaminperkinsburke.com>  
**Sent:** Sunday, August 8, 2021 2:43 PM  
**To:** cpayne@oaklandca.gov  
**Cc:** tlimon.opc@gmail.com; jfearnopc@gmail.com; cmanusopc@gmail.com; SShiraziOPC@gmail.com; amandamonchamp@gmail.com; leo.raylynch@hmcarchitects.com; vsugrueopc@gmail.com  
**Subject:** Brooklyn Basin SEIR response  
**Attachments:** To the Planning Commission.pdf

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

---

To the Planning Commission,

17-1 Brooklyn Basin are terrible neighbors with little, if any, concern for the community that surrounds them which has been around for over forty years, long before they even considered building upon this land.

Their original plans took no notice of the property where I and 29 others live—Shadetree. We the residents purchased it for ourselves in 2017, thwarting their plans to purchase our property and raze our home—something they did not anticipate—and they have been squeezing us ever since.

This latest SEIR is further indication that they have no intention of appreciating our presence. Our lives. The air we breathe. The sun. The water.

17-2 It's not enough that they pile drive pylons into the earth just yards away from 8a to 5p M-F. Or that rather than clean up the parcels they purchased which directly surround us, they simply dumped mountains of concrete and waste on top of it, with minimal abatement—something we had to fight for. We listen to their pile driving all day long, hear the incessant ringing of their malfunctioning Halide street lamps at night, inhale the constant dust from their mountainous debris—and now they want to block the sun from reaching our

17-3 property, destroy a legally protected wetlands area, take away our parking, our communal garden, our driveway easement which was guaranteed to us in perpetuity as our right of way to the water which they immediately fenced off having somehow wiped that deed from existence God knows now, and more and more. I have to move my own home 14 inches because it intrudes into some bushes they have planned, for example.

And now, just the other day, one of their neighboring parcels caught fire in the middle of the night while we were all sleeping. Fortunately, we were able to put it down with several fire extinguishers until the fire department arrived to finish it off.

They are no longer simply bad neighbors and a constant nuisance to our eyes, ears, noses, mouths and minds—they are threatening our lives with their negligence.

17-4 All we have ever asked is that they be good neighbors. They claim up and down that they are. I've spoken with Mike Ghielmetti in person on two occasions and on one of those occasions he said, "Look, I've done

17-4  
cont. ↑  
everything I'm required to do." And I responded, "You keep using that word—*required*. I'm simply talking about doing what's *right*." He laughed it off.

This is the problem with Brooklyn Basin, with Signature Properties and Mr Ghielmetti himself. If they are not *required* to do the right thing, they simply will not.

Myself and everyone I call friend and neighbor around here are fighting for our lives. Fighting for our peace, our clean air, our sunlight, and now our safety. Who can we turn to in order to require these developers to develop their property in a respectful manner? Who? Several of us spoke up the other day at your meeting and even more are now writing you letters because we are hoping that you may be the ones who have the compassion, respect and authority to make our neighbors behave like real citizens of Oakland as opposed to foreign invaders.

Please. Help. It has come to the point where we are now begging you. Begging our city to do something. So that we may finally live and thrive in peace upon the land which we have fought so hard to secure.

Sincerely, and with gratitude for your service,

Ben Burke

---

**From:** Charonnat Design <charonnatdesign@gmail.com>  
**Sent:** Tuesday, August 10, 2021 4:43 PM  
**To:** cpayne@oaklandca.gov  
**Subject:** Brooklyn Basin Marina Expansion Project DSEIR Comments  
**Attachments:** Response to Brooklyn Basin Marina Expansion Project DSEIR - August 1 2021 - L Charonnat (attachments)-.pdf

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

---

PLEASE SEE ATTACHED PDF

**Leal Charonnat, Architect**

**CHARONNAT - ARCHITECT+ENGINEERING**  
1-5th Avenue Ste 1-9 Oakland Calif 94606  
(510) 436-3466 FAX (877) 769-9966 [charonnatdesign@gmail.com](mailto:charonnatdesign@gmail.com)

-----  
August 1, 2021

(By electronic transmission)

City of Oakland Planning Commission

Dear Chairperson Limon and Planning Commissioners,

18-1 | This letter is in response to the proposed revisions to the Brooklyn Basin/Ninth Avenue Terminal project, in particular to the proposed marina and parcel changes and entitlement relocations of high-rise buildings.

The fact that major changes to the way the area density is being changed, all the while the DSEIR is titled "Brooklyn Basin Marina Expansion Project," is pure subterfuge. While the proposed marina is the titled subject, the actual impact on the project area and environs is the change to the entitlements asked for in this DSEIR.

18-2 | The following pages include my comments as well as pertinent pages from previous reports.

After witnessing the Planning Commission meeting, it would seem that the current Planning Commission members have little or no firsthand knowledge of why there is even a 'Brooklyn Basin' project. It seems quite likely from the way the commissioners discussed this project, they had no sense of what the League of Women Voters report, or the Estuary Policy Plan – developed over several years with the input of hundreds of Oakland citizens – actually asked for.

18-2 cont. ↑ Any changes from the already approved entitlements to this project area – ‘Brooklyn Basin, formerly Oak to Ninth Avenue – must adhere to the Estuary Policy Plan.

Sincerely,

Leal Charonnat

1 – 5<sup>th</sup> avenue #1-9

Oakland, CA 94606

18-3 | Enclosures (Specifically included for Commissioner review and study):

- LWVO Waterfront Study 1999
- Estuary Policy Plan – Oakland California, June 1999
- Oak-to-Ninth Mixed-use Development – Response to Request for Qualifications - 2001
- Brooklyn Basin – Oak to 9<sup>th</sup> Development Plan – Axonometric View (ROMA Design) 2005

18-4 | I. PROPOSED MARINA

*The proposed marina concept should be rejected in whole. The actual proposal is based on hearsay – the supposed request by an anonymous marina operator. The fact that the proponent is targeting “large” ships only lends to the targeted audience for this scheme. The fact that the proponent is asking for unheard of entitlements never before discussed in the 20 years since the League of Women Voters first published their report on the Oakland waterfront (see attached annotated document).*

↓ Proposed Marina is without Merit

18-4 cont. ↑ The proposed marina is based wholly on a folly – the project proponent specifically testified that the marina design was based on what one particular marina operator asked for. Such reasoning is counter to the basis of the Estuary Policy Plan (see attached) that directs development to be for the citizens of Oakland.

18-5 **Unsupported – no additional facilities.**  
The proposed marina is not to be supported by any additional facilities (such as those normally found at a marina including but not limited to restrooms, shower facilities, storage, parking, etc.) The proposed marina is designed for “large” craft, ones that do require additional support staff that is not uncommon with marinas of such size craft. The documentation of this is wholly inadequate in its detailing the actual use of such a marina.

18-6 **Blocks the view of the estuary**  
The proposed marina is basically a parking lot blocking the view from shore for anyone of all the activity on the estuary including boating activity, racing, training, etc. The p

18-7 **Shoreline will be walled off with Security Fencing**  
The proposed marina will essentially privatize the shoreline. Users of the marina will require security, which will entail security fencing found at any “high-end” marina. The proponent has not shown any evidence of this type of security which all marinas of this type have installed. It is a fiction that this marina would have no such security. The review of this proposal is incomplete without such illustration.

18-8 || **LOSS OF NATURAL EDGE (WETLAND)**

-

*The proposed changes completely negate any possible ‘natural’ wetlands, and as such should be reject in whole. The entire purpose of and reason for this development is based on the tenets of the Estuary Policy Plan –that these 60+ acres of shoreline be developed for all of Oakland. The proposed changes create essentially a privatized shoreline. As such, these changes should be reject.*

**Marina docks are not friendly to ‘natural’ shorelines**

The proposed marina would require a hardening of the shoreline. Boats – particularly those with keels, require dredging for a harbor of sufficient depth. The proposal does not address this in detail to the point of an adequate review.

↓ **Marina vomit on the shoreline**

18-8  
cont.

↑ Measure DD was voted on to develop a natural shoreline for Oakland. The extensive marina design – any marina design – is in conflict with a natural shore.

**Incompatible with any previous Estuary Policy/Measure DD**

The installation of as marina will impact any natural shoreline wildlife. It is complete fiction that such as marina will allow natural shoreline wild life to exists.

**Inadequate analysis of shoreline impact**

In particular, there is no detail analysis of impact on nesting shoreline wildlife, or other wildlife that uses the estuary as a food source.

**2001 Wetlands Creation Project Ignored**

The Port of Oakland already settled in 2001 to create a wetland on the shores of this project. This project completely ignores any impact it would have on such wetland.

18-9

**III Project Parcel Swamping (sic)**

*The project proponent's original design was fully vetted and prepared by their professional team of consultants. Without adequate traffic, noise, and other detailed studies, the proponent now wants to increase their entitlements with only limited review by the denizens of Oakland. Such major changes cannot be adequately addressed with the 'distraction' of the bogus marina project proposal. Such 'swamping' needs to be wholly rejected until such time a more thorough review is possible.*

**Inadequate Public Review of Changes**

The proposed "swapping" of density and the change in location of the large high-rise towers is without adequate public input. No community outreach has been done for such major changes. The Estuary Policy Plan was created with numerous community meetings, over a period close to two years. This proposal is slipped in with a "marina additions" as a distraction.

↓ Marina Distraction to Parcel changes

18-9  
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The review of a out-of-step marina addition is in part a distraction of the real purport of these changes. The changes are profound: adding units with reducing access.

#### Tower Changes Negatively Impact on local art community

The change in the position of the high-rise tower in relation to the existing art community severely impacts those residents – in clear violation of the intended Estuary Policy. Such major changes must be done with more community input including further shadow and wind studies, community outreach. Etc.

#### **Out of Scale – out of touch with the Estuary Policy Plan**

The scale of the proposed building is not respectful of the existing low-rise community structure. The original design and layout was done by the project proponent with adequate professional design and advice, and was adequately vetted by the proponent. Such a “swap” only “swamps” the local community. This proposal would never have been approved in the original design.

18-10

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The proposed changes are actually profound, yet there is little documentation except for a few charts for comparison. The public and city require additional design documentation (models, 3-D illustrations, ‘story poles’) to understand the implications of what is asked for. The city of Oakland cannot rely on such rudimentary documentation for thorough review of what is to be the final development of Oakland’s waterfront.

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36

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Response to

BROOKLYN BASIN MARINA EXPANSION PROJECT - Draft Supplemental Environmental Impact Report

In 1993, the League of Women Voters of Oakland published a benchmark study titled *The Waterfront: It touches the World*. How does it touch Oakland? This document laid the foundation for much of the region's waterfront planning over the following decade, and it stimulated a new awareness of Oakland's waterfront as a vital yet neglected resource.

Today, some of the facts and specifics of the report are dated, but the study's fundamental findings and direction continue to be relevant and meaningful.

The study report, reproduced here, was prepared by the League's Waterfront Committee, consisting of Virginia Hamrick, Susan Rich, Sandra Threlfall, and Richard Winnie, Chair.

[The Waterfront: It touches the World.](#)  
[How does it touch Oakland?](#)

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- Ch 2 - [Watermarks](#)  
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- Ch 3 - [Discovering Oakland's Waterfront](#)  
sectors of the Waterfront
- Ch 4 - [Can the Waterfront Be More Than a Port?](#)  
tidelands trust and the Port of Oakland
- Ch 5 - [The Pebble and the Pond](#)  
economic impact of the Waterfront
- Ch 6 - [The Outward View](#)  
the Shoreline Trail and public access
- Ch 7 - [The Estuary Shore: a Mixture or a Recipe](#)  
City/Port coordination of land use & economic development
- Ch 8 - [The Stealth Waterfront](#)  
history & future of Naval Supply Depot & Oakland Army Base
- Ch 9 - [Renewed Horizons](#)  
summary of issues
- Appendix - [LWV Oakland Position](#)

## League of Women Voters of Oakland Waterfront Study



### Chapter 1. Oakland- The Bay Area's Premier Waterfront City

Most of the world's great cities are on waterways because transportation is critical to a city's economic vitality.

Historically, a site on a major river or bay created a point of access between inland goods and distant markets. Port cities eventually became manufacturing centers, due to the convenience of assembling components obtained from several different locations. Trading also made the early ports into commercial and banking centers and major cultural influences on their hinterlands. The location of the early American cities was also dictated by access to global markets, and these cities also quickly emerged as the nation's first manufacturing and commercial centers.

Manufacturing and banking activities no longer gravitate to modern ports as they once did. Efficient ground transportation has reduced the need to locate manufacturing operations adjacent to port terminals, and advances in communications allow trading to occur at distant locations. Modern ports now serve as intermodal gateways, where products and materials are drawn from wide areas and transferred between water and land-based transportation.

Oakland's position among waterfront cities is especially advantageous. Not only is it situated on one of the Pacific Ocean's best located and protected bays, but Oakland also holds the premier position on the bay. Hence, although San Francisco housed the region's first port facilities, they soon moved across the bay due to Oakland's superior land connections. Oakland's port facilities are complemented by the Oakland International Airport, offering opportunities to link water, ground and air transportation. This nexus has attracted regional distribution centers, including the United Parcel Service, Federal Express and the United State Postal Service facilities.

Oakland is one of America's most important gateway cities. In 1990, port facilities transferred nearly 15,000,000 revenue tons of cargo between water and land vehicles, and the airport conveyed 457 million pounds of air cargo.

The conjunction of transportation modes at Oakland's Waterfront is vital to our nation's ability to compete in international trade. However, as crucial as our Waterfront is to mining in Nevada, pulp producers in Northern California and the farms of the heartland; it is less clear how the advantages of being a Waterfront city can be used for the betterment of Oakland.

#### Tapping Our Waterfront's Full Potential

It is estimated that the Port of Oakland's maritime activities support nearly 300,000 jobs in the region. Few of these jobs are from operation of the Port. Most are with industries which rely, to some degree, upon the availability of transportation facilities. It is not clear how many of these jobs are within Oakland.

The two military installations on the Waterfront are also sources of employment. Last year the community organized to oppose closure of Bay Area military bases, including the Naval Supply Depot consisting of over four hundred acres in the marine terminal area. The Oakland Army Base, while not on the current base closure list, may ultimately also be threatened. Given the threat to these bases and their great potential for a variety of other uses, is not too soon to consider the alternative uses of this land for the benefit of Oakland.

As the first step in planning for the future, we must develop better information about how the Waterfront impacts Oakland's economy. This would include such information as:

What are the types and relative numbers of jobs provided by Waterfront transportation facilities and the industries which rely upon these facilities?

What major businesses and industries reside in our area due to the availability of Waterfront transportation facilities?

What small business opportunities exist due to Waterfront-related industries?

We also need a clearer understanding of the competitive advantages derived from Waterfront transportation facilities and how we might use these advantages in our economic strategic planning. For example:

What types of industries have a need to locate near intermodal transportation facilities such as on Oakland's Waterfront?

LEAL CHARONNAT

RESPONSE TO BROOKLYN BASIN MARINA DSEIR

- AUGUST 1, 2021

How can we attract and accommodate enterprises for whom the Waterfront offers a competitive advantage?

How can education, training and apprenticeship programs be designed to increase the likelihood that Waterfront industries would hire locally?

How can we increase local, small business opportunities associated with the Waterfront?

Finally, there should be discussion of public access to Oakland's shoreline. Along the nineteen miles of shoreline in Oakland, there are few points at which the public can reach the water. Housing is virtually excluded from the Waterfront, and recreational opportunities are extremely limited. Oakland is a waterfront city, but is virtually locked from contact with the shore.

### **Rediscovering Oakland's Waterfront**

As Oaklanders we are justifiably proud of our harbor. However, in our fascination with the mighty cranes and the modern container vessels, we have lost sight of the many other opportunities which a Waterfront offers.

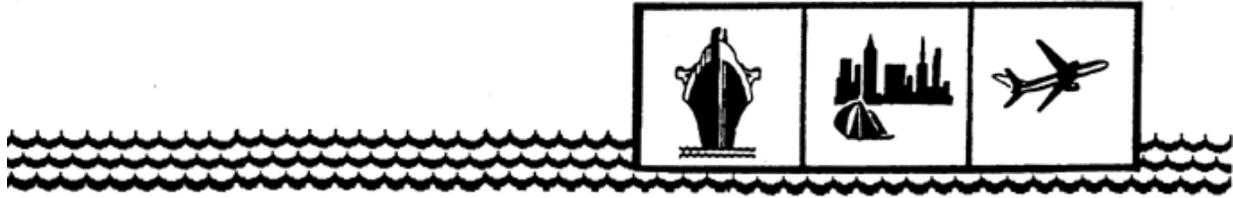
Of all the Bay Area's cities, Oakland has the longest and most varied shorelines. Oakland's heritage as a Waterfront city has also been lost, and with it the recognition of the historic role which Oakland has played in California.

The following chapters explore these many dimensions, including its history, economic potential, recreational and cultural opportunities. The report also attempts to address institutional opportunities and barriers, and describe the Port of Oakland, City/Port coordination of land use decisions and the future of the military bases.

A lack of space and time limits the contents of the reports to definition of issues and general discussion. However, it is the hope of the committee that by treating the many dimensions of the Waterfront in a single booklet, we can begin to recognize the full potential available to Oakland as a Waterfront city.

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## League of Women Voters of Oakland Waterfront Study



### Chapter 2. Watermarks (Highlights in the history of Oakland's Waterfront)

There are few texts which describe the history of Oakland's Waterfront comprehensively. This may be because the Waterfront itself is so varied.

As the terminus of the transcontinental railway, Oakland gained the character of a mixing pot of people, goods and ideas. For many, Oakland was where they first set foot in California. The railroads also gave impetus to new opportunities and a new society. Consequently by 1930 the first major labor union open to Blacks, the Brotherhood of Sleeping Car Porters, found a home in Oakland.

Oakland thrived from the early railroads. The main passenger depot was at Seventh and Broadway. Hotels and restaurants sprang up along Eighth, Ninth and Washington Street to serve the travelers. Trains continued west from Broadway along Seventh Street to the Waterfront where in 1871 the Central Pacific opened a two-mile Long Wharf where passengers and freight made connections to San Francisco.

The harbor shaped Oakland in different ways. Early industries located near the docks for convenience. While San Francisco established itself early as a commercial center, the actual goods passed through or were manufactured in Oakland. Oakland became a hub of shipping, not only for California, but for the western United States. With all types of cargo passing through Oakland, it was not long before factories and warehouses multiplied here.

As ferry travel developed, West Oakland emerged. By 1877, ferries had made more than four million crossings in the East Bay. West Oakland thrived as the center of activity and the heart of industry and entertainment.

Later, the airport made Oakland emerge in an entirely different way, as the birthplace of transcontinental and trans-Pacific air travel. Doolittle, Earhart and other early adventurers came to Oakland to make their mark.

As the years have passed, the technology of human and cargo travel has changed. The impact of change has been profoundly felt in Oakland. The disappearance of the ferries and the rise in containerized cargo have combined to create the most dramatic effect in West Oakland. As industries have lost the need to locate on the shoreline, manufacturing jobs have migrated from the Waterfront. As package express services have risen, Oakland Airport has captured new opportunities.

As a ground/sea/air transportation center, Oakland is always at the center of technological and social change. From history we learn the special place our city holds in the social and economic dynamics of our nation. History also teaches us the importance of recognizing the changing opportunities of Waterfront cities and the continual need to anticipate and capture these opportunities.

The following is a brief outline of some of the key points of change in the history of Oakland's Waterfront.

#### <Oakland's seaport develops amid the struggle for its control>

**1851** First regular commercial ferry service established between Oakland and San Francisco.

**1854** Oakland is incorporated and Horace W. Carpentier is elected as the first mayor. Thirteen days later, Mayor Carpentier obtains exclusive use of the Waterfront for a period of thirty years.

**1855** In reaction to Carpentier's land grab, he is expelled from office. A lengthy court battle ensues over ownership of the Waterfront.

**1868** The possibility that Oakland might be selected as the western terminus for the transcontinental railroad brings the dispute with Carpentier to a head. Carpentier agrees to deed his rights to the Oakland Waterfront Company. It is later discovered that Carpentier is President of the Oakland Waterfront Company!

#### <Courts place the tidelands in public ownership>

**1907** The Courts finally determine that the City of Oakland owns the Waterfront, ending a fifty-five year fight with Carpentier and the Central Railroad.

1926 City voters enact a charter amendment transferring administration of publicly owned tidelands to the Port of Oakland, a new semi-autonomous agency governed by the Board of Port Commissioners. - AUGUST 1, 2021  
LEAL CHARONNAT RESPONSE TO BROOKLYN BASIN MARINA DSEIR

1927 The first Board of Port Commissioners takes office.

#### <Oakland Municipal Airport's historic beginning>

1930 Sir Charles Kingsford-Smith wings into Oakland Municipal Airport from the east, becoming the first person to circumnavigate the world in an airplane.

1937 (May 20) Amelia Earhart takes off from Oakland Municipal Airport for her fateful attempt to circumnavigate the world.

#### <The rise and fall of the Waterfront as a passenger transportation hub>

1931 Francis Marion ("Borax") Smith dies. Possessing a \$30 million fortune from twenty mule team borax, he had settled in Oakland in the early 1900s and began buying streetcar lines. He called his system the Key Route. These transit lines converged at the Waterfront, where a major ferry system linked the East Bay and San Francisco. The Key System continued in service throughout the East Bay until it was absorbed into the Alameda-Contra Costa Transit District in ) 960.

1933 (July 9) Thousands gather at the base of Borax Smith's old Key Route mole to watch a dynamite blast, triggered telegraphically from the White House by President Franklin D. Roosevelt, break ground for the \$75 million Oakland-San Francisco Bay Bridge.

1936 The Oakland Bay Bridge opens to traffic. 46, 120 vehicles cross the bridge on the first day paying the 65 cent toll. (Incidentally, passage to South America from Oakland aboard a McCormick Lines passenger vessel cost \$3.50 per day).

By 1939 Key System trains had begun regular train service across the Bay Bridge, leading to demise of the Key Route and Southern Pacific ferries and the end of passenger travel through the West Oakland Waterfront

#### <1936- 1950 Waterfront emerges as a military supply depot>

1936 The U.S. Navy announces plans to construct a \$12 million, 390 acre Naval Supply Depot on Oakland's northwestern Waterfront to support ships of its Pacific Fleet.

1941 The U.S. War Department condemns 74 acres for an Army Depot.

By 1950 due to the Korean Conflict, the Oakland Army Base has become the busiest maritime facility on the Pacific Coast.

#### <The rise and fall of the Oakland Municipal Airport>

1937 United Airlines introduces Douglas DC-3's in its Oakland-New York service.

By 1941 United Airlines' Oakland-New York route boasted the heaviest ton-per-mile traffic volume in the world.

1943 Oakland Municipal Airport has become the marshaling point for all planes bound for the Pacific war effort. Civilian flights cease and Oakland's commercial flights are diverted to San Francisco for the duration of World War II.

1947 Oakland Municipal Airport is returned to Port control by the War Assets Administration. Civilian flights return to the Oakland Municipal Airport, but it fails to recover its Pre-War dominance. The Port launches a Fly Oakland campaign to discourage the wartime practice by airlines of transporting Bay Area passengers to San Francisco Airport.

#### <Post- War search for a new role for the Waterfront>

1949 Oakland's first freeway, a new 'high speed', six lane artery called the Eastshore Freeway, opens to traffic from Oak Street to 23rd Avenue.

1951 Jack London Square is officially dedicated.

1958 Oakland's first television station, KTVU Channel 2, begins broadcasting and eventually locates in a new studio at the foot of Washington Street.

1961 Construction of a convention hall (Goodman Hall) begins in Jack London Square along with the start of an eighty-nine berth marina.

1961 The Port Commission files a formal complaint with the CAB against eight airlines, claiming that they have accorded Oakland "inadequate and unjustly discriminatory service". The complaint is provoked by a fifty-six percent

drop in scheduled departures between 1955 and 1961, leaving Oakland with less than four percent of all Bay Area air passenger traffic. Oakland eventually won this lawsuit, forming the basis for airline deregulation.

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**1961** The West's first deep-water chemical terminal begins operation at the Port's Seventh Street unit.

**1962** The Port plays a key role in formation of the Oakland-Alameda Coliseum. The Port swaps 157 acres at the head of San Leandro Bay to the East Bay Regional Park District in exchange for 105 acres of park land across the freeway, which the Port in turn donates to the City as the site for the planned Oakland-Alameda County Coliseum sports complex.

**1966** Galbraith Golf Course opens on 169 acres south of the approach to Oakland International Airport.

**1967** Radio station KNEW goes on the air from the Port of Oakland building.

**1977** Dredging begins for four million dollars in improvements at Embarcadero Cove, where the Port will develop a 400 berth marina with state funding support.

#### <Oakland leaps ahead in containerized shipping technology>

**1962** S.S. Elizabethport, the world's largest freighter, arrives at the Port of Oakland's Outer Harbor Terminal to inaugurate inter-coastal container ship operations by Sea-Land Service, Inc. The Port has spent \$600,000 to upgrade Berths 8 and 9 to accommodate the line's revolutionary operations. Through the use of sealed trailers the shipper is able to load and unload a vessel in one-sixth the time of conventional ships. This reduces handling costs from some \$24 per ton to \$4 per ton.

**1965** The Port Commission approves a partnership with the newly established Bay Area Rapid Transit District, leading to construction of the Outer and Middle Harbors. In return for an easement to route the BART tube along Seventh Street, (through the old ferry mole which the Port had inherited from Southern Pacific Railroad), BART will demolish the deteriorated Southern Pacific facilities. In addition, as part of the agreement, 140 acres of the adjoining shallow portion of the bay are diked and filled to create land for the Middle Harbor Terminal. The fill material consists of rock, sand and gravel which BART excavates while constructing subways in downtown Oakland and Berkeley.

**1965** Sea-Land signs a twenty-year agreement with the Port for use of a 26 acre, two berth terminal to be built by the Port in the Outer Harbor.

**1968** Japan's six major steamship companies locate their U.S. container operations at the Port of Oakland. By this time the Port of Oakland had become the West Coast's largest container facility and the second largest container port in the United States, barely surpassed by the Port of New York. Oakland's annual container tonnage outpaces Rotterdam's.

**1969** The Port inaugurates container service between Oakland and Europe. Oakland now handles the second largest volume of containers among ports of the world, with annual container traffic exceeding three million tons.

**1974** American President Lines signs an agreement to shift its container operations from San Francisco to Oakland.

**1975** The 85-acre Middle Harbor Terminal, a \$35 million project, is now fully occupied.

**1977** A two berth, 32-acre Outer Harbor facility is completed and is occupied by a Japanese four-line consortium, whose ships now carry forty percent of all U.S. West Coast-Japan container trade. By 1978, cargo volume reaches ten million tons.

#### <Expansion of the Airport Complex>

**1965** Following five months of negotiations with a major Boston development firm, the Port decides not to sell the 700-acre Port Industrial Park (now the Airport Business Park). Studies suggest the Port can realize almost \$2 million more over the coming decade by developing the property itself. Indeed, in fiscal 1965, Port rental facilities earned more than 2 1/2 times as much as marine terminals offsetting an \$815,315 loss from airport operations.

**1973** Federal Express establishes Bay Area headquarters at Oakland International Airport.

**1975** UPS opens a 150,000 square foot regional terminal in Oakland Airport Business Park.

**1980** Construction begins on a new \$1.3 million Executive Terminal at Oakland International Airport's North Field.

#### <The Waterfront confronts a changing world>

##### Recovering Oakland's Competitive Position Among West Coast Ports:

- After seizing the initiative in containerized maritime traffic on the West Coast, the Port of Oakland has slipped to third place, after Los Angeles/Long Beach and Seattle/Tacoma, among West Coast ports.

The Port has confronted this challenge by seeking to improve its sea-rail/truck linkages on the shore and by deepening the harbor to accommodate larger ships. In 1986 Congress authorized a \$74 million dredging project and the initial stage of dredging began in September 1992. LEAL project and the initial stage of dredging began in September 1992. DSEIR - AUGUST 1, 2021

#### **Resurgence of Airport Operations:**

- In 1985, the Lionel J. Wilson Terminal opens at the Oakland International Airport, enabling it to achieve passenger volumes which are second in the Bay Area only to San Francisco International Airport.
- "Spin-off" employment grows with the expansion of airline maintenance operations, air cargo distribution facilities and traveler service industries.
- Environmental concerns and conflicts with residential developments on nearby land complicate prospects for future airport expansion.

#### **Rethinking the role of commercial development:**

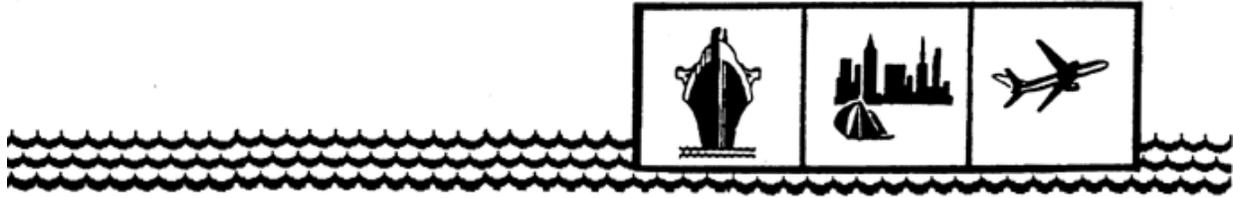
- In 1989, a major office and retail expansion of Jack London Square is completed, but nearly all of the new retail space remains vacant three years later. Setbacks at Jack London Square and continued difficulties at Jack London Village make the Port wary of further commercial projects.
- In 1992, the Port and Amtrak discuss construction of a long-haul passenger station at Jack London Square and the regional transportation agency considers increasing ferry service at Jack London Square. Both potential developments offer the prospect of increasing pedestrian traffic at Jack London Square.
- In 1990 - 1992, the Port, Oakland Coliseum and City of Oakland discuss the potential use of the Port-owned land across Highway 880 from the Coliseum. Consideration is given to using the land for either Coliseum parking or major retail tenants.

#### **Response to growing environmental concerns:**

- In 1976, the Port of Oakland donates 135 acres of shoreline and 495 acres of San Leandro Bay to the East Bay Regional Park District for public recreational use.
- The Port maintains some limited public access areas and mini-parks at sixteen locations along the Waterfront.
- Environmental objections delay the harbor dredging project for more than five years. Objections to bay fill at the airport confound runway expansions.
- In 1991, the State Legislature takes the first steps to implement a shoreline trail which will skirt the Waterfront. The Port and City are working to implement this plan in a manner which will increase Waterfront access without interfering with transportation operations.

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## League of Women Voters of Oakland Waterfront Study



### Chapter 4. Can the Waterfront be More than a Port?

The junction of land, sea and air transportation on our Waterfront gives Oakland a powerful competitive edge in economic development, but legal restrictions upon the use of tidelands and a lack of coordination between the Port and the City of Oakland may prevent us from realizing the Waterfront's full potential.

This chapter explores the evolution of Port transportation facilities and the institutional problems which are impeding development of the Waterfront.

#### The Waterfront as a Public Trust

In 1892 the United States Supreme Court bestowed a special legal status upon tideland areas, in the case of *Illinois Central R.R. v. Illinois*:

*"[T]he State holds title to soils under tidewater by common law. . . . But it is a title different in character from that which the State holds in lands intended for sale. . . . It is a title held in trust for the people of the State that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties."*

The public trust doctrine restricts the use and ownership of tidelands in California. As the California Supreme Court declared in a 1929 case (*City of Oakland v. Williams*), the use of tidelands ". . . must have some relation to and connection with, or be promotive of, the accomplishment of the main purpose, to wit, and development of improvement and up building of a harbor. . . ."

These cases, along with the State Tidelands Act, define the scope of the public trust doctrine. Recent changes in the law recognize that the public's interest also includes water-related recreation and conservation.

Beginning shortly after Oakland was incorporated, the State of California passed the tidelands to the City in about twenty separate grants. These lands must be operated under the public trust doctrine and in conformance with the terms of each original grant.

Today more than five thousand acres in Oakland are subject to this public trust doctrine, as administered by the Port of Oakland. This includes the shoreline, filled tidelands and vast dry land areas that were acquired with funds from wharf and other revenue-producing uses of the tidelands. Some parts of this area extend more than a mile inland from the water. Nearly all of Hegenberger Road, the land west of Highway 880 and more than two thousand acres of West Oakland are within Port jurisdiction.

#### Establishment of the Port of Oakland

In 1854 Oakland was incorporated and Horace W. Carpentier became its first mayor. At that time Carpentier was operating a ferry to San Francisco and a bridge across Lake Merritt. Within thirteen days after becoming mayor, Carpentier was granted "exclusive" use of the waterfront for thirty years. In return he pledged to pay the city five dollars plus two percent of wharfage fees. Citizens rebelled and expelled Carpentier from office in 1855. Under a new mayor the grant was repealed, provoking a lengthy court battle.

In 1868, when Oakland was being considered as the Western terminus for a transcontinental railway, the dispute was settled by Carpentier agreeing to deed his rights to the Oakland Waterfront Company. Only later was it discovered that Carpentier was president of the Oakland Waterfront Company. It was not until 1907 that the courts finally determined city ownership of the waterfront, ending the fifty-five year reign of Carpentier and the Central Pacific Railroad.

At a special election in December 1926, city voters enacted a Charter amendment transferring administration of the tidelands to the Port of Oakland, a new semi-autonomous agency governed by a Board of Port Commissioners. The Charter amendment granted the Port II . . . the complete and exclusive power. . . to do certain things, including take charge of and control the tidelands. . . granted to the City in trust by the State of California for the promotion and accommodation of commerce and navigation."

## Evolution of the Waterfront

In 1909 voters approved a \$2.5 million bond issue to build the first concrete pier on the West Coast. In 1925 voters approved another \$9.6 million in general obligation bonds for major harbor improvements. During the next decade new terminals were also built at Grove Street, Fourteenth Street, and Ninth Avenue.

In 1941 the Army and Navy took control of the Outer Harbor and more than four hundred acres of land for a military supply base serving the Pacific basin. The Naval Supply Depot and the Oakland Army Base remain in operation today, although the Port is considering converting part of the Naval Supply Depot to Port use.

In 1962 the Port embraced the new concept of containerization in intermodal transportation. By constructing container facilities ahead of other West Coast ports, cargo volumes grew rapidly and the Port of Oakland assumed a leading position in world trade. The Port now handles ninety percent of the container traffic in San Francisco Bay and is the fifth largest container port in the United States.

An airport was first established on the Waterfront in 1927, dedicated by Charles Lindbergh only twenty-nine days after he completed his historic solo flight across the Atlantic Ocean. In 1955 the voters approved a bond issue for construction of the Oakland International Airport. The former airport, North Field, remains in operation as a general aviation facility.

Oakland International Airport is now among the fastest growing airports in the nation, having served more than six million passengers last year. It is also the fifth largest air cargo facility in the nation.

Aviation operations have attracted subsidiary enterprises that provide a large number of jobs in Oakland. These include the United Airlines maintenance facility, (2,000 employees), Federal Express distribution center (375 employees), Alaska Airlines' maintenance facility (250 employees), National Airmotive Corporation (400 employees) and many service jobs in the restaurants and hotels along Hegenberger Road.

The Port is also responsible for development of any land that is not needed for aviation or maritime facilities. This includes commercial developments at Jack London Square, Embarcadero Cove and the Airport Business Park and Distribution Center.

In all, airports and marine terminal facilities occupy 3,218 acres of the Waterfront, commercial real estate comprises another 462.7 acres and 185 acres remain undeveloped. In 1991, Port revenue totaled \$103 million, of which 51.5% was derived from aviation operations, 40.2% from maritime facilities and 8.3% from commercial development.

### **An Economic Development Void?**

As the next chapter will discuss, transportation facilities on the Waterfront account for only a small portion of the jobs derived from Port operations. By far the greatest number of jobs are created by industries which rely upon the transportation facilities. For example, the Federal Express and the airline maintenance facilities employ substantially more people than the airport itself.

Therefore, in order to tap the full potential of the Waterfront, it is important to mount an economic development strategy aimed at attracting and retaining employers that rely upon the transportation facilities of the Port. However, two factors - both arising from the application of the tidelands trust -- confound economic development of Oakland's Waterfront.

#### **The Responsibility Vacuum:**

Traditionally, the Port of Oakland has focused its efforts narrowly on developing transportation facilities, rather than on the broader goal of economic development. The City of Oakland bears primary responsibility for the city's economic development strategic planning. However, the City concentrates its efforts on property outside the Waterfront. Consequently, although superior transportation is commonly viewed as one of Oakland's strongest competitive advantages, there is little coordination between the Port and City in tapping this strength. There is also little concentration in planning other uses of the Waterfront, such as housing and recreation.

#### **The Incentive Void:**

The tideland trust also alters the incentives for developing the Waterfront. Land operated by the Port is exempt from real estate taxes and is not encumbered with debt (although aviation and maritime facilities, such as terminals and cargo cranes, are encumbered by debt incurred in their construction). Nor are Port facilities required to produce a return on investment, as would be required of private investments in land or capital. In a free market system, debt service, land taxes and rate of return impose financial pressures which compel owners to place the land in the most beneficial use. Lacking such incentives, large tracts of Port land remain undeveloped or underutilized.

The existence of the tidelands trust and the clear definition of the Port of Oakland's mission has produced one of the

finest intermodal transportation facilities in the world. Ironically, the very nature of this public trust and its single-minded pursuit by the Port may have prevented Oakland from realizing the full potential of a Waterfront city.

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## League of Women Voters of Oakland Waterfront Study



### Chapter 5. The Pebble and the Pond

Oakland's Waterfront is one of the world's premier transportation centers. The intermodal Gateway has a highly efficient harbor with excellent truck and intercontinental rail connections. These civilian facilities are mirrored by Pacific Basin military logistical centers at the Naval Supply Depot and the Oakland Army Base. The Airport Complex provides commercial and general aviation services from two airports and serves as an important cargo hub.

These facilities are critical to the economic vitality of the Bay Area and the Central Valley. The Port of Oakland estimates that the marine terminals and airport directly or indirectly account for more than 300,000 jobs.

With such an impressive economic powerhouse in Oakland we assume that it naturally produces spin-off jobs and business in the local economy. By merely relying on this assumption, though, Oakland may be missing some important opportunities.

The economic impact of these facilities is much like dropping a pebble into a pond. Just as a pebble's impact is measured by the ripples that roll outward across the pond, the economic effects of Oakland's transportation facilities spread across a vast region. This leads to two critical questions:

- ▶ What is the impact of Oakland's transportation centers on the local, as distinct from the regional, economy?
- ▶ How can Oakland take full advantage of these transportation centers in its economic development?

This chapter analyzes the economic impact of the Waterfront and explores ways of increasing its impact on the local economy. It focuses on transportation because the marine terminals and airport have such a major presence on the Waterfront and because they give Oakland a competitive advantage over other cities. Other types of commercial opportunities, particularly in the Estuary Shore area (between Jack London Square and the Coliseum), are discussed in chapter seven.

#### How Big is The Splash? How Wide are the Ripples?

Recently the Port of Oakland commissioned studies of the economic impacts of the marine terminal and airport facilities. As shown in Table I, these studies found that the facilities generated four different types of jobs:

- ▶ *Direct employment* is the number of persons directly involved in the operation of the transportation facilities; such as cargo handlers, crane operators and customs officials.
- ▶ *Induced employment* is created in non-transportation industries as the immediate result of direct employees spending their wages on goods and services, such as food and housing.
- ▶ *Related employment* is in firms which rely to some degree upon the transportation facilities. This category includes manufacturers and farms which ship or receive goods through the Port, as well as suppliers and repair shops which support transportation operations.
- ▶ *Visitor industry employment* is in businesses used by people who travel through the Oakland International Airport. These include hotels, restaurants, entertainment and convention-related businesses.

	Marine Terminals	Airport
Direct (Bay Area)	6,692 jobs	6,134
Induced (Bay Area)	2,800 jobs	2,700
Related (Bay Area/State)	179,300 jobs	92,500

Visitor industry (Bay Area/State)	not applicable	42,200
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Table 1 does not show where the jobs are located. Because direct jobs are involved in the operation of the terminals, most of these are probably within Oakland. Jobs in the other three categories are dispersed across a much wider area. *Induced employment* is created wherever a *direct* employee spends income. *Related* jobs range from local industries, such as the NUMMI plant in Fremont, which must be near transportation facilities, to remote users such as farms in the Central Valley. *Visitor industry* jobs, while not as wide-ranging as related jobs, occur throughout the Bay Area, not just within Oakland.

Because of the distinctive character of direct and indirect jobs, different strategies are needed to maximize the direct and the indirect effects of the transportation facilities in the local economy.

### Increasing the Splash: The Direct Effects

Most *direct* jobs are within the marine and airport terminal areas, and so they have a visible impact on the local economy. Tables 2 and 3 show the job categories which comprise direct employment at the two facilities.

Table 2	
Direct Jobs - Marine Terminals	
Rail and truck transportation	2,112
Marine terminal operation	4,203
Port of Oakland	202
Banking/insurance	75
Port dependent exporters/importers	100
TOTAL	6,692

Table 3	
Direct Jobs - Airport	
Airline/airport operations	4,206
Freight transportation (FeEx, USPS, etc.)	1,052
Port of Oakland	341
Ground transportation (taxi/rental cars)	364
Construction/Consulting	171
TOTAL	6,134

There are two principal ways to increase the direct impact of the transportation facilities on the local economy:

- ▶ *Increase the volume of cargo and passengers passing through the facilities:*

The Port of Oakland estimates that 7.8 direct jobs are created for every one thousand dry cargo containers which pass through the marine terminals. Increases in passenger and cargo traffic in the Airport Complex also create new direct jobs, additional visitor industry and related jobs in associated industries such as hotels, restaurants and suppliers.

Consequently, the Port of Oakland has placed significant emphasis on maintaining the competitive position of the transportation facilities. Recent proposals to deepen the harbor channel and realign dockside land connections are linked to the goal of increasing direct employment at the terminals.

- ▶ *Maximize immediate effects on the local economy:*

Some aspects of marine terminal and airport operation can be targeted so as to maximize their impact on the local economy.

One such target is the hiring of residents for direct jobs. As Tables 2 and 3 indicate, nearly all of the direct jobs are in private companies, with the Port of Oakland accounting for only about five hundred direct jobs. As discussed below, the Port of Oakland has recently undertaken efforts to encourage its tenants to train and hire local residents. Targeted training programs in public schools and community colleges can also help increase the degree of local hiring.

Local impacts can also be increased by encouraging the use of local support businesses, such as parts suppliers and repair firms. Some direct business opportunities are available, such as airport concessions, which can be used to create opportunities for local residents.

Despite the number of *direct* jobs, this impact comes at a high price. If we assume that all the *direct* jobs in Table 2 are actually in the marine terminal area, this facility would produce an average of six jobs per acre - less than the residential density of Walnut Creek and less intensive than many agricultural operations. - AUGUST 1, 2021

The marine terminals and airport are vast, highly mechanized facilities. Therefore, the challenge is not simply to increase utilization of the facilities - the splash - but to capture a greater share of the ripples which they generate:

### **Capturing the Ripples: The Secondary Impacts**

How can Oakland capture a greater share of the secondary effects of its outstanding land, air and sea connections? The answer lies in defining the competitive advantage which these facilities offer.

The relationship between competitive advantage and the creation of spin-off business opportunities can be seen in the Airport Complex. The Oakland International Airport is centrally located on the West Coast, is conveniently linked to ground transportation and has vacant land adjacent to it. This combination of assets has attracted three types of related commerce:

- ▶ *Airline maintenance:* Alaska Airlines, United Airlines, and National Airmotive have maintenance operations in the Airport Complex, accounting for more than one thousand jobs (Classified as direct jobs in Table 3). In addition, a variety of smaller scale repair and parts supply businesses are located at North Field. Metal working shops in East Oakland also benefit from these airline maintenance operations.
- ▶ *Distribution:* Federal Express and the United States Postal Service are also major employers in the Airport Complex, accounting for more than me thousand jobs (Classified as direct jobs in Table 3).
- ▶ *Traveler Services:* Hotels, restaurants and car rental companies are located on Port of Oakland land at the airport and along Hegenberger Road. The amount of local visitor industry employment depends upon both the volume of passengers using the Oakland International Airport and passengers' selection of Oakland services, rather than those in neighboring cities.

Although the competitive advantage of the airport is relatively well defined, the Port has encountered difficulty in expanding airport-related enterprise. About twenty years ago the Port developed the Airport Business Park north of the junction of the Nimitz Freeway and Hegenberger Road. Originally envisioned as an ideal site for businesses which require convenient land and air connections, today few of its occupants are airport-related.

The competitive advantage offered by the marine terminals is less apparent. Possibly due to the lack of vacant land, there are few warehouse, distribution and related manufacturing or commercial operations near the marine terminals. While there are several types of local businesses which are closely associated with the marine terminals, such as container repair and trucking firms, the secondary impacts of this facility on the Oakland economy is poorly defined. Moreover, it is not clear what types of new businesses and industries Oakland might seek to attract based upon its superb land/sea/air connections.

A possible secondary impact of the marine terminals is the recent location in Oakland of the corporate headquarters of American President Lines, NOL and Crowley Maritime Corporation. Undoubtedly, the ocean terminal gives Oakland prestige which can be used in marketing the city generally.

### **A Responsibility Vacuum?**

Cooperation among a variety of local agencies is the key to tapping the economic potential of the Waterfront. This cooperation comes into play in three major areas:

- ▶ Creating employment and training opportunities.
- ▶ Maximizing local business opportunities.
- ▶ Attracting and retaining businesses which rely on service the transportation facilities.

The Port of Oakland is a key player in each of these areas because it is responsible for operating the airport and marine terminals. However, the Port has traditionally taken a narrow view of its role in creating spin-off economic effects and has limited its mission to expanding the use of its facilities. This can increase the number of direct jobs, but neglects the larger potential offered by secondary businesses.

The broader goal of economic development - employment and training opportunities, small business development and the attraction and retention of related businesses - has been left primarily to the City of Oakland. However, the City has tended to defer to the Port's exclusive jurisdiction over the tidelands. Consequently, neither agency has systematically defined Oakland's competitive advantage in transportation, nor aggressively sought to maximize local benefits from these operations.

During the past year the City and Port began several joint efforts to increase local economic benefits from the

transportation facilities. Significantly, these initiatives include other essential players, including high schools and community colleges, the Private Industry Council and business and labor organizations. These initiatives include:

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- ▶ Aviation Academy: The Oakland Unified School District, the Port and several business and training organizations are pursuing establishment of an aviation maintenance training program at Castlemont High School. This program would be aimed at providing high school graduates with the skills and certificates necessary for employment in the aircraft maintenance industry. The Peralta Community College District has also been involved in this project to provide related training beyond high school.
  
  - ▶ Direct jobs and business opportunities: The Port's Equal Opportunity Division has expanded efforts to encourage affirmative action in hiring and contracting by the Port and Port tenants. In addition, the Employment Resources Program assists Oakland's unemployed and underemployed residents in finding employment with Port tenants.
  
  - ▶ Education and training: Several collaborative efforts, involving City and County governments, educational institutions and business and labor organizations have sought to improve the projection of labor market trends. While not aimed exclusively at transportation-related employment, these efforts can improve our ability to target education and training programs at job categories needed by local industries, including those related to the air and marine terminals.
  
  - ▶ Port Customer Council: Last year an organization consisting of Port tenants and directly associated businesses was formed. Its purpose includes increasing involvement of its members in the Oakland business community.
  
  - ▶ Port/neighbor relationships: The Port has a special need to develop partnerships within areas, such as the Coliseum area and West Oakland, which are adjacent to its operations. Currently, the Port is involved in community efforts affecting its jurisdiction and surrounding properties. These include the possible formation of the Coliseum Redevelopment Area, planning of the replacement of the Cypress section of Highway 880, and solving difficult problems such as toxic contamination and truck parking in areas adjacent to the Port.

### **Catching the Wave**

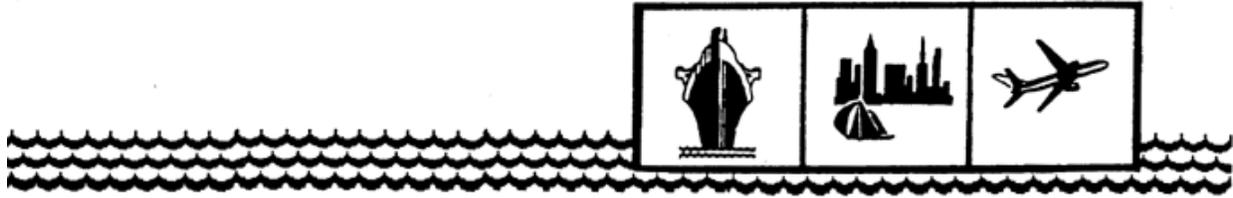
By all appearances Oakland's Waterfront is an economic powerhouse. Few cities are endowed with such efficient air, sea and land transportation facilities, centered in an economy as rich as California. However, the benefits of these facilities are spread throughout a wide region.

Oakland derives important direct effects from these facilities. To obtain the lucrative secondary effects, though, requires an accurate understanding the comparative advantage that these facilities offer and collaboration among a variety of local governmental agencies and the business and labor communities to tap that potential.

We have seen the beginning of this collaboration. Its ultimate success will determine how many of the ripples from these important regional facilities will be felt in Oakland's economy.

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## League of Women Voters of Oakland Waterfront Study



### Chapter 6. The Outward View

Oakland is blessed with a beautiful, lively shoreline that serves as a gathering point for exercise, contemplation, conversation and celebration. Accessible to all, it provides common ground for our diverse community and is a singular place of beauty.

This wonderful urban space is the three miles of shoreline along Lake Merritt. It is the heart of Oakland, central to our city and community life. It is Oakland's inward view.

Oakland has another nineteen miles of shoreline - from the wild marshlands of San Leandro Bay; northward along the Estuary, teeming with water craft of every imaginable type; past the gigantic cranes of the Outer Harbor to the free-spirited sculptures on the Emeryville tidelands. This shoreline offers vistas and wildlife, fun and adventure, and dreams of distant worlds. This is Oakland's outward view.

#### Oakland's Historic Retreat from the Waterfront

Although Oakland has more bay shoreline than any Bay Area city, it lacks identity as a waterfront city.

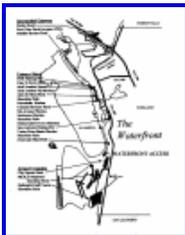
Oakland once touched its shore, when ferry terminals, warehouses and shipyards clustered at the northern Waterfront and fisheries lined the Estuary. Beginning in the 1930's, though, Oakland withdrew from the shore.

The rail tracks along the shoreline always posed somewhat of a barrier, but until the late 1930's ferry terminals and industries drew people to the Waterfront nonetheless. Eventually ferry travel declined, industries closed and new obstructions arose.

World War II brought military bases which excluded the public from the most of the northern Waterfront for reasons of national security. Freeways added a formidable obstacle and the growth of highly mechanized container facilities further restricted access to the Waterfront.

Today there is little public access to the shoreline and the Waterfront is detached from Oakland's business and residential districts. Even Jack London Square is isolated from downtown and the Oakland Convention Center.

#### Where Can We Touch the Water?



This study has divided the Waterfront into three areas, the Intermodal Gateway, the Estuary Shore and the Airport Complex. Just as each has a distinct character, defined by topography, industries and land uses; so too do the recreational and aesthetic opportunities differ among the areas of the Waterfront.

Map One shows the public access points on the Waterfront. The following provides a general description of each area.

#### The Intermodal Gateway

**Major Features:** This is one of the world's great land/sea transportation hubs. The enormous cargo cranes and container ships convey a sense of power and importance. This is one of the most exciting parts of the Waterfront. However, the large military reservations and concerns for public safety in the marine terminal area have restricted access to this area.

**Public Access:** Currently there is only one public access point in the Intermodal Gateway, a one-acre park in the Middle Harbor. Until recently, access was also available at Port View Park, a 4.5 acre area containing an observation platform. This park was closed after the Loma Prieta Earthquake, and will be reopened after the Port of Oakland completes the relocation of Seventh Street late next year.

#### The Estuary Shore

**Major Features:** The Estuary is a lively "water boulevard" with an unending parade of water crafts. It also offers a wide variety of recreation, including boating, fishing and jet skiing. The shoreline contains restaurants, small boat

repair and other commercial enterprises, many of which are water oriented.

**Public Access:** There are several mini-parks and fishing piers in this area. Water-oriented commercial developments and marinas are concentrated at Jack London Square and Embarcadero Cove. The new ferry service from Jack London Square revives passenger travel through the Waterfront, and offers commuters wonderful contact with life on the Estuary. The Potomac, FDR's Presidential yacht is docked at Jack London Square and houses a small museum. Bike and pedestrian pathways have been constructed along several sections of the Estuary Shore, but the lack of a continuous pathway prevents travel for any significant distance.

### The Airport Complex

**Major Features:** The undeveloped shoreline of this area, curving along San Leandro and San Francisco Bays, offers sparkling vistas. The extensive wetlands, marshes and sloughs contain an amazing array of wildlife.

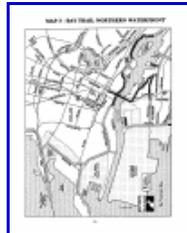
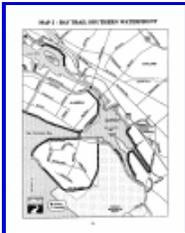
**Public Access:** Martin Luther King, Jr. Regional Shoreline Park is 565 acres of dedicated open space consisting of bay and wetland. A trail system provides restricted access to delicate natural areas and along Tidal Canal and Doolittle Pond. Picnic areas, boat launch facilities and fishing piers are also available at the park. Galbraith Golf Course is located southeast of the Oakland International Airport. The future of this facility is in doubt, since the Port of Oakland has selected it as a disposal site for dredge spoils.

### A New Approach to the Water: The Bay Trail

Another form of public access is by pedestrian and bike trail. Only a few miles of trail are presently available, but a new effort has begun to develop a continuous path along the Waterfront and between the Waterfront and inland attractions.

In 1987, the State Legislature adopted Senate Bill 100 to authorize planning of a trail around San Francisco and San Pablo Bays. The Association of Bay Area Governments (ABAG) was assigned the task of coordinating the trail's development.

The Bay Trail Plan, adopted in 1989, is a 400-mile network of multi-use pathways through all nine Bay Area counties. The key component of the system is a "spine trail" which will create a continuous path around the Bay. "Spur trails" will connect points of natural, historic and cultural interest along the shoreline and "connector trails" will link the main trail to recreational sites, residential areas and employment centers inland from the bay.



Maps Two and Three show the proposed trail network within Oakland.

The main trail will ultimately provide a continuous pathway along the entire Waterfront. Spur and connector trails will link the Waterfront westward to the Alameda City bayfront and eastward to other trail systems, such as around Lake Merritt.

The problems which must be overcome to complete the Bay Trail on Oakland's Waterfront illustrate the difficulty of obtaining public access within an intensely developed area.

- ▶ While some sections of the Bay Trail will be on exclusive bike/pedestrian paths, most will utilize existing public streets and sidewalks. This compromises the recreational experience and results in a conflict between automobile and bike or pedestrian traffic.
- ▶ Some parts of the Waterfront are so heavily developed that a continuous pathway cannot be built along the shore. For example, shoreline industries in the High Street and the Twenty-ninth Avenue areas cause the Bay Trail to be located several blocks from the water.
- ▶ Since the Intermodal Gateway is a major truck and rail hub, heavy traffic and the presence of tracks in public streets pose hazards to bicyclists and pedestrians. The Port, City and ABAG are working to solve these problems, such as by designing protected pathways along existing streets.

A total of 21 miles of Bay Trail is planned for Oakland's Waterfront. At present, 8.5 miles have been completed, consisting of 6 miles in the Airport Complex and 2.5 miles in the Estuary Shore. Another 1.5 miles (of a planned 7 miles) are now under construction in the Intermodal Gateway.

### Vistas and Visions

Two questions are paramount in considering the future development of public access to the Waterfront:

- ▶ How can we develop public access which highlights the unique character of each area of Oakland's Waterfront?
- ▶ How can we improve the relationship between Oakland's community life and the waterfront?

Response to the first question begins with recognition of the distinct aesthetic, recreational and educational potential of each area of the Waterfront and the problems which must be overcome to tap that potential.

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For example, the Intermodal Gateway conveys an awesome impression of international commerce and seafaring adventure. However, safety considerations restrict public access within the marine terminal. The challenge is to provide view opportunities without endangering the public.

In 1986, the Bay Area Partnership convened a workshop to explore new visions for Oakland's western gateway. This led to the realization that, although several hundred thousand people cross the Bay Bridge each day, harbor operations are obscured from view. The workshop resulted in drawings which showed how view corridors could be created from the roadway and a vista point could be developed near the Toll Plaza. Views from these points would display a powerful image of Oakland and enable the public to capture the excitement of the harbor, without interfering with Port operations.

The second question involves recovering Oakland's heritage as a Waterfront city. Its answer has both a physical and an educational aspect.

The physical orientation of Oakland is inward. To recover the identity of a Waterfront city, we must form links from the downtown and neighborhoods to the shoreline and create public spaces at important points along the Waterfront. The Bay Trail, with its connections to inland parts of Oakland, is an excellent start. A continuous pathway between Jack London Square and Lake Merritt, for example, would once again link the Waterfront and the downtown. The proposal to locate Oakland's Amtrak terminal at Jack London Square would also help restore the Waterfront as a crossroad of passenger travel.

The educational aspect of public access is often ignored. As a Waterfront city, Oakland has an especially rich heritage and great educational opportunities. Port operations are a vivid example of international business, world history and geography. The intercontinental railroad, World War II shipyards and early aviation adventures at North Field are not only an integral part of our local heritage, but also lead to a broader understanding of the social and economic changes which shaped our nation. The marshland of San Leandro Bay is an unexcelled laboratory of marine life.

Not only should our schools use the assets of our Waterfront, but public access points should also include interpretive programs to teach and inspire.

### **Looking Outward at the Possibilities**

The central role which Lake Merritt plays in Oakland's community life illustrates the vitality that a shoreline gives to a city. However, Oakland's other shoreline - its outward view - is detached from community life.

The power of a harbor, the challenge of sailing and fishing, the energy of shoreline commerce and contact with our natural environment are only available in waterfront cities. These are assets that we can capture by once again looking outward to Oakland's Waterfront.

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## League of Women Voters of Oakland Waterfront Study



### Chapter 7: The Estuary Shore: A Mixture or A Recipe

This study has divided Oakland's nineteen miles of shoreline into three areas, each having a distinct character and function. The northern Waterfront is the Intermodal Gateway, with massive ocean, rail and truck terminals. The southern Waterfront, the Airport Complex, is an air passenger and cargo center, including two airports and distribution, hotel and other related services. The area between Jack London Square and the Coliseum is referred to as the Estuary Shore.

Unlike the other two areas, the Estuary Shore has limited utility for air or marine terminals. Instead, it contains an array of activities unrelated to transportation and largely unrelated to the water. It is comprised of neighborhoods which mirror their inland counterparts, though cut off by Highway 880.

The Oakland/ Alameda estuary is probably the most vibrant waterway in the Bay Area. Its narrowness concentrates water crafts, fishing and water sports on an ever changing "water highway". The visual experience from the shore is comparable to the urban river fronts of cities like New Orleans, St. Louis and Pittsburgh.

The Estuary Shore offers great potential as Oakland's threshold on the bay. To realize that goal requires a vision and coordination between the City government and the Port of Oakland.

Recently, the Port and City have begun to collaborate on issues of mutual concern, including land use. This is especially important in the Estuary Shore, since it is nearly evenly divided between Port and City jurisdiction. The Estuary Shore has wonderful ingredients, but the City and Port have yet to combine them into a recipe which features the best qualities of Oakland's Waterfront.

#### The Ingredients: The Neighborhoods of the Estuary Shore

As shown on Map One, the Estuary Shore is a patchwork of industrial, commercial and residential activities. They are organized in three distinct neighborhoods:



▶ *Jack London Square/Produce Market District*

The northern section of the Estuary Shore is an important mixed-use district. The most prominent feature is Jack London Square. It is surrounded by the hardware and discount retail stores along Second and Third Streets, the thriving Oakland Produce Market and a growing office and live/work district containing many small businesses, as well as the international headquarters of Safeway Stores. Given the type and variety of uses, as a whole the district is closely related to the downtown.

▶ *Embarcadero Crescent*

The crescent of shoreline across from Coast Guard Island, from the mouth of Lake Merritt Channel to Embarcadero Cove, is undergoing a slow transition. Fifth Avenue and Seabreeze Marinas, situated south of Lake Merritt Channel, are in disrepair. The Ninth Avenue Terminal is the only cargo facility remaining in the area, its use restricted by the shallow depth of Webster Street Tube. South of the terminals are three restaurants, marine supply stores and an aging dry-dock. Between Executive Inn and Park Street (29th Street) Bridge, the Port has developed Estuary Cove, consisting of several restaurants, a marina and more than one hundred thousand square feet of offices.

▶ *High Street/Fruitvale Avenue*

From Park Street Bridge to the Coliseum is a mixture of heavy and light industries; including a recycling plant, a lumber mill, cargo container repair and storage facilities and processing installations. Distribution and other small businesses are scattered throughout the area. The vacant acreage across from the Coliseum is being considered by the City for a major retail center. Tucked among these commercial uses are an active

residential neighborhood, containing single family houses and live/work studios.

Although these areas mirror inland neighborhoods of Oakland they are treated differently because planning authority in this area is split between the City government and the Port of Oakland.

### **The Chefs: The City and the Port**

In 1926, the City Charter was amended to create the Port of Oakland, an independent department responsible for administering the City's tideland area. Among the powers granted to the Port was the regulation of land use.

Today the Port exercises planning and zoning control over those portions of the Estuary Shore which were formerly tidelands. The balance - roughly half of the area - is within City jurisdiction. The Port Commission decides land use issues in the Port area, while the City Planning Commission or City Council regulates the rest.

The City and Port exercise their planning powers quite differently. This accounts for some of the development patterns and is the primary reason for the lack of a master plan for the area.

- ▶ Traditional zoning: The City follows traditional zoning practices by classifying land into General Plan and zoning categories. This method is intended to separate incompatible land uses and establish patterns of future development.
- ▶ Opportunity-driven zoning: The Port uses an opportunity-driven model of zoning, leaving land unzoned and allowing the marketplace to dictate its ultimate use.

This divided jurisdiction also exists in other areas of the Waterfront. For example, the south side of Hegenberger Road is within City jurisdiction while the north side is under the Port's authority. However, the impact of the agencies' differing approaches is most apparent in the Estuary Shore, due to its mixture of land uses and its nearly even division between the City and Port jurisdiction.

Each part of the Estuary Shore is affected differently by the division of authority between the City and Port. For example:

- ▶ *Jack London Square/Produce Market District*

The newly redesigned Jack London Square stands as an island, visually distinct: from its surrounding neighborhood and physically isolated from downtown convention and regional transportation facilities. Coordination is needed between the City and the Port in the promotion of Jack London Square as a destination and in the development of the surrounding non-Port land.

For example, the Oakland Produce Market is one of the city's most active and unique market areas, but its future is clouded by a change of ownership and congestion. In addition, with two new live-work projects presently under consideration, this area is gaining a significant residential population. The future direction of the marketplace, the developing new night life on lower Broadway and the growing small business and live/work community in the area - all within City jurisdiction - can attract: new activity into this area and help overcome the isolation imposed by the freeway.

- ▶ *Embarcadero Crescent*

The shoreline between Lake Merritt Channel and Embarcadero Cove offers excellent views of the waterway, but the area remains isolated and lacking an overall plan for taking advantage of this important amenity.

The Port has developed an attractive: water-oriented center at Embarcadero Cove, but other sections have been developed without an overall plan. For example, although restaurants on the northern part of the crescent have been required to install public access on their bay frontages, the boardwalks have been constructed on an ad hoc basis and are not connected to one another except through parking lots or along public roadways.

- ▶ *High Street/Fruitvale Avenue*

This area is an important part of East Oakland's employment base. However, past economic development efforts have sometimes been stymied by an apparent reluctance by the Port to participate in area-wide economic development efforts. Traffic circulation and other improvements and the buffering of the residential neighborhood require cooperation between the Port and the City.

Recently, the City and Port have begun to work more closely on issues of mutual concern. The respective planning staffs of the City and Port began meeting regularly last summer. In early December subcommittees of the City Planning Commission and Port Commission will begin meeting to improve coordination of land use decision-making.

In recent years the Port has also played a more active role in economic development issues, especially in the Coliseum and airport areas.

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Besides creating new vehicles for City/Port collaboration, two important planning efforts offer the potential of defining a new vision for the Waterfront:

- ▶ Land Use Element Update: Beginning next year, the City will begin updating the Land Use Element of the General Plan. The present General Plan designates virtually all of the land within Port jurisdiction as "Industrial". Clearly, this is not an accurate description of the present or potential uses of much of the Waterfront, especially within the Estuary Shore.
- ▶ "OSCAR" (Open Space Conservation and Recreation Element of the General Plan): The City also is currently revising the Open Space and Conservation Element of the General Plan. This will help define important shoreline recreational, ecological and visual resources which should be preserved or emphasized in future development of the area.

### Searching for a Recipe

The Estuary Shore can become an amenity equal to other famous river fronts and urban shorelines. Map Two was prepared by the architectural firm of Van Meter Williams Pollack to illustrate methods of strengthening the identity of the Estuary Shore and its relationship with inland Oakland. The illustration emphasizes three important elements:



- ▶ Linkages: Physical connections between the shore and inland Oakland can help overcome the formidable physical barrier that Highway 880 presents. Internal linkages can strengthen the identity of the area with the waterway. Several roadways, including Broadway, Twenty-Ninth Avenue, Fruitvale Avenue and High Street provide important links with inland neighborhoods. Pedestrian/bike pathways between Lake Merritt and Estuary Park and north and south along the shoreline would also invigorate the area.
- ▶ Gathering Points: Major access points, such as Estuary Park, Jack London Square and Estuary Cove and mini-parks and shoreline trails provide important focal points for the area. The ferries and future Amtrak station at Jack London Square also are important means of attracting people to the Waterfront and making the shoreline a vital part of Oakland.
- ▶ Commercial and residential revitalization: Improving the vitality of commercial and residential neighborhoods within the Waterfront is also critical. Opportunities include the Produce Market, live/work and other residential opportunities and improving traffic circulation within the Fruitvale and High Street areas.

The Estuary Shore is Oakland's threshold to the water. Here, perhaps more than in any other part of the Waterfront, vision and City-Port cooperation is essential. Hopefully, the recent Port/City cooperative efforts and new planning processes will lead to a recipe for reconnecting Oakland to its shoreline.

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## League of Women Voters of Oakland Waterfront Study



### Chapter 8. The Stealth Waterfront

The Naval Supply Center and the Oakland Army Base occupy nearly eight hundred acres of the Waterfront in West Oakland. The future of these installations is in doubt - bringing great risk or, perhaps, important new opportunities for Oakland.

The threat of closure has hung over the Oakland Naval Supply Center and other closely related facilities in the Bay Area for several years. Recently, the Defense Department placed this installation on the 1993 base closure list. While local officials have argued that this facility should be retained as a ship pre-positioning service center, there is a strong likelihood that this facility will be closed in the near future, regardless of the fate of other Bay Area bases. The Oakland Army Base is not on the current closure list, but its long-term future remains in doubt with the continued reduction in the nation's military forces.

The local military installations provide a large number of relatively well-paid blue collar and service jobs. The closure of one or both of Oakland's bases would not only sacrifice these jobs, but would also damage the supply, security and other local businesses which serve the bases.

If either of these bases were closed, there is little doubt that, given the pivotal position of this land on the Waterfront, the area could ultimately be restored as a valuable asset. The Port of Oakland, for example, has prepared a plan for conversion of the Naval Supply Center if closure is ordered. However, during the time required for planning, environmental clean-up and conversion to civilian use, Oakland's economy would suffer greatly.

The dilemma, then, is whether Oakland should make contingency plans now, particularly in relation to the Oakland Army Base which is not presently faced with a specific closure threat, or whether such planning might actually make conversion more likely. By exploring future opportunities, are we increasing the immediate risks?

#### The Military Role of the Bases

In 1939, the Navy purchased five hundred acres of marsh and submerged tideland from the City of Oakland for one dollar and combined it with land acquired from two railroads to create a place for the Naval Supply Depot. Three-and-a-half-million cubic yards of fill were dredged from the Bay and more was brought in from the Oakland hills to prepare the site. The Depot was activated only eight days after the raid on Pearl Harbor, and it quickly grew to an enormous logistical machine for the Pacific Theater. The Oakland Army Base was established in 1941 to provide a similar facility for the Army.

Today the Naval Supply Center supports naval operations in the Pacific and Indian Oceans. It maintains a "surge" capacity in emergencies, such as the Persian Gulf War. Customers include repair facilities at the Alameda Naval Aviation Depot, western Pacific supply centers, such as Pearl Harbor, and the aircraft carrier USN Abraham Lincoln which is stationed at Alameda. Since 1990, the Defense Logistics Agency, servicing all branches of the military, has managed distribution from the Center. The Center now houses more than 50,000 different items valued at \$2.5 billion and provides world-wide customer service.

The Oakland Army Base is headquarters for the Military Traffic Management Command which coordinates Department of Defense passenger and freight traffic in the twenty western states. It controls all sea-level cargo between the mainland and Pacific Basin. It also operates ocean terminals and outports, including the Bay Area Military Ocean Terminal. In addition, the Oakland Army Base monitors airlift traffic and manages shipment and storage of personal property for the armed services. Two of its largest tenants are a warehouse operation supporting Army and Air Force Post Exchange stores in the western states and Pacific and the Navy Public Works Center which constructs and maintains military facilities in the Bay Area.

#### Economic Impact of the Bases

Naval operations in Oakland and at the Alameda Naval Air Station currently employ 8,605 civilian workers, causing the Navy to be Alameda County's largest employer. The Army employs approximately 2,750 civilian and 570 military personnel at its local facilities. The civilian figures include Oak Knoll Hospital, the Naval Supply Center, the Alameda Naval Air Station and Treasure Island.

Subsidiary economy benefits come from contracts and supply purchases, which totaled \$124 million at the Oakland Army Base and \$27.5 million at the Naval Supply Center in 1991. Mainly due to federal procurement policies, Alameda County has the highest per-capita minority and women-owned businesses in California. Many contracts go to Oakland maritime, transportation and security firms.

According to a recent survey at naval facilities in Alameda, over half of the civilian workers are minorities, with an average age of 42 and an average of 16.5 years of service. The work force has unique and specialized skills, but has limited formal education. These data show that workers dislocated by base closure would experience great difficulty finding stable alternative employment in the local economy.

### **The Uncertain Future of the Bases**

The end of the Cold War and the federal budget crunch have led to down-sizing of United States military and closure of one-fourth of our nation's military installations. To achieve this end, the federal government has developed a process for selecting facilities for closure and a procedure for converting bases to civilian uses.

The Alameda Naval Air Station and related activities at the Naval Supply Center and Oak Knoll Naval Hospital were initially included on the 1991 Defense Base Closure List. Only after intensive lobbying by local officials were these facilities removed from the list. The local effort was organized through the Alameda County Base Retention Tactical Committee, a coalition of elected officials and business and labor representatives. This facility was placed back on the 1993 closure list, along with the Naval Supply Center, Treasure Island, Oak Knoll Naval Hospital and Mare Island Naval Shipyard. Even if any of these installations are removed from the current list, they could be future base closure lists as could the Oakland Army Base.

Presently, the Defense Base Closure and Realignment Commission is considering the fate of local bases. After Commission review, a revised list will be sent to the President for final action. Congress will act on the list this Fall, but its action will be limited to approval or disapproval of the complete list as issued by the President. The same procedure will be followed in 1995 and possibly in subsequent years.

Representative Ron Dellums (D-Oakland), Chair of the House Armed Services Committee, has argued that, even if military expenditures are cut as much as fifty percent and the number of United States aircraft carriers is reduced from fifteen to seven, there will continue to be a need to base three carriers on the Pacific Ocean. He believes that the local bases offer the only West Coast facility with full operational support for the newest Nimitz-class aircraft carriers and presently certified to homeport three such carriers.

Despite this, there is fierce competition among West Coast ports and Bay Area bases remain at considerable risk. Nearly \$200 million, of a total \$485 million budget allocation, has already been spent for construction of an aircraft carrier base in Everett, Washington, the home state of House Speaker Thomas Foley.

Recent competition has also arisen over the location of logistical centers to serve the nation's newly reconfigured naval fleet. As part of Post-Cold War military down-sizing, the Navy plans to establish one or two ship pre-positioning centers in the United States to replace overseas military bases. Such centers would maintain and service supply ships which would remain at sea, ready for deployment. The Navy has four such ships afloat now and plans to increase the number to fifteen or sixteen.

The Bay Area and Charleston, South Carolina are the leading contenders for designation as this new type of logistical center. Existing facilities at the Oakland Naval Supply Center, Alameda Naval Aviation Depot and Concord Naval Weapons Center can be upgraded for this purpose at a cost of only six million dollars, while a similar capacity at Charleston would cost \$60 to \$80 million. Moreover, the local installations have superior land-sea connections. The Bay Area's success in this competition may decide the fate of the local bases.

### **Pitfalls of the Conversion Process**

If closure of any of the local military installations becomes necessary, a major effort would be urgently needed to minimize dislocations and delays in the conversion process. Federal law provides for assistance, but the speed and nature of the transition is dependent upon the response of the local community.

In 1961 Congress enacted the Defense Economic Adjustment Program to help communities predict and resolve problems caused by military program changes. Thus far it has been applied to more than four hundred communities. Results in these communities offer hope that conversion can lead to long-term economic and social benefits. An average of more than 1.5 new civilian jobs have been created for every civilian job lost due to base closure, although it has sometimes taken as long as ten years for this adjustment. Some areas have fared much worse than others. In the late 1960's, Mobile, Alabama, lost more than twelve thousand jobs and gained only three thousand.

Most of the larger closures on which this record is based occurred before 1977, during a period of national economic expansion. Therefore, it may not be valid to extrapolate from this experience to the 1990's economy, fraught with structural deficiencies and fewer opportunities for low-skill or less-educated workers. Moreover, local dislocations could be greater due to Oakland's high unemployment rate.

Based upon past experience with base closures, the following are some ingredients for successful conversions:

- ▶ Avoid delaying pre-planning and community involvement.

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- ▶ If closure is required, negotiate as much lead time as possible.
  
- ▶ Bargain hard with the federal government on price of the land and the costs and responsibilities which the local government must bear in conversion. In converting Hunters Point Naval Shipyard in San Francisco, the Navy sought to make the City responsible for nearly one million dollars in new police and fire equipment and over three million dollars a year for police, fire and security services during redevelopment.
  
- ▶ Beware of costly or complicated environmental hazards.

The presence of contamination is a critical issue, not only due to the cost of clean-up but also because it can delay re-use of the land. Only properties which are certified as posing no public health risk can be transferred. For example, a twenty-eight acre contaminated landfill at the deactivated Hamilton Air Force Base in Novato has delayed plans to build housing and commercial space. An impermeable cap and groundwater treatment system for this toxic dump will cost twenty-five million dollars. The San Francisco Bay Regional Water Quality Control Board has questioned this solution, causing the dump to remain fenced and undevelopable for the present.

Usually very little federal money is available for investigation of environmental hazards until a base is actually scheduled for closure. Consequently, both Oakland bases have received only preliminary evaluations showing that:

- ▶ The Oakland Army Base has no known dump/landfill sites, waste treatment facilities or PCB transformers. Groundwater monitoring wells have been installed, soil borings have been taken to test for contamination and to monitor possible trouble spots, such as from silver nitrate contamination from photography laboratories.
  
- ▶ Potential problems loom larger at the Naval Supply Center, which has twenty-two sites under review. A closure plan for one hazardous waste storage area is being developed and an asbestos survey is being conducted.
  
- ▶ Both bases are actively involved in identifying and correcting problems associated with underground storage tanks.

#### **Planning Now for Conversion - Harmful or Helpful?**

Local officials have tended to discourage discussion of conversion as counterproductive during lobbying efforts to retain the bases. Others question the validity of this position, sometimes even whether such lobbying should proceed at all.

Nonetheless, two limited local efforts have begun which explore contingencies in advance of any decision to close either or both of the bases. The first was initiated by the City of Oakland. At the request of the City Council Legislation and Long-Term Planning Committee, the Office of Economic Development and Employment has been compiling data from other areas undergoing base closure, examining their re-use strategies and gathering names of consultants.

Ordinarily, no federal funds are available for contingency planning until a facility has been placed on the Congressionally-approved closure list. However, recent legislation, initiated by Representative Dellums, makes \$500,000 planning grants available to four areas which could be severely impacted by future military cuts. If the East Bay qualifies for such funds, contingency planning could be undertaken locally.

A private community organization, the Arms Control Research Center (ARC), has also undertaken contingency planning, in the belief that closing the Bay Area bases could positively affect the Bay Area economy. ARC contends that civilian use could generate at least 14,000 jobs in the East Bay. The group has offered a five-year plan with various conversion options to save jobs and clean up toxic wastes at the bases, creating local environmental reconstruction jobs in the process. ARC's plan is based upon a lateral conversion concept whereby existing facilities would be re-used for similar civilian functions, wherever possible. For example, the Navy's fifty-foot aircraft carrier harbor would be converted to use as a commercial cargo facility.

Aside from a federal planning process, a limited degree of conversion may already be underway. By federal legislation, the Port of Oakland is authorized to enter into a long-term lease with the Department of Defense for up to 195 acres of the Naval Supply Center. The Port and Navy are presently negotiating the lease of land which would be cleared of the existing Naval facilities and devoted primarily to a new civilian marine terminal.

In many respects, this transfer of land would accomplish the same purposes as conversion of military facilities to civilian use, although the proposed transfer is too limited to impair continuation of the essential functions of the Naval Supply Center. However, completely aside from the merits of the present proposal; if this method were applied to a larger area by future legislation, the Oakland bases could be subjected to defacto conversion without the basic protections and community review process which are such a basic part of the military conversion legislation.

In addition, the Port of Oakland has argued that the process for conversion of the Naval Supply Center for civilian use can be avoided due to an automatic reversionary right which the Port holds in case the Defense Department abandons the land. The validity of the Port's legal position has not yet been determined. More importantly, if such an automatic right does exist, it is unclear what process, if any will be utilized for public review of alternative proposals for reuse and what federal financial assistance might be made available for clean-up, conversion and retraining.

#### **A Pivotal Time for Oakland's Waterfront**

The Naval Supply Center and the Oakland Army Base are, in many respects, the key to the future of the Waterfront in West Oakland. For fifty years they have provided a valuable base for employment and small business activity in the Oakland economy.

The safest, most predictable future for this area is its continuation as a logistical and communications center, with an enlarged role in the nation's Post-Cold War military structure. However, if this role is not achieved, Oakland will be faced with a painful transition.

Despite the pivotal point at which this part of the Waterfront finds itself, little consideration has been given to alternative uses of this vast area in the event that any or all of it is set for conversion. The range of possibilities is indeed great. The speed and the future opportunities which are realized as a result, if a transition were required, will test the effectiveness of our government leaders and our community's vision of its Waterfront.

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### Chapter 9. Renewed Horizons

Waterfront cities are unique. Only at such places do land and sea transportation converge, offering opportunities which are not available elsewhere. The shoreline also inspires with visions of distant lands and natural life. The Waterfront is not just a physical horizon; it is also a horizon for the human spirit.

Oakland has always offered new horizons. In the late 1800's the City was the horizon for the continent. As the terminus of the intercontinental railroad, Oakland was the end of the westward journey to California. The bustle of the Waterfront excited the imaginations of writers and adventurers like Jack London and Bret Hart. Later the Bay Area's first trans-Pacific airport made Oakland the horizon for Doolittle, Earhart and other early aviators.

Early this century the Waterfront also provided a different kind of horizon. The western railroads offered new opportunities and so by 1930 the first major labor union open to Blacks, the Brotherhood of Sleeping Car Porters, found a home in Oakland. Later the War-era shipyards gave birth to forces which would change the role of racial minorities and women in American society.

#### **Oakland's Estrangement from its Waterfront**

Oakland has more than nineteen miles of shoreline; stretching from San Leandro Bay, along a busy estuary and a powerful harbor, and beyond the Bay Bridge. This is the longest bay front of any city in the Bay Area. It is also one of the most varied shorelines in the world, ranging from a massive cargo cranes to natural marshlands.

Until the middle of this century, the bay shoreline was central to Oakland's existence. The Waterfront contained the terminus of intercontinental railroads, a bustling harbor, dry-docks and fishing wharves. Industries developed near the docks because goods from many different places could be combined and traded there.

The West Oakland community thrived on the harbor and grew rapidly with the expansion of the ferry terminals. By the 1930s thousands of people traveled daily through West Oakland to the ferries and to jobs at shoreline industries. The Waterfront was the heart of the East Bay, pumping life through the arteries which radiated from it.

Beginning late in the 1930's, though, four major forces reshaped Oakland, turning it inward from the bay:

- ▶ **National Security:** During World War II the federal government established the Oakland Army Base and Naval Supply Depot in West Oakland and converted the Oakland Airport to military use. These bases excluded the public from the Waterfront for reasons of national security.
- ▶ **Death of the Ferries:** With the opening of the Bay Bridge, commuter rail lines were diverted from West Oakland. The loss of commuter traffic pulled the commercial underpinnings from West Oakland.
- ▶ **Industrial Change:** Industries, such as manufacturing plants, fisheries and the shipyards vanished from the shore and were replaced by highly mechanized cargo handling facilities which employ far fewer workers.
- ▶ **Physical Isolation:** Freeway construction imposed an awesome physical barrier between the residential community and the water.

#### **Misconceptions which Bolster the Isolation**

This physical separation has been strengthened by common misunderstandings about the nature of tidelands and the role of the Port of Oakland in its operation. These common misconceptions can be summarized as:

- ▶ *The tide/ands may only be used for narrowly defined purposes.* Much of the Waterfront is subject to a public tidelands trust. It is commonly believed that this trust restricts use of the tidelands to a few, narrowly-prescribed maritime activities. The range of allowable uses, however, is not limited to marine transportation. The terms of the trust also promote recreation and conservation and, in some cases, permit many types of

- ▶ *Increasing cargo volumes is the same as "economic development"*. The airport and marine terminals are highly mechanized facilities, creating relatively few jobs per acre. The great majority of the jobs attributed to these terminals are not in the operation of the facilities themselves, but in secondary industries which use them. These secondary industries include agricultural, manufacturing, distribution and trading firms. The vast majority of these secondary industries reside outside Oakland. Therefore, while increasing the volume of cargo passing through the terminals is an important goal; this alone will not produce many local jobs. Only by attracting secondary industries can Oakland make the Waterfront transportation facilities the powerhouse that they should be in the local economy.
- ▶ *The Port's use of tidelands is dictated by private market forces*. The Port of Oakland is often viewed as a business driven by the same incentives as private enterprise. In fact, the Port's land is not subject to holding costs which motivate private owners to develop their land, nor does the Port calculate an internal rate of return on its investments as do private businesses.

To question the conventional wisdom is not to suggest that the Waterfront is being mismanaged or misused. On the contrary, the marine terminal is one of the most efficient harbors in the nation and is truly essential for the economic health of the Bay Area. The Oakland International Airport is not only an increasingly important passenger and cargo hub, but also has produced at least five thousand subsidiary jobs in aircraft maintenance, distribution and traveler services in Oakland.

However, only if we recognized the flaws in the conventional wisdom and can we gain a more realistic picture of how the Waterfront can once again become the centerpiece of Oakland's economic and cultural growth.

### **Reconnecting Oakland's Waterfront**

There are three aspects to restoring Oakland's identity as a Waterfront city - by reconnecting the Waterfront to Oakland physically, economically and culturally.

*Physical reconnection* depends upon the establishment of linkages and gathering points.

- ▶ *Linkages* are needed between inland Oakland and the shoreline, such as extension of the bike/pedestrian trail from Lake Merritt to Jack London Square and the completion of a continuous pathway within the Waterfront, as contemplated by the East Bay Trail. Important roadways such as Fruitvale Avenue, High Street and Broadway also can help link inland neighborhoods to the shore.
- ▶ *Gathering points* are also important, drawing people to the shoreline and making it a part of community life. Commercial developments, promenades, vista points and publicly oriented uses should be placed along the shoreline to feature the natural waterway and diverse activities on the bay and estuary.

Above all, a master land use plan is needed for the Waterfront. Presently, zoning decisions within the Waterfront are divided between the City and the Port. The two agencies use different land use policies and practices, even though in some areas, such as Estuary Cove, Jack London Square and Hegenberger Road, Port land is indistinguishable from City land. The two jurisdictions recently began collaborating on land use planning, but inter-agency discussions are infrequent and there is no common master plan for the Waterfront.

Two planning efforts are underway which will affect land use planning within the Waterfront. The Port is currently developing a master plan for land within its jurisdiction. The City is also updating the Land Use and the Open Space Elements of its General Plan. These efforts warrant public participation, with a vision to making the Waterfront relate more directly to inland Oakland.

Economic reconnection is crucial if Oakland is to tap the full potential of the Waterfront. This is important in two key respects:

- ▶ *Direct economic impacts*: Economic planning should be aimed at maximizing the local economic effects of the transportation operations themselves, by using local small businesses, creating employment and training opportunities for local residents and mitigation of adverse effects of the facilities upon surrounding neighborhoods.
- ▶ *Secondary economic impacts*: A strategy is needed for attracting industries which rely upon the marine and air terminals. These secondary industries are the real job producers, yet neither the Port nor the City has systematically addressed this problem. The Port focuses on maximizing the tonnage of cargo passing through the terminals; while the City, deferring to the jurisdiction of the Port, directs its economic strategy elsewhere.

Finally, the Waterfront should be used as an educational and cultural resource. Oakland has always been a special place due to its Waterfront. This has attracted creative people and great adventurers. The Waterfront can provide the same magic today, if we treat it as an important community asset.

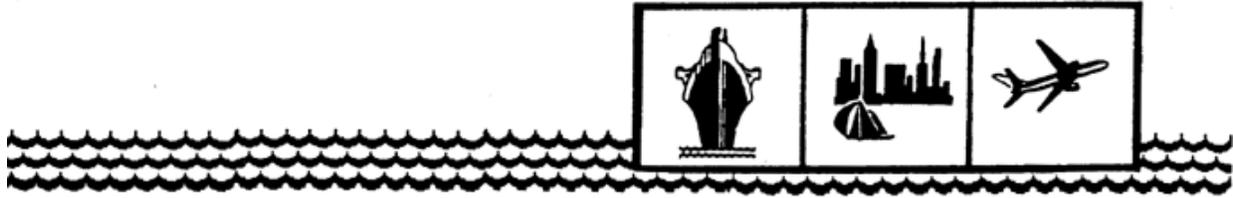
- ▶ *Education:* Our Waterfront is a laboratory. Arrowhead Marsh is perhaps the best example of marine ecology in any Bay Area city and the marine terminals illustrate the power of international trade and technology. What better way to inspire children about the natural environment or world economies than by allowing them to witness it personally?
- ▶ *Training:* Local education and training programs can target the economic opportunities which are uniquely available on Oakland's Waterfront. Such programs as the Aviation Academy can inspire students with tangible opportunities and offer the best assurance that local residents will be prepared for the jobs offered by the airport and harbor.
- ▶ *Esteem:* The intercontinental railroad, our military bases, the shipyards, the early international airport and the transformation of our harbor have placed Oakland on the cutting edge of the forces which have shaped our nation and society. What better way to convey pride in our city than to realize its historic importance?

### **Reaching for the Horizon**

The Waterfront is an economic, recreational and educational resource which makes Oakland unique. To realize this great opportunity we must again reach for the horizon and restore the Waterfront to a central place in the life of our community.

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## League of Women Voters of Oakland Waterfront Study



### APPENDIX - WATERFRONT POSITION

Position recommended to the membership by the Board of the League  
Of Women Voters Of Oakland for Adoption at Annual Meeting (6/5/93).

#### Waterfront Land Use Planning

1. Land Use Master Plan: Development of the Waterfront should be guided by a master plan including the land within Port jurisdiction, adjacent land within City jurisdiction and land within Department of Defense jurisdiction. This master plan should seek to maximize the economic, recreational and aesthetic potential of the Waterfront, including:

- a) recreation, sporting and pedestrian access to the water and the shoreline.
- b) housing opportunities in the waterfront area.
- c) important vistas of natural areas, the waterway and constructed industrial features, such as the harbor.
- d) pedestrian and bicycle circulation along the shoreline and between the Waterfront and important inland paths.
- e) buffering of industrial areas from adjacent residential areas.
- f) maximizing the economic vitality of a variety of commercial and industrial uses which are appropriate for the Waterfront.

2) The LWVO specifically supports the following activities which can improve land use planning of the Waterfront:

- a) revision of the Land Use Element and the Open Space and Recreation Element of the Oakland General Plan to contain a master plan which includes the Waterfront.
- b) development of the East Bay Trail through the Waterfront and the creation of mini-parks and vista points along the shoreline trail.
- c) establishment of vista points and fishing piers within the Waterfront, including re-establishment of the Seventh Street Waterfront Park.
- d) coordination of land use decisions between the City Planning Commission and the Board of Port Commission, and increased public participation in planning decisions of the Port of Oakland.
- e) establishment of a continuous pedestrian path between Lake Merritt and Jack London Square and Estuary Cove.

#### Economic Development

1) Economic Development Strategy: The LWVO supports coordinated economic development planning and activities involving the Port of Oakland, the City Oakland and the County of Alameda. This planning should specifically seek to maximize the indirect impacts of the transportation terminals and the commercial opportunities derived from the unique assets of Oakland's Waterfront.

2) Specifically, economic planning related to the transportation terminals should encompass such aspects as:

- a) business attraction - identifying the types of businesses which gain an advantage from locating near marine/land/air transportation, and systematically seeking to attract such businesses to Oakland.
- b) air distribution and maintenance - expansion of distribution and

maintenance facilities in the airport and marine terminal areas.

c) traveler services - improvement of the identification and promotion of the Hegenberger Road and Embarcadero Cove traveler services in relation to the Oakland International Airport.

d) direct economic impacts - maximize the local economic impacts of the operation of the airport and marine terminals, such as local purchasing and hiring, creation of training opportunities and entrepreneurial programs in commercial areas, such as the airport concessions.

3) Education and training opportunities: The LWVO supports activities which utilize the heritage and the economic and ecological opportunities of the Waterfront in the education of students. These opportunities include:

a) vocational education - opportunities such as vocational academies and targeted training programs can increase the likelihood that Oakland students will ultimately be hired into occupations which are available on the Waterfront.

b) unique educational opportunities - learning about activities of the harbor and the associated training activities, visits to natural marine areas and other educational opportunities which are uniquely available in Oakland can inspire students and provide a laboratory for learning.

c) heritage - knowledge of Oakland's Waterfront heritage, such as transcontinental railroad, shipyards, Waterfront authors and adventurers, early aviation history, containerization shipping innovations and other Waterfront history should be incorporated in local educational programs to demonstrate the historic importance of Oakland.

### **Military Base Conversion Planning**

The Oakland Army Base and Naval Supply Center ultimately can provide space for secondary industries which can provide important job opportunities and for other activities that increase the variety of activities on the Waterfront and enhance the West Oakland neighborhood. The LWVO supports early and thorough contingency planning of future uses of the two installations and public participation in the planning process, in accordance with the federal military base conversion statutes.

### **Public Involvement**

1) Citizen Advisory Committee: Because there has previously been little coordinated review of the Waterfront's economic, recreational, aesthetic and educational potential, the LWVO supports formation of a temporary public advisory committee to define the Waterfront's potential and a strategy for increasing its value as asset of Oakland.

2) The LWVO supports increased public involvement in planning and land use decisions of the Port of Oakland.

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RESPONSE TO BROOKLYN BASIN MARINA DSEIR

- AUGUST 1, 2021

# Estuary Policy Plan

## Oakland, California

June 1999



CITY OF OAKLAND



PORT OF OAKLAND



CITY OF OAKLAND



PORT OF OAKLAND

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## Executive Summary

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As the twenty-first century approaches, national and international trends have created new opportunities for the urban waterfront and its role for the City of Oakland. Recognizing this potential and the strategic nature of the Oakland Estuary, the Port of Oakland and City of Oakland have undertaken the preparation of this plan to reinforce Oakland's identity as a livable city on the bay.

The "*Estuary Policy Plan*" (Also referred to as the 'Estuary Plan') includes objectives and policies to enhance the future of the area of Oakland between Adeline Street, the Nimitz Freeway, 66th Avenue and the Estuary shoreline. The plan is a result of community concerns first articulated by the League of Women Voters in its award-winning report entitled "*The Waterfront: It Touches the World: How Does It Touch Oakland?*", subsequently

reinforced by the goals, objectives and policies established by the General Plan Congress in the 1998 update of the Oakland General Plan.

The basic premise of the plan and its preceding efforts is that the Estuary is a resource of citywide and regional significance. This area cannot be viewed as a single-purpose district isolated from the city, but rather as a diverse and multifaceted place that connects the city and the bay.

The *Estuary Policy Plan* calls for a system of open spaces and shoreline access that provides recreational use opportunities, environmental enhancement, interpretive experiences, visual amenities, and significant gathering places. A series of individual parks, open spaces and shoreline access points, connected by a con-

tinuous landscaped parkway with promenades, bikeways and shoreline trails, is recommended. In addition to enhancing existing facilities, new parks are proposed at the mouth of the Lake Merritt Channel, at the site of the Ninth Avenue Terminal, at Union Point, and within the Jack London District.

Further, the Estuary Plan proposes a variety of uses that strengthen Oakland's position as an urban center, accommodate economic growth, and encourage development that complements the downtown and adjacent neighborhoods.

The plan reinforces the Jack London District as the East Bay's primary dining and entertainment venue, by promoting mixture of retail, dining, entertainment and visitor-serv-

ing uses oriented to significant gathering places and public access areas along the water.

The plan proposes the preservation of industrial areas which are necessary to support Oakland's port, as well as the city's role in food processing, manufacturing and distribution. In addition, the emerging trend toward loft-type residential and off-price retail establishments in the Jack London District is encouraged to continue.

The plan proposes the large-scale transformation of the area from the Lake Merritt Channel to the Ninth Avenue Terminal into a mix of artisan work/live lofts, hotel, cultural and commercial-recreational uses that will complement the planned open spaces and parks along the water.

The plan recommends strengthening the livability of existing and future residential development within the Kennedy Tract, and suggests new opportunities for small-scale office, business and commercial establishments. In certain areas (e.g., around the Con-Agra facility in the San Antonio/Fruitvale District), the plan supports the retention of existing industries, but acknowledges that they may relo-

cate for a variety of reasons. If that occurs, the plan suggests land use priorities for an appropriate transition to new urban development in the future.

The Estuary Policy Plan also proposes significant measures to improve both regional and local access. The proposed circulation system is aimed at reducing the barrier effect of the freeway by improving on and off ramps and by enhancing local vehicular access to inland areas.

The plan recommends creating a continuous landscaped recreational parkway, accommodating pedestrians and bicycles as well as transit and vehicular access, along the entire five-and-a-half-mile length of waterfront, between 66th Avenue and the Jack London District. This parkway would help knit together the diverse parts of the Estuary shoreline, thereby establishing an identity of Oakland as a waterfront city.

The Estuary Policy Plan also emphasizes the need for connection between waterfront uses and inland areas. The plan promotes entertainment-oriented development in the Jack London District, and extending waterfront ac-

tivities along Lower Broadway, toward the downtown. At the same time, development of the area between Estuary Park and the Ninth Avenue Terminal will create a significant place for Oaklanders to gather for events, and achieve a long-held objective of connecting the Estuary to the Lake Merritt Channel, Lake Merritt, and inland neighborhoods.

Redevelopment at Embarcadero Cove is planned to create additional windows to the Estuary. A new park at Union Point and improvements to the shoreline should create a new focus along the water for Brooklyn Basin, San Antonio, Fruitvale, Central East Oakland, and other inland neighborhoods. Extension of the Martin Luther King, Jr. Regional Shoreline westward to High Street will also provide open space opportunities for East Oakland residents and visitors to enjoy the environment of San Leandro Bay.

Finally, the Estuary Policy Plan recommends some critical first steps in implementing the plan and achieving the vision. It identifies what is necessary to move on to the next level of action.

In total, the Estuary Policy Plan is a waypoint in a community-wide dialogue that has been underway for many years. It follows up on ideas that were first presented several decades ago; more recently reinforced by the League of Women Voters and the Oakland General Plan. It is both a recognition of the importance of this unique asset to Oakland, and a long-range vision of the Estuary's potential.

At the same time, the plan initiates a series of steps that can achieve the vision. By beginning now, and working hard, Oakland can enhance the waterfront, fulfill its unmet potential, and reclaim its role as a true waterfront city.



# I Background



*The 5.5-mile long Estuary Planning Area extends from Adeline Street on the west to 66th Avenue on the east.*

# Introduction

---

In 1996, the Port of Oakland and the City of Oakland embarked on an unprecedented cooperative effort to develop the first plan in Oakland's history focused specifically on the Estuary shoreline (Figure I-1). The *Estuary Policy Plan* represents an effort conducted over a period of approximately 18 months to prepare a plan for 5 1/2 miles of urban waterfront within the heart of the city and port.

This effort encompassed a planning area extending from Adeline Street to 66th Avenue, including all of the lands on the water side of I-880 within Port and City jurisdiction. The study area touches many of the city's neighborhoods as well as downtown, and is bracketed at the ends by Oakland's airport and seaport (Figure I-2).

Oakland can claim the most extensive and diverse bay shoreline of any community in the region. Yet, for many, the experience of the Oakland waterfront is fragmented—limited to specific areas, such as the highly visible shipping terminals or the commercial activities and special events at Jack London Square. Although its shoreline extends for 19 miles along the edge of the city, Oakland is more often viewed as an inland gateway at the hub of multiple rail and highway corridors than as a waterfront city.

## STUDY HISTORY

In recent years, community interest in the waterfront has increasingly focused a desire for improved public access, environmental quality, civic image and identity, recreation, and other publicly oriented activities.

In the early 1990s, public dialogue about Oakland's waterfront began with the update of the *Open Space, Conservation and Recreation Element* of the Oakland General Plan. At about the same time, the League of Women Voters published a report, *"The Waterfront. It Touches the World: How Does it Touch Oakland?"* (June 1993), which focused on the waterfront. The report strongly promoted Oakland's identity as a waterfront city. This report became a call to action for waterfront advocates and the community at large.

The efforts of the League of Women Voters spawned the Waterfront Coalition, a grassroots citizens organization that, in turn, sparked even broader interest and support for waterfront revitalization. In 1995, a charrette was sponsored by the Port and the City to help formu-

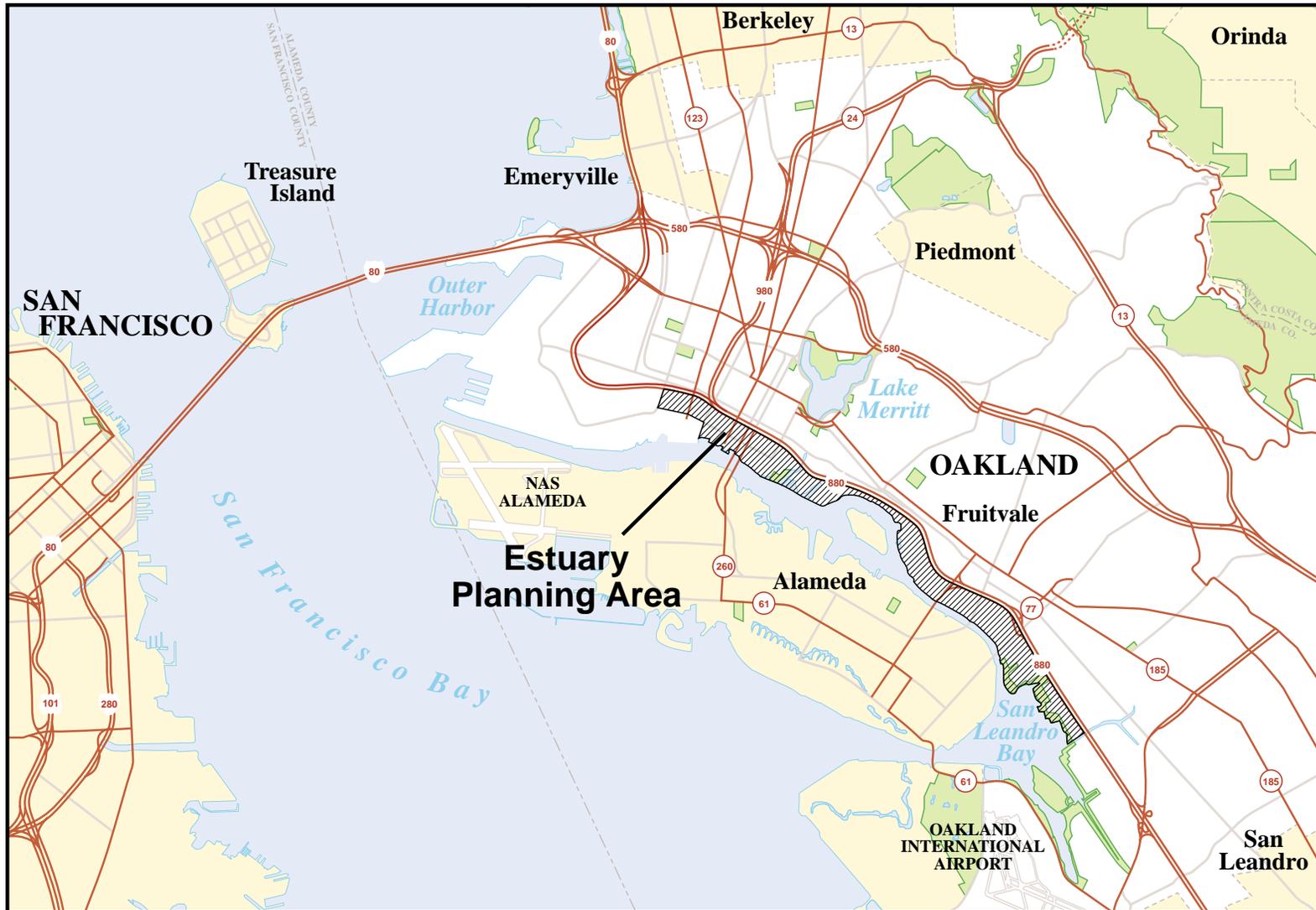


FIGURE I-1: Regional Context

late a vision for the waterfront that would, in turn, provide additional policy support.

At the time, the Oakland General Plan was being updated, overseen by a community-wide advisory committee known as the General Plan Congress. A Waterfront Subcommittee of the General Plan Congress was formed. In 1996 the General Plan Congress published its draft Goals, Objectives and Policies report for the entire waterfront area. The policies recognized the waterfront as having untapped potential for redevelopment, publicly oriented activities, and enhanced public access. One of these policies specified the need for more detailed study and planning in the Estuary portion of the waterfront.

Hence, the Oakland Estuary Policy Plan.

The Estuary Plan project has been undertaken as a joint effort by the Port of Oakland and the City of Oakland. The plan incorporates comments and input from other public agencies, including the Bay Conservation and Development Commission (BCDC), East Bay Regional Parks District (EBRPD), the Trust for Public Lands, the City of Oakland Life Enrichment Agency—Parks, Recreation and

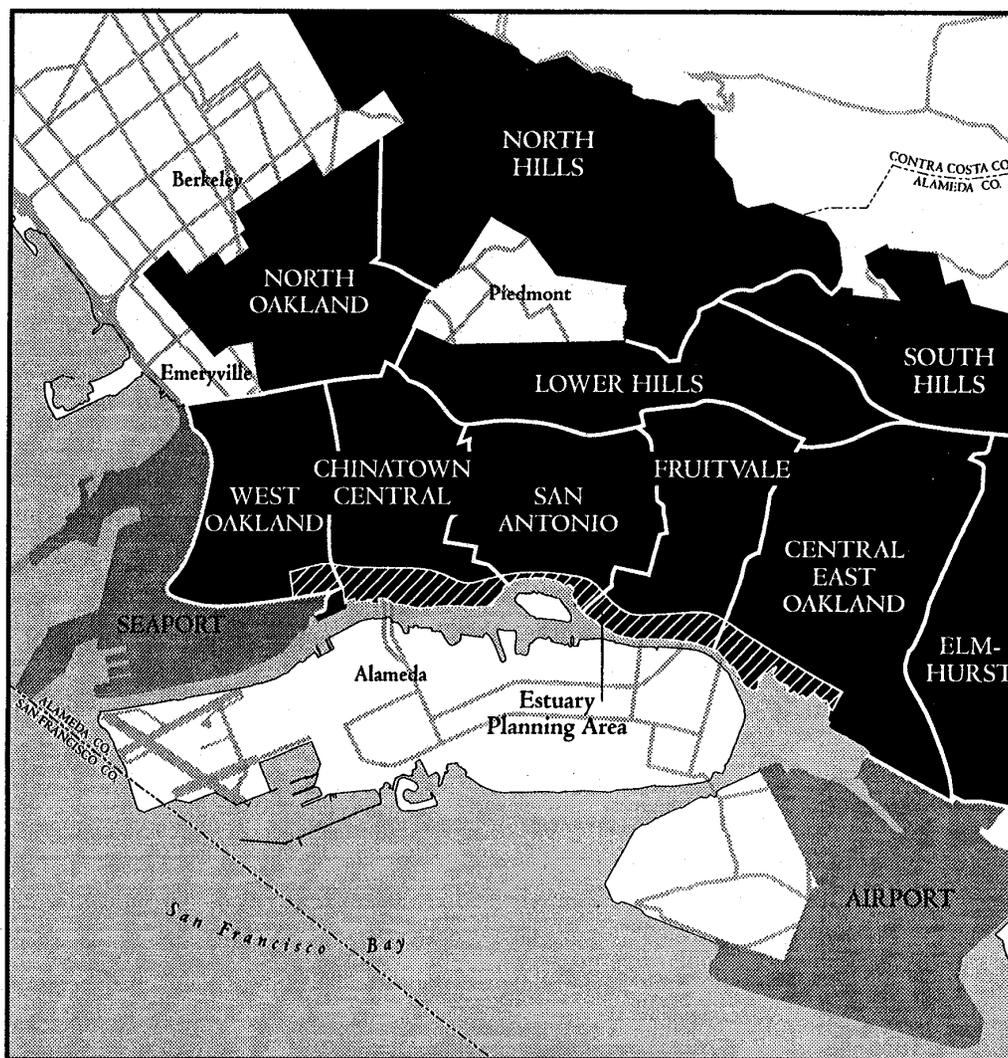


FIGURE I-2: Oakland Neighborhoods Adjacent to the Estuary

Cultural Services, and the Oakland Museum. Draft concepts and recommendations were presented to the City-Port Liaison Committee, the City Planning Commission, and the Board of Port Commissioners.

Guidance, input, and direction in the planning process were also provided by the Estuary Advisory Committee, a diverse group representing a broad spectrum of community interests. The advisory group was facilitated by the nonprofit organization Oakland Sharing the Vision. This group also helped organize the community involvement process. Members of the Advisory Committee committed significant energy and effort to shaping the planning effort. They met nine times in public sessions, and hosted a public workshop with consultants and staff.

To assist in preparing the draft of the Estuary Plan, the Port and City engaged a team of consultants led by ROMA Design Group. ROMA served as the lead firm, directing the efforts of an Oakland-based team of consultants, including Hansen/Murakami/Eshima, associated architects; Hausrath Economics Group, urban economists; Gabriel-Roche, Inc., public participation and transportation; Korve Engineer-

ing, traffic engineering; as well as numerous others offering expertise in specialized technical areas.

## PURPOSE & ROLE OF THE PLAN

The Estuary Policy Plan has been prepared in an attempt to address issues and concerns that have arisen related to continuity and accessibility of the shoreline, the quality and character of new development, and the relationship of the shoreline with surrounding districts and neighborhoods. More specifically, the plan builds upon the goals for the waterfront prepared by the General Plan Congress. The goals are summarized as follows:

- ❑ Increase the awareness of the waterfront throughout the city and region, and maximize the benefit of Oakland's waterfront for the people of the city.
- ❑ Promote the diversity of the waterfront by providing opportunities for new parks, recreation, and open space; cultural, educational and entertainment experiences; and new or revitalized retail, commercial and residential development.

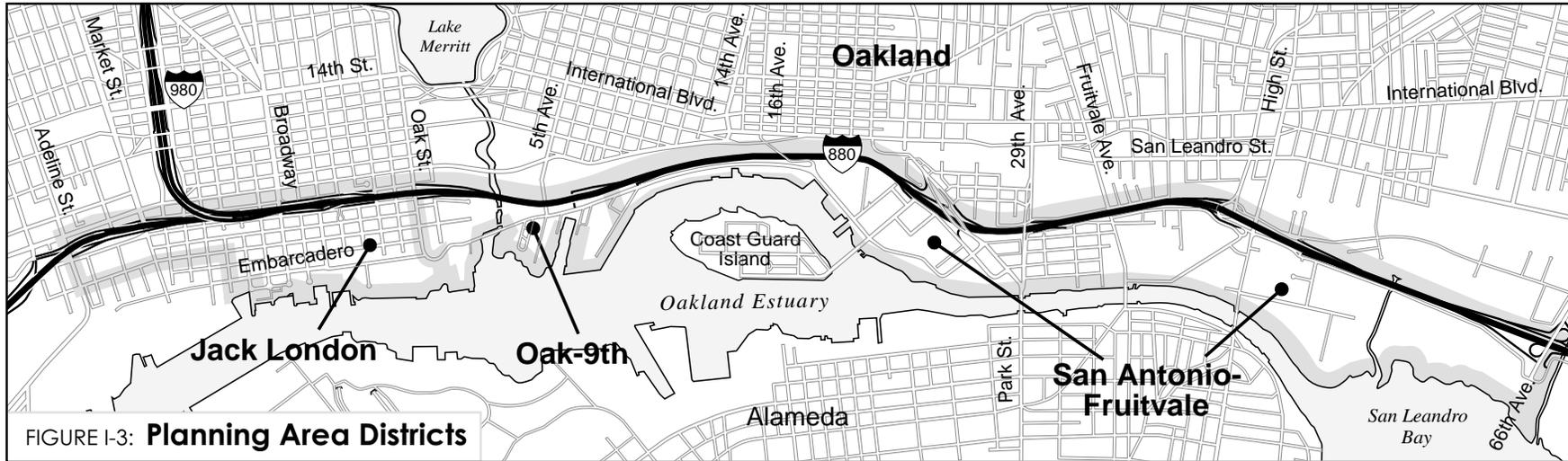
- ❑ Enhance and promote the city's waterfront for the economic benefit of the community, with emphasis on Oakland's position as a leading West Coast maritime terminal and a primary Bay Area passenger and cargo airport.

- ❑ Connect the waterfront to the rest of the city, with emphasis on linking the adjacent neighborhoods and downtown directly to the waterfront, reducing physical barriers and the perception of isolation from the water's edge, and improving public access to and along the waterfront.

- ❑ Preserve and enhance the existing natural areas along the waterfront.

The Estuary Policy Plan is intended to be incorporated into the General Plan, which includes elements regarding Land Use & Transportation, Open Space, Conservation & Recreation (OSCAR), Historic Preservation, Housing, Noise and Safety.

Compared to the General Plan, the Estuary Policy Plan has a more focused geographic scope, and is therefore more specific in nature. In addition to policy recommendations that



will be integrated into the General Plan, a companion document, the *Estuary Plan Implementation Guide*, will be prepared. The Implementation Guide will identify specific steps to be undertaken to implement the recommendations of the *Estuary Policy Plan*. These include detailed strategies and work programs to create and implement projects, site design and development standards, funding and institutional strategies, and other administrative steps necessary to carry out the *Estuary Policy Plan*.

Plan recommendations will also be reflected in the Oakland *Waterfront Public Access Plan*, which will identify public access opportunities for the entire Oakland waterfront. The *Estuary Policy Plan* may also serve as a basis for revisions and amendments to the BCDC *San Francisco Bay Area Seaport Plan*, plans for the regional San Francisco Bay Trail, and planning documents prepared by other regional agencies, such as the Association of Bay Area Governments (ABAG), the Metropolitan Transportation Commission (MTC), East Bay Municipal Utilities District (EBMUD)

and the East Bay Regional Parks District (EBRPD).

## PLAN ORGANIZATION

The *Estuary Policy Plan* presents recommendations related to land use, development, urban design, shoreline access, public spaces, regional circulation, and local street improvements for the entire waterfront and individual districts within it.

**Section I** includes all of the introductory elements, which provide an overview and summary of the planning process, the planning area and surrounding context, major plan concepts and recommendations.

Issues to be resolved, opportunities to improve the situation and objectives to be realized are described in **Section II** of the plan. They are organized by functional topics: Land Use, Shoreline Access, Public Spaces, Regional Circulation, and Local Street Improvements.

**Section III** of the plan recommends policies for each of the three districts within the Estuary planning area. As shown in Figure I-3, these districts include:

- ❑ ‘Jack London District’, extending from Adeline Street to Oak Street;
- ❑ ‘Oak-to-Ninth Avenue District’, from Oak Street to the Ninth Avenue Marine Terminal; and
- ❑ ‘San Antonio/Fruitvale District’, from 9th Avenue to 66th Avenue.

**Section IV** of the plan, entitled “*Moving Forward*”, describes the next steps in implementing the Policy Plan. It identifies the critical activities necessary to sanction the plan, gives decision-makers and staff direction to begin to implement the plan, and establishes the regulatory controls necessary to insure compliance with it.





*Oakland's harbor circa 1882, at the present-day Jack London Waterfront, supported a diverse range of maritime and commercial activities.*

## The Estuary Shoreline

---

Oakland, California has a waterfront.

In Oakland, the shoreline of San Francisco Bay extends 19 miles, from San Leandro Bay to the Oakland-San Francisco Bay Bridge. At its northern end, the shoreline is dominated by the Port of Oakland's marine terminals. At the southern end lies Oakland International Airport. Between the seaport and the airport is the five-and-a-half-mile Estuary shoreline (Figure I-4). The Oakland Estuary is one of California's most diverse shores, encompassing a variety of physical environments and settings, each with its own distinct quality and character.

Today, the Estuary can be viewed as a single community resource that binds together the shorelines of Alameda and Oakland. Compared to other parts of the bay, the Estuary is

more like a river. It is linear in form and contained, rather than open and expansive like the broader bay. It creates an environment that is intimate in scale and character. It frames dramatic views to the San Francisco and Oakland downtown skylines.

The Estuary is an urbanized edge that has developed over a span of more than 100 years of city history. Unlike the hillside areas of the city, this area is intensely developed, with urbanization extending all the way to the water's edge. Very little open space or vegetated area exists, with the notable exceptions of Estuary Park and the Martin Luther King, Jr. (MLK) Regional Shoreline.

Oakland's waterfront figures prominently in the history and life of the city. It is both the birthplace and birthright of what is now a mod-

ern city and national transportation hub. The settlement which became Oakland was first established on the Estuary, at a transshipment point where water-borne goods were off-loaded and transferred to transport and land networks.

Over the years, the waterfront has been dominated by the development of the Port of Oakland. Extensive backland area and rail connections have given the Port the competitive edge needed to become one of the largest container ports on the West Coast. Additionally, the Oakland Airport's central location within the prosperous bay region has made it one of the fastest growing air passenger and cargo facilities in the United States. These two centers support more than 20,000 direct jobs within the region, but they are both land intensive operations that make it difficult for residents to take advantage of the waterfront.

Most of the improvements were made once the City wrested control of the waterfront from the railroads in the early 1900s. The shoreline was extended westerly to the San Francisco incorporated limits following a momentous court case that finally settled the long-standing controversy between the City and the railroads over tidelands.

After that, Oakland experienced a period of city building that brought municipal docks, quays, wharves, and belt line railways to the waterfront.

With the advent of air travel in the late 1920s, the City acquired land for a commercial airport that became the starting point for many history-making transpacific flights. In 1936, the San Francisco-Oakland Bay Bridge was completed, signaling the emergence of the automobile for personal travel; thirteen years later, in 1949, the six-lane Eastshore Freeway (now I-880) was constructed through Oakland.

Following the ship-building years of World War II, Oakland's port facilities shifted to the Outer Harbor, where a good supply of backland could support containerized ship-

ping. This shift in technology proved to be a valuable investment for the City and the Port—one that would establish Oakland's position in the region and West Coast as a major international port of call for the transshipment of goods.

As a result of this growth, Oakland's waterfront has been dramatically transformed through filling, dredging, and shoreline stabilization efforts. The shoreline was once a series of coves, bays, inlets, and tidal marshlands fed by creeks and watercourses from the hills; over time, human activity advanced it incrementally outward into the bay. The Estuary was narrowed by filling and lengthened by dredging until it became a linear tidal canal that connects San Francisco Bay with San Leandro Bay.

At the same time, Oakland residents have long supported the notion of a commercial waterfront. A number of major investments in shoreline and infrastructure improvements were approved, primarily for the purpose of expanding trade and commerce.

In addition to the port facilities, the Estuary has historically served commercial and indus-

trial purposes. In the mid 1800s, the village of San Antonio on San Antonio Creek (now within the incorporated limits of Oakland) supported an active wharf and lumber industry supplied by redwoods from the nearby hills. In what is now Jack London District, early uses included fishing, shipping and maritime commerce, and iron works located along First and Second streets west of Broadway. With the advent of rail access, the Estuary became the terminus for agricultural goods and produce, and agricultural processing facilities, such as Con Agra, were also built.

In recent decades, the industrial and commercial character of the Estuary area have continued to evolve.

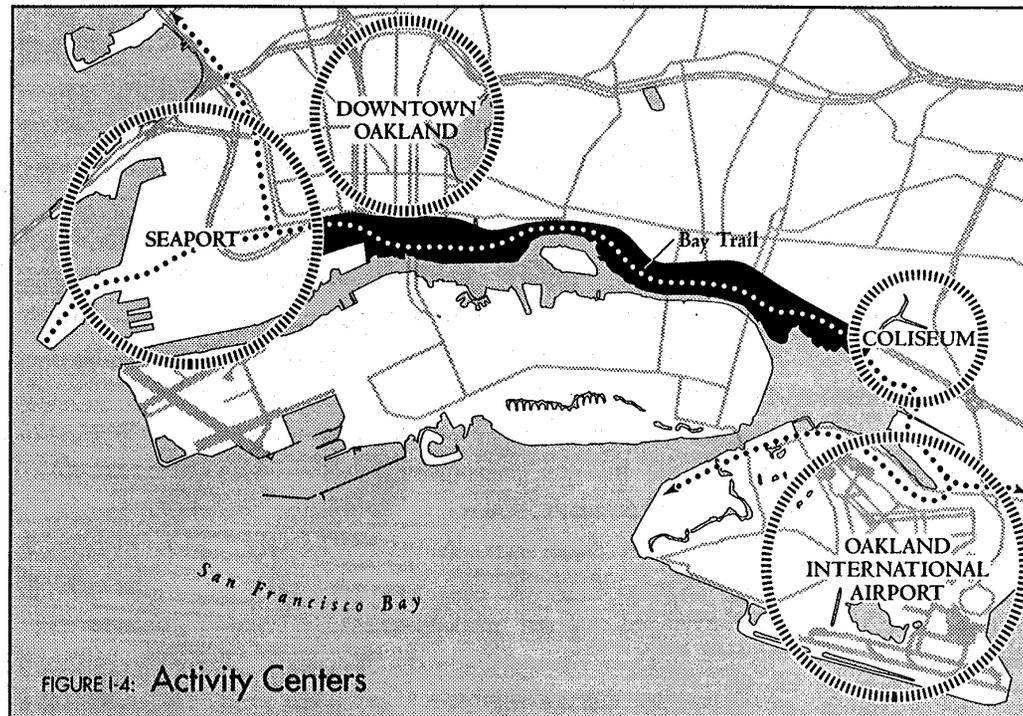
In the southern and inland portions of the shoreline (San Antonio, Fruitvale and Central East Oakland areas) business offices and large-scale commercial uses have been developed in what was once a traditional industrial area characterized by manufacturing and agricultural processing. Further to the north and west, in the area now known as Embarcadero Cove, hotels and motels, offices and restaurants have been built along the narrow stretch of shoreline once occupied by marine-related busi-

nesses, and marinas have been built along the water's edge, providing for recreational boating use.

The Ninth Avenue Terminal still remains in use—one of two such maritime facilities east of the Alameda-Oakland Tubes (the other being the Encinal Terminals across the Estuary in Alameda).

The Jack London District is far more commercially oriented than any other portion of the Estuary shoreline, and has seen the greatest amount of change along the waterfront in the past 20 years. The mix of restaurant, retail, theaters, entertainment and office uses has transformed Jack London Square into a primary entertainment venue, and has provided opportunities for Oakland residents and visitors to experience the waterfront.

Furthermore, the development of work/live housing has added to the traditional commercial manufacturing and industrial character of adjacent inland areas, and has helped to establish this inland area as a lively urban mixed-use district.



Throughout the Estuary, development patterns vary. There are large superblocks of industrial land; islands of remnant neighborhoods; the narrow, arching shoreline along the old Brooklyn Basin; and the urban grid that extends from the surrounding city through the Jack London District to the water. Variations in the urban pattern affect the opportunities for connection and infill development. For instance,

the grid pattern of streets and older warehouse buildings within the Jack London District creates an attractive urban scale that is well connected with the surrounding city.

On the other hand, barriers to the water exist in many forms along the Estuary. Interstate 880 is the most obvious of many physical barriers that separate the waterfront from the rest

of the city. At the Lake Merritt Channel, the rail lines, a major sewer line and the overhead freeway combine to create a formidable physical and visual barrier that interrupts the link between Lake Merritt and the Estuary. To the south of the Lake Merritt Channel, the freeway becomes an at-grade facility, and thus an even more imposing barrier.

Major thoroughfares, which traverse the entire length of the city, may lead to the Estuary shore, but often in an unceremonious fashion. Broadway, one of the city's most important streets, terminates in an ambiguous zone of parking, service delivery trucks, and pedestrians in the area south of the Embarcadero.

East of the Lake Merritt Channel, Fifth Avenue crosses under the freeway and changes alignment as it meets the Embarcadero. Other important streets— 16th Avenue, Fruitvale Avenue, High Street, and 29th Avenue/Park Street—enter the Estuary area, and immediately shift alignment or meet difficult intersections, and thus add to the overall sense of disorientation experienced along many portions of the waterfront today.

Throughout the study area, infrastructure and other built facilities are aging. Although there have been some recent transportation improvements (e.g., the Amtrak station at Jack London Square, removal of the Union Pacific tracks on 3rd St.), little investment has been made over the years in ongoing maintenance and repairs. There are many areas of the waterfront where improvements are needed, not so much to expand capacity, but to upgrade conditions. Along the I-880 freeway, which is now nearly 50 years old, substandard conditions exist relative to the spacing of intersections, and seismic improvements are needed. Roads and utilities need to be repaired, and in some areas the shoreline needs to be reinforced.

## MULTIPLE JURISDICTIONS

Like most other urban waterfronts, many governmental agencies have jurisdiction within the Estuary area (Figure I-5). The study area includes significant amounts of inland areas, within which the City has jurisdiction and provides regular municipal services. Planning and development within the jurisdiction of the city are subject to typical municipal regulatory review and permitting authority.

Also included in the study area are lands and water within the jurisdiction of the Port of Oakland. The Port is a unique agency of city government, which is given the responsibility by the Oakland City Charter to own, develop and manage lands along the Estuary within the specified area of Port jurisdiction.

In its development role, the Port acts as a landlord; offering sites to lease to the private development community and taking an active role in project development. The Port also has the unique authority to undertake its own land use planning, project planning, and project approval. It reviews and approves building projects on private property within its area of jurisdiction, and undertakes its own environmental review and certification process.

Although the Port manages these lands, it does so “in trust” on behalf of the State of California. Ultimate authority over their use is maintained by the California State Lands Commission under the public trust (aka “Tidelands Trust”) doctrine. Tidelands Trust properties are limited to uses that promote maritime trade, transportation and commerce, public recreation and open space.

Port jurisdiction includes a much larger area than Port-owned land within the Tidelands Trust, and includes private as well as public properties.

In addition to the City, the Port and State Lands Commission, the San Francisco Bay Conservation and Development Commission (BCDC) exercises considerable influence over Estuary sites that lie within a 100-foot 'Shoreline Band' that surrounds the entire San Francisco Bay. Within its area of jurisdiction, BCDC insures that development is consistent with the *San Francisco Bay Plan* and the *San Francisco Bay Area Seaport Plan*. Additionally, BCDC reviews and has permit authority over all individual waterfront projects that are developed within the Shoreline Band, to insure that they maximize public access to the Bay and minimize the amount of bay fill that is used.

In addition, other large public property owners within the Estuary area will play a role in the implementation of this Plan. They include Alameda County, the East Bay Municipal Utility District (EBMUD), the East Bay Regional Park District (EBRPD), and a myriad of state agencies with specific functional man-

dates. Also, a number of quasi-public agencies and institutions, including Laney College and the Peralta Community College District, control lands within the Lake Merritt Channel area.

Private land parcels tend to be relatively smaller in size, with the exception of certain industrial sites such as Con Agra and Owens-Brockway. However, some key parcels have been assembled under single ownership and could undergo dramatic changes. Such parcels include those associated with the Produce Market in the Jack London District, Fifth Avenue Point, and Tidewater Business Park.

### TRENDS IN MILITARY USE OF THE SHORELINE

From a regional perspective, several current trends will help to shape the future of the Estuary. Perhaps the most significant of these is the changing status of military lands. For over 50 years, much of the shoreline in the Bay Area has been occupied by military uses established at the onset of World War II. Recent downsizing of the armed services has brought about the closure of many bases, amounting

to approximately 10,000 acres within the Bay Area.

In the East Bay, several military bases in Oakland and Alameda have closed; each with its own implications for the region and for the Estuary planning area. For instance, the 125-acre FISC site in Alameda, across the Estuary from Jack London Square, is being pursued as a mixed commercial, office and residential project, which would help to reinforce this part of the Estuary as an activity center.

Within Oakland, the reuse of the Oakland Army Base provides an opportunity to consolidate maritime activities away from the Inner Harbor into the Outer Harbor. Currently, significant portions of the Estuary area are used for maritime support: (e.g. truck and container storage, break-bulk cargo handling, and port-related operations). Locating these activities in areas such as the former army base could not only improve efficiency of operations, but also free up the Estuary shoreline for a variety of uses beneficial to surrounding neighborhoods.

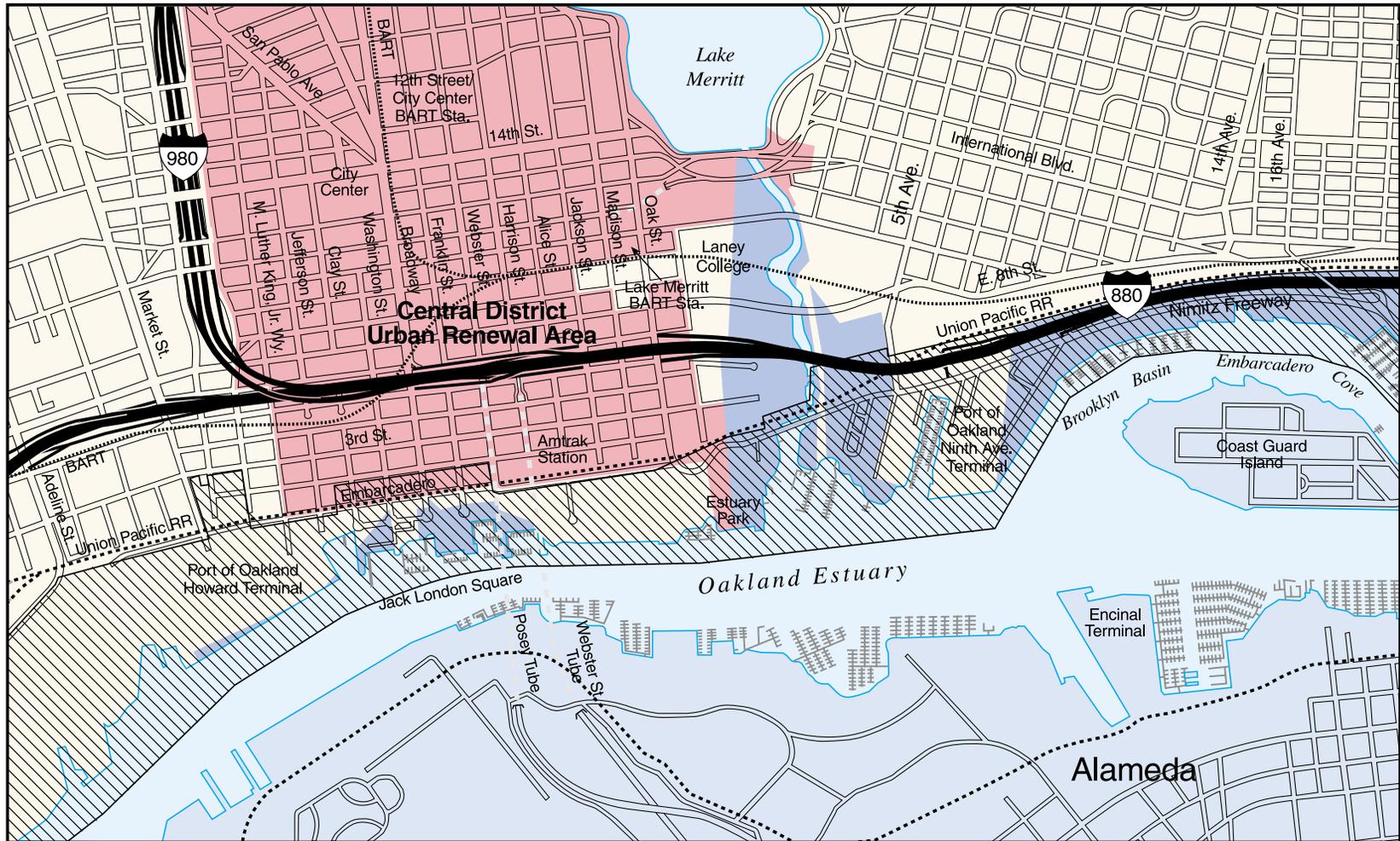
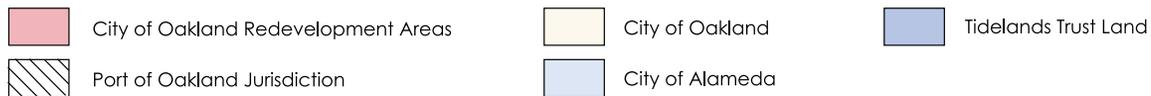
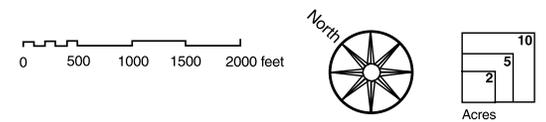
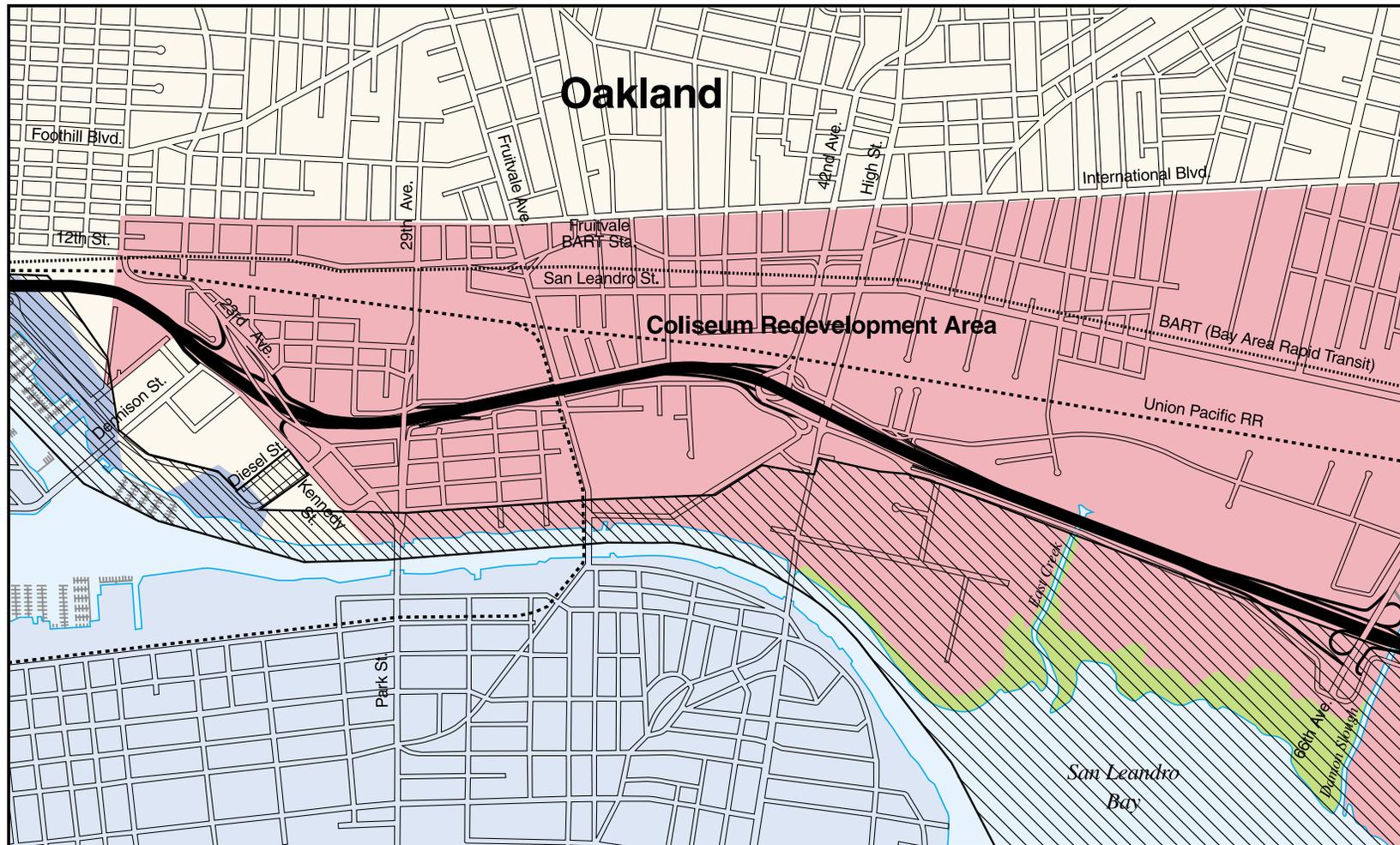


FIGURE I-5: **Jurisdictions**





## EMERGING ROLES FOR THE ESTUARY SHORELINE

Changes in military lands, transportation technology, and the economy of the city provide the opportunity to transform the declining industrial waterfront into one of the city's most vibrant and valuable assets. Already, a number of new roles for the Estuary have begun to emerge. They form the fundamental building blocks for the creation of an urban waterfront which accommodates diverse activities, and which is physically accessible to residents and visitors.

The Estuary area is a unique environment which intrinsically lends itself to active and passive recreation. The shoreline offers opportunities for a wide variety of water-oriented recreational activities, including fishing, viewing, sitting, bicycling, jogging, walking, and birdwatching. The Bay Trail and the MLK Regional Shoreline, in the southern portion of the estuary, contribute greatly to the emerging role of the Estuary as a place for recreation and open space.

As a protected water space, it is one of the most attractive sites within the Bay Region for water-oriented sports, particularly boating. Sailing has an established presence in the estuary, which has become the largest single focus of recreational boating in the Bay Area. There is a long-established tradition of rowing, canoeing and kayaking, all of which are well suited to the calm, smooth waters of the area.

Throughout the Estuary area, urban pioneering is underway, with the introduction of work/live and artist studio spaces into mature industrial and commercial districts. New neighborhoods are being established, and existing neighborhoods are expanding and diversifying. New uses are occupying older buildings, forming idiosyncratic combinations within distinctive districts.

Adjacent to downtown, the Jack London District is evolving into a citywide and regional center for urban recreational pursuits, including dining, shopping and entertainment.

Through the concerted efforts of the Port of Oakland, Jack London Square has also become the city's primary venue for celebrations, parades, races, and major events. The recent addi-

tion of the Jack London Cinema and Yoshi's jazz club to the existing restaurants has also contributed greatly to the attractiveness of the area as an entertainment destination in the East Bay.

Traditional industry, warehousing and general commercial uses continue to play an important part in maintaining the role of the Estuary as a place of employment.

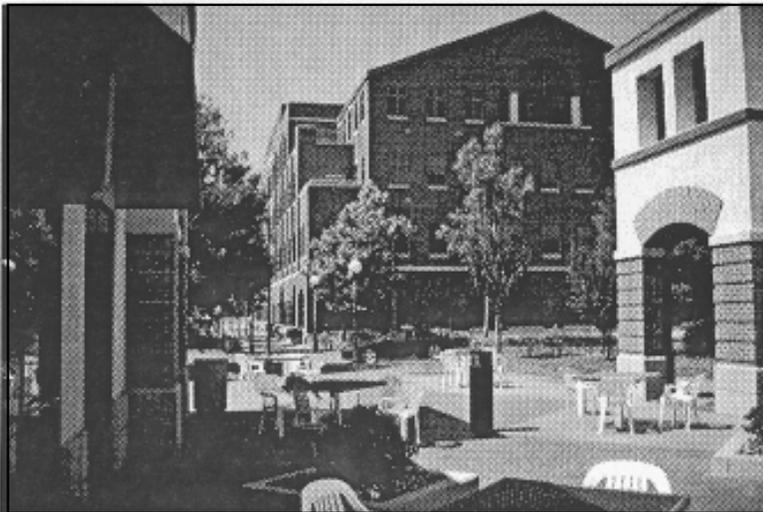
Both traditional and emerging roles for the estuary area could be further reinforced as transportation projects are undertaken. The projects will create a stronger link between the waterfront and the surrounding city. Recent railroad consolidations resulted in the removal of one set of tracks that transverse the Estuary shoreline. Seismic improvements planned for the I-880 freeway by Caltrans offer the potential to modify existing interchanges and provide greater access to the waterfront.

Finally, public access improvements planned by the Port and City, in conjunction with the City of Alameda, will result in new opportunities for pedestrian and bicycle movement along the shoreline.

This is a unique moment in time for Oakland's waterfront. Guided by a long-range plan and goal for sustainability, livability, and accessibility, revitalization of the waterfront can occur, and the Estuary can become an attractive amenity that adds to the identity and overall livability of the city as a whole.



## **II** Objectives



*The Estuary shoreline will support a broad range of land uses and activities.*

## Land Use

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During the past several decades, with the advent of containerized cargo handling facilities and the development of the Inner and Outer harbors at the Port of Oakland, the traditional role of the mid Estuary shoreline as a place for maritime trade, transportation, commerce, and industry has declined. Although the only cargo handling facility remaining in the Estuary planning area is the Ninth Avenue Terminal, a number of industries still remain that were once water related or provided support services for an economic base that has now shifted elsewhere. The closure of large military bases on the waterfront is likely to further the trend toward consolidation of maritime industries to the west, and could open up new market opportunities for the future of the Estuary shoreline.

### MARKET TRENDS

***Traditional Heavy Manufacturing.*** As in other urban areas, older heavy industrial uses continue to decline along the waterfront as markets change, facilities become obsolete, and the region expands outward. Existing operations remain because of significant investments in facilities and continued good proximity and access to markets and suppliers. The enclave of food-related businesses in the San Antonio/Fruitvale area is an example where some older operations have remained and newer, more specialized operations have moved in because of the availability of facilities and good proximity to markets. The Owens-Brockway facility is an example of a large production facility with significant capital investment that is likely to remain viable.

***Warehouse, Distribution, and Storage.*** Warehousing, distribution and storage activities are prominent along the waterfront as well as in other industrial areas of Oakland. The seaport, the airport, major freeways, and a central location in the region are the factors supporting the transportation and wholesale trade industries in the planning area. Facilities are generally characterized by large land areas and relatively minimal warehouse structures and docking facilities. While there is a demand for such facilities, the planning area does not offer significant locational advantages over other locations in East Oakland, West Oakland, and elsewhere along the I-880 corridor. Over time, improvements that capitalize on the waterfront location and enhance the attractiveness and value of the planning area for other uses are likely to make the area less desirable for warehouse, distribution and storage activities.

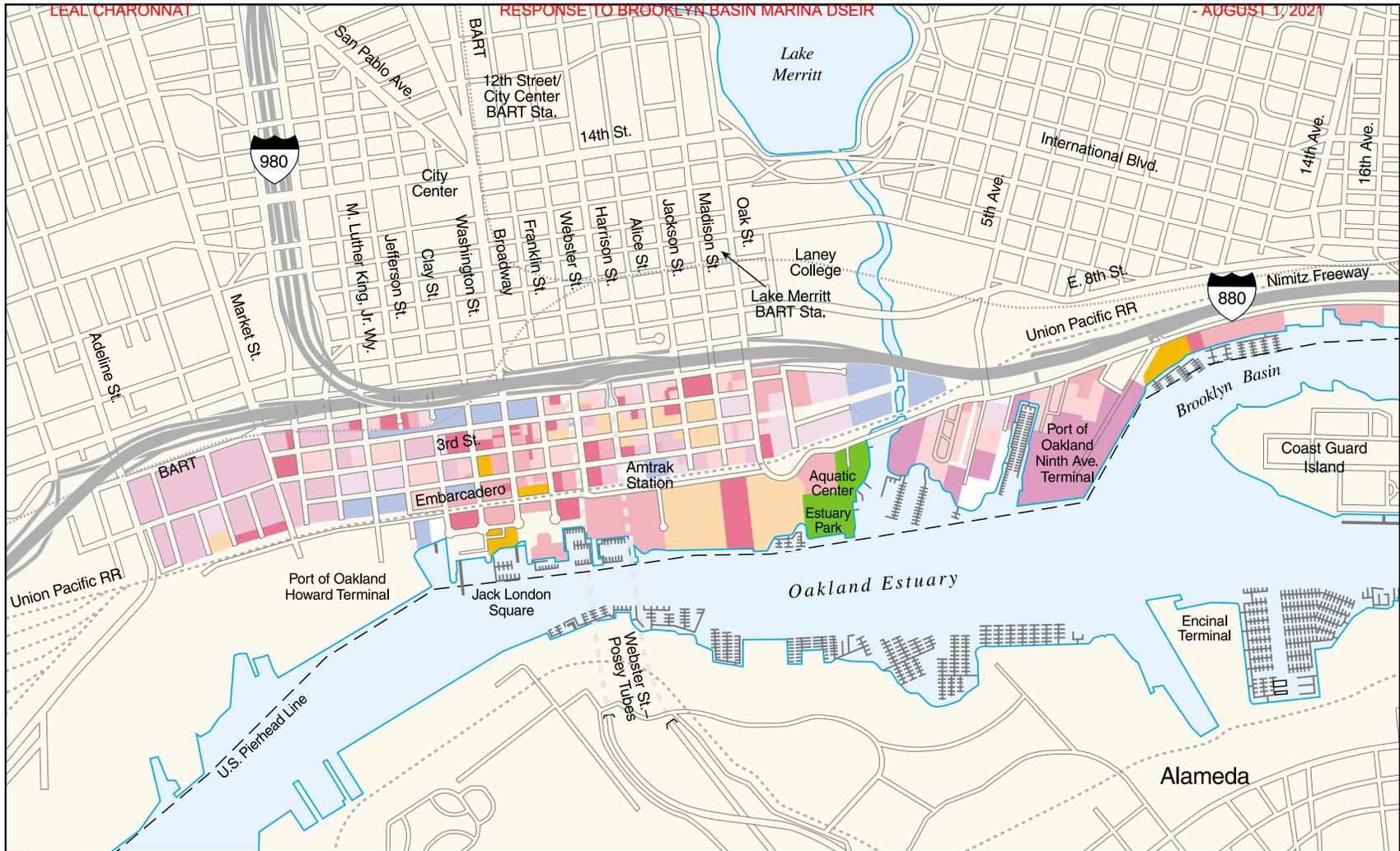
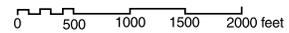
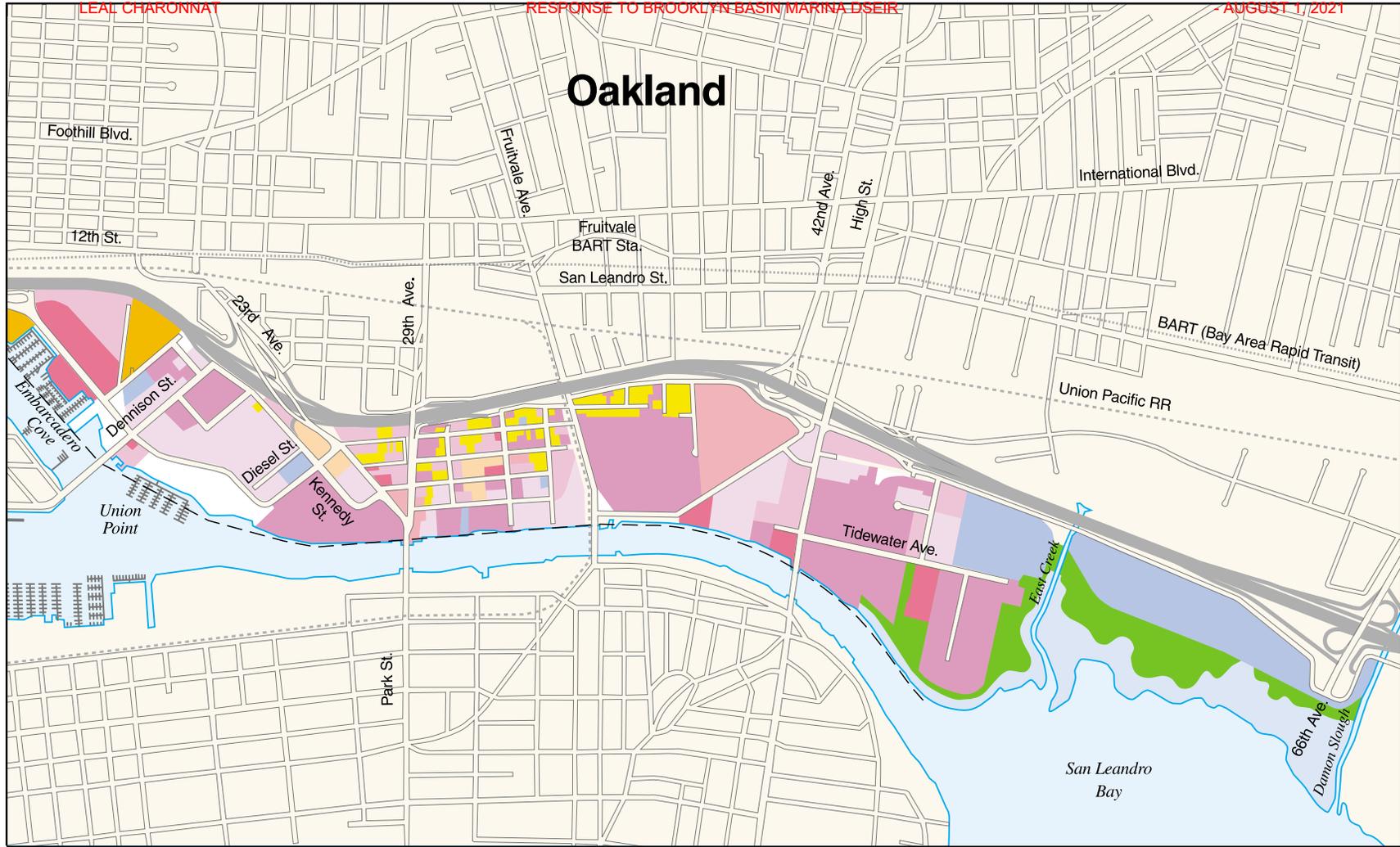


FIGURE II-I: Existing Land Use

- |                                                                                                                            |                                                                                                                                      |                                                                                                        |                                                                                                   |
|----------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
|  RDE - Retail, Dining and Entertainment |  Mid to High Density Residential above 20 du/acre |  Warehousing      |  Open Space  |
|  Wholesale and Off Price Retail         |  Low Density Residential up to 20 du/acre         |  Light Industrial |  Tidal Marsh |
|  Office                                 |  Public/Quasi-Public Institution                  |  Heavy Industrial |  Vacant      |
|  Hotel/Motel                            |                                                                                                                                      |                                                                                                        |                                                                                                   |



**Construction Industry.** The construction industry has remained healthy in Oakland. There are a number of construction-related business operations in the planning area. These businesses are there because of the area's central location, freeway accessibility, and available land. Investment in capital facilities is not substantial in most cases. Like the warehouse, distribution and storage uses, the planning area no longer offers significant locational advantages for construction uses, and water access is not as critical. It is likely that, over time, the planning area will become less desirable for such uses.

**Wholesale Produce Industry.** The wholesale produce industry in Oakland is centered at the Oakland Produce Market in the Jack London District. However, market operations are not expected to remain there over the long term. A recent City study identified that physical conditions of the existing facilities are inadequate for modern, efficient operations, and that the type of modern distribution facility needed cannot be provided at the current location. Eventual relocation of the wholesale produce market will offer opportunities for reuse of the area.

**Light Industrial Activities.** Within the planning area, there have been some transitions from heavier industrial to lighter industrial uses. Examples of light industrial uses in the area include light manufacturing firms, boat repair and sales operations, artisans, graphics and printing businesses, construction contractors and special trades, and security and business service firms. Most of these types of uses have located in existing older buildings, adapting space as needed, although the stock of large, older buildings is not always well-suited for this market.

There is the potential for future growth of light industrial activities in the planning area. Development of flex-type space that allows businesses with different activities and functions would be desirable, as would improvements to enhance the desirability of older industrial areas by providing some level of amenity, upkeep, and security.

**Research and Development.** Research and Development (R&D) and various high-technology uses have been expanding in the inner East Bay as growth continues in these sectors throughout the region. Campus-type business park development is desired by many of these

uses. Locations in the planning area with the strongest potential for such development include those offering an attractive, high-amenity environment; good access and proximity to services; a quiet, somewhat contained site area; and a certain critical mass or minimum scale of development.

A waterfront setting, views, recreation facilities, and open space all enhance the marketability for such uses. Although Oakland has not established itself in the R&D market, attributes of portions of the planning area could be competitive.

**Office.** Office uses have been growing within the planning area. The mix of uses and historical quality of the Jack London District support a less-traditional office niche in close proximity to the Oakland Central Business District (CBD). The area's convenient location and its opportunities for new space, for interesting space in older industrial buildings, and for owner-occupied office space have attracted a wide variety of smaller office tenants, including architects, consultants, media-related firms, and insurance, law, and other professional service firms. The demand for office space is expected to continue to grow.

Lower cost office space in the Embarcadero Cove area has also attracted office uses. That location's relative isolation from other office activities has been offset by a waterfront setting and lower cost space with surface parking.

**Commercial.** A range of commercial uses and activities exist along the waterfront, and have been increasing in importance over time. Potential exists for increased commercial activity throughout the planning area.

As a destination for dining, entertainment and retail uses, Jack London Square's performance has improved significantly since the early 1990s. Major new attractions (Jack London Cinema, Barnes and Noble, Yoshi's), established restaurants, and numerous special events now bring thousands of people to the area. There is momentum to build on and great potential to strengthen and expand the area as a stronger and desirable destination for retail, dining and entertainment activities.

Additional unique uses and attractions, as well as physical improvements, will be important to create a more inviting "people place" that better capitalizes on its waterfront setting.

Outside of Jack London Square, eating and drinking establishments that take advantage of water views and ambiance are evident, but not plentiful. There is potential for growth of these uses as new development occurs, public access and open space improvements are made, and larger numbers of people are attracted to the waterfront.

Larger scale retail uses also have been successful in the planning area. A mix of retailers offering home furnishings, children's and specialty items, and off-price goods provide a shopping attraction in the Jack London District. Retailers are doing well and sales have been increasing. There is potential to add similar types of retailers nearby. Oakland and the inner East Bay are very underserved in goods retailing.

Good freeway accessibility and visibility, the availability of a large, formerly industrial sites, and a location on a major route (I-880) are key factors in the recent development of a large new retail uses such as the Super K-Mart in the San Antonio/Fruitvale area. Other large retailers (e.g. Arvey's Paper) have located in the more industrial areas of the Jack London District because of freeway accessibility, proxim-

ity to downtown, and the availability of large warehouse buildings. These types of locations in the planning area are likely to remain attractive to larger retail uses.

**Hotels/Motels.** Hotels and motels in the planning area have been very successful. Lodging in the Embarcadero Cove area offers moderately priced rooms on the waterfront with good freeway accessibility and proximity to the Oakland Airport. Additional hotel development will soon be under construction in that area. Lodging in the Jack London District includes moderately priced hotel/motel units and a full-service hotel at the waterfront. Potential exists for a higher amenity waterfront hotel in the Jack London District. Over time, hotels are a potential use for other waterfront locations, particularly in the Oak -to- Ninth area, after new open space and recreation uses are developed there.

**Housing and Work/Live.** Residential uses in the planning area range from single-family units in the Kennedy Tract neighborhood to higher density units and loft housing in the Jack London District and work/live units in transitioning industrial areas. The mixed-use character of the planning area makes it attrac-

tive for work/live activities, which are compatible with both the industrial and residential areas. Work/live studios in the older industrial waterfront areas are relatively affordable among such uses in the East Bay, and are attractive to artisans and craftspeople working on the premises as well as to incubator-type businesses. Work/live and loft housing in the more central portions of the Jack London District is more attractive to East Bay artisans and entrepreneurial professionals, and commands higher prices and rents. Throughout the planning area, work/live and loft housing has been developed through the conversion and rehabilitation of older warehouse and industrial buildings.

There is the potential for more work/live uses and housing in the planning area in the future. Improvements that capitalize more on the waterfront location in the San Antonio/Fruitvale District could enhance the attractiveness of that area for additional conversions of existing buildings to work/live activities. The development of new housing in this formerly industrial area would require public investment in infrastructure and amenities, and would need to be done at a scale large enough to create a neighborhood identity.

There also is the potential for additional work/live and loft housing in the Jack London District in the future. There are some opportunities for additional conversions of warehouse buildings to work/live lofts and some opportunities for new construction. Prices and rents in the area will eventually reach levels high enough to cover the costs of newly constructed loft housing and work/live projects. The district's industrial/artistic feel, its mix of uses, and its urban development pattern are important aspects of the area's desirability for urban, nontraditional types of housing.

## ISSUES & OPPORTUNITIES

With the decline of its historic industrial, warehousing and commercial uses, there is the opportunity to establish a new role for the Estuary—one that emphasizes a publicly spirited place that is tied more closely to the surrounding neighborhoods and districts.

In the future, successes in certain areas (such as Jack London Square) can be extended, existing residential neighborhoods reinforced, new mixed-use neighborhoods established, viable industries supported, and incompatibilities between heavy industrial uses and residential

neighborhoods mitigated. The new uses can help to strengthen the economy of the city and shape Oakland's identity as a waterfront city an identity that will be a source of pride and enjoyment for residents and visitors for years to come.

More specifically, the [Estuary Policy Plan](#) recommends reconfiguring land use patterns along the shoreline, to build upon the following opportunities:

- ❑ ***Urban Entertainment and Mixed Uses Extending from the Waterfront to the City Center and Chinatown.*** The Jack London District has been established as a regional destination for retail, dining and entertainment, and as a lively mixed-use district. There is now the distinct potential to build on the successes of the area, create a stronger regional destination, and establish activity centers that benefit the city as a whole. The strength of the entertainment/mixed-use segments of the economy offers an opportunity to realize a long-held city objective to connect the waterfront (physically and economically) to downtown Oakland. Intensifying these uses at Jack London Square, and expanding them along the

Broadway Street corridor will realize that objective.

- ❑ ***Redevelopment of Declining Commercial and Industrial Areas.*** Some portions of the Estuary shoreline are underutilized, due in large part to the decline of the industrial base that historically has dominated the Estuary. Today, the Estuary provides an opportunity area for new uses that contribute to and/or benefit from a waterfront environment. It can also be a valuable resource in fostering nontraditional land uses within existing buildings (such as work/live, artisan studios, incubator, commercial and R&D).

At the same time, these older buildings represent the history of the city. To the extent possible, they should be preserved and adapted to contemporary re-use.

- ❑ ***Reuse of the 5th Avenue to 9th Avenue Area.*** The possibility of consolidating maritime operations in the Oakland Outer Harbor creates opportunities for a major redevelopment effort in an area extending from the Ninth Avenue Terminal to the mouth of the Lake Merritt Channel. This

area offers the largest single opportunity in Oakland to provide for dramatic, large-scale economic development, plus a main public space at the waterfront.

A system of inter-connected open spaces can connect the Estuary shoreline with Lake Merritt. There is potential to build upon the diverse nature of the shoreline and provide for a variety of water-oriented recreational activities (both passive and active). These recreational uses can be complemented by public-oriented activities, including hotels and restaurants, as well as nonprofit institutions, cultural facilities, and existing artisan studios on private property.

## LAND USE OBJECTIVES

Objectives for land use recognize the Estuary as an attractive location for development opportunities and intensification of a variety of activities. They are based on and reinforced by the objectives in the General Plan Elements addressing *Land Use & Transportation (1998)*, *Open Space, Conservation & Recreation (OSCAR; 1996)*, *Historic Preservation (1994)* and *Housing (1992)*.

***Objective LU-1: Provide for a broad mixture of activities within the Estuary area.***

As the waterfront changes away from industrial, warehousing and maritime support uses, a broader range of new uses should be encouraged that are complementary with the existing uses that remain. Development should build upon the value of the waterfront as a community amenity and attraction.

A variety of uses can contribute in making the Estuary of value to Oakland's community and an attractive regional destination. A balance of uses and activities such as commercial, recreation, and residential - both traditional and non-traditional - will add to a dynamic waterfront. Additionally, innovative mixes of cultural arts, institutions, and events that entice people to experience and enjoy the waterfront in a variety of ways should be included. Measures should be established to protect against incompatibilities between diverse uses.

***Objective LU-2: Provide for public activities that are oriented to the water.***

The Estuary waterfront should be developed in keeping with the spirit of the public trust,

***Objective LU-3: Expand opportunities and enhance the attractiveness of the Estuary as a place to live.***

The Estuary has been a place for people to live, with neighborhoods established close to jobs on inland sites. The mix of jobs and housing is characteristic of urban waterfront locations, and provides a precedent for modern day mixed use. It should remain so.

In the future, opportunities to develop housing should be supported in the Estuary study area. An expanded residential population and associated services would support commercial and recreational uses, and over time generate neighborhoods. A larger day and night population would add to the safety and livability of the waterfront. Development should be designed to avoid the feeling of ‘gated’ or private communities.<sup>1</sup>

***Objective LU-4: Develop the Estuary area in a way that enhances Oakland’s long-term economic development.***

The waterfront has historically been, and continues to be, an important place to

promote economic development and employment opportunity in Oakland.

Waterfront locations are attractive areas for businesses and commercial uses. Oakland’s Estuary can accommodate a wide variety of uses which will add to the economic health and well-being of the City. Opportunities range from hotels, restaurants, and entertainment venues to retail, general office space, cultural facilities, and business parks. At the same time, existing commercial and industrial uses that are already established and which also contribute to the City’s tax and employment base should be encouraged to expand. These are all ‘growth industries’, which present the opportunity for Oakland’s residents and business community to receive direct and indirect economic benefits.

Employment opportunities, the tax base, and spin-off activities should expand with the introduction of new waterfront developments. In addition, the tax revenue derived from new development will add to the ability to develop the open space and other amenities which are envisioned.

All of this economic activity will succeed in the Estuary area because of the unique business environment created by the waterfront’s amenities. Strong economic links should be forged between the waterfront and the rest of the City, so that the benefits derived from waterfront development are realized in the Estuary study area and beyond.

***Objective LU-5: Provide for the orderly transformation of land uses while acknowledging and respecting cultural and historical resources.***

Transformation of the Estuary should take place in an orderly fashion, incrementally, and in consideration of the long-range goals of the city.

The Estuary Policy Plan calls for changes in land use and new development projects that will be implemented over an extended time frame, within the context of a dynamic urban environment. Infill of vacant and underutilized parcels, as well as demolition or buildings adapted for reuse should occur while respecting cultural and historic resources, when applicable.

<sup>1</sup> See Oakland General Plan, Land Use Transportation Element, Policy W9.3.

The waterfront is one of the city's most historic areas. There are several districts, sites and/or buildings of significance, which should be respected, assessed, and preserved, if feasible.<sup>2</sup>

***Objective LU-6: Create greater land use continuity between the Estuary waterfront and adjacent inland districts.***

The historic development patterns in the Estuary study area have resulted in a unique juxtaposition of industrial, residential, and commercial uses, plus divisive transportation corridors. It is an objective of the Estuary Plan to minimize the adverse impacts associated with incompatible uses.

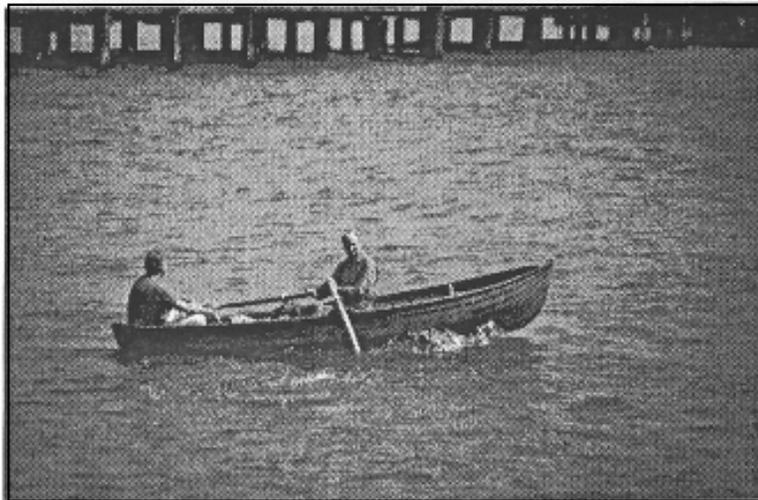
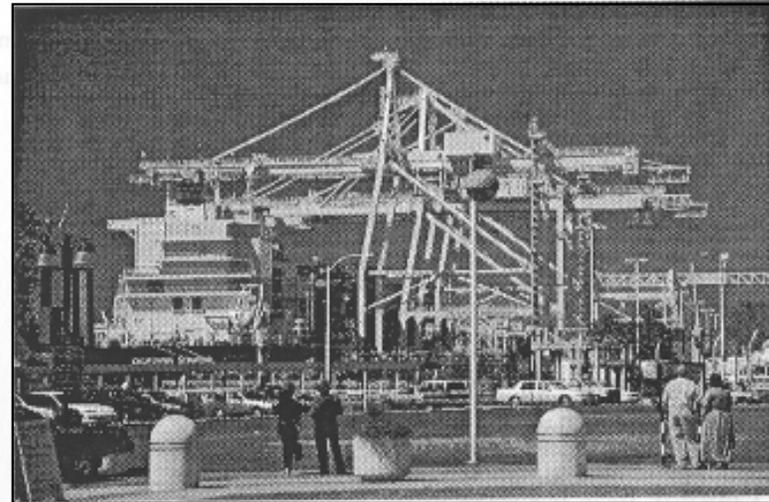
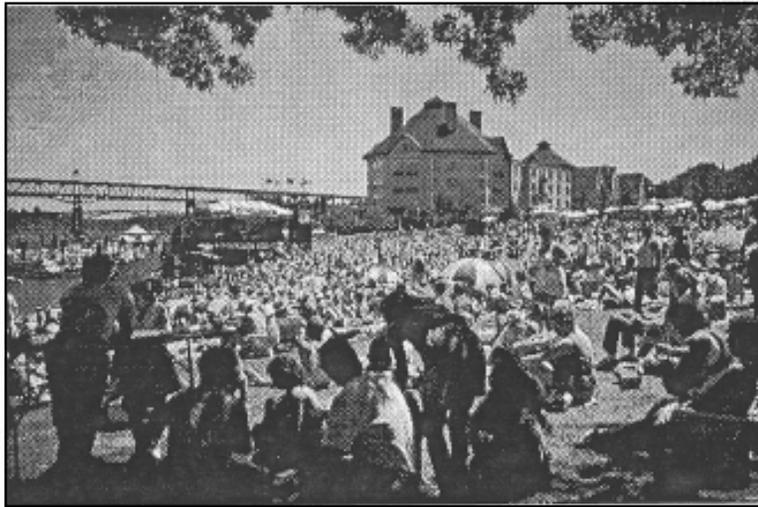
Currently, there is a break in the land use pattern as it meets the Estuary shoreline. Adjacent neighborhoods and districts are interrupted by transportation corridors, thus exaggerating the contrast between activities along the shoreline and those in inland areas of the city.

While the regional transportation corridors are here to stay, local-serving roadways and streets

should be aligned and designed to enhance greater continuity of land use. This will allow the Estuary area to become a more integral part of the city. More specifically, Broadway, Webster, Fifth, 29th, Fruitvale, 42nd and High Streets should be assessed and carefully designed when they are reconstructed to promote clear and safe means of access from inland neighborhoods to the waterfront.

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<sup>2</sup> See Oakland General Plan, Historic & Preservation Element, Policies 3.0 series.



*The Estuary shoreline will include a wide range of open space experiences.*

## Shoreline Access & Public Spaces

---

The planning of open space in Oakland has long focused on the physical features of the city—in particular, the creeks and canyons leading from the hills to the Estuary.

Over 100 years ago, in 1888, landscape architect Frederick Law Olmsted made a proposal for a “wildwood” chain of parks throughout the city. Later, in the early 1900s, Mayor Mott engaged the world-famous planner Charles Mulford Robinson to prepare a plan for the city. The 1905 Robinson plan established a system of parks and playgrounds under the newly created Oakland Park Commission, and laid the foundation for a regional park system. Following bond approval, a period of park development ensued. Lakeside Park surrounding Lake Merritt was developed, and Lake Merritt itself became the first official wildlife refuge in the state of California.

However, Robinson identified a significant problem which has only partially been resolved: *Residents had “no access to their glorious waterfront on one of the most beautiful bays of the world.”*

Although Lake Merritt, the creeks and hillsides were viewed as important elements in Olmsted’s chain of parks and open spaces within the city, the shoreline was not originally conceived in open space terms. At the turn of the century, when parks and playgrounds were being built in inland areas, docks and wharves, were being constructed on the waterfront. Although the Robinson plan had identified the concept of building a recreational pier at the foot of Broadway, the waterfront was principally seen as a place of commerce.

However, recreational activities such as fishing, viewing, sitting, bicycling, jogging, and walking, have increased in recent years, along with recognition of the shoreline’s value as habitat for wildlife and as a place for birdwatching, nature walks, and interpretive and educational experiences.

### SHORELINE ACCESS

Efforts to develop public access along the shoreline have been guided by BCDC, which (in a joint effort with the City and the Port) is currently preparing a public access plan for the entire Oakland waterfront, including the Estuary shoreline. In addition, the EBRPD is developing plans to extend the Martin Luther King, Jr. Regional Shoreline (an environmental reserve on the eastern end of the planning area).

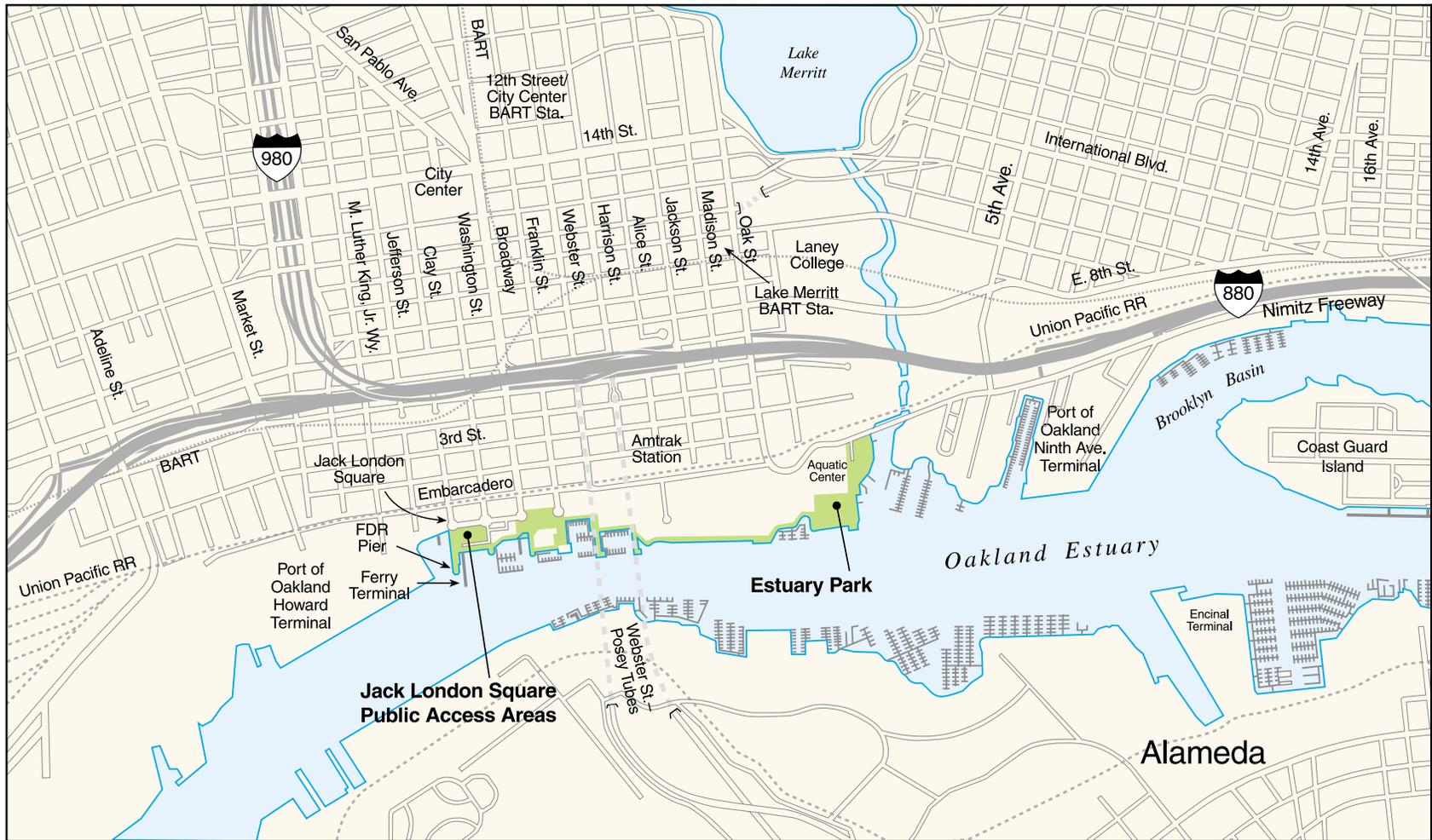
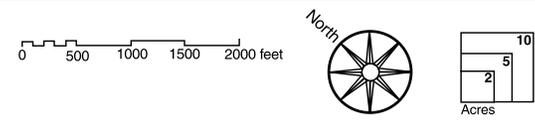
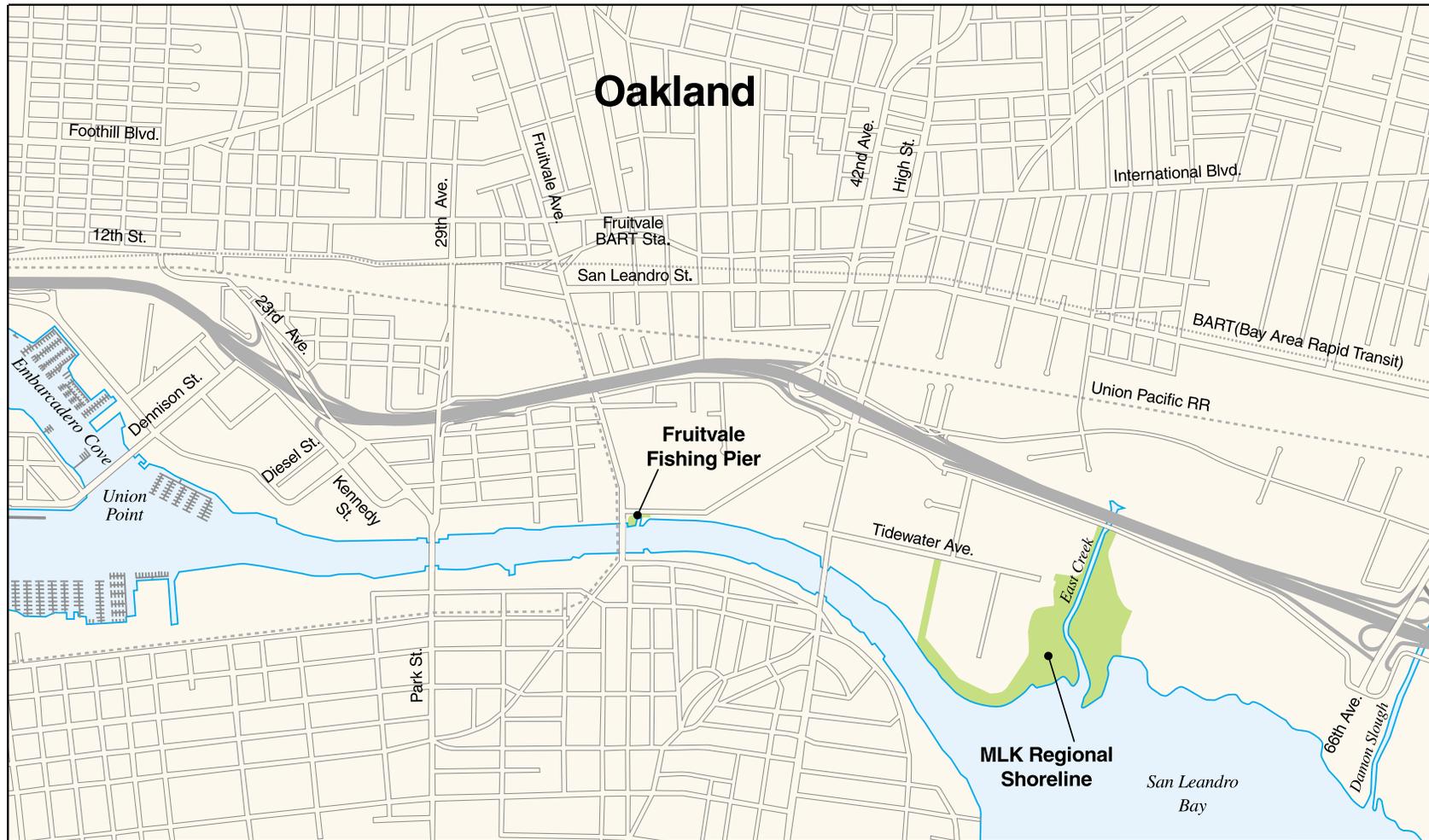


FIGURE II-2: Existing Public Access and Open Space



## San Francisco Bay Trail

Regional interest in a continuous pedestrian and bike path along the bay has resulted in efforts coordinated by the Association of Bay Area Governments (ABAG) to create a 400-mile Bay Trail in nine bay counties. In Oakland, 21 miles of the Bay Trail are planned, but only 8.5 miles have been completed, primarily on existing public streets in the Embarcadero Cove and Jack London Square areas.

## Water Spaces

Certain recreational activities fit well within the confines of protected water of the Estuary. Small boat sailing, rowing, canoeing, and kayaking established a presence along the waterfront, and are activities well suited to the calm, smooth waters of the Estuary. The tradition of rowing dates from the early 1900s, when the University of California (Cal Crew) located its boathouse in the area amid warehouses and agricultural industrial businesses. Recreational interest in the shoreline has increased with time, particularly as industrial and warehouse activities have shifted away from the mid Estuary to the western periphery of

the city. In particular, recreational boating has expanded dramatically.

Plans are underway by the Port, City, and other entities to improve and expand boating facilities. Specifically, the Port is rebuilding its 160-berth marina at Jack London Square and Cal Crew has proposed the relocation and expansion of its boathouse within the Union Point area. In addition, a new Aquatics Center is planned in Estuary Park, which would expand the programs that currently take place on Lake Merritt and provide boating instruction and similar activities.

## Special Events

Through the efforts of the Port of Oakland, the waterfront has increasingly developed into the primary location for Oakland's civic events, community celebrations, and cultural activities. Some of these are major events attracting several thousand people, such as Cirque du Soleil, the Fourth of July fireworks, lighting of the Christmas tree, and boat parades.

Others are large events that are somewhat less intensive, and may be spread out over the en-

tire Jack London waterfront and occur over a day or weekend (such as the boat show, Festa, etc.). Major concerts have been very successful, and over the past three years, attendance has tripled to crowds as large as 15,000. Other events include weekly farmers' markets, concerts, special celebrations and rallies, which typically attract around 1,000 people and are typically staged at the foot of Broadway.

## ISSUES & OPPORTUNITIES

What was evident to Charles Robinson in 1905, to the League of Women Voters in 1993, and to the General Plan Congress in 1996, is still an issue today. Although several places exist where public waterfront access has been provided (eg., MLK Regional Shoreline, Jack London Square, Estuary Park, Portview Park, several fishing piers, etc), the Estuary shoreline is not a cohesive open space system.

Existing sites are isolated from one another and from the rest of the city and often not well identified or developed. Open space is frequently shared with automobile traffic. The only existing city park within the area, Estuary Park, is difficult to find and is poorly maintained. Furthermore, some of the prominent

spaces that are used for major civic celebrations and events are subject to future development.

Despite tremendous community interest in expanding open space and recreational opportunities along the Estuary, the creation of a cohesive open space system has been stymied by existing ownerships and water-related businesses, interrupted roadways, and barriers created by rail spurs.

Yet, the waterfront offers many opportunities to add to the amount and quality of public recreational space. It has the capability to support a wide variety of recreational activities, (particularly water sports), and the potential to provide visual relief, opening up intensely developed urban areas to the bay. A number of opportunities exist to create a “necklace” of open spaces along the Estuary. As changes in land use occur, continuous public access punctuated by larger open spaces and linked to the rest of the city, will become an attractive element of a revitalized waterfront.

Opportunities to establish a larger and more coherent network of shoreline access and public recreational spaces include:

- ❑ ***Continuous Shoreline Access/Fill In Gaps in the Bay Trail.*** A continuous Bay Trail immediately adjacent to the shoreline, with a separated pedestrian path (where physically feasible) as well as a continuous recreation-oriented boulevard that accommodates pedestrians and bicyclists and provides for vehicular and transit access.
- ❑ ***Waterfront Parks.*** New waterfront parks along the Bay Trail, ranging from additional urban spaces for intensive recreational activities to large open areas for performances, competitive events, or civic celebrations.
- ❑ ***Boating and Water-Oriented Recreation.*** Additional facilities for boating, in particular, to facilitate the transition of smaller craft (canoes, rowboats, kayaks) into the water.
- ❑ ***Link to Lake Merritt.*** A public open space and pedestrian linkage along Lake Merritt Channel between Estuary Park and Lake Merritt, to build upon the recreational value of the lake and the Estuary, and to create stronger ties with the surrounding communities, in a manner that maintains the high quality of regionally significant wildlife habitat.
- ❑ ***Tidelands Enhancement.*** Additional tidal marshland enhancement areas to provide valuable habitat for birds and other wildlife species, and new opportunities for bird watching and other educational/interpretive experiences.
- ❑ ***Connections to New Parks and Open Spaces.*** Connections to new parks and open spaces planned along the opposite shore, in Alameda and on Coast Guard Island, to reinforce the Estuary as a primary open space for the communities adjoining it.

## SHORELINE ACCESS & PUBLIC SPACE OBJECTIVES

Objectives for access and public spaces recognize the emerging role of the waterfront as a key place for open space and recreation within the city and region. It builds upon the objectives for public access, open space, and recreation articulated in various planning documents, most notably the *Open Space, Conservation and Recreation Element (1996)* and the *Land Use and Transportation Element (1998)* of the General Plan.

***Objective SA-1: Create a clear and continuous system of public access along the Estuary shoreline.***

Provision of continuous shoreline access is an important goal embraced by both regional and local communities. Furthermore, it is a specific mission of BCDC and ABAG's Bay Trail program, and a prime objective of the East Bay Regional Park District. In the Oakland segment, the intention is to provide a continuous system of public waterfront spaces, and to provide for a continuous open space network which connects all waterfront elements, which provides a variety of waterfront experiences.

Within the parameters of safety and security, development of public facilities should be undertaken according to site-specific standards, based on the physical capacities and programming needs of the particular site.

There is a diverse sequence of spaces along the shoreline, including the protected nature of the Lake Merritt Channel; the marshy habitat that extends to Damon Slough; the expansiveness of the Fifth Avenue Point shoreline edge; the sheltered character of the Embarcadero

Cove, Brooklyn Basin and Coast Guard Island; and the lively areas within the Jack London District. Each of these special qualities should be reflected in the design of parks, promenades, and open spaces.

General objectives for the provision/enhancement of open space and associated facilities at all locations include:

- ❑ Preservation and protection of the natural features, wildlife and vegetation;
- ❑ An easily identifiable standard sign system that can be implemented throughout the open space system, to provide directional/orientation/interpretive information;
- ❑ Physical improvements to increase visitor comfort, safety, and pleasure (eg. separated paths, landscaping, lighting, observation pads, comfort stations, trash receptacles, furniture, emergency services, vehicular parking, etc.)

***Objective SA-2: Punctuate the shoreline promenade with a series of parks and larger open spaces***

A number of parks and larger open spaces are proposed that would build on the intrinsic character of the shoreline and provide for a wide range of recreational experiences. The intent is to create series of parks and other publicly accessible spaces, capable of accommodating a wide variety of recreational activity, connected by a shoreline promenade. These could include:

- ❑ A portion of the "Meadow" in front of the Port Building in Jack London Square;
- ❑ A new "Green" to anchor Phase 2 developments at Jack London Square;
- ❑ A new "Greenway" extending along Webster Street to connect Jack London Square to the inland neighborhoods;
- ❑ Expansion of Estuary Park;
- ❑ A series of parks in the 5th-9th Avenue area;
- ❑ A new park at Union Point; and
- ❑ Expanded and improved facilities along the MLK Regional Shoreline.

***Objective SA-3: Emphasize visual corridors and open space links to surrounding inland areas.***

To make the Estuary shoreline more accessible, links to inland areas should be strengthened. Visual corridors and physical links to the water should be provided at regular intervals along the shoreline, using the grid of city streets in their full widths, to enhance the connection between inland areas and the water. In addition, the design of open spaces should promote opportunities to appreciate views and waterfront amenities from inland areas. At the same time, key corridors should be extended outward to the Estuary itself, to provide viewing experiences that are unique to the Estuary.

***Objective SA-4: Develop opportunities for recreational activities that are oriented to the waterfront and serve identified neighborhood needs.***

Recreational areas along the waterfront should meet the needs of the region and the city as a whole, as well as specific adjacent neighborhoods and districts. Programming of larger recreational areas should be undertaken in con-

junction with the EBRPD, neighborhood organizations and other interested parties to ensure that the recreational activities provided help to meet identified needs.

***Objective SA-5: Enhance natural areas along the shoreline.***

There are significant opportunities along the Estuary shoreline and Lake Merritt Channel to enhance remnant tidal marshes and other natural areas. These areas can add to the visual enjoyment and diversity of the shoreline, and expand wildlife habitat for birds and other species. They can also create outdoor areas for direct learning and experiences related to nature.

***Objective SA-6: Encourage the development of educational and cultural programs and interpretive facilities that enhance understanding of the waterfront environment.***

The Estuary shoreline is an ideal site for learning about nature, the history of the city, the economic activities supporting it, and the unique recreational and leisure activities available to residents. In order to enhance public

awareness and understanding of the contribution the Estuary makes to the quality of life in Oakland today, all waterfront facilities should be considered as potential visitor centers. To the extent feasible, significant historic sites and buildings should be preserved, adapted for re-use, and explained. Open space and shoreline access areas should be programmed to include educational and interpretive elements. Activities such as historic walks and self-guided tours should continue to be offered. Plaques or appropriate markers that recognize and commemorate the waterfront's history should be encouraged.<sup>3</sup>

To the extent feasible, significant historic sites and buildings should be preserved, adapted for re-use, and explained. Open space and shoreline access areas should be programmed to include educational and interpretive elements.

<sup>3</sup> See Oakland General Plan, OSCAR Element, OS 7.3.

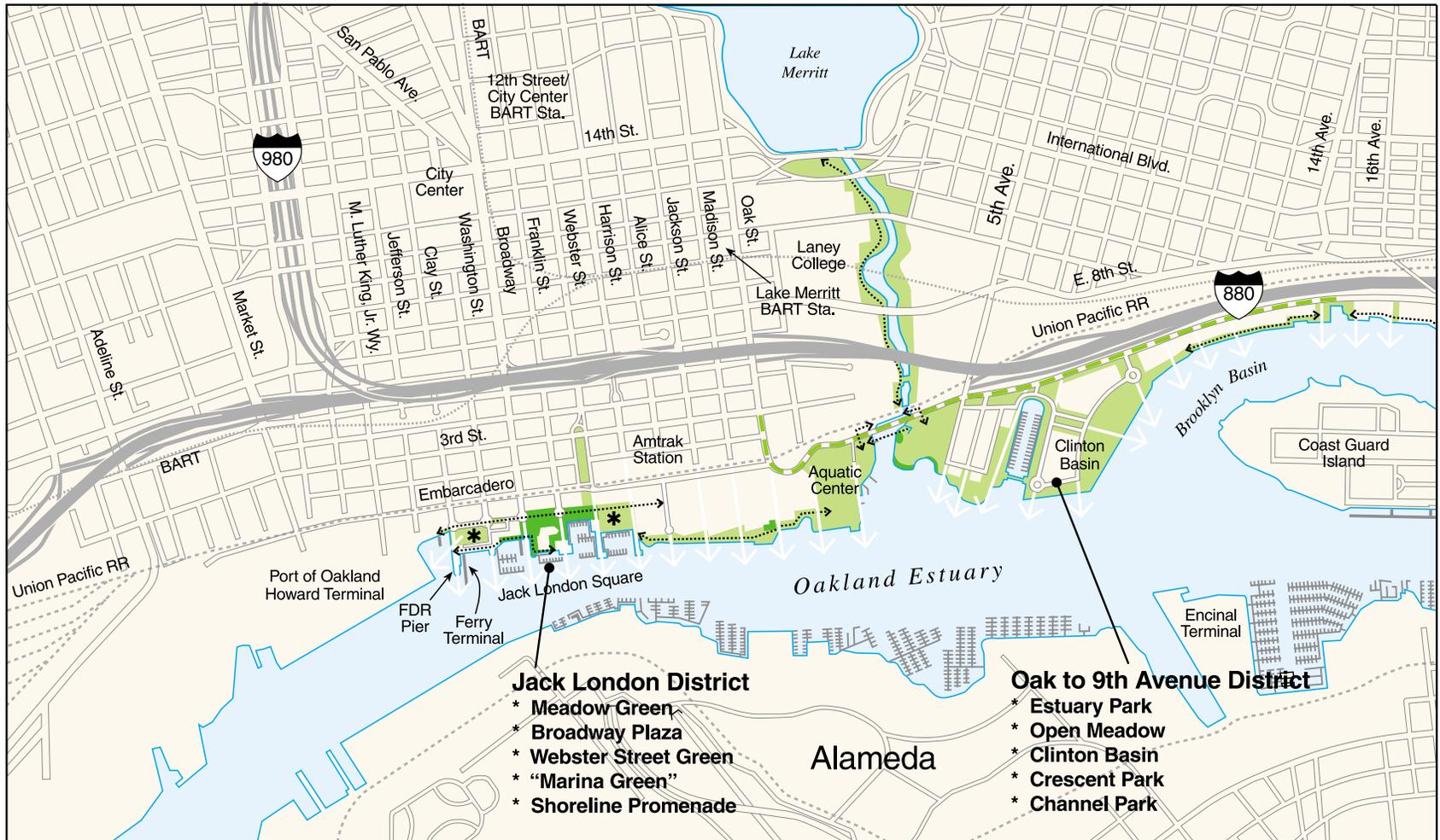
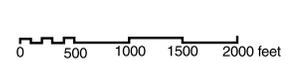
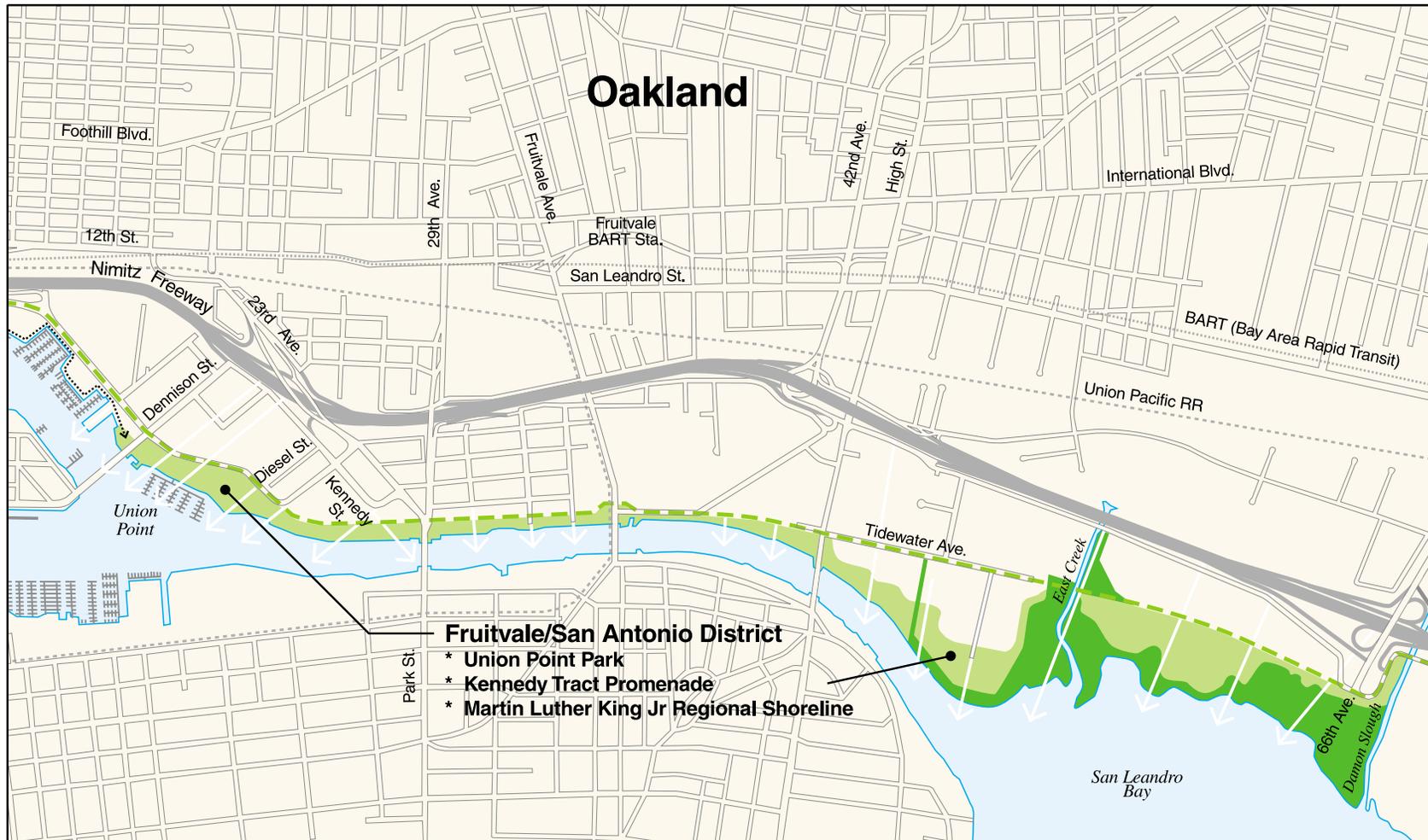


FIGURE II-3: Illustrative Shoreline Access & Public Space Plan







*A continuous waterfront parkway will provide for pedestrian, bicycle and vehicular movement along the Estuary shoreline*

## Regional Circulation & Local Street Network

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Soon after its inception in 1852, Oakland (and the waterfront in particular) became a major crossroads within the region, state, and nation. An early catalyst for economic development occurred in 1869 with the establishment of Oakland as the western terminus of the trans-continental railroad. Subsequent development of transportation infrastructure focused on the railroad terminus: steam trains and ferries to take passengers to San Francisco, wharves and steamers to move freight, and additional rail connections to distribute goods up and down the coast.

In the years since, Oakland's strategic location has helped to enhance the city's role as the hub of a transportation network serving the city, the San Francisco Bay region, and entire Western half of the United States. BART, Amtrak, aviation services all have joined the historic

freight operations as major components of Oakland's transportation function.

While Oakland's comprehensive system of passenger and freight transportation represents important economic arteries for the Bay Region, it has been developed at the expense of the local circulation system.

### BARRIERS

In the Estuary area, the sheer magnitude of the regional transportation infrastructure has contributed to the fragmentation of the local street system, and created a physical and psychological barrier between the city and its waterfront.

For example, railyards separate the waterfront and the city, penetrable only at specific grade

crossings along the line. But the difficulties posed by the rail network for local circulation were magnified by construction of the I-880 freeway, which parallels the railroad right-of-way. The combination of the freeway, the rail corridor, and the BART corridor creates a physical barrier to auto traffic as well as pedestrians and bicyclists.

Additionally, the juxtaposition of the freeway system over the city grid has created a series of oddly-shaped land parcels that are hard to make use of. Confusing interchanges, sub-standard ramps, and circuitous routing of traffic are disorienting to travelers in the Estuary area. The confusing nature of the circulation system creates safety problems and disincentives for those unfamiliar with the area to visit.

Furthermore, it is not possible to walk, bicycle, or drive directly from one end of the Estuary to the other. Crosstown routes that link the hills and the bay are ambiguous, and meet the Estuary shoreline in an awkward or interrupted fashion.

Crossings of the Estuary to Alameda and waterborne connections to the larger region are fairly limited, considering the proximity of destinations in the two cities. Three bridges and the two tubes provide vehicular access between Oakland and Alameda, and a ferry terminal at Jack London Square provides access to Alameda and San Francisco. However, these connections are clustered at the ends of the Estuary, leaving a large reach of the shoreline (Jack London Square to Fruitvale) without connections across the water that link it to Alameda or the larger Bay Region.

## ISSUES & OPPORTUNITIES

It is absolutely necessary to clarify and improve the circulation system to and along the waterfront in order to meet the objective to enhance the image and identity of the Estuary area and make the waterfront a more integral part of the city. Several opportunities exist to create a

more comprehensible and amenable circulation system that ties together the various attractions of the waterfront, and reconnects them to the city. These include:

- ❑ **Embarcadero Parkway.** A continuous parkway connecting Oak Street on the west with 66th Avenue on the east could be created. This parkway would not only provide a critical link in the circulation network, but would also provide a sense of orientation, connect diverse open spaces, and provide paths for strolling and passive recreation.

The parkway could be designed to accommodate a full range of transportation modes, including automobile, transit, bicycles and pedestrians, but managed as a “slow street” to discourage through movement of truck traffic.

- ❑ **Freeway Access.** Simplifying and enhancing freeway access to and through the area could be achieved by consolidating freeway ramps and linking them to major thoroughfares. Existing on and off-ramps occur in a seemingly haphazard manner, and do not meet current standards. Although

interchange improvements can only be undertaken with Caltrans’ approval and increasingly must rely upon nontraditional sources of funding, consideration should be given to the creation of full-movement interchanges at selected points along the freeway (Caltrans standards suggest one-mile intervals) and to the removal of sub-standard on and off-ramps.

As an integral part of these improvements, it is important to enhance parallel circulation on both sides of the I-880 corridor, but away from the Estuary shore.

The absence of direct connections from I-880 (Cypress Freeway) to Downtown Oakland and Jack London Square is a concern to the city. Efforts must be made immediately to rectify this severe problem, and make the waterfront accessible from the regional freeway network.

- ❑ **Local Access.** Local access corridors across the freeway that enable motorists, pedestrians and bicyclists to reach the water could be constructed. Once freeway ramps are consolidated at the major interchanges, opportunities to create and enhance links

to inland neighborhoods can be maximized.

- ❑ **Waterborne Transportation.** New links by waterborne transit (eg. ferries, water taxis and shuttles) that utilize the Estuary as a corridor for circulation, and which connect future activity centers on both the Alameda and Oakland sides, can be established.

Ferry service from existing terminals is expected to increase between Oakland/Alameda and San Francisco, as well as to Treasure Island, Angel Island, and other recreational destinations.

In addition, there is the potential for water taxi and shuttle service in the upper reaches of the Estuary, linking activity centers as they develop. While expanded water taxi and ferry service has long been pursued in the Estuary, this may be an opportune time to tie it more closely to new development opportunities.

- ❑ **Transit Loop.** A trolley line along the Broadway spine, connecting the Jack Lon-

don Square with the City Center and beyond, could be implemented. Although more difficult to accomplish, there is also an opportunity to establish a rail transit link between the Fruitvale BART station and Alameda along an existing rail right-of-way on Fruitvale Avenue, which crosses the Estuary into Alameda.

- ❑ **Parking.** As land uses change in the Estuary area, adequate parking will be required to support new uses. Parking areas should be strategically located, in accordance with urban design objectives for the area. Parking facilities should be evenly distributed and accessible, while avoiding prime waterfront spaces and pedestrian precincts.

## REGIONAL CIRCULATION & LOCAL STREET NETWORK OBJECTIVES

Objectives for regional circulation and local street networks recognize the importance of circulation and access to support the objectives for land use, public access and public spaces. These add specificity to a number of **objectives**

reflected in the General Plan Land Use & Transportation Element and Bicycle & Pedestrian Plan.

### ***Objective C-1: Improve and clarify regional access to Oakland's waterfront.***

Interchanges along the I-880 freeway should be consolidated at arterial roadways and brought up to current standards to improve access to and within the Estuary area.

The I-980 connection to the Alameda Tubes at the Jackson Street off-ramp currently routes traffic through city streets, and should be improved to alleviate congestion on local streets and clarify access routes to Alameda and on Oakland local streets.

Improved freeway interchanges should be considered at 5th Avenue, 23rd Avenue, Fruitvale, and High Street/42nd Avenue. A new interchange should be investigated to provide direct access from I-880 to Jack London Square and downtown Oakland.

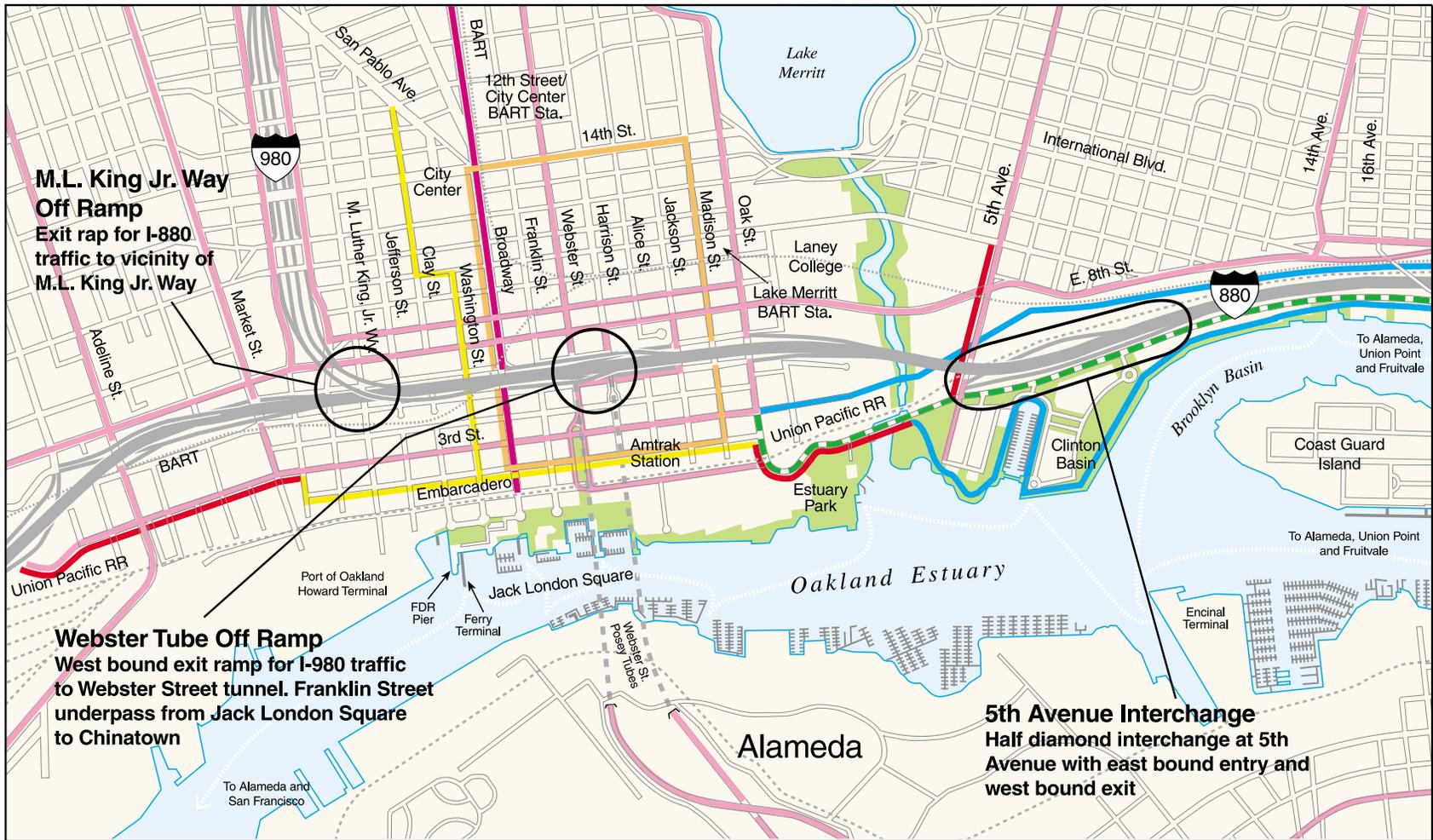
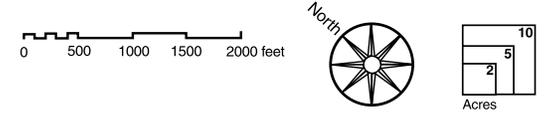
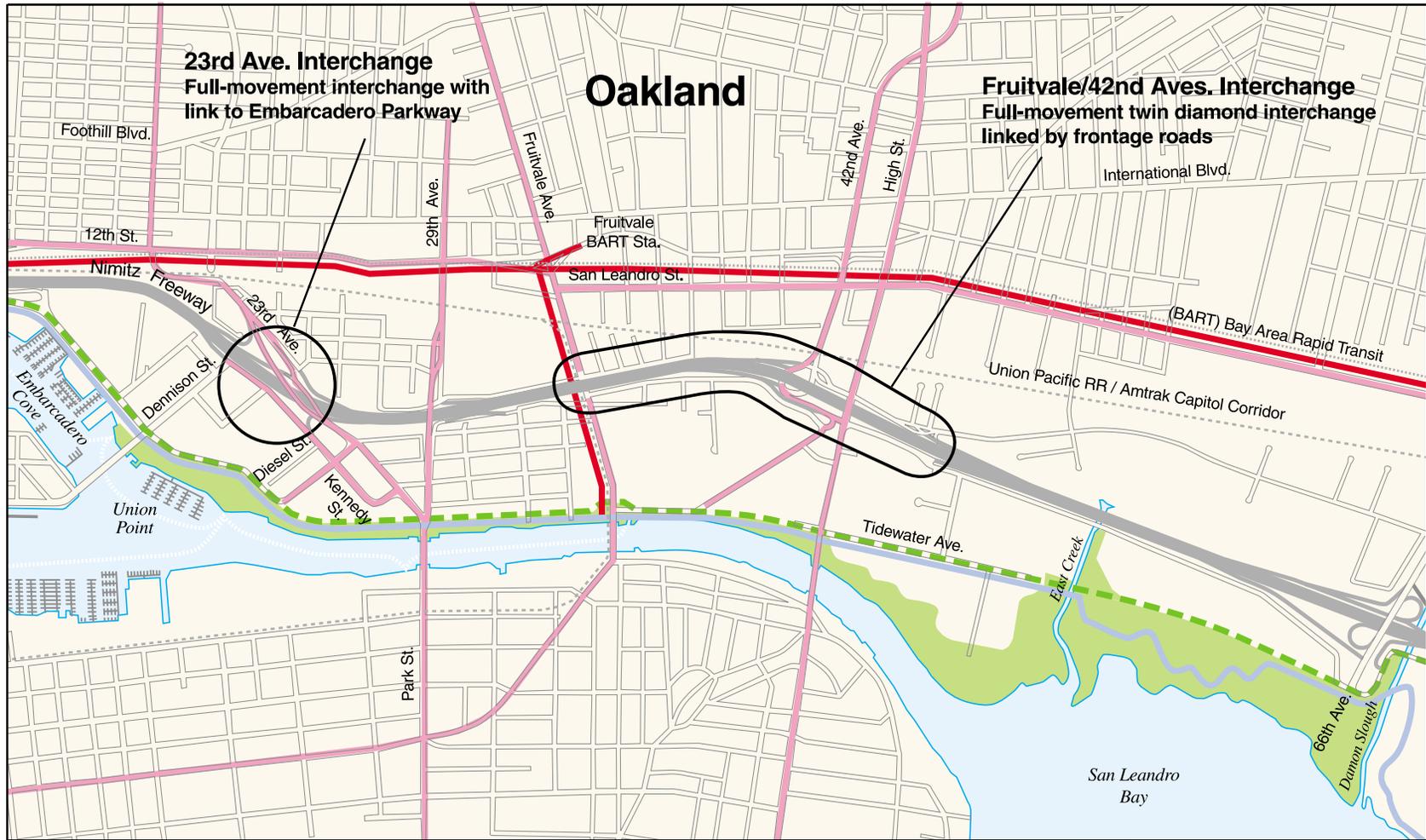


FIGURE II-4: Illustrative Circulation Plan

- |                              |                                        |                             |                              |
|------------------------------|----------------------------------------|-----------------------------|------------------------------|
| Interstate Highways/Freeways | Downtown Trolley                       | Class I Bikeways/Pathways   | Estuary Parkway              |
| Oakland/Alameda Tubes        | BART – Bay Area Rapid Transit          | Class II Bikeways/Pathways  | Open Space and Public Access |
| Major Linking Streets        | Passenger/Freight Rail                 | Class III Bikeways/Pathways |                              |
| Local Streets                | Waterborne Transit (Ferry, Water Taxi) |                             |                              |



***Objective C-2: Establish a continuous waterfront parkway; a safe promenade for pedestrians, bicycles, and slow-moving automobiles***

For the most part, vehicular circulation should be accommodated on existing roadways. However, a continuous waterfront parkway is a top priority in the [Estuary Policy Plan](#). The Parkway should take advantage of and stay within the Embarcadero right-of-way, extending from Jack London Square to Park Street.

Beyond Park Street, it may be necessary to purchase additional right-of-way to allow the parkway to be connected through to Fruitvale Avenue and beyond to Tidewater Avenue and 66th Street.

West of Oak Street, the parkway should meet the city grid, providing several routes west to Mandela Parkway.

The configuration and cross-sectional character of the roadway will likely vary, depending on availability of right-of-way, adjoining land uses, and traffic conditions. The parkway and all other waterfront roads should be treated with appropriate landscaping, lighting, signage, rest/

overview areas, and, where appropriate, parking, and other features which provide a continuous parkway character for pleasant driving, walking, and cycling. The parkway should be slow-moving. The roadway should be accompanied by separate or contiguous bicycling and pedestrian paths where feasible.

***Objective C-3: Balance through movement with local access along the waterfront.***

In many urban waterfronts, shoreline transportation corridors have been allowed to become freeway-like environments, providing through movement at the expense of local access. The concept of the Embarcadero Parkway, described above, aims to properly balance local access with through movement.

Traffic-calming methods should be incorporated into roadway design throughout the study area, to ensure that vehicular movement is managed in consideration of recreational and aesthetic values. The parkway should not become an overflow or alleviator route to the I-880 freeway, and it should prohibit through truck movement.

***Objective C-4: Strengthen local circulation connections between Oakland neighborhoods and the waterfront.***

With anticipated improvements to the regional transportation system, better connections can be made between the waterfront and inland neighborhoods.

Specifically, emphasis should be placed on improving those connections which already exist: Washington, Broadway, Webster, Franklin, Oak, 5th, 16th, 23rd, 29th Avenues, Fruitvale and High Streets. These links can be strengthened through alterations of street alignments or extensions of existing roadways, relocating parking areas, and improving pedestrian facilities.

***Objective C-5: Promote transit service to and along the waterfront.***

Land and water-based transit services should be extended to and along the waterfront. Transit services should be focused along Broadway, Washington, Franklin, Third, and Fruitvale.

A special transit loop linking Jack London Square with other significant activity centers (eg., Old Oakland, the Oakland Museum, and the Lake Merritt and City Center BART stations), should also be encouraged. Passenger rail service between Fruitvale BART and Alameda should be studied further.

Redevelopment on both the Oakland and Alameda sides of the Estuary may, in the future, warrant increased ferry and water taxi service. Water taxis can link activity centers on both sides of the Estuary, transforming the waterway into a viable boulevard that brings together the Oakland and Alameda waterfronts.

***Objective C-6: Improve pedestrian and bicycle circulation.***

Bicycle and pedestrian networks should be extended throughout the waterfront. By enhancing the Embarcadero Parkway, a continuous pedestrian path and bicycle route can be established along the waterfront. Links from the parkway to upland neighborhoods are proposed along connecting routes, including Oak, Lake Merritt Channel, 2nd Street to 3rd Street, Fifth, Fruitvale, and Alameda to High, as well as the grid of streets in the Jack London District.

*Section II: Objectives*

***Objective C-7: Provide adequate parking without diminishing the quality of the urban environment.***

In the Jack London District in particular, provision of adequate parking is critical to accommodate both existing and future demands. Several sites currently used for surface parking are subject to future development. In addition, parked vehicles are ‘spilling over’ into pedestrian areas, to the detriment of the District’s attractiveness. To resolve this, a comprehensive parking management strategy should be developed to plan for and provide adequate parking.



# **III** District Recommendations



*Aerial view of the Central Jack London District.*

## Jack London District

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The Jack London District encompasses approximately 225 acres of land situated between Adeline Street on the west and Oak Street on the east. Properties within the district are predominantly in private ownership, but also include some large public land holdings (Figure III-1). In particular, the Port of Oakland has a significant presence, with ownership of 31 acres of land on the water side of the Embarcadero, as well as additional parcels inland. The Jack London District historically served as an important center of maritime trade and commerce, and today is associated with the figure of Jack London, his seafaring adventures, and spirit of rugged individualism. These historic resources are represented in the historic properties and districts that exist throughout the Jack London District (Appendix A).

Over the past several decades, the Jack London District has experienced tremendous change. The westward growth of the port and development of container terminals on filled land, as well as the decline in shipbuilding and fishing after World War II, brought about a transformation in the area. Many of the service support and industrial uses that traditionally occupied the district declined and left the area. Some buildings were vacated as these uses moved elsewhere; others continued to be used, but not fully; and still others were adapted to new uses.

Although industrial and distribution uses remain dispersed throughout the district, they are particularly concentrated in the western portions of the district between Adeline Street and Martin Luther King, Jr. Boulevard, close

to the port's maritime services in the middle and outer harbors.

The construction of regional transportation projects in the 1960s, such as the Webster Tube to Alameda and the Nimitz Freeway, and the siting of large-scale public buildings along the freeway corridor, contributed to the physical isolation between this area and the rest of the city (Figure III-2).

Today, the transformation of the Jack London District is well underway. Uses such as retail, dining and entertainment have expanded along the waterfront. Home improvement and off-price retail outlets are emerging to the west of Broadway, with office, work/live and loft residential uses are increasing to the east. It is an opportune moment to capitalize upon these positive trends and realize longstanding

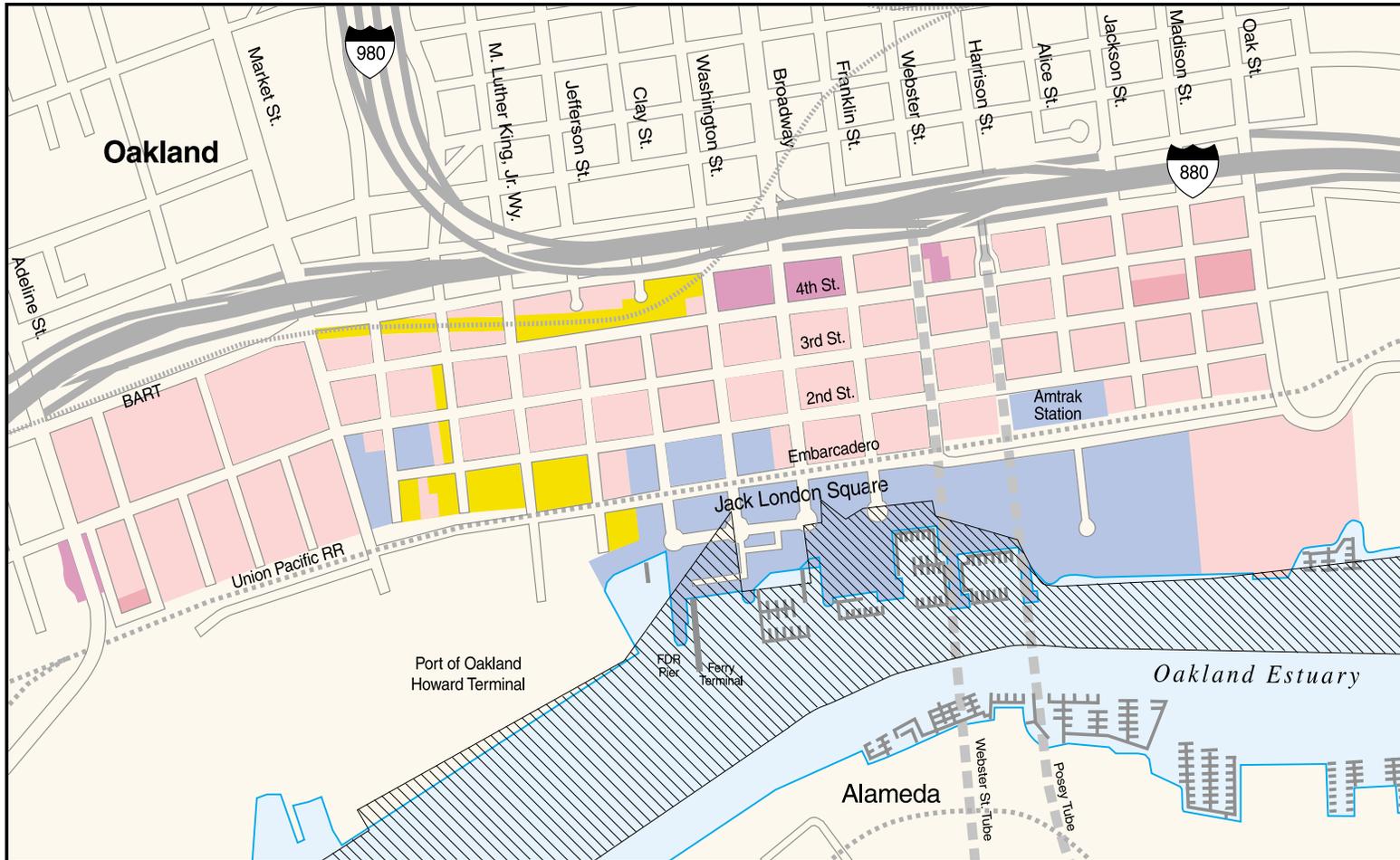
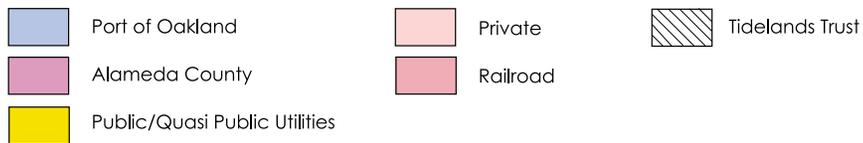


FIGURE III-1: Jack London District Current Ownership



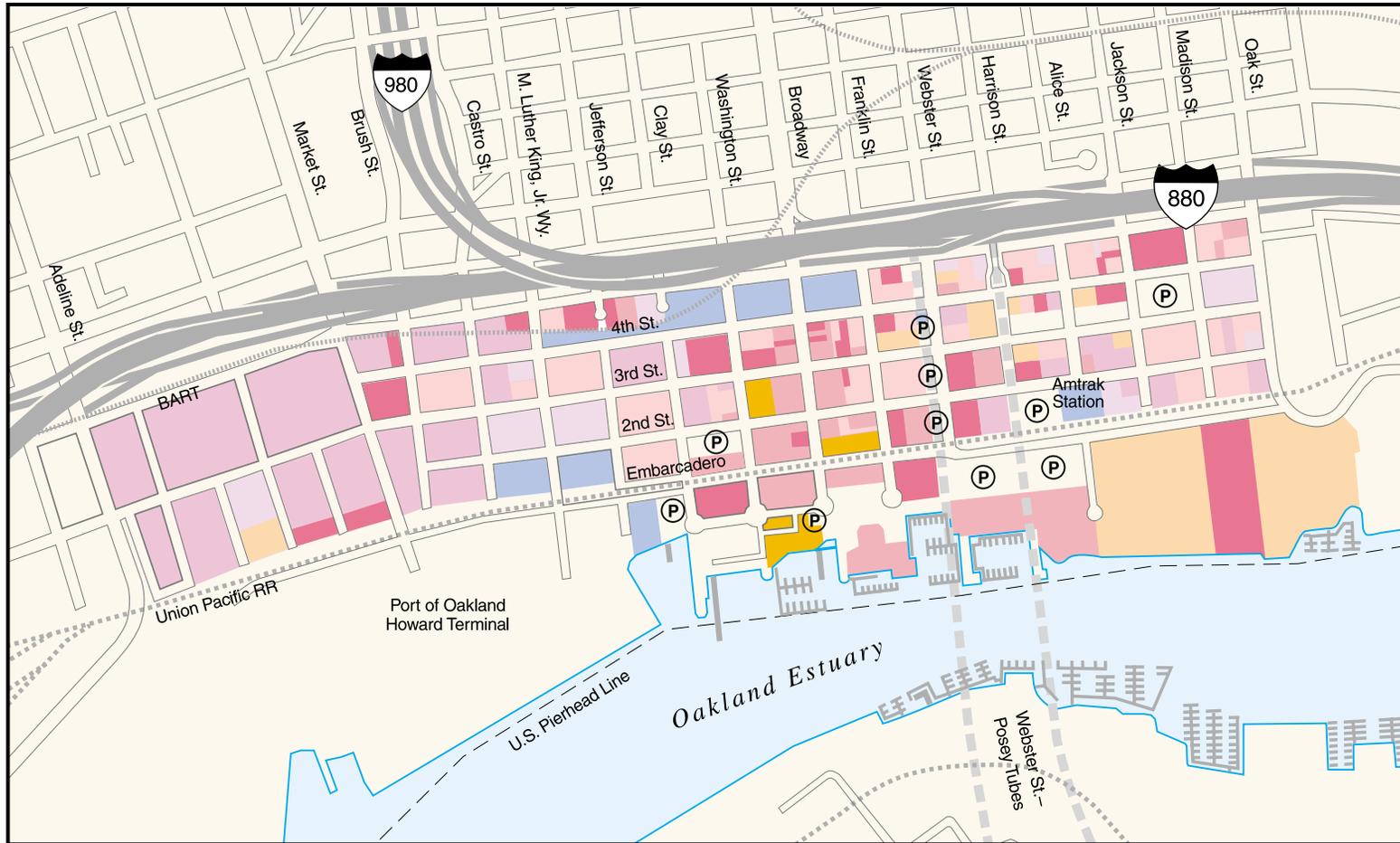
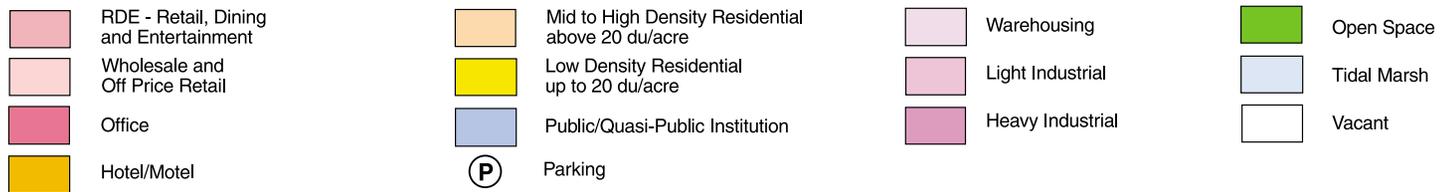


FIGURE III-2: Jack London District Existing Land Use





*The Jack London waterfront is becoming a significant regional destination. The Cirque du Soleil attracted hundreds of thousands of visitors in 1997.*

community objectives for renewal of the district as a whole.

The Jack London District should play an increasingly important role in contributing to Oakland's quality of life and making the waterfront a more visible part of the city. The area is closely tied to downtown Oakland, both physically and functionally. The contin-

ued redevelopment of the Jack London District is essential not only for the district itself, but also as part of a citywide and downtown improvement strategy that will help to reposition the downtown as a multidimensional activity center.

## LAND USE

The policies for land use emphasize strengthening the district's economic role within the region, building on existing trends and potentials, and broadening the appeal and quality of the area. Envisioned for the area is a mix of uses that builds on the amenity of the waterfront and provides a strong connection with the downtown.

Specifically, within the Jack London District, the Estuary Policy Plan reinforces existing trends toward commercial and residential land uses (Figure III-3). New uses should be promoted as infill development at Jack London Square and along the Broadway spine to create an intense area of public interest and activity that seamlessly links the waterfront to downtown Oakland.

To the east of Broadway, new residential development that is compatible with the existing industrial use and character of the area should be encouraged. A residential population in this area can infuse new vitality into the district as a whole. West of Broadway, the trend toward off-price retail should be continued and encouraged.

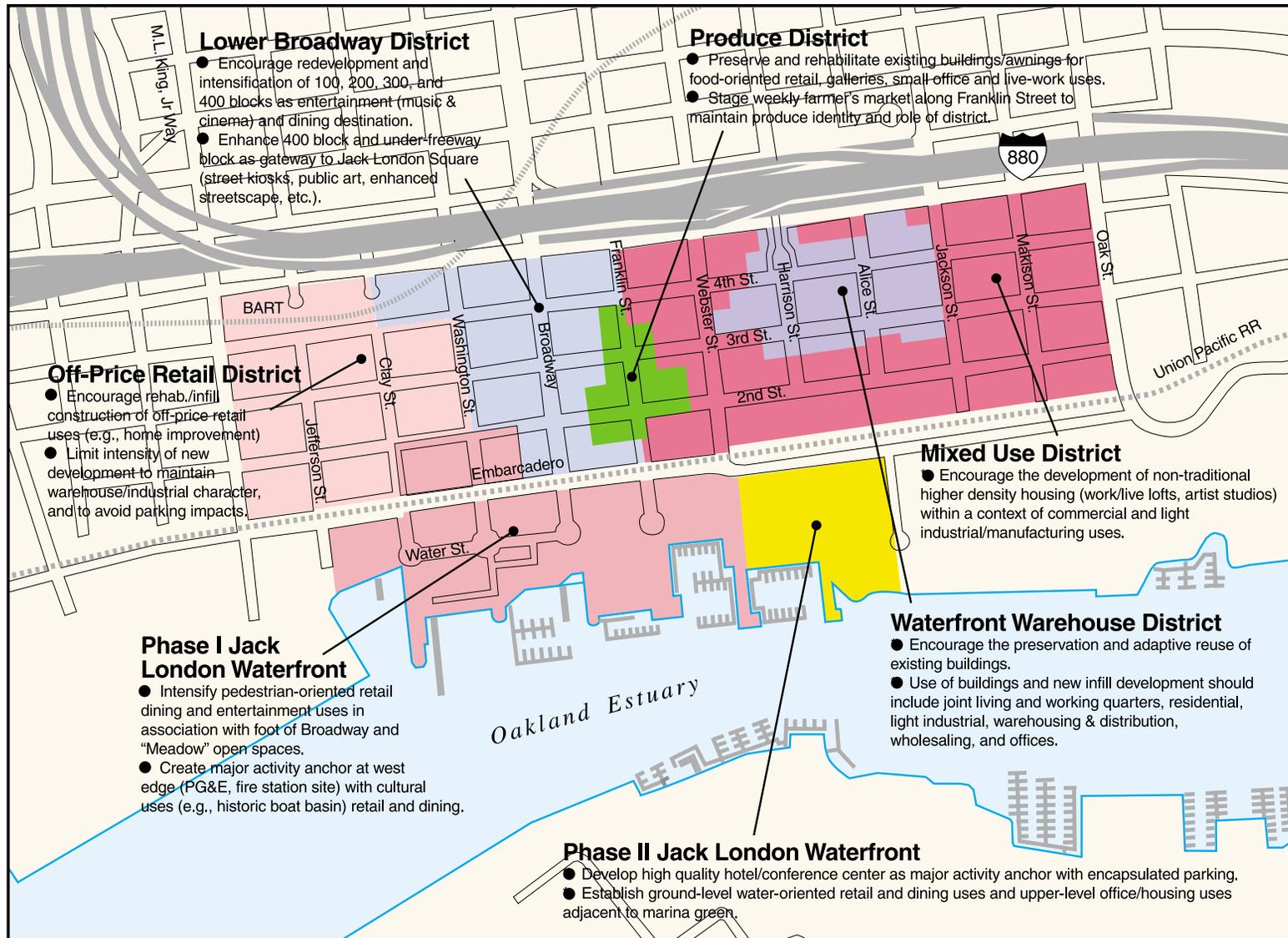


FIGURE III-3: Central Jack London District Illustrative Development Strategy

For ease of discussion, the Jack London District has been subdivided into 7 subdistricts. Land use policies for each are presented as follows:

### **Retail, Dining, & Entertainment District**

***POLICY JL-1: REINFORCE RETAIL, DINING AND ENTERTAINMENT USES ALONG THE WATERFRONT, AND EXTEND THESE USES ALONG BROADWAY TO CREATE A REGIONAL ENTERTAINMENT DESTINATION.***

The Jack London Square has been established as a significant regional destination for retail, dining and entertainment. The Estuary Policy Plan recommends that existing pattern of uses be expanded and intensified within the Phase I portion of Jack London Square (i.e., between Clay and Webster Streets), and that the district to be expanded northward along the Lower Broadway corridor between the Embarcadero and Fifth Street.

More specific policy guidance for development within this area includes:

***JL-1.1: Expand commercial uses along the entire five-block frontage of Lower Broadway.*** The plan recommends that a coordinated redevelopment effort be pursued by the Port, the City, and the private sector to revitalize Lower Broadway as an integral extension of the waterfront and downtown. (See also Policy JL-13.1) These blocks are particularly important for retail, dining, and entertainment uses. Upper level office uses and ground-floor retail uses should be encouraged, to promote activity and daytime populations on the streets.

If necessary, acquisition and assembly of selected frontage properties for development projects should be facilitated by the use of redevelopment tools as part of an overall strategy of intensification and enhancement.

***JL-1.2 Intensify Phase I of Jack London Square.*** Within the Phase I portion of Jack London Square, (i.e., between Clay and Webster Streets) the Estuary Policy Plan recommends the intensification of retail, dining, office, hotel, and entertainment activities in conjunction with the enhancement of waterfront open spaces and other shoreline amenities. All ground-level frontages of buildings

should be developed as active publicly-oriented attractions such as retail, dining or entertainment uses.

Infill developments should be carefully designed to insure that views and shoreline access are maximized, and that the continuity of pedestrian areas is maintained. In order to intensify the continuity of pedestrian activity within the area, several infill and development opportunities are identified. These include:

- ❑ *A “flagship” retail anchor or entertainment attraction, on the vacant site at the southwest corner of Broadway and the Embarcadero.* Development of this site should generate significant activity and interest at this key intersection. This development should be of a landmark design befitting its strategic location.
- ❑ *A freestanding restaurant, dining pavilion, or other attraction adjacent to the proposed ‘Meadow Green’ open space and historic boat basin at FDR Pier. (See Policy JL-9.1).* This development should create a strong destination at the western terminus of the Water Street corridor.

- ❑ *Additional kiosks and retail extensions in the plaza adjacent to the existing Barnes & Noble bookstore.* The kiosks, food carts, etc. should help to intensify activity on a daily basis, and provide patrons with high-quality food services and an attractive environment for outdoor eating, with views to the water.

In addition, expansion of existing retail uses on the south side of the plaza will establish a stronger retailing edge. Water Street should be maintained as a through promenade. The design of the pavilions and retail extensions should contribute to the festive visual environment.

- ❑ *A cafe extension on the south side of 77 Jack London Square (the Oakland Tribune building).* A cafe extension or similar structure should be constructed to create a more interactive environment along this segment of the Water Street promenade.
- ❑ *Hotel Expansion.* The Waterfront Plaza Hotel should be encouraged to expand within the ‘footprint’ of the existing hotel/restaurant, the “Water Street III” retail/

office building and the courtyard between the two buildings.

Ground-level uses that face on Water Street and the shoreline promenade should be publicly accessible, and include retail, restaurants, public attractions, or other similar uses. While visitor pick-up and drop-off should be accommodated, all parking should be off-site. (See Policy JL-13)

- ❑ *Redevelopment of the block bounded by the historic boat basin, the Embarcadero, Clay and Jefferson streets for public-oriented commercial-recreational and/or cultural use (e.g., maritime museum).* This longer term project should be pursued to help activate the water’s edge and create a major activity anchor at the western edge of the Jack London waterfront.
- ❑ *Upper level office use throughout this sub-area.* Similar to the Lower Broadway area, upper level office uses should be encouraged to promote an active daytime population. Development should be carefully sited and designed to avoid shadowing of the Water Street axis.

## Commercial-Recreation District

***POLICY JL-2: ENCOURAGE THE REDEVELOPMENT OF PHASE II OF JACK LONDON SQUARE BETWEEN WEBSTER AND ALICE STREETS.***

The Phase II portion of Jack London Square represents a generation of waterfront redevelopment undertaken in the 1960s and 1970s. Today, many of the buildings at Jack London Village are in deteriorating condition. Continuity of public pedestrian access between Jack London Village and the rest of the Jack London District is circuitous and unfriendly. While the *Heinolds First and Last Chance Saloon* and Jack London’s cabin provide a unique sense of the historic waterfront, they are isolated in relation to surrounding activities.

This and adjacent sites currently used for parking are the only viable opportunities to develop additional commercial and recreational uses, and add to the luster of Jack London Square as an entertainment venue. However, development of these sites requires extraordinary sensitivity to the waterfront location, the shoreline edge, and to surrounding activities. Specific policy direction is provided:

***JL-2.1: Encourage the redevelopment of Phase II of Jack London Square for commercial-recreational and waterfront-oriented uses.*** Phase II of Jack London Square should be redeveloped comprehensively, in a manner that provides significant public attractions, and unimpeded shoreline access around and through the site. This shoreline access should surround the proposed 'Marina Green' (See Policy JL-8.2), providing perimeter activities and attractions that complement and enliven the waterfront environment.

Redevelopment efforts should incorporate the following:

- ❑ *A high-quality hotel and conference center.*
- ❑ *Ground-level retail, restaurants, public attractions, and other amenities facing the Marina Green and the shoreline promenade, with office and/or housing uses above.*
- ❑ *Upper level office use throughout this sub-area.* Upper level office uses should be encouraged to promote an active daytime population. Development should be care-

fully sited and designed to avoid shadowing of the Water Street axis.

- ❑ *Integrated parking* to serve the hotel/conference/office center. Parking facilities should be designed to conceal the parking functions from the Marina Green and the waterfront. Parking for bicycles, as well as rooftop recreational uses could be included.
- ❑ *Heinold's First and Last Chance Saloon* should be retained in its present location, either as a stand alone feature (if feasible) or by incorporating it within the new frontage at the current site, as a landmark element.
- ❑ *A distinctive visual landmark at the eastern terminus of Jack London Square and Marina Green.* The design and height of buildings along Water Street could create this visual landmark.
- ❑ *Inland of the Embarcadero a parking structure should be constructed where it can serve visitors of both Phase I and Phase II portions of Jack London Square, as well as the Produce District and the Loft District.* The parking structure should incorporate active ground-level uses and be designed to be

complementary to the character of the adjacent warehouse district. (See Policy JL-13)

- ❑ *A pedestrian bridge across the Embarcadero and rail tracks* to the Phase II development should be encouraged to supplement at-grade access. The design of this structure should complement the existing bridge at the Washington Street garage and Amtrak, and add to a sense of arrival at the waterfront district.

### Off-Price Retail District

#### ***POLICY JL-3: ENCOURAGE THE EXPANSION OF OFF-PRICE RETAIL ESTABLISHMENTS WEST OF BROADWAY.***

Currently, in the area west of Washington Street to MLK Boulevard, there is an eclectic mix of uses that includes offices, studios, retail, warehouse and light industrial uses. These businesses tend to fit well in this environment, which bridges the more intense regional entertainment and dining attractions at the water's edge and the heavier industrial and service commercial uses inland and to the west.

Opportunities exist to expand and strengthen this unique district with additional retail space within rehabilitated warehouse buildings and/or new construction. Therefore, the lower intensity nature of the district should be maintained, and some of the convenient surface parking that exists should be retained.

However, additional structured parking will also be required to serve the area and Jack London Square in the longer term. Consideration should be given to a future garage within the general vicinity of Cost Plus. The Off-Price Retail District should also be included within a larger parking district to ensure reciprocal parking arrangements. (See Policy JL-16)

### Produce District



*A mixture of home improvement and off-price retail businesses have created an attractive district immediately west of Jack London Square.*

#### ***POLICY JL-4: PRESERVE THE HISTORIC CHARACTER OF THE PRODUCE DISTRICT, AND ENCOURAGE ACTIVITIES THAT CREATE A VIABLE URBAN MIXED-USE DISTRICT.***

The Produce District represents the most significant concentration of food-related businesses within the city. It is also among the oldest enterprises along the Estuary, dating from 1917, when the City relocated the facilities from 11th and Webster streets to the vicinity of Third and Franklin. Today, it encompasses several blocks and occupies approximately 130,000 square feet of space operated by 13 merchants, the majority of whom sell directly to local restaurants. In addition, the Oakland Grill, at the heart of the district, has established a restaurant business that caters to Produce District customers and lunchtime office workers, as well as regional patrons.

The Produce District is recognized by many for its distinctive market buildings, with wide canopies and broad openings, as well as the morning activity of large trucks and forklifts moving produce on the sidewalks and in the streets.

#### ***JL-4.1 Encourage the sensitive rehabilitation and adaptive reuse of existing buildings.***

Retention of the historic character and ambiance of the Produce District should differentiate it from other Oakland destinations, and should complement nearby retail, dining and entertainment activities along Broadway and the waterfront. All efforts to preserve the existing structures are encouraged, whenever feasible; however, if not feasible, development shall incorporate elements depicting the unique historic character and features of the buildings (eg., canopies, overhangs and arcades, etc.).

***JL-4.2: Provide for a mix of new uses in the Produce District.*** Recognizing market and financial factors, the plan recommends a diverse range of uses, including existing wholesale and distribution activities. Priority should be given to attracting food-oriented retailers that can maintain the character of this market district, particularly at the key intersection of Third and Franklin Streets. Other uses, including office, retail, work/live lofts and warehousing, should also be encouraged.

***JL-4.3: Encourage the location of a farmers market along Franklin Street.*** In order to retain the market character of the Produce District, it is recommended that Franklin Street be improved as an expanded venue for the

weekly farmers market, which currently occurs at Jack London Square. This recommendation would require closure of the street to traffic and parking on market days. (See Policy JL-16)

### Mixed Use District

***POLICY JL-5: IN AREAS OUTSIDE THE EXISTING BOUNDARIES OF THE HISTORIC DISTRICT (API) AND EAST TO THE LAKE MERRITT CHANNEL, ENCOURAGE THE DEVELOPMENT OF A MIX OF USES, INCLUDING HOUSING, WITHIN A CONTEXT OF COMMERCIAL, LIGHT INDUSTRIAL/MANUFACTURING USES, AND ANCILLARY PARKING.***



*The historic produce market with its projecting awnings and vibrant street-life is a unique district in downtown Oakland.*

The area east of Broadway to the Lake Merritt Channel, between I-880, the Embarcadero and 2nd St. east of Oak Street is characterized by a number of food-related businesses, warehouses used for storage and distribution of products, some office uses, as well as a mixture of service and support uses.

A mix of uses, including housing, should be encouraged in order to support the retail and entertainment uses in the adjacent districts, and to help promote a more secure and vital environment with a day and nighttime population.

Other uses, including light industrial, warehousing and distribution uses, should also be encouraged to remain within this area. To accommodate the desired mixture of uses and minimize land use conflicts, new development should incorporate appropriate measures to recognize these existing uses and related activities and provide appropriate buffers to adjacent land uses.

New development should maintain the character of the existing multistory warehouses and industrial buildings.

- ❑ Active, publicly oriented ground-level uses with windows and doors oriented toward the street, and build-to lines along streets are encouraged.
- ❑ Use of industrial materials (e.g. corrugated metal, glass, steel) should be encouraged.
- ❑ On-site parking and loading should be concealed from view from the street and/or encapsulated within the buildings. Surface parking lots should be well landscaped.

The existing plaza at the Amtrak Station should be retained as open space and for transit drop-off. Development on the remainder of the site should be designed to accentuate the civic gateway function of the rail terminal building.

## Waterfront Warehouse District

***POLICY JL-6: ENCOURAGE THE PRESERVATION AND ADAPTIVE REUSE OF EXISTING BUILDINGS IN A NEW WATERFRONT WAREHOUSE DISTRICT. USE OF BUILDINGS AND NEW INFILL DEVELOPMENT SHOULD INCLUDE JOINT LIVING AND WORKING QUARTERS, RESIDENTIAL, LIGHT INDUSTRIAL, WAREHOUSING & DISTRIBUTION, WHOLESALE, OFFICES AND OTHER USES WHICH PRESERVE AND RESPECT THE DISTRICT'S UNIQUE CHARACTER.***

The Waterfront Warehouse District occupies portions of the nine blocks, bounded by the entire existing historic district Area of



*Over the past five years numerous work/live and loft studio projects have been developed in the Jack London District.*

Primary Importance (API). This district has a significant concentration of well-preserved warehouses whose unique physical characteristics are associated with the historic use of the Estuary. The district is currently a viable warehouse district with a variety of industrial activities.

The district is also home to new residents, artists & artisans, and professionals. Recent private initiatives have adapted many existing buildings for re-use as residential, offices, joint living and working quarters, and smaller commercial tenants such as design firms, computer and multi-media businesses, law firms, consultants, restaurants, etc. This mixture of uses and activities should be encouraged to help promote a 24-hour population.

Other uses, including office, light industrial, warehousing, distribution, and ancillary parking, should continue to be encouraged.

Adaptive re-use of existing buildings, as well as new infill development, should be encouraged. In order to preserve the character of the district, development should be compatible with adjacent uses, and incorpo-

rate physical features that reinforce the district's unique scale, historic flavor and activities. Zoning regulations should be flexible enough to accommodate the diverse mixture of uses and activities that define the district. The following should be promoted:

- ❑ Active, publicly oriented ground-level uses or habitable spaces built to property lines with windows and doors that are oriented toward the street,
- ❑ Build-to lines along streets.
- ❑ Adequate setbacks and separations between adjacent buildings.
- ❑ Distinguish building mass or elevations into different components of approximately one-quarter block or less.
- ❑ Character-defining architectural features and appurtenances, including multi-paned sash windows, parapets and simple restrained cornices, sidewalk canopies and awnings, flat roofs, rooftop features, historic signs, etc.

- ❑ Balconies and areas of private open space should be discouraged on the front elevations of buildings. Rather, they should be in the back of the building, between buildings, or as rooftop terraces, and designed to avoid privacy impacts on adjacent buildings.
- ❑ Use of industrial materials (e.g. concrete, masonry, metal, brick, glass, steel), to reinforce the interesting mix of exterior building materials.
- ❑ On-site parking and loading concealed from view from the street and/or encapsulated within the buildings. Surface parking lots should be well landscaped.

### Light Industrial District

***POLICY JL-7: MAINTAIN LIGHT INDUSTRIAL AND WAREHOUSING USES WEST OF MARTIN LUTHER KING, JR. BOULEVARD.***

The Estuary Policy Plan recommends maintaining light industrial activities, including warehousing and distribution uses, west of Martin Luther King, Jr. Boulevard where a concentration of industrial activities exist. Of-

fice and retail uses should be encouraged within this area as well, to promote economic diversity. These uses should be carefully screened to ensure that they are compatible with existing industrial activities and with the adjacent West Oakland neighborhood north of the I-880 freeway.

Light industrial uses should also be considered within other portions of the Jack London District, including the Off-Price Retail District and the Produce District.

### Waterfront Mixed Use District

***POLICY JL-8: ENCOURAGE THE MIX OF USES EAST OF ALICE STREET TO PROMOTE LAND USE COMPATIBILITY, WHILE MAINTAINING AND ENHANCING WATERFRONT VIEWS AND ACCESS.***

Along the waterfront East of Alice Street are two large residential developments (Portobello condominiums and the planned complex on the Port's 9-acre 'Site B'), separated by the KTVU television station. Given the differentiation of land uses, and the large-scale, self-contained nature of each, development continuity is lacking. They should be better integrated with each other, with the

surrounding area, and with the waterfront. These developments can be enhanced with exterior site treatments which use common features (such as lighting and street furniture), coordinated landscaping and architecture, and other amenities. It is particularly important that the waterfront promenade be a unifying feature which ties together the disparate developments and maintains continuity of waterfront access. At the same time, site enhancements should strive to strengthen connections between the waterfront and inland areas. In addition, the boundaries of these sites with the adjacent Jack London Square Phase II projects (See Policy JL-2) and Estuary Park (See Policy OAK-2.1) should be carefully considered as projects develop, to enhance compatibility.

### SHORELINE ACCESS & PUBLIC SPACES

While Jack London Square has established itself as a popular regional destination, the full potential of its public environment is still unrealized. Simply providing additional retail and entertainment venues, while important, is not enough to make the district an attractive, inviting destination. It is equally important to enhance the public spaces and to offer opportunities for general interest activities out

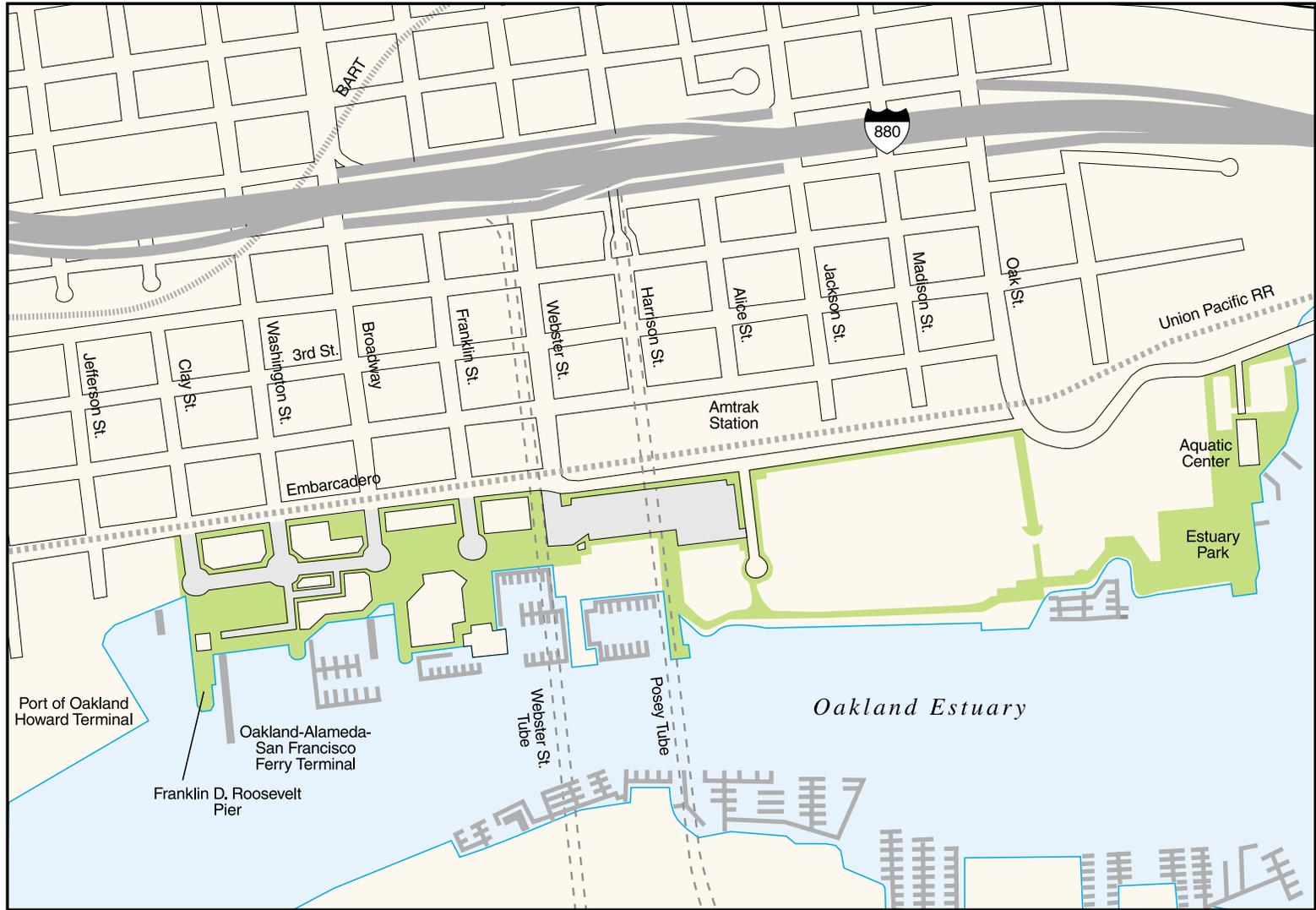


FIGURE III-4: Jack London District Existing Public Access and Open Space



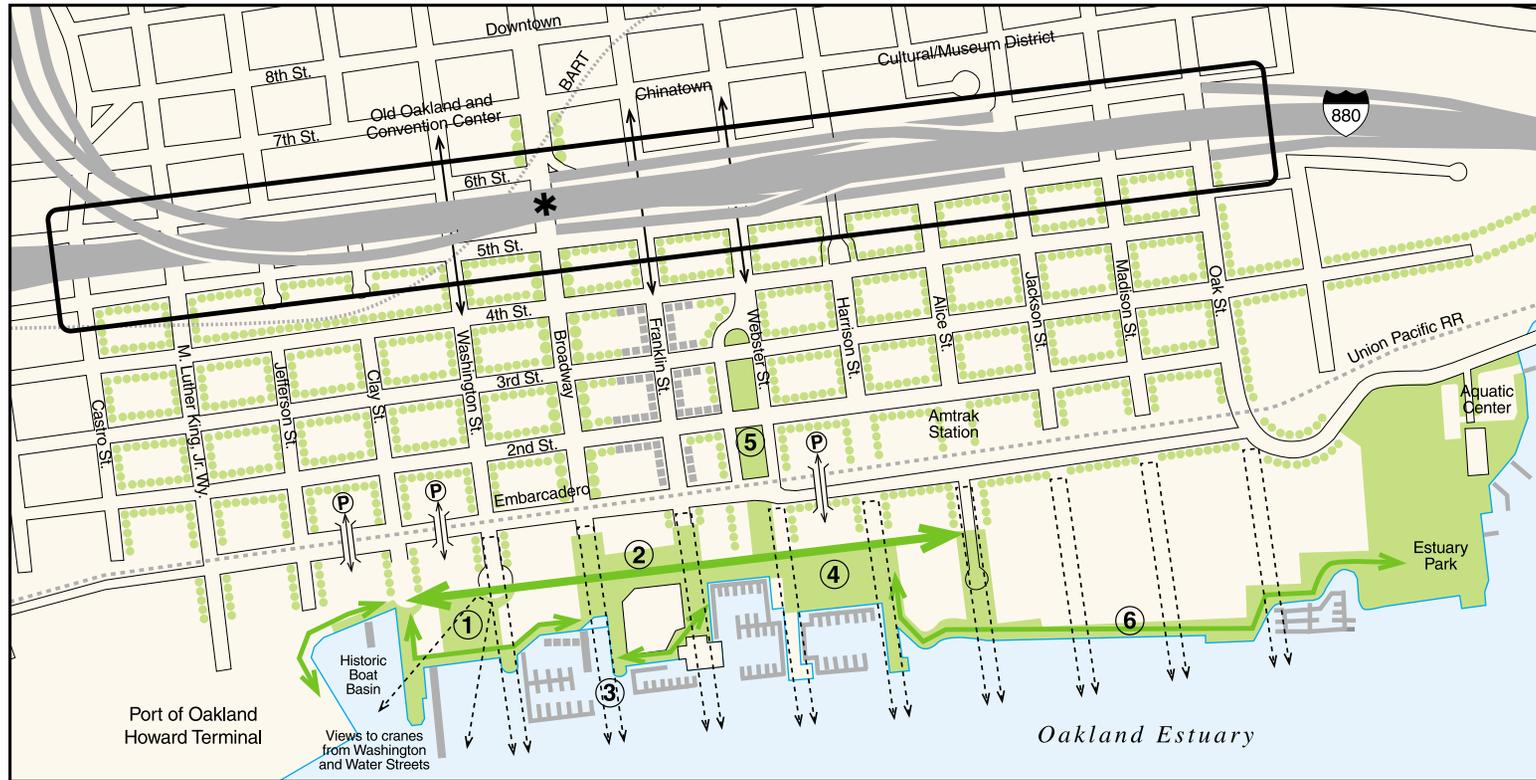


FIGURE III-5: Jack London District Illustrative Shoreline Access and Public Space Plan

- ① "Meadow Green"      ④ "Marina Green"      ●●● Upgrade lighting and landscaping along Broadway
- ② Broadway Plaza      ⑤ Webster Green      ■■■■ Preserve and extend awning/arcades along Franklin Street
- ③ Broadway Pier Extension      ⑥ Greenway      ●●● Undertake streetscape improvements to enhance pedestrian environment/linkages
- \* Improve Broadway Freeway undercrossing with Major Gateway Element
- Create linked system of public open spaces oriented to Estuary.
- ➔ Create uninterrupted shoreline band of public access.
- ⋯ Preserve and enhance views to the Estuary.
- Improve visual access and lighting under freeway

side of the buildings.

Currently, public space along the Jack London District waterfront is inconsistent. Sprinkled throughout the district are good examples of areas for public access, gathering, and overall enjoyment of the water's amenities. However, there are also areas where easy access and enjoyment are not as evident; where access is interrupted or constrained at key points; where pedestrian areas are compromised by conflicts with automobiles; where dramatic views to the water from inland areas are not evident; where design of amenities is not cohesive or inviting.

It is not the total amount of open space that is at issue, but rather where the open space is located and how it is designed, structured and managed. Therefore, policies promoting better shoreline access and enhanced public use within the Jack London District emphasize:

- ❑ Improving existing public spaces
- ❑ Adding additional open space for variety of recreational pastimes

- ❑ Maximizing opportunities to use the water
- ❑ Insuring continuity and cohesiveness of design
- ❑ Maintaining and enhancing views
- ❑ Staging of special events
- ❑ Minimizing pedestrian/vehicular conflicts

***POLICY JL-9: ESTABLISH A WELL STRUCTURED SYSTEM OF WATER-ORIENTED OPEN SPACES, CONSISTING OF THE FOLLOWING ELEMENTS.***

***JL-9.1: Improve existing shoreline access, open spaces, and connections between inland areas and the water:***

The grid of city streets should be the basis for establishing public access between the inland areas and the water. The full width of the street grid system should be preserved, and wherever feasible, be extended to the Estuary shoreline.

- ❑ ***The "Meadow Green":*** Approximately two-thirds of the existing open area west of the Waterfront Plaza Hotel (referred to as "Site A" or the "Meadow") should be maintained as open space. The site should be enhanced by maintaining the lawn, and adding street furniture, lighting and other amenities for active and passive use. Existing surface parking along the shoreline edge should be removed to extend the park to a pedestrian promenade along the edge of the water.

This open space should be designed and programmed to take advantage of the extraordinary activities that surround it. Existing views of the Howard Terminal cranes



*Much of the open space in Jack London Square is shared with automobiles which creates pedestrian conflicts and confusion.*

and the Estuary, proximity to the historic boat basin, FDR Pier, the ferry terminal, the Waterfront Plaza Hotel, Port building as activity centers all contribute to the uniqueness and popularity of the site. These elements should be reinforced as the site is upgraded.

The remainder of the site should be developed as a freestanding restaurant, dining pavilion, or other attraction that is carefully oriented to complement the Meadow Green and the surrounding activities. (See Policy JL-1.2) .

- ❑ *“The Broadway/Franklin” Plaza:* The Barnes & Noble plaza, including the adjacent Broadway and Franklin street ends, should be reconfigured as necessary to create an active pedestrian-friendly open plaza. The plaza should function as the ‘main square’ of the Jack London district. It should be designed and programmed to accommodate events, kiosks, displays, the annual Jack London Christmas tree, and other temporary uses and activities which attract large groups of people. Surrounding restaurants should be encouraged to use

the space as an extension of their outdoor dining facilities.

In addition, the plaza should accommodate creation of a suitable landmark terminus of Broadway, in keeping with significance of Broadway’s role and civic importance.

The plaza should be designed to accommodate service and emergency vehicles. Valet parking currently servicing the restaurants should be limited to drop-off and pick-up only. Specifically, automobiles should not be stored or parked in the plaza. Visitor parking should be accommodated in the Barnes & Noble garage or other suitable parking facilities. (See Policy JL-13)

- ❑ *Shoreline Promenade:* The shoreline walkway between the Waterfront Plaza Hotel and Estuary Park should be improved. Currently, it is not a continuous path and it lacks continuity. It should be upgraded as a ‘promenade’, suitable for comfortable casual strolling, with appropriate landscaping, lighting, benches, and other pedestrian amenities.

Significant segments of the promenade are scheduled to be developed as part of the adjacent marina reconstruction project at Jack London Square, and by the development of ‘Site B’ between Jack London Village and KTVU. The remainder promenade should be completed as soon as possible or as adjacent projects are realized. Portions of the existing waterfront walkway that are currently obstructed or otherwise substandard should be improved as opportunities arise.

- ❑ *Extend the promenade to the historic boat basin:* A walkway and/or pile-supported deck along the eastern edge of the historic boat basin between Clay and Jefferson streets should be established to provide public access to the water and vessels.
- ❑ *Remove Pedestrian/Auto Conflicts:* Throughout Jack London Square, public areas should be designed and managed to avoid pedestrian/automobile conflicts, so that pedestrians take priority. On the water side of the Embarcadero, parking lots, valet services, deliveries, and vehicular access generally should be limited to what is absolutely necessary. Necessary vehicular

services should be designed and managed to insure that vehicles are hidden from public view and circulate in off-hours, avoiding pedestrian activities.

As the waterfront becomes a destination in itself, it is no longer essential for individual restaurants to have front door drop-off, unless to accommodate the elderly or disabled. In no cases should cars be parked in the plaza areas. To ensure convenient attendant parking when needed, valet parking kiosks should be relocated to an area near the entrance to the Barnes and Noble garage or other nearby garage locations (existing and planned). (See Policy JL-16)

***JL-9.2: Create new open spaces that expand the opportunities to view, appreciate, and enjoy the water's edge.*** New waterfront open spaces should be created: one along the waterfront in the Phase II portion of Jack London Square, and one that connects this space toward downtown Oakland, along Webster Street.

- ❑ *The “Marina Green”:* Development of Phase II of Jack London Square (See Policy JL-2) should include an approximate one-

acre open space to be located adjacent to the marina, between the water, Webster and Harrison Streets. This space, referred to as the “Marina Green”, would complement the “Meadow Green”, a similar space at the western end of the Jack London Square project.

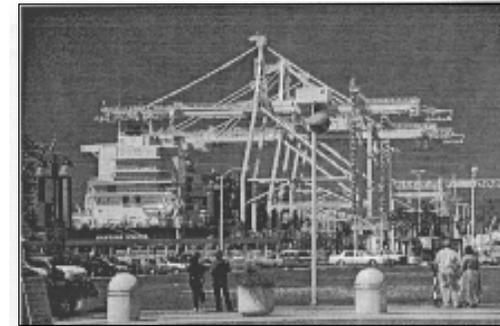
The Marina Green should be developed to accommodate a multitude of passive recreational activities. Framed by a proposed hotel on the existing Jack London Village site, the marina, and other development to the north and east (See Policy JL-2), the Marina Green should provide an attractive place for people to gather for casual recreation, passive enjoyment, or to attend an event.

The Marina Green should also be designed to connect to the planned “*Webster Street Green*” (see below) and the waterfront promenade and greenway between Alice Street and Estuary Park. The harbor master building for the Jack London marina should be located on the Marina Green. It should be carefully sited and designed to complement the green and to provide views

of the waterfront, in addition to marina related and other public services.

- ❑ *“Webster Street Green”:* Webster Street (between the water and I-880) should be reconfigured to create an attractive greenway that can function both as an important pedestrian route to the waterfront and as an attractive open space amenity for the mixed-use loft district that is emerging around it.

The Webster Street right-of-way is adjoined by an easement over the Webster tube to Alameda. As such, it is unbuildable. By relocating the surface parking lots above the tube, the easement and street right-of-way



*Views to the maritime activities of the Howard Terminal should be preserved as a unique feature of Oakland's waterfront.*

can be designed to create the Webster Street Green.

- ❑ *To develop additional open spaces, provide setbacks from the water's edge for generous areas of greenways, promenades, and other public gathering places between Clay and Alice streets.*

Generous setbacks should be provided from the water's edge and be well integrated with any development in the area. Outdoor cafes and seating should be encouraged along the frontage of Water Street and the waterfront promenade.

- ❑ *A new public access pier at the foot of Broadway. A public access pier should be con-*



*The Estuary is a popular venue for rowing and other recreational boating.*

structed that extends to the pier-head line at the terminus of Broadway to afford pedestrians the opportunity to go beyond the marinas for views up and down the Estuary, toward San Francisco and the Howard Terminal.

***JL-9.3: Maintain and enhance view corridors to the Estuary. Maintain the full width of existing view corridors, and establish additional view corridors.*** The streets provide important view corridors to the waterfront which should be maintained. Where the grid pattern of streets is interrupted, other view corridors should be established, if feasible. Several key viewsheds are important to maintain or establish, as follows:

- ❑ *Views of the Estuary, from along Water Street.*
- ❑ *Views of the marina and Estuary from the intersection of Franklin and Water Streets, and from along the shoreline promenade.*
- ❑ *Views of the Howard Terminal cranes and operations, from the intersections of Water and Washington streets, and Water and Clay Streets.* These views provide the most dramatic juxtapositions of scale and activity

between the working and urban waterfronts, and should be maintained as a unique feature of Oakland.

- ❑ *Views of the Estuary from Water Street across the proposed Marina Green and from the foot of Webster Street to Harrison Street.*
- ❑ *Opportunities for public viewing of the Estuary, the Inner Harbor, and the San Francisco skyline should be provided from upper levels of development projects adjacent to the Meadow Green, the harbormaster building on the proposed Marina Green, and the proposed hotel in Jack London Square, Phase II.*

***JL-9.4: Maximize opportunities to use the water. Ensure that the use and treatment of water spaces reinforce public enjoyment of the Estuary.*** The Estuary, as it passes through the Jack London District, is a narrow expanse of water, 700 to 900 feet in width. The water space provides an ever-changing stage of activity; one can view 1,000-foot-long container ships negotiating the channel alongside 25-foot recreational sailboats. Other activities, such as rowing competitions, lighted boat parades, powerboat races, etc., all offer the opportunity for people to use the water and appreciate its

value as a recreational resource. In addition, the public is invited to participate in aquatic recreation, via the provision of sailing and rowing classes, recreational boating, marina services, kayak launching, bay excursions on charter vessels, fishing, etc. These activities should be promoted, and supported with high-quality facilities, services and educational programs which encourage the public to participate in the wide range of aquatic activities.

❑ *Jack London Marina.* The pending reconstruction of the Jack London Marina should be accomplished as soon as possible. The Port should insure that it accommodate a variety of boats, plus associated services, programs, transient slips, temporary dockage for ferries, water taxis, charter operations, yacht sales, and ceremonial events.

In order to preserve the remaining areas of open water, no additional marina slips (beyond the current marina improvement project) should be developed between the foot of Harrison Street and Estuary Park.

❑ *Historic boat basin.* The existing cove between Jefferson and Clay streets should be

further enhanced as a historic boat basin, featuring the lightship Relief, the Potomac, and other vessels as appropriate. The boat basin should continue to accommodate fire boats for the adjacent fire station, unless the station is relocated to accommodate additional development.

***POLICY JL-10: CONTINUE TO STAGE SPECIAL EVENTS.***

Continued use of the waterfront spaces for special events is an extremely important function. It not only serves community needs, but also reinforces the retail, dining and entertainment activities. However, existing spaces that are suitable to accommodate these events are reaching their capacity. Furthermore, it is becoming increasingly difficult to accommodate parking and other services necessary to attract crowds and stage events.

Major events will need to be staged at other locations along the waterfront or elsewhere within the city. However, it is important that events continue to be staged within the Jack London District.

Event locations should include the Broadway-

Franklin Plaza at foot of Broadway (See Policy JL-8.a.1), the Meadow Green, Water Street, the proposed Marina Green between Webster and Harrison streets (See Policy JL-8.2), and along the linking streets of Franklin, Webster, Washington and Broadway. The use of shuttles from the downtown and remote parking sites will be more critical during events. Shuttle services and transit should be promoted and accommodated. (See Policy JL-16)

**REGIONAL CIRCULATION,  
LOCAL STREET  
IMPROVEMENTS, TRANSIT  
& PARKING**

As it transforms from a predominantly industrial district into a regional destination of mixed use, the Jack London District is experiencing increasing problems of traffic congestion, parking deficiencies, and discontinuous bicycle and pedestrian paths. The following policies provide for the improvement of access and circulation by all modes at both a regional and local scale, and the development of a comprehensive approach to ameliorating existing and future parking problems.

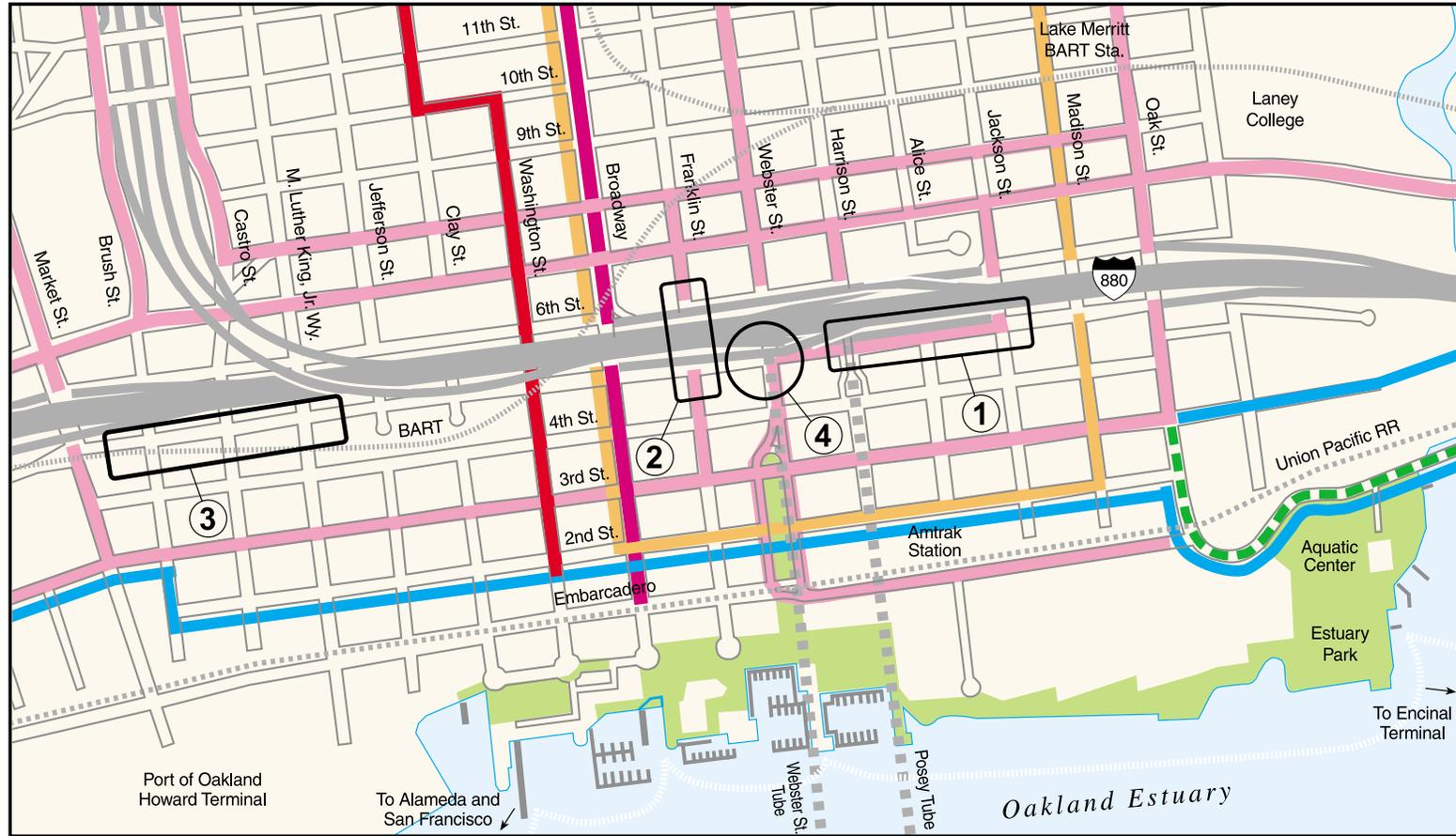


FIGURE III-6: Jack London District Illustrative Circulation Plan

- |                                                                                                                                                                                                                                                                        |                                                                                                                                                         |                                                                                                                                                   |                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>① Improved channellization from Posey Tube to Interstate 880.</p> <p>② Franklin Street undercrossing of Interstate 880.</p> <p>③ New off-ramp from Interstate 880 to vicinity of M.L. King, Jr. Way.</p> <p>④ New off-ramp from Interstate 880 to Webster Tube.</p> | <p>■ Interstate Highways/Freeways</p> <p>■ Oakland/Alameda Tubes</p> <p>■ Major Linking Streets</p> <p>■ Local Streets</p> <p>■ Embarcadero Parkway</p> | <p>■ Open Space and Public Access</p> <p>■ Class I Bikeways/Pathways</p> <p>■ Class II Bikeways/Pathways</p> <p>■ Class III Bikeways/Pathways</p> | <p>■ Downtown Trolley</p> <p>⋯ BART – Bay Area Rapid Transit</p> <p>⋯ Passenger/Freight Rail</p> <p>■ Waterborne Transit (Ferry, Water Taxi)</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------|

## Regional Circulation

### ***POLICY JL-11: WORK WITH CALTRANS TO IMPROVE DIRECT ACCESS FROM I-880 TO THE ALAMEDA TUBES TO REDUCE REGIONAL TRAFFIC ON LOCAL STREETS IN THE JACK LONDON DISTRICT.***

Vehicular traffic between the city of Alameda and other parts of the Bay Area is currently dependent on the local streets of the Jack London District. As a result, there are chronic congestion problems at key entry points to the waterfront district.

Similarly, traffic from Alameda using the Posey Tube must negotiate through city streets (i.e.,



*The I-880 overpass along Broadway creates a physical and psychological barrier between downtown and the waterfront.*

Harrison and Seventh) to gain access to the Jefferson Street on-ramp to I-880. Congestion on city streets by regional traffic has a direct effect on the ability of these streets to provide efficient local access. Improvements should be pursued, in conjunction with Caltrans, the City of Alameda, the Metropolitan Transportation Commission, and the Alameda County Congestion Management Agency. Accordingly, specific improvements should be made to the Alameda Tube connections with the freeway viaduct:

- ❑ *The Jackson Street eastbound ramp from I-980 should be modified to allow a direct exit to the Webster Street Tube without traveling on Fifth Street.*
- ❑ *The walls of the Posey Tube north of the portal structure should be modified, and the capacity and channelization of traffic improved.*

### ***POLICY JL-12: WORK WITH CALTRANS TO PROVIDE EXIT OFF-RAMPS FROM I-880 TO DIRECTLY SERVE DOWNTOWN OAKLAND AND THE JACK LONDON DISTRICT.***

The recently built I-880 (Cypress Freeway) does not accommodate direct access to or from downtown or Jack London District. Automobiles coming from the San Francisco area with destinations to downtown Oakland or Jack London District must take the following three, less direct options: (1) bypass the new freeway addition of I-880, take I-980 and exit on 14th or 11th Street; (2) take I-880, exit on the new Union Street off-ramp and take local streets; or (3) from I-980, exit at Jackson Street and double back taking local streets.

This has had a debilitating effect on the attractiveness of two of the City's primary visitor destinations. Preliminary traffic assessments reveal that off-ramps from I-880 to downtown and Jack London District are potentially feasible. The City should continue to work with the Port, Alameda Congestion Management Agency (CMA), and the City of Alameda to develop plans for off ramps which directly serve the area.

## Local Street Improvements

***POLICY JL-13: IMPROVE THE STREETS WITHIN THE JACK LONDON DISTRICT TO CREATE AN INTEGRAL SYSTEM OF OPEN SPACE, LOCAL ACCESS, AND OVERALL CIRCULATION, WHILE PROVIDING BETTER LINKS BETWEEN INLAND AREAS AND THE WATERFRONT.***

In the Jack London District, with its multiple destinations and attractions, the street system provides key pedestrian, bicycle, auto and transit connections from one place to another. The north-south streets that traverse beneath the freeway, including Broadway, Washington, Webster, and Franklin, are particularly important in providing linkages between downtown Oakland and the waterfront.

In addition to their utilitarian function of facilitating movement, streets and sidewalks play an important role in establishing a strong public environment. Enhancements to the “streetscape” should improve the overall environment and attractiveness of the district, create a sense of design continuity, and improve safety.

At a minimum, the local streets should have continuous sidewalks, improved lighting, and street furniture. And, the streets should be designed to “calm” traffic. Convenient on-street parking should be provided. (See Figure III-7)

Streetscape improvements should be made in areas of the Jack London District where the greatest concentrations of pedestrian activity

are expected, from Martin Luther King, Jr. Boulevard to Oak Street, and along streets that will provide critical links to adjacent neighborhoods. These include Broadway, Washington, Franklin, Webster and Third Street.

***JL-13.1: Improve Broadway in a manner appropriate to its civic scale and role in connecting the waterfront with the downtown.*** Broadway is Oakland’s principal ceremonial



*Franklin Street should become an expanded venue for the City’s weekly farmers market.*

and civic street and transit hub, connecting the eastern hillside neighborhoods with the downtown core and the heart of the Jack London District. Like Market Street in San Francisco, Broadway deserves a treatment and terminus appropriate to its stature in the city, reflecting the importance of the coming together of the city and the bay.

In addition to enhancing the civic identity of Broadway and its role as the principal public space connecting downtown with the emerging waterfront entertainment district, making the following improvements could enhance the investment climate of the area, and could help attract new development:

- ❑ *Public Art:* A landmark public art element should be constructed beneath and against the I-880 freeway viaduct. Making the viaduct as user friendly as possible is absolutely necessary to diminish the barrier effect of the I-880 between downtown and the waterfront. In addition to creating an attractive pedestrian link the art piece should establish a highly visible and distinctive gateway. The design of the feature should aim to create a strong sense of arrival at the waterfront and

complement the existing arch at the foot of Broadway. Improving the pedestrian environment beneath the structure with lighting, paving, and signage should be undertaken immediately.

- ❑ *Lower Broadway:* The blocks between Sixth Street and the Embarcadero should be upgraded with improved paving, lighting, street trees, banners, and other streetscape elements that promote the street's identity as the heart of a vital entertainment district. The existing sidewalks should be improved to accommodate outdoor dining, which can help energize the street as an active public place. Consideration should be given to extend existing streetscape elements in Jack London Square (e.g., lighting, furniture, and banners) north of the Embarcadero along Lower Broadway to forge a stronger visual link and a sense of continuity of between the two areas.

***JL-13.2: Strengthen the pedestrian character of Washington Street.*** Washington Street provides an important direct connection from the heart of the waterfront to Old Oakland and the downtown convention center. Since

the completion of the Jack London Cinema and Yoshi's, it has become a busy street in the local network. As the entertainment and off-price retail districts develop and intensify, it will be important for the pedestrian orientation of Washington Street to be enhanced and extended northward to Old Oakland and downtown.

As development along Washington Street occurs, it should be encouraged to locate public-oriented activities on the ground floor. Improvements to the street, including new lighting, street trees, and paving, should be made along its length.

***JL-13.3: Reinforce a food and market orientation on Franklin Street.*** Since the Produce District was established in 1907, Franklin Street has played a distinctive role as a market street, lined with projecting canopies and enlivened with colorful activities. It is desirable for the area and the street to retain some aspects of its original role and character. The Estuary Policy Plan suggests preservation of the existing market buildings and adaptive reuse and rehabilitation for a variety of uses, including food-oriented retailing. (See Policy JL-4)

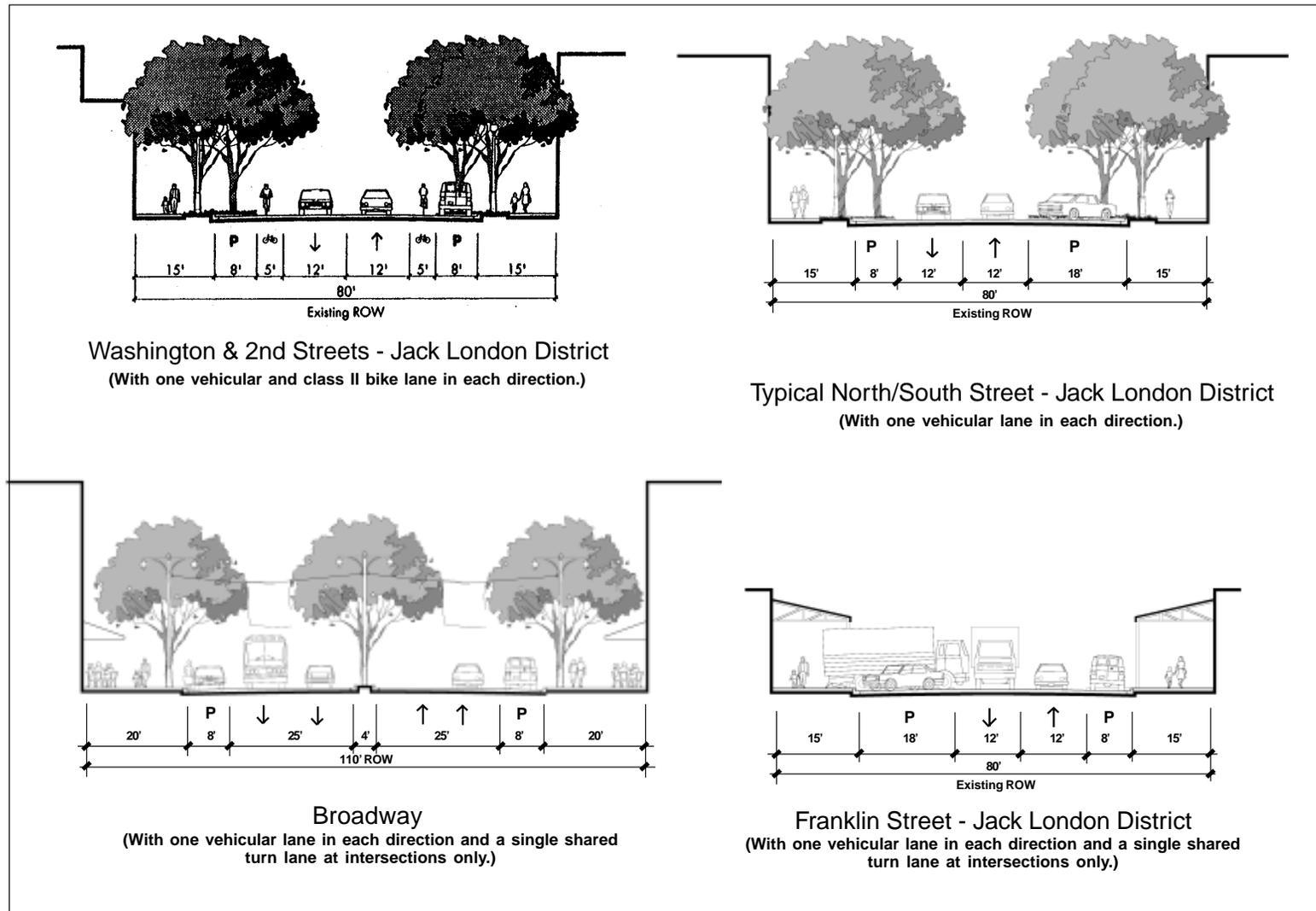


FIGURE III-7a=: Jack London District Illustrative Street Cross Sections

Accordingly, Franklin Street should be considered as an expanded venue for the city's weekly farmers market. Accordingly, the design of the street should include:

- ❑ *The configuration of the street* should provide enough space and services for food stalls along the street, including provisions for electrical and water hookups.
- ❑ *The awnings of adjacent buildings* should remain as a principal physical feature of the street. As new development occurs in areas beyond the boundaries of the historic district, the awnings should be extended to provide a continuous pedestrian experience.



*Many of the streets within the Jack London District are unimproved reflecting the historic role of the area as an industrial warehouse district.*

- ❑ As the historic heart of the Produce District, *the corner of Franklin and Third streets should be targeted for street-oriented retailing uses.* An emphasis on food would be in keeping with the street's history and identity and the emerging role of the district as a mixed-use residential neighborhood.

***JL-13.4: Develop significant pedestrian improvements along Webster Street that create a strong link to the waterfront.*** Webster Street is the easternmost north-south street within the Jack London District, which permits unimpeded at-grade pedestrian access to the waterfront from downtown Oakland. It is possible today to walk along Webster Street from Chinatown to the waterfront. As such, the street plays an important linking role that should be aesthetically enhanced.

As discussed elsewhere, a 'greenway' should be developed along Webster Street to create an open space and pedestrian link to the waterfront. This open space should take advantage of Caltrans easements which prohibit building over the Alameda tubes. It should be located over the tube right-of-way and be integrated with streetscape improvements to

create a distinctive "green" street space and amenity within the area. (See Policy JL-8.2)

***JL-13.5: 2nd & 3rd Streets: Reinforce Second and Third Streets as an east-west connector for pedestrian, vehicular and bicycle movement.*** Second Street is the principal east-west movement corridor through the Jack London District. This route connects to Third St. at Brush toward Mandela Parkway and plays an important role as a direct connection between Mandela Parkway in West Oakland, Jack London District, Oak Street and the proposed Embarcadero Parkway along the remainder of the Estuary. The removal of the railroad tracks within the street and the gradual conversion of industrial buildings, particularly east of Martin Luther King, Jr. Boulevard, affords the opportunity to improve the visual and pedestrian environment of this street.

The right-of-way should be improved to accommodate parallel bike lanes and curbside parking. Distinctive landscaping and lighting along the street should be introduced to establish a strong continuity between West Oakland and the waterfront.

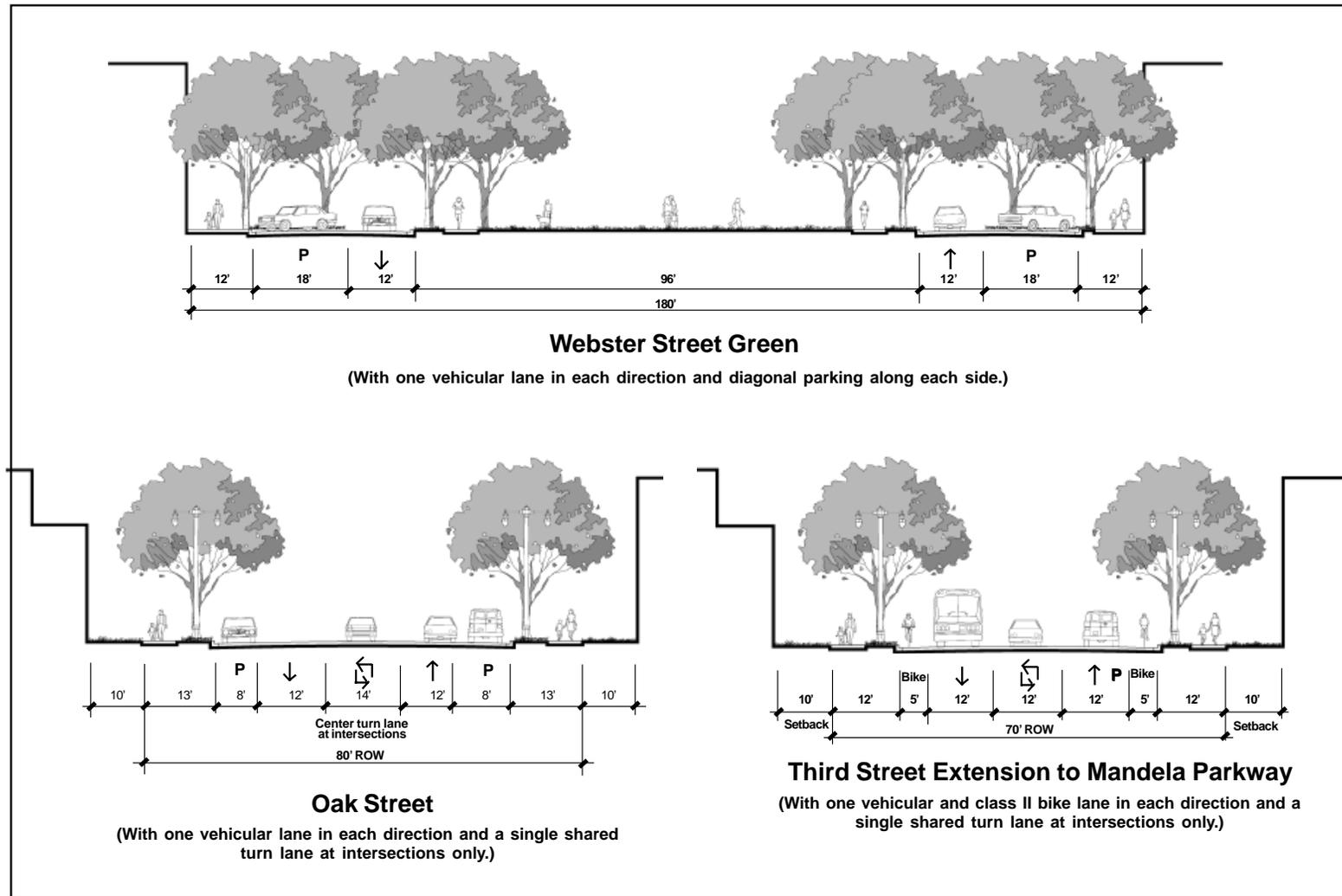


FIGURE III-7b: Jack London District Illustrative Street Cross Sections

## Transit

### POLICY JL-14: PROVIDE FOR INCREASED TRANSIT SERVICE TO THE JACK LONDON DISTRICT.

The continued success and viability of the Jack London District as a mixed-use neighborhood and regional entertainment destination will rely upon improved transit service. For the district to sustain growth and expansion, it will not be able to rely solely on the automobile. Transit plays an increasingly important role in bringing people to the waterfront and providing convenient circulation within the district.

Enhancement of transit service and facilities should be promoted in the following manner, with an overall goal to provide 24-hour service.

***JL-14.1: Expand Bus Service.*** Broadway is the main trunk of bus service, accommodating most of the City's bus routes. While Broadway should continue to be the primary transit corridor, other transit corridors should be developed. These should also be focused

along 2nd Street, Washington, Oak and Franklin Streets (when improved).

***JL-14.2: Expand the downtown shuttle/trolley service to the waterfront.*** The implementation of a reliable, efficient shuttle/trolley service on Broadway is a key action that could strengthen links with the downtown. Rubber-tire trolley service should be re-established along the Broadway corridor. The route between downtown and the waterfront should be the principal focus of this service. As demand increases, however, routing could be expanded and a loop system created with connections to the Amtrak station, the Museum District, and the Lake Merritt BART station.

***JL-14.3: Support ferry and water taxi service.*** Increased commuter ferry and water taxi service should be encouraged to serve the Jack London District and other areas of the Estuary. As waterfront redevelopment in both Oakland and Alameda takes place and as development occurs further up the Estuary, new landing sites, facilities and parking should be provided.

***JL-14.4: Explore the potential for a new BART Station to serve the Jack London District.*** As the Jack London District

develops with higher intensity uses and becomes a greater regional destination, the feasibility of developing a new BART Station should be explored.

### ***JL-14.5: Enhance connections to existing***

***transit modes and stations.*** Connections to stations and coordination among transit modes should be enhanced to make transit use easy, convenient and attractive. For example:

- ❑ ***Transit Scheduling.*** Service schedules of current transit providers (AC Transit, BART, Amtrak, Oakland/Alameda Ferry, Broadway Shuttle, etc.) should be coordinated.
- ❑ ***Street Enhancements.*** Local streets and pedestrian corridors leading to existing transit stations are important connections which should be enhanced. Improvements along Broadway, Oak, Webster, 2nd and 3rd Streets would provide stronger pedestrian, bicycle and visual connections to District transit stations.

- ❑ *Amenities at Stations:* Amenities (e.g. bicycle racks, lockers, lighting, etc.) should be provided at all stations.
- ❑ *Signs:* Directional signs to various transit stations and other attractions should be appropriately placed throughout the district.

***JL-14.6: Encourage incentives for the use of alternative modes of transit.*** Use of all modes of transit should be encouraged and promoted through various incentives offered to district employees and visitors.

## Bicycle Circulation

***POLICY JL-15: ENHANCE BICYCLE CIRCULATION THROUGH THE JACK LONDON DISTRICT.*** *Bicycle circulation through the Jack London District is constrained by the lack of clearly designated routes and conflicts with truck and other vehicular traffic. Improved bike routes and facilities should be provided within the district.*

***JL-15.1: Provide bike lanes on Second and Third Streets.*** Bicycle lanes (Class II) should

be provided along the 2nd Street and portions of the Third Street corridor, connecting Oak Street and the Embarcadero on the east with Mandela Parkway and West Oakland on the west.

***JL-15.2: Establish bike lanes on Washington Street.*** Bicycle lanes should also be constructed on Washington Street north of Third Street to provide links to the downtown core and Old Oakland.

***JL-15.3: Provide bike storage areas in inappropriate locations.*** Parking structures, transit stations, and employment uses greater than 5,000 square feet should provide adequate secure bike storage.

## Parking

***POLICY JL-16: DEVELOP AND IMPLEMENT A COORDINATED PARKING STRATEGY FOR THE DISTRICT THAT OPTIMIZES THE USE OF PARKING FACILITIES, TAKES MAXIMUM ADVANTAGE OF SHARED PARKING OPPORTUNITIES AND EXPANDS PARKING SUPPLIES.***

Parking availability is becoming an increasingly serious challenge in the Jack London District.

Existing regular parking resources (eg. surface lots, street parking, Washington Street garage, Barnes & Noble garage, Amtrak Station, etc.) are now fully subscribed during peak hours. It is clear that additional parking facilities are necessary to handle current, if not future

demand.

However, while demand is increasing, supply is decreasing. Policy direction of this plan is to intensify uses throughout the Jack London District, thereby increasing demand. Development of sites and/or provision of shoreline open space in the district will displace some of the sites that are currently vacant and are used for surface parking. (e.g., Site B, Safeway Lot, Phase II, etc.)

Adding to this shortage is the fact that large events also place an extra strain on parking resources. Furthermore, necessary loading zones for warehouse activity leaves less curb area for on-street parking. And several policy recommendations in this plan could displace existing parking sites.

***JL-16.1 Parking Strategy.*** The City and the Port will collaborate on an effort to address the parking shortage. A specific strategy should

be focused on ways of meeting demand with facilities and services that can be used effectively by multiple users throughout the day and week, and that can serve the broader needs of the entire district. The Parking Strategy should consider the following:

- A thorough analysis of projected district-wide parking supplies and projected future demands, updated regularly.
- A 'Parking Development Program', to identify specific means and locations to increase the supply of parking to serve the entire district; including provision of on-street parking, surface lots (e.g. areas under I-880), stand-alone parking structures, facilities within mixed use projects, etc. All reasonable means of addressing the situation are analyzed as projects are developed. Specific locations should be identified and investigated, for purposes of testing feasibility. Incentives and regulations which encourage use of shared parking facilities should be explored. Recommendations in the program should take into account the increased availability of transit service over time.
- A Valet Management Program, to insure that valet services occur where they are necessary, without infringing on pedestrian areas.
- A Remote Parking Program to secure and manage parking sites necessary to accommodate special events or long-term parking for district employees, Amtrak or BART riders, etc.
- Development of a shuttle system, to provide shuttle services between existing or new parking sites and Jack London District activity centers. During special events, remote parking and shared use of facilities should be considered as primary strategy.
- Administrative measures should be investigated and applied, as appropriate, to generate revenues for parking improvements (e.g. assessment districts or similar mechanisms, parking overlay zones, parking demand management, pricing/fee structure strategies, impact fees for new development).
- Explore incentives and regulations that encourage use of shared parking facilities.

*JL-16.2: Relocation of existing parking.* The parking strategy should recognize the shortage of parking that already exists, and attempt to address this critical need as soon as possible. Existing parking that is recommended to be eliminated should not be relocated until the time of site development/improvement, or as replacement facilities are developed.



## Oak - to - Ninth Avenue District

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The “Oak - to - Ninth Avenue” District of the Estuary planning area is situated south of I-880, east of Oak Street, and west of Embarcadero Cove. Encompassing approximately 120 acres, the district includes two distinct sub-areas separated by the Embarcadero and the main line rail corridor. They are the properties between Fifth and Ninth Avenues, projecting into the Estuary south of the Embarcadero. The district includes Estuary Park, the landside areas between Oak Street and Lake Merritt Channel, and the Ninth Avenue Terminal.

Although the Oak - to - Ninth District does not appear markedly different than it did several years ago, it has, in fact, undergone a number of changes. Historically, this portion of the Estuary waterfront primarily served as an industrial and warehousing support district, oriented to and served by the Union Pacific

main line rail tracks and the cargo handling facilities at the Ninth Avenue Terminal. As such, it is isolated from the surrounding urban community, perhaps more than other reaches of the study area. The district is criss-crossed by rail tracks, the freeway, and the Lake Merritt Channel, all of which have become barriers to movement.

Today, the Oak-to-Ninth District is still dominated by warehousing, manufacturing, distribution, storage and transportation activities. However, historic waterfront industries have declined, and waterfront properties have begun the process of industrial conversion. New, smaller scale and nontraditional uses have also emerged within existing underutilized warehouse and industrial buildings to create a lively enclave of artist studios and artisan workshops.

Changes in transportation will create new opportunities for reuse and revitalization. With the consolidation of the Southern Pacific and Union Pacific railroads, the rail tracks along Third Street have been abandoned, providing the opportunity to extend Third Street eastward near West Oakland and will improve bicycle and pedestrian accessibility from the Estuary to Mandela Parkway.

Caltrans' planned seismic upgrade project for the Fifth Avenue interchange at I-880 could be designed to improve local accessibility and help achieve a better alignment for Fifth Avenue as well as an improved interchange. Finally, the prospect of consolidating maritime activities in the Outer Harbor provides a tremendous opportunity to improve the Ninth Avenue Terminal for greater public access and use.

Several unique circumstances within this district afford opportunities for positive changes that could benefit the entire community.

First, there is a considerable amount of public land. For example, Estuary Park is a significant public asset which can and should be upgraded. It has a historic relationship with nearby Lake Merritt and the Lake Merritt Channel, and there is now a chance to finally reconnect Lake Merritt with the Estuary. These opportunities offer the distinct opportunity to realize long-held community objectives for the creation of a major open space of citywide scale and significance.

With ambitious plans to change land use, this area of the shoreline could be converted into a large-scale network of open spaces and economic development that extend for over 60 acres from Estuary Park to Ninth Avenue. The assemblage of parkland would create the major open space resource in Oakland and, at the same time, establish a recreation asset of regional significance. In areas adjacent to the open spaces, additional development of hotels, cultural activities, and other attractions that take advantage of the unique setting, could help to energize the entire district. And, the

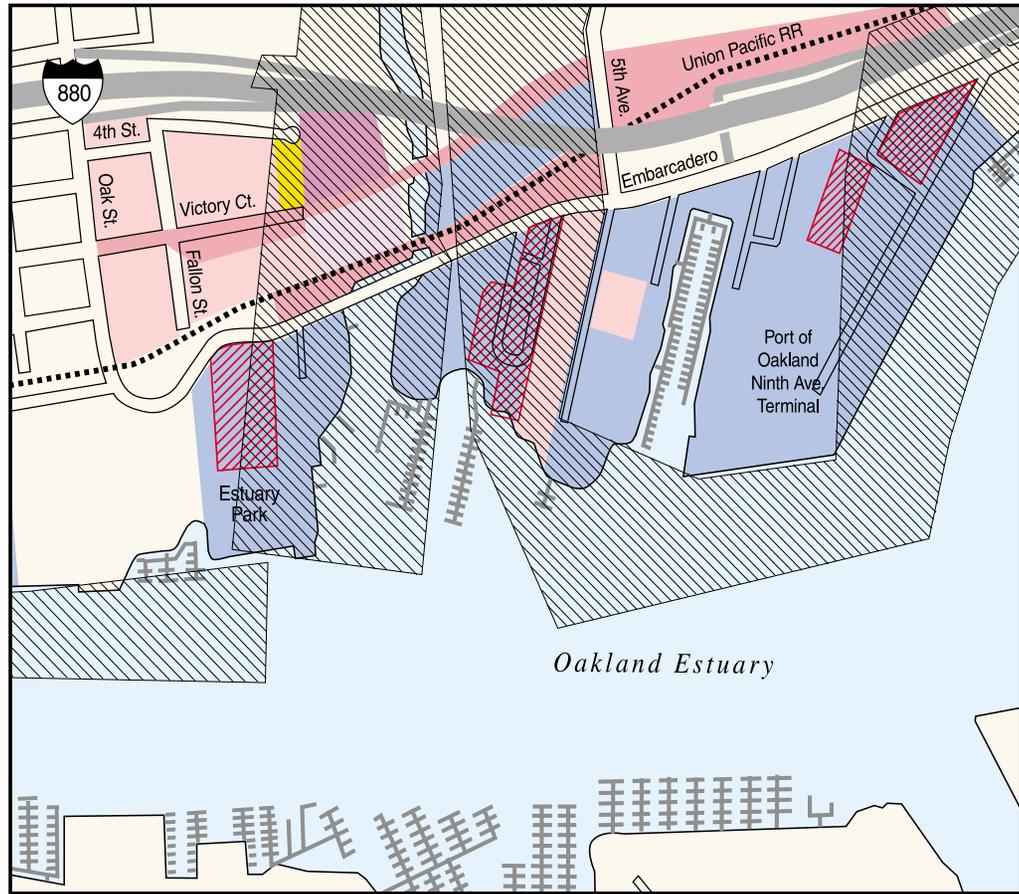
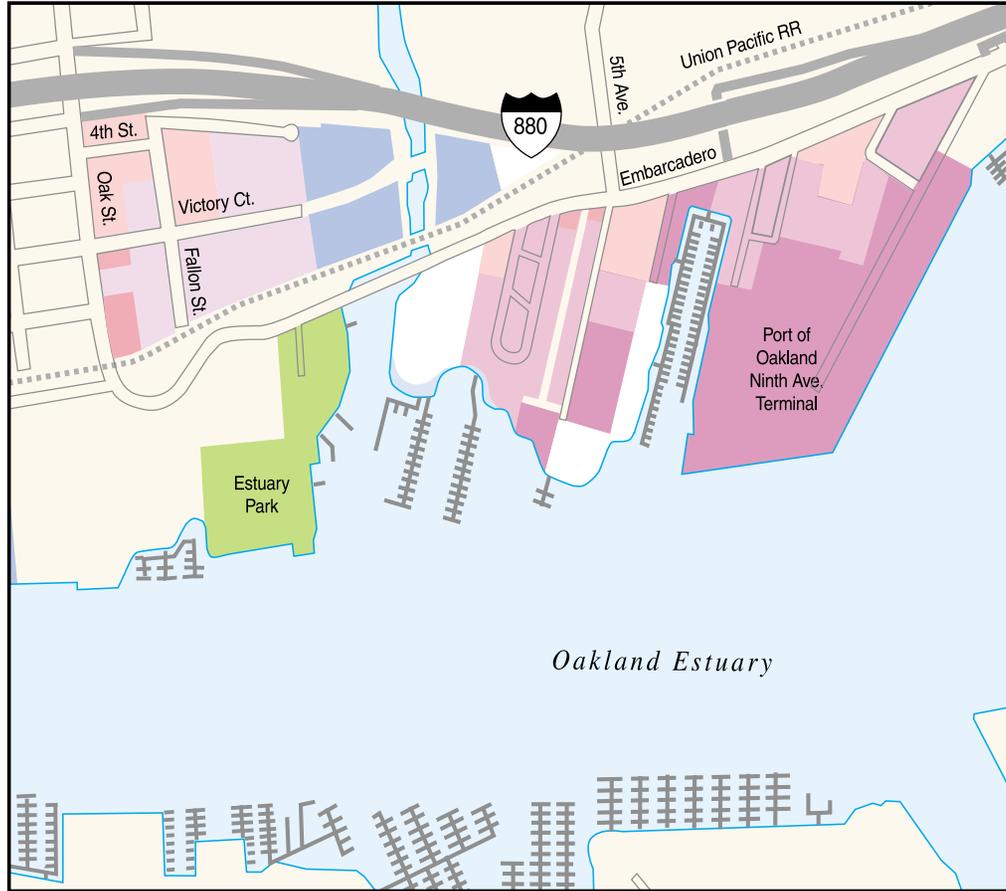


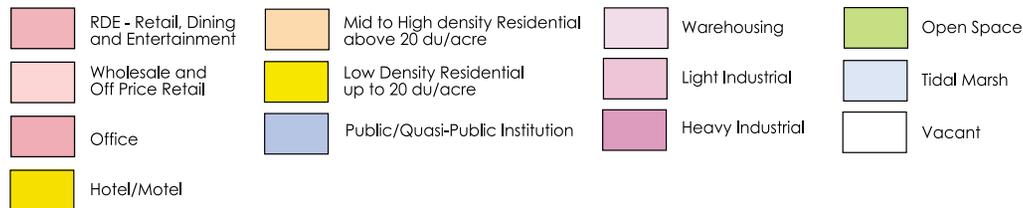
FIGURE III-8: Oak to 9th District Current Ownership





artisan community that currently exists in the area can continue to play a valuable role in the life of the area, and the City.

FIGURE III-9: Oak to 9th District Existing Land Use



## SHORELINE ACCESS & PUBLIC SPACES

Shoreline access and public space policies are intended to establish this area of the Estuary as the major recreational destination in the city. The Estuary Policy Plan recommends a series of large open spaces, intended to provide for a wide variety of recreational experiences. Developing a series of well-defined open spaces would change the entire nature of the waterfront in this area, transforming it from an industrial backwater into a recreational centerpiece of the city. In total, these sites would represent one of the most significant additions of urban parkland within the entire Bay Area. They would create both a regional and local asset of major proportions.

These spaces are intended to be connected to each other and to a larger city-wide system of trails and parks. Policies recommend strong links to inland communities, Lake Merritt, and Lakeside Park, by enhancing the Lake Merritt Channel. Furthermore, the policies recognize the importance of preserving the area's wetlands, wildlife habitat and other natural features.



*A continuous open space and public access link is planned between Lake Merritt and the Estuary.*

***POLICY OAK-1: PROTECT AND ENHANCE THE NATURAL AND BUILT COMPONENTS THAT ESTABLISH THE WATERFRONT'S UNIQUE ENVIRONMENT.***

The Oak-to-Ninth reach of the waterfront has the potential to offer many recreational experiences, in both natural and developed set-

tings. Given the scale and variety of environments encompassed by this segment of the waterfront, many kinds of recreational activity can take place. While it is advantageous to promote recreational activities, the sites' waterfront location is unique. It is important to focus first on preserving the intrinsic qualities of the shoreline, and to insure that the envi-

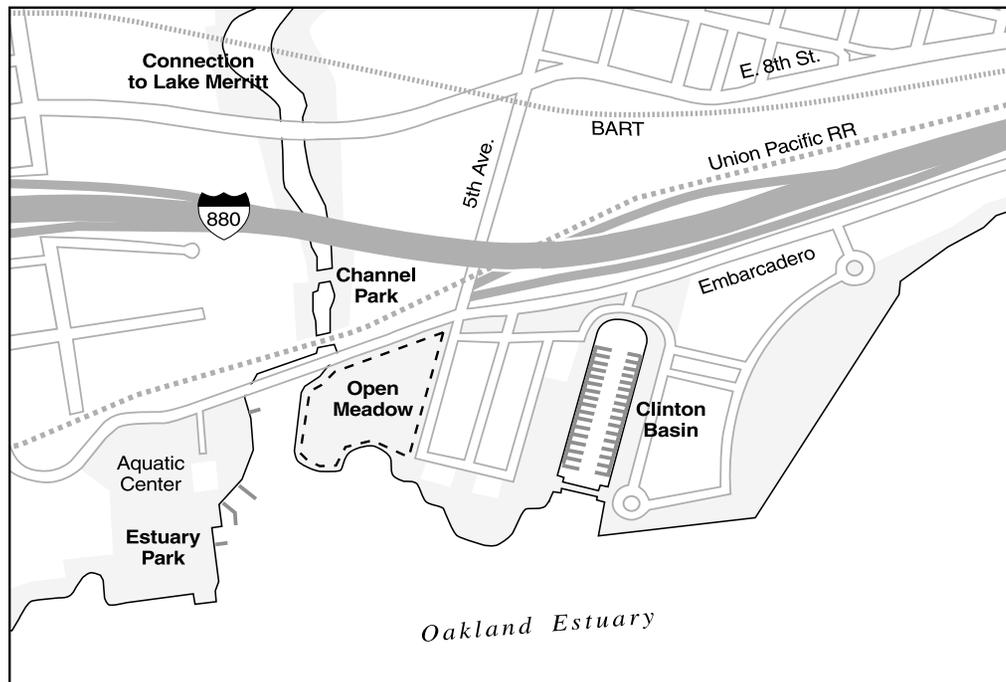


FIGURE III-10: **Oak to 9th District: Illustrative Open Space Key Map**

ronmental values of the site are not compromised.

***OAK-1.1: Encourage the preservation and enhancement of wetland areas.*** The waterfront should be improved in a manner that maintains and enhances the ecological value of the area in general and the Lake Merritt Channel in particular. In some locations, tidelands

function as tidal wetlands, providing marsh habitat for fish, migratory waterfowl, and other animals.

Improvements should be encouraged that restore wetland and marsh habitat. Wetlands should be protected by such treatments as setting back trails from the shoreline, installing suitable buffer planting to prevent disruption

to nesting and resting areas, seasonal routing of pedestrians to avoid sensitive habitats, etc. As improvements and projects are considered, the City and Port should work with interested groups and organizations to ensure appropriate treatments along the shoreline, particularly along the channel on the eastern bank between I-880 and Embarcadero.

***OAK-1.2: Provide for continuous pedestrian and bicycle movement along the water's edge.*** In this and other areas of the Estuary, continuous bicycle and pedestrian movement is essential to achieving goals for access and implementation of the Bay Trail.

In this district, pedestrian and bicycle movement should be emphasized on all local streets. A network of facilities should provide for pedestrian and bicycle routes as close to the shoreline as possible. It should offer a range of experiences that take advantage of the varying water spaces along the shoreline.

To reduce the barrier effect of channels and waterways that penetrate the land in this area, the existing Embarcadero bridges should be improved across the Lake Merritt Channel on the

south side of the Embarcadero, to provide for pedestrian and bicycle routes.

***OAK-1.3: Undertake remediation of contaminants in conjunction with development and/or improvement of relevant sites.*** Typical of many waterfront areas that have historically been in intensive industrial use, contamination has been documented within this district. It will be a consideration in redevelopment of the sites identified.

To date, parties have undertaken initial efforts to characterize surface soil, subsurface soil and groundwater within the Oak to Ninth area. Further investigations should be undertaken to more accurately characterize contamination, and to determine the most appropriate and cost-effective remediation methods that can achieve reuse objectives for this area in a timely and coordinated fashion.

The level and type of soil and groundwater cleanup should be commensurate with the recommended re-use of the affected sites.

***POLICY OAK-2: ESTABLISH A WELL-STRUCTURED, INTEGRATED SYSTEM OF***

***MAJOR RECREATIONAL FACILITIES WHICH ACCOMMODATE A WIDE VARIETY OF ACTIVITIES AND WHICH TAKE ADVANTAGE OF THE UNIQUE WATERFRONT SETTING. PROMOTE A VARIETY OF RECREATIONAL EXPERIENCES.***

There are opportunities to create several new public spaces and facilities, as discussed below. In keeping with their size, location and regional significance, they should not be developed as isolated elements. Rather, they should be developed as an integrated system extending along the shoreline and inland to Lake Merritt and other parts of the city. Looking at them from west-to-east:

### **Estuary Park & Mouth of Lake Merritt Channel**

***OAK-2.1: Expand Estuary Park. Encourage aquatic sports within the mouth of Lake Merritt Channel.*** Currently, the 5.5-acre Estuary Park is the only public open space within the Oak-to-Ninth area, and one of the few parks on the entire waterfront that is close to activity centers. Although it provides access to the water and is used intensively, it also suffers from a lack of accessibility and visibility.

❑ ***Expand & Rehabilitate Estuary Park.*** If Estuary Park is to fulfill its potential, it is important to make it more visible from the Embarcadero. It should be expanded and extended to the street, adding to the total amount of useable public space and improving park security.

The entire park (including the expansion area) should be improved. It should be designed and programmed so that it can accommodate the planned Aquatic Center (see below) and a large space suitable for a wide range of informal and organized field sports such as soccer.

The existing fishing pier, shoreline seating area, and boat launch provide opportunities to use and appreciate the water as a recreational resource. They should be maintained. Consideration should be given to providing places to observe major civic celebrations and water related festivals (e.g., the lighted yacht parade, rowing races, etc.).

❑ ***Develop the Jack London Aquatic Center.*** The new Jack London Aquatic Center is currently planned for Estuary Park to pro-



**FIGURE III-11: Oak to 9th District Bird’s-Eye Illustrative Perspective**

vide city residents a place to learn boating skills and gain proficiency in sailing, rowing, and kayaking. Like the programs now offered in the summer at Lake Merritt, the new Aquatic Center will be oriented to youth, but will focus on boating in the Estuary.

- Develop the mouth of Lake Merritt Channel as a protected water space for aquatic sports.* A “no wake” zone or maximum speed limit for motorized vessels should be established within the U.S. Pierhead Line to recognize the environmental sensitivity of the mouth of Lake Merritt Channel.

***OAK-2.2:*** *Create a major new park on the east side of the mouth of the Lake Merritt Channel, at the Estuary.* To complement Estuary Park to the west, the former Crowley site on the east side of the channel, between the water, a realigned Fifth Avenue (See Policy OAK-4.1) and the Embarcadero, should be converted into a major park suitable for pas-

sive recreation. Promenading, viewing and other contemplative activities should be emphasized. Shoreline edges should be restored to tidal wetlands.

### Clinton Basin

**OAK-2.3: Enhance Clinton Basin.** Clinton Basin is a marina that recalls the maritime slipways and boat-building activities of a past age. While it has been used as a recreational marina for many years, it has fallen into disrepair, and has become functionally obsolete.

❑ **Rehabilitate the marina.** If economically feasible, the marina should be upgraded to contemporary standards. In addition to extending the life of the marina, improving the physical condition would provide an interesting focus for waterfront activities. Provisions in the marina for boat rentals and launches, fishing charters, water taxi/ferry services, a limited amount of food services, etc., would all contribute to the liveliness of the area, and should be accommodated.

❑ **Establish a linear open space composed of a series of smaller parks around Clinton Basin.** The basin is hidden behind buildings and not highly accessible. In order to improve access to the water and visibility of the boating activities, a series of public spaces should be developed on both sides of the basin and at the head of the basin adjacent to the Embarcadero. This network of public spaces should be composed of a series of smaller connected parks, connected by a continuous promenade along the edge of the basin that connects the open spaces.

To improve accessibility around the basin and to reduce its barrier effect, consideration should be given to developing a pedestrian bridge at the bayward end of the basin. Views into Clinton Basin from the Embarcadero should be maintained and enhanced.

❑ **Provide for a limited number of new recreational slips east of Fifth Avenue.** A small number of slips for the mooring of recreational boats should be provided east of Fifth Avenue, with support facilities provided accordingly. An area for supply drop-off and the provisioning of vessels should

be provided to create a high-quality mooring area, attractive to patrons and complementary to landside uses within the district.

### Ninth Avenue Terminal

**OAK-2.4: Establish a large park in the area of the existing Ninth Avenue Terminal to establish a location for large civic events and cultural activities.** Maritime activities and support services that operate in and around the terminal shed should be relocated. (See Policies OAK-4.3)

The park is envisioned as primarily an open, unobstructed green field that is flexible in use. It should be large enough to accommodate large numbers of people associated with special events, cultural activities, city festivals, etc.; yet, at the same time be designed to be attractive to individuals or small groups of people on a more regular basis.

The park should be oriented to maximize access and views of the Estuary. It should be adjoined by commercial, hotels, and public uses, which can benefit from the civic events and cultural activity programming. (See Policy OAK-4.2)

Recognize that the Ninth Avenue Terminal shed, or portions thereof, may be suitable for rehabilitation and adaptive reuse. However, the terminal building impedes public access to and views of a key area of the Esstuary.

- ❑ The Port and City should investigate the feasibility of keeping and reusing the building (or portions thereof). A Specific Plan for the entire District should be initiated prior to development. (See Policy Oak 5)
- ❑ *Encourage the mooring of vessels adjacent to the Ninth Avenue Terminal.* Along the southern boundary of the Ninth Avenue Terminal, a limited amount of vessel mooring is encouraged to complement the recreational and cultural uses of the area.

***OAK-2.5: Provide for mooring of the ARTSHIP.*** The ARTSHIP Foundation has recently acquired the *Golden Bear*, a former naval training vessel, to serve as headquarters and primary program venue for the numerous community outreach and art programs run by the Foundation and other art and cultural organizations. An extensive renovation project



*The 9th Avenue Terminal provides an exciting opportunity for public-oriented activities and open spaces.*

is proposed to convert the ship into theaters, gallery space, classrooms, meeting space, studios, and other facilities necessary to support a major arts initiative.

It is envisioned that the ARTSHIP could be an integral part of the waterfront, and a major waterfront attraction. It is a project that achieves almost all of the identified objectives

for the waterfront. Provisions should be made for its permanent mooring in the vicinity of the Ninth Avenue Terminal. Some landside facilities, including parking and servicing, should also be accommodated.

## Lake Merritt Channel

### ***POLICY OAK-3: LINK THE ESTUARY TO LAKE MERRITT BY ENHANCING THE LAKE MERRITT CHANNEL.***

Although a pedestrian/bicycle path exists, the link between the Estuary and Lake Merritt is dominated by physical obstacles. Given the significant historical relationship between the Lake, the Channel and the Estuary, it is incongruous that a physical connection between them has not been completed.

The opportunity exists to achieve this long-standing community objective. Most of the properties north of the Embarcadero along the Lake Merritt Channel are publicly owned. In addition plans are under discussion to build a pedestrian and bicycle overpass between Estuary Park and the channel shoreline to the north.

To create the strongest possible connection between Lake Merritt and the Estuary, two measures should be undertaken:

***OAK-3.1: Create a system of public open spaces that connects Lake Merritt Channel to the Estuary.*** The existing path on the East-

ern side of the channel should be completed and enhanced. It should be developed to allow unimpeded movement between the Estuary and Lake Merritt. Where feasible, the path should be widened and fully integrated into adjacent public spaces that are currently underutilized.

Efforts to expand public uses in this area must be carried out in a manner that respects the wildlife habitat value of the wetland areas within and along the channel. Restoration of tidal wetlands along the shoreline edges should be included as part of the facility development programs that would extend through this area.

Surface parking should be relocated away from the channel's edge.

***OAK-3.2: Work with public agencies in the area to extend the open space system inland from the Channel.*** Much of the land inland of the Embarcadero which is recommended to be enhanced as publicly-accessible space is owned by railroads, public agencies and institutions, including the City of Oakland, the Union Pacific Railroad, Laney College, Peralta College District, and EBMUD. The City

should work with these entities to assemble or otherwise gain access to these properties (as necessary) to extend areas available for public use.

## LAND USE

Public space is planned to be the primary new use within the Oak-to-Ninth District, occupying all of the land along the shoreline and extending inland at Lake Merritt Channel, Clinton Basin, and a new 'Crescent Park'. (See Policy OAK-2.4). Recreational use of the shoreline will be the most significant agent of change within the district. It will create a series of extraordinary amenities and recreational resources for the community, as well as an attractive setting for new and existing development.

Within the larger framework of a major waterfront open space system, development should be guided by the following policies:

***POLICY OAK-4: PROVIDE FOR LIVELY, PUBLICLY ORIENTED ACTIVITIES THAT COMPLEMENT THE ADJACENT WATERFRONT PARKS AND OPEN SPACES.***

Development adjacent to the open recreational spaces should complement them, and should provide public attractions which add to the variety of activities and experiences found on the waterfront. Development should be encouraged on both sides of Clinton Basin, and in areas close to the Embarcadero, as follows.

### Fifth Avenue Point

***OAK-4.1: Preserve and expand the existing Fifth Avenue Point community as a neighborhood of artists and artisan studios, small businesses, and water-dependent activities.*** West of Clinton Basin, the Fifth Avenue Point community is one of Oakland's most unique neighborhoods. It has nestled among declining waterfront industrial uses, creating a spark of life and activity. The artisan work that takes place there is an economic asset which is valuable for local residents. In addition, the existing work/live units within the Fifth Avenue artisan village contribute to the inventory of affordable studio spaces within Oakland. These units should be maintained and reinforced through the provision of additional units, including artist and artisan work/live studios and small light industrial and water-dependent businesses. A limited amount of retail and res-

taurant use, such as the existing Seabreeze Cafe, should also be promoted within the area.

It should be noted that enclaves such as this are rarely planned. Rather, they develop through the spontaneous vision and dedication of creative, entrepreneurial property owners and residents. By their very nature and character, these enclaves are economically fragile. Policies that promote preservation and expansion of the Fifth Avenue Point community should be carefully applied, so as not to adversely affect property values, or inadvertently change the very essence of what makes it unique.

***OAK-4.2: Promote development of educational and cultural interpretive facilities.*** The Oak-to-Ninth reach of the waterfront is an ideal location for cultural attractions and other development. (See Policy OAK-4.4) In addition to the recreational benefits associated with festivals, etc. (See Policy OAK-2.4 & 2.5), facilities housing museums, educational and cultural programs, etc. can be major waterfront attractions. Such facilities should be located and developed to add to the atmosphere established by the Fifth Avenue Point community and Clinton Basin (See Policies

OAK-2.3, 2.5 & 4.1). Requisite parking and servicing should also be accommodated and, where feasible, consolidated.

- ❑ The Oakland Museum is investigating options to expand and develop the 'Treasure House' concept. An appropriate location for this use would be adjacent to the planned waterfront open space flanking Clinton Basin and the Estuary.
- ❑ The ARTSHIP Foundation has recently acquired the *Golden Bear*, a former naval training vessel, to serve as headquarters and primary program venue for the numerous community outreach and art programs run by the Foundation and other art and cul-



*The 5th Avenue Point community includes a synergistic grouping of artists, artisans and small industrial businesses*

tural organizations. Under an extensive renovation project, the ship will be converted into theaters, gallery space, classrooms, meeting space, studios, and other facilities necessary to support a major arts initiative.

***OAK-4.3: Facilitate the relocation of break-bulk cargo operations from the Ninth Avenue Terminal.*** East of Clinton Basin, a major existing use within the district is the Ninth Avenue marine terminal, which is owned and operated by the Port of Oakland. In order to achieve the vision for the waterfront in the Oak-to-Ninth area, it is necessary that the existing terminal operations and those related maritime and warehousing activities adjacent to the terminal be accommodated elsewhere; thus enabling reuse of the Ninth Avenue Terminal site.

### Mixed Use Development

***OAK-4.4: Promote development of commercial-recreational uses in the vicinity of the Crescent Park and Clinton Basin.*** Relocation of cargo handling and clearance of the Ninth Avenue Terminal creates potential development parcels between the proposed Cres-



*The 5th Avenue Point community will be retained as a unique mixed-use district with work-live units, studios, small businesses and water-dependent activities.*

cent Park (See Policy OAK-2.4), the Embarcadero and Clinton Basin (See Figure 10). Development of these sites should be planned and carried out in a comprehensive manner, and include possible hotel, conference, restaurant, retail, and similar commercial-recreational uses. A recreational 'resort' orientation, along with cultural and social programs, should be

encouraged as an integral component of the development programs of hotel and other uses. Recreational elements could be developed as a part of the projects. Accommodating tennis, swimming, etc., could add another dimension to the recreational experience of the area.

New development within this area should be

promoted along the Embarcadero Parkway, with “windows” to the water at intermittent points. It should be set back from the shoreline promenade. (See Policy OAK-5)

***OAK-4.5: North of the Embarcadero, encourage a mixed-use district while maintaining viable industrial uses.*** In the more traditional warehouse and industrial area north of the Embarcadero between the Lake Merritt Channel and Oak Street, a mixed-use district is encouraged. Emphasis should be placed on maintaining the existing industrial and manufacturing uses, as well as providing for non-traditional higher density housing (work/live and artist studios). This area is essentially an extension of a larger mixed-use district to the west, extending to Webster Street in the Jack London District.

***POLICY OAK-5: INITIATE MORE SPECIFIC PLANNING OF THE ENTIRE OAK-TO-NINTH DISTRICT.***

The Oak-to-Ninth district is large and diverse, with several unique, complicated issues that dominate its real development potential. It should be planned in sufficient detail to identify all potential issues, and to understand the

options available to address these issues in a timely manner.

A Specific Plan should be prepared prior to development. Planning should be based on a strategy which analyzes the area comprehensively and which accounts for the constraints imposed by subsoil environmental conditions. Transformation of the district will require that several outstanding issues be resolved simultaneously. Development feasibilities should be analyzed, phasing of improvements should be identified, and a funding strategy to finance and implement recommended open space should be addressed. These require that a realistic development program and site plan be developed.

### REGIONAL CIRCULATION & LOCAL STREET IMPROVEMENTS

The Oak-to-Ninth area is isolated from other parts of the city by regional transportation facilities, all of which run parallel to the waterfront. The following policies are recommended to reduce the effect of these barriers and improving access to, and circulation through, the area.

### Regional Access

***POLICY OAK-6: EXPLORE THE FUTURE POTENTIAL FOR A NEW BART STATION AND MAJOR PARKING FACILITY ON BART PROPERTY AT FIFTH AVENUE AND EAST EIGHTH STREET.***

As the waterfront develops as a major destination, opportunities for the creation of a new BART station east of Fifth Avenue should be explored. In addition to improving regional transit service, easy BART connections would enhance the potential of the nearby waterfront as a major destination, and reduce parking problems associated with special events. The site might also include a significant parking facility for commuter parking, replacement parking for Laney College surface lots, and special events parking for the waterfront.

In addition to serving the waterfront area, a BART station at this location could have positive impacts on the revitalization of adjacent neighborhoods.

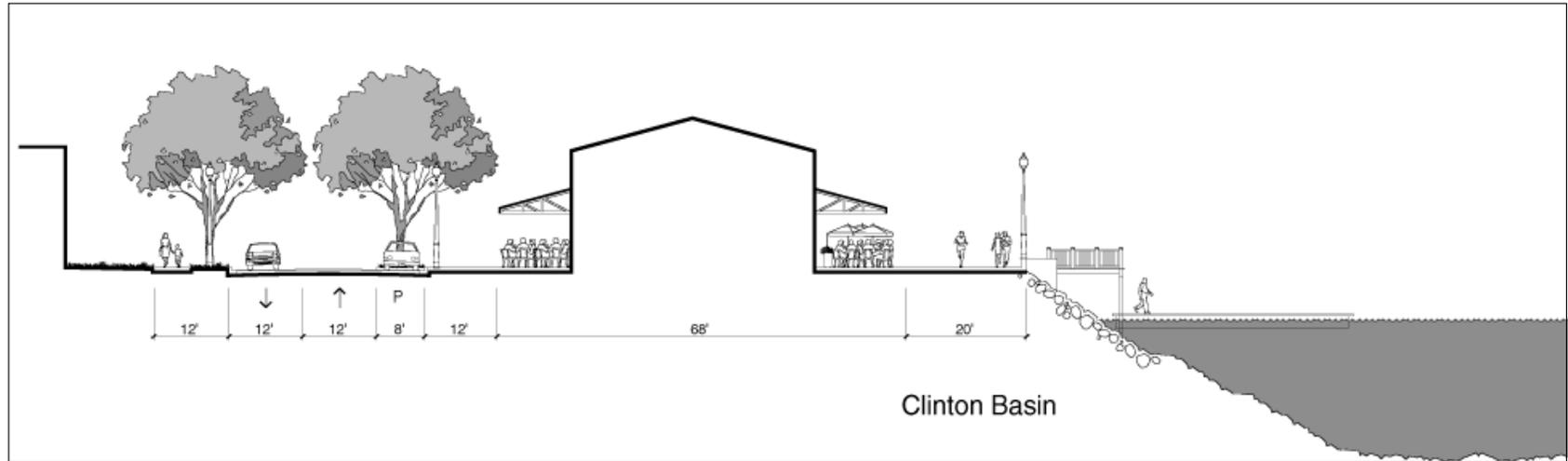


FIGURE III-12: Clinton Basin Illustrative Cross Section

***POLICY OAK-7: COORDINATE WITH CALTRANS ON THE UPGRADE OF THE I-880 FREEWAY TO IMPROVE REGIONAL***

***ACCESS TO THE WATERFRONT.***

As it passes through Oakland, I-880 is sub-standard. On and off-ramps occur in a random manner, creating short merging distances and associated safety problems. This is particularly true in the Oak-to-Ninth District. As the area evolves and becomes more of a regional attraction, the highway network that serves the district will become a busier and

more dangerous place for drivers and pedestrians.

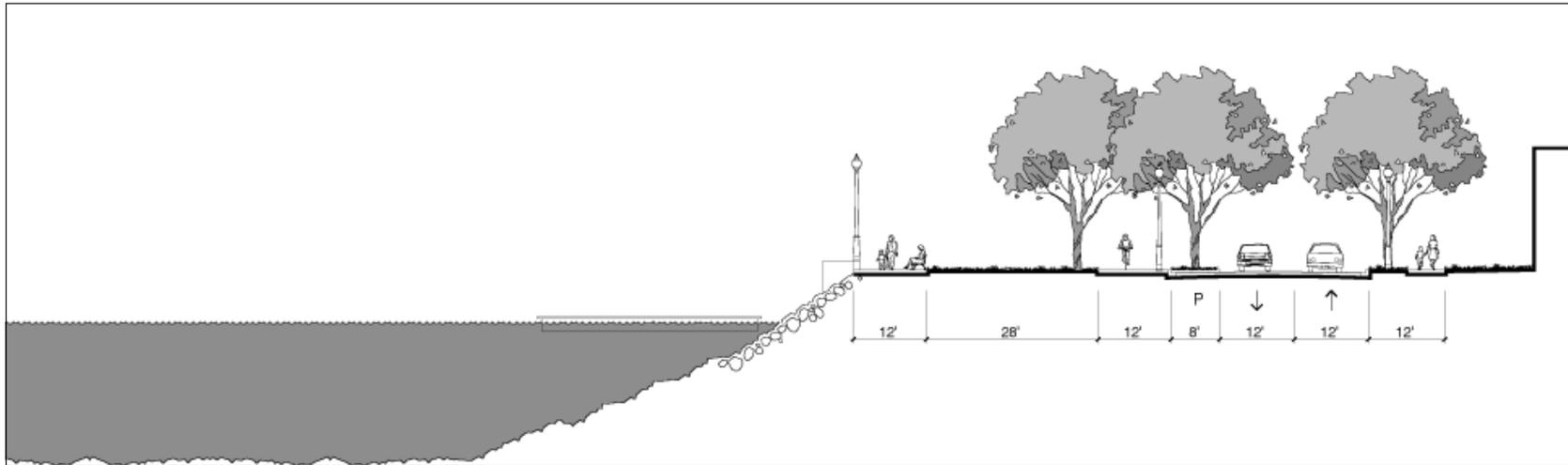
However, with the current seismic upgrade

program for the freeway, this situation could be remedied to promote highway safety and to provide clear, safe and convenient access to the waterfront. The City should work with Caltrans to develop retrofit plans for the Fifth Avenue Interchange which also include a more direct way to the waterfront. At a minimum, the existing on and off-ramps along the Embarcadero between Fifth and Ninth Avenues

should be removed and replaced with a configuration that provides both eastbound on-ramp and westbound off-ramp connecting to Fifth Avenue.

**Local Street Improvements**

***POLICY OAK-8: ENHANCE FIFTH AVENUE AS THE PRINCIPAL PEDESTRIAN AND VEHICULAR LINKAGE TO THE PUBLIC OPEN SPACE SURROUNDING THE MOUTH OF THE LAKE MERRITT CHANNEL.***



Fifth Avenue is a significant north-south street, connecting to Park Boulevard and linking the waterfront to downtown neighborhoods and the Oakland Hills. As such, it is important that Fifth Avenue be improved south of the Embarcadero as the principal pedestrian and vehicular connection to this segment of the waterfront. It should be realigned and straightened to become the edge of the open space and to establish a direct driving route that circumvents the Fifth Avenue Point community.

In order to enhance the pedestrian environment along Fifth Avenue, landscaping, light-

ing, and sidewalk improvements should be undertaken along its entire distance.

***POLICY OAK-9: IMPROVE THE EMBARCADERO EAST OF OAK STREET AS A MULTIMODAL LANDSCAPED PARKWAY WITH BICYCLE, PEDESTRIAN AND VEHICULAR FACILITIES.***

A key objective of the [Estuary Policy Plan](#) is to create a continuous multimodal parkway to improve access along the waterfront and enhance the continuity and identity of the Estuary within the city. Consistent with recom-

mendations to develop segments of the parkway in other sections of this plan, the Embarcadero Parkway concept should be implemented between Ninth Avenue, Lake Merritt Channel and Embarcadero Cove, beyond.

A three-lane roadway (two moving lanes and a center left-turn lane) should be built, wherever feasible, with an adjacent landscaped corridor to accommodate a continuous bicycle trail and pedestrian promenade on the Estuary side.

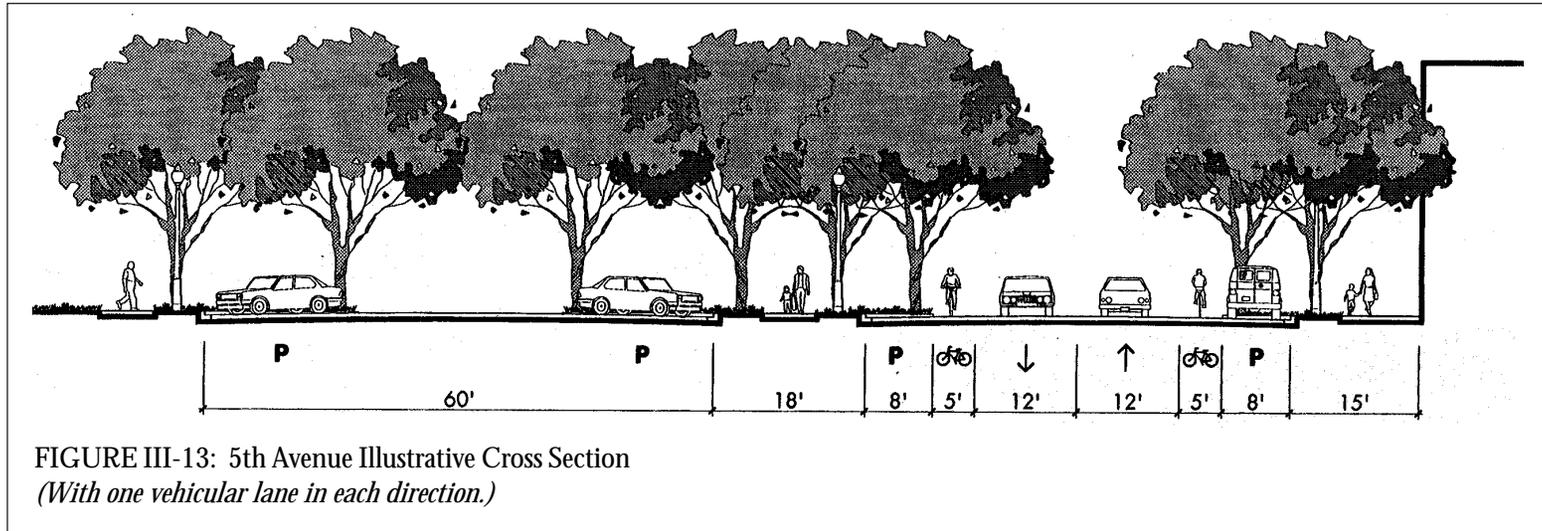


FIGURE III-13: 5th Avenue Illustrative Cross Section  
(With one vehicular lane in each direction.)

**POLICY OAK-10:** *CREATE A NETWORK OF PEDESTRIAN-FRIENDLY STREETS THAT OPENS UP VIEWS AND ACCESS TO THE WATER.*

Within the Fifth Avenue Point area and the commercial-recreational district east of Clinton Basin, a network of local streets should be provided to serve individual properties.

In future planning (See Policy OAK-5) this network should be designed in a block configuration to allow for a diversity of ways

through the district and a comfortable and safe pedestrian environment. The configuration of streets should be aligned to promote views and access to the shoreline, provide convenient access to and parking for open spaces, and discourage fast-moving through traffic. Streets should include generous provisions for pedestrians and be landscaped in a manner that extends the open space amenity inland from the shoreline.

New local streets should continuously follow the Estuary and Clinton Basin open space, in

order to create a more public and open feeling along the water and increase accessibility. Connections should be made from this area across the head of Clinton Basin to the Fifth Avenue Point community to ensure that both sides of the basin are tied together by local streets.

### Parking

**OAK-11:** *DESIGN PARKING TO BE CONVENIENT AND COMPLEMENTARY TO THE PUBLIC ORIENTATION OF USES WITHIN THE AREA.*

Convenient and visible parking is important in ensuring the success of open space improvements as well as new development. In future planning (See Policy OAK-5) parking should be provided in a manner that complements the open space character of the area. Large expanses of asphalt should be avoided in favor of landscaped roadways with parking alongside them. Such an approach will minimize the visual impact of parking while maximizing access and visibility to adjacent activities. Parking areas should be well lit and linked to pedestrian trails.

Development projects should provide all of their parking requirements onsite, and be generously landscaped to promote continuity with open space areas. Parking should be screened from predominant public view with landscaping and/or encapsulated and architecturally integrated within buildings. Parking that serves private uses should be made available to the public during nonpeak periods.

Permanent onsite parking along roadways can only satisfy a small percentage of the overall parking needs. Additional opportunities for events parking north of I-880 such as the existing railyards, existing parking facilities at

Laney College, and private parking facilities within the waterfront area should be pursued and programmed.

***OAK-12: ESTABLISH A MANAGEMENT PROGRAM FOR SPECIAL EVENTS ACCESS AND PARKING.***

A major event at the waterfront (See Policy OAK-2.4) could attract several thousand people. As a result, transportation and parking will be significant issues. Events planning should include a comprehensive transportation management program that includes shuttles, vans, and special transit vehicles providing service to the downtown, the Jack London District, and key regional transit providers (e.g., BART, Amtrak, Transbay ferries). Events' parking should also be provided within walking distance of the planned celebration space.





*The San Antonio/Fruvale District stretches from Embarcadero Cove to San Leandro Bay.*

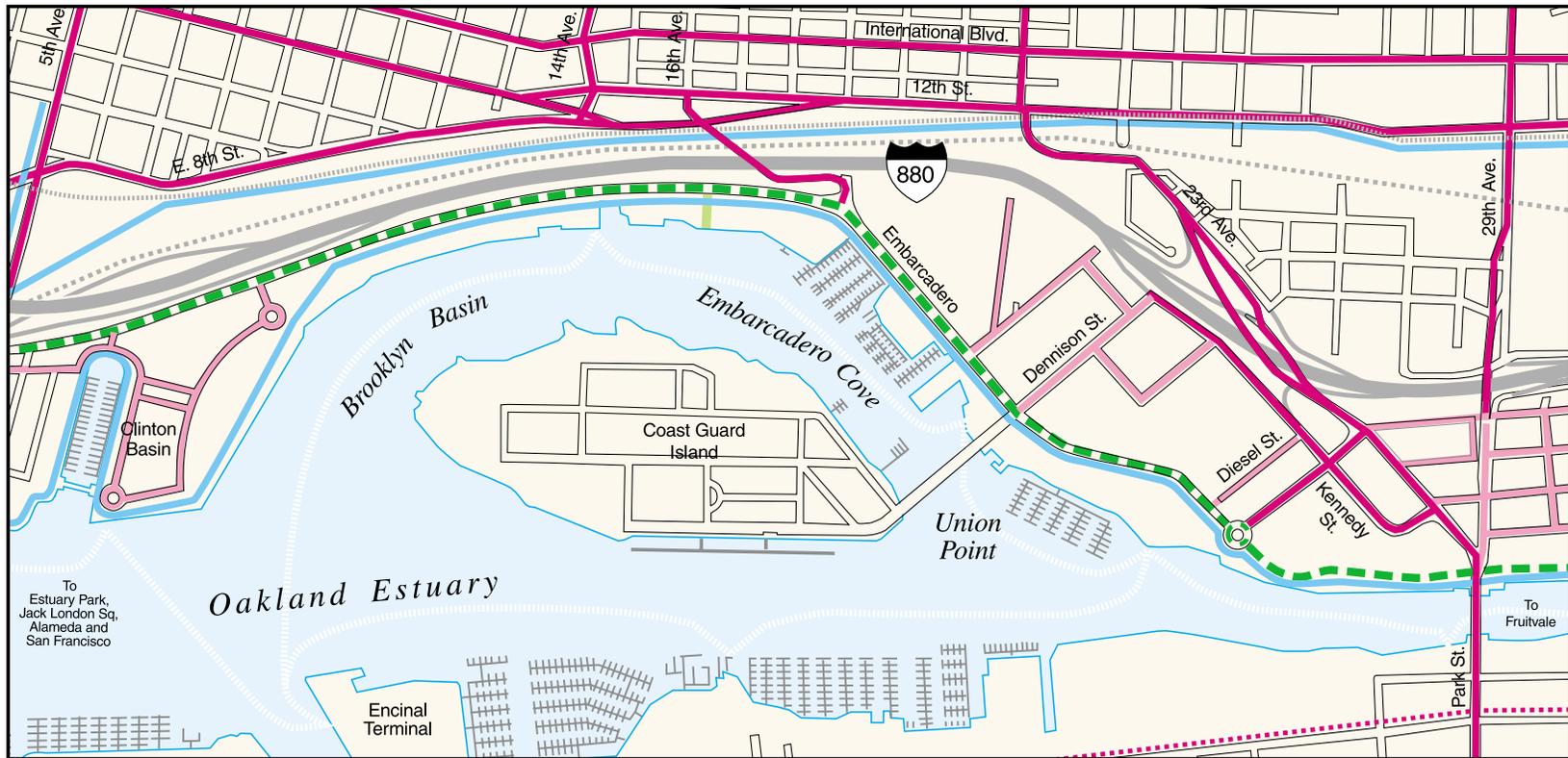
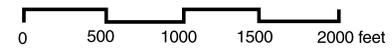


FIGURE III-19: **San Antonio/Fruitvale District Illustrative Circulation Plan**



- |                                                                                                                  |                                                                                                                            |
|------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
|  Interstate Highways/Freeways |  BART – Bay Area Rapid Transit          |
|  Arterial Roadways            |  Waterborne Transit (Ferry, Water Taxi) |
|  Waterfront Parkway           |  Passenger/Freight Rail                 |
|  Local Streets                |  Light Rail                             |
|  Class I Bikeways/Pathways    |  Class II Bikeways/Pathways             |
|                                                                                                                  |  Class III Bikeways/Pathways            |





# **IV** Moving Forward



## Steps Toward Implementing the Estuary Policy Plan

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The Estuary Policy Plan establishes the context, vision, goals, objectives and policies that will guide the transformation of the waterfront:

- It presents the history of the Estuary area and its relationship to the City, providing a context for future changes.
- It identifies issues to be addressed and opportunities to improve the Estuary's attractiveness and public use.
- It provides policy direction for the Estuary as a whole, and subdistricts in particular. Included are recommendations to change the physical appearance of the Estuary, and enhance it as a community asset.

However, implementing this plan's vision is a complex challenge. It will take a long time, and demand significant and constant commitments of effort and involvement. It requires coordinated initiatives by many public agencies, interest groups, the private sector, and individual citizens. And, in addition to commitments of interest and time, realizing the ideas presented in the plan will also require the dedication of extraordinary amounts of financial and other resources, phased over many years.

In shifting focus from planning to implementation, it is important to reaffirm a basic premise about the Estuary. Preparation of this plan was based on a recognition that the Oakland Estuary is one of Oakland's -- and the region's -- most important resources. Successful implementation also depends on a

broad awareness of this fact. The major products of this planning process are not only planning documents and projects. Rather it is a community-wide "Estuary Consciousness"; a dedication to work together to achieve the great potential of the waterfront.

Guided by this philosophy, a strategy for implementation requires that several initial steps be undertaken immediately. These include the following initiatives:

- ❑ To begin with, the plan should be sanctioned by the key decision-making bodies which have the responsibility to oversee the waterfront. Specifically, the City Planning Commission, City Council, and Board of Port Commissioners should review and approve (as appropriate) the Estuary

Policy Plan and other supporting documents as they are developed.

- ❑ Coordinated staff follow-through is very important. Specific priorities, identification of immediate and catalyst projects, development strategies, programs, funding, institutional arrangements, and other means of implementing recommendations should be identified, assessed, documented, and undertaken.
- ❑ Appropriate regulatory controls which reflect the recommended land use patterns and development intensities should be established and enforced. In addition, the overall quality of design should be promoted via specific project review procedures.
- ❑ The implications of this plan on private property rights should be clarified.

***POLICY MF-1: ADOPT THE ESTUARY POLICY PLAN INTO THE OAKLAND GENERAL PLAN.***

The update of the General Plan's *Land Use and Transportation Element (March 1998)* was prepared and adopted while the Estuary Plan was underway. Anticipating completion of the Estuary Plan, the General Plan recommends (in Objective W-8) that the city... "Provide (for) a comprehensive planning framework... (for the mixed use waterfront area). In addition to... (General Plan) objectives and policies, the Estuary Plan, which will be adopted as part of the General Plan, will provide additional detail..."

The Estuary Policy Plan achieves this objective. The Oakland Planning Commission and City Council should take steps to formally incorporate it as an element of the General Plan.

***POLICY MF-2: DEVELOP A COMPANION DOCUMENT TO THE ESTUARY POLICY PLAN, TO BE CALLED THE ESTUARY PLAN IMPLEMENTATION GUIDE.***

The Estuary Plan Implementation Guide should be developed and used as a resource by Port and City decision-makers, as well as the public, in initiating and evaluating waterfront-related projects or programs. The Implemen-

tation Guide should be a compendium of specific recommendations, ideas, strategies, standards, City/Port organizational relationships, funding, financing, and other implementation techniques which can be used to carry out the policies of the Estuary Policy Plan.

As opportunities to implement waterfront projects present themselves, the Implementation Guide should be used to clarify Estuary Policy Plan recommendations and establish basic direction for decisions and actions. It should be used by Port and City staff and decision-makers as the basis for initiating and evaluating waterfront projects.

Work programs for critical initiatives should be established, project managers should be identified, and commitments by agencies and stakeholders should be identified and documented in the Implementation Guide. The Implementation Guide should also be used to evaluate development projects proposed by other public agencies and the private sector. Therefore, it should assess and document appropriate design guidelines suggested by the Estuary Policy Plan. The guidelines should also form the basis of enforceable regulatory controls, to be drafted

and enforced by the City and/or the Port within their respective jurisdictions. (See Policy MF-3).

Implementation of significant project initiatives such as those identified in the Estuary Policy Plan typically take time, and undergo several twists and turns over their lifetimes. For that reason, the Implementation Guide should not be a static document that presents a single way of implementing initiatives. Rather, it should be a ‘working document’, updated on a regular basis, to reflect unforeseen opportunities or constraints to implementing projects. Specific recommendations should be continually assessed and periodically re-evaluated, based on current market conditions, economic feasibility, site-specific physical characteristics, funding options, etc.

***POLICY MF-3: ADOPT AND ENFORCE DEVELOPMENT REGULATIONS WHICH REFLECT THE LAND USE POLICIES ESTABLISHED BY THE ESTUARY POLICY PLAN.***

Eighteen unique land use classifications are recommended by the Estuary Policy Plan. They should form the basis of future

regulatory controls to be enforced to insure project consistency with the Estuary Policy Plan (and ultimately, with the General Plan.)

The new classifications should supersede the single “Waterfront Mixed Use” classification currently in the Land Use and Transportation Element of the General Plan. They should also be incorporated into city zoning regulations and Port development controls.

Each classification is unique in terms of land uses, desired character, relationship with the waterfront, and ability to achieve the goals and objectives of the Estuary Policy Plan. (See Land Use Classification Map and Summary Matrix, pages 132-135)

The intensity and density standards should be considered as maximums. For residential uses, the density maximums are not entitlements that apply to every property within a given classification. Similarly, for non-residential uses, the floor-area-ratios (FARs) are overall maximums; not entitlements that apply to every property within a given classification. Because there are not specific parcels or definite lot-line delineations, FARs in the Port area should be applied on an area-wide basis, while

in the City area and privately-owned parcels within the Port area, they should be applied by parcel.

Ultimate densities of specific projects should consider many factors beyond these maximums, including the context of each individual district, neighborhood character, zoning regulations, parking, open space, height limits, and all relevant policies of the General Plan.

The Port and the City have separate powers for regulating land uses within their respective jurisdictions. The City should amend its zoning codes, and the Port should amend or otherwise establish development standards and restrictions that reflect these classifications. Furthermore, the two agencies should enforce their respective controls in a consistent manner, to insure that a uniform approach to development is achieved.





## Summary of Estuary Policy Plan Land Use Classifications

Land Use Classification	Intent	Desired Character	Maximum Intensity
LI-1: Light Industrial	Maintain light industrial and manufacturing uses that provide support to the adjacent maritime area and downtown, but are compatible with the adjacent West Oakland neighborhood.	Future development in this area should be primarily industrial and manufacturing in nature.	FAR of 2.0 per parcel. 30 units per gross acre.
ORD: Off Price Retail	Promote the expansion of off-price and home improvement retail stores that can further establish this area a retail destination complementary to the Jack London waterfront and downtown.	Future development in this area should be primarily commercial, with retail, restaurant, other public-oriented active uses.	FAR of 2.0 per parcel. 30 units per gross acre.
RD&E-1: Retail, Dining, Entertainment (Phase 1: JLS)	Intensity and enhance public-oriented uses and activities that strengthen the attractiveness of the area as an active and pedestrian-friendly waterfront destination.	Future development in this area should be primarily retail, restaurant, entertainment, marina support, cultural, hotel, upper level offices, parks, and open space with active uses on the ground level of principle streets. Water uses also included.	Average FAR over entire area of 3.5.
RD&E-2: Retail, Dining, Entertainment (Broadway)	Enhance and intensify Lower Broadway as an active pedestrian-oriented entertainment district that can help to create stronger activity and pedestrian linkages with downtown Oakland, Old Oakland, and Chinatown.	Future development in this area should be primarily retail, restaurant, entertainment, hotel, upper level office, cultural, parks, public open space, and any other use that is complementary to active public-oriented ground-level uses.	FAR of 7.0 per parcel. 125 units per gross acre.
WCR-1: Waterfront Commercial Recreation (Phase II)	Extend public-oriented waterfront activities west from Webster Street to Alice Street, in conjunction with enhanced public access, open space, and recreational opportunities.	Future development in this area should be primarily retail, restaurant, cultural, office, hotel, commercial-recreational, conference, exhibition, performances, shows, parks, and public open spaces, and recreational opportunities with active public-oriented uses on ground floors on streets and adjacent to open space areas. Water uses also included.	Average FAR over entire area of 3.0.

### Definition of Terms:

**Intent:** the purpose of the classification

**Desired Character of the Area:** a broad description of the character, types of uses, and activities that are desired in areas designated with the classification. This is descriptive and not an exclusive definition of use or activity.

**Intensity:** the maximum intensity of building form, or density in terms of housing units per gross acre. Gross acreage includes all land in the neighborhood, including streets and parks. To calculate permitted density on any given lot, refer to the Ordinance No.12054 C.M.S.: *Guidelines for Determining General Plan Conformity 100-31*.

Land Use Classification	Intent	Desired Character	Maximum Intensity
PM: Produce Market (Franklin Street b/w 2 <sup>nd</sup> & 4 <sup>th</sup> Streets)	Retain the historic architectural character and integrity of the Produce Market District, and promote uses that maintain the viability, life, and activity of the area.	Future development in this area should be primarily wholesale food, retail, restaurants, office, work/live lofts, cultural, outdoor markets, parks, and public open spaces and light industrial, warehousing, and other uses that are complementary.	FAR of 1.0 per parcel. 30 units per gross acre.
WWD: Waterfront Warehouse District	Encourage the preservation and adaptive reuse of existing buildings and new infill development that preserve and respect the area's unique character and historic flavor, within a context of commercial and light industrial/manufacturing uses.	Future development in this area should be primarily joint living and working quarters, residential, light industrial, warehousing, wholesale, office, artist/artisans studios, neighborhood serving commercial uses, including local small scale restaurants with manufacturing, assembly, and other uses that are compatible with adjacent uses.	FAR of 5.0 per parcel 100 units per gross acre
MUD: Mixed Use District	Encourage the development of nontraditional higher density housing (work/live, lofts, artist studios) within a context of commercial and light industrial/manufacturing uses.	Future development in this area should be primarily light industrial, warehousing, wholesale, retail, restaurant, office, residential, work/live, lofts units, parks, and public open spaces with manufacturing, assembly, and other uses that are compatible with adjacent uses.	FAR of 5.0 per parcel. 125 units per gross acre.
WMU: Waterfront Mixed Use (Site B, Lincoln Properties, KTVU, Portobello)	Allow for a mixture of uses that complement the waterfront setting, and maintains and enhances views and public access to the waterfront.	Future development in this area should be primarily residential, office, retail, and restaurants, parks, and public open spaces. Water uses also included.	FAR of 2.0 per parcel. 40 units per gross acre.

Definition of Terms:

**Intent:** the purpose of the classification

**Desired Character of the Area:** a broad description of the character, types of uses, and activities that are desired in areas designated with the classification. This is descriptive and not an exclusive definition of use or activity.

**Intensity:** the maximum intensity of building form, or density in terms of housing units per gross acre. Gross acreage includes all land in the neighborhood, including streets and parks. To calculate permitted density on any given lot, refer to the Ordinance No.12054 C.M.S.: *Guidelines for Determining General Plan Conformity 100-31*.

Land Use Classification	Intent	Desired Character	Maximum Intensity
PWD-1: Planned Waterfront Development (Estuary Park to 9 <sup>th</sup> Ave)	Provide for the transformation of maritime and marine industrial uses into a public-oriented waterfront district that encourages significant public access and open space opportunities. Encourage a unique mix of light industrial, manufacturing, artist lofts and workshops, hotel, commercial-recreation, cultural uses, and water-oriented uses that complement the recreational and open space character of the waterfront.	Future development in this area should be primarily public recreational uses including boating clubs, community and cultural uses, parks, and public open spaces; with primary uses including light industrial, manufacturing, assembly, artist workshops, cultural, work/live studios, offices, neighborhood commercial, and restaurants; and including hotel, conference, restaurant, commercial-recreational, and cultural. Water uses also included.	FAR of 1.0 and 30 units per gross acre for privately owned parcels.  Average FAR over entire area of 1.0. Average 30 units per gross acre.
WCR-2: Waterfront Commercial Recreation (Embarcadero Cove/Union Point)	Encourage a mix of hotel, commercial-recreational and water-oriented uses that complement the recreational and open space character of the waterfront, enhance public access, and take advantage of highway visibility.	Future development in this area should be primarily hotel, restaurant, retail, marine services and boat repair, boat sales, upper level office, parks, and public open spaces with water uses.	Average FAR over entire area of 1.0.
LI-2: Light Industrial (Brooklyn Basin)	Maintain light industrial, food processing and manufacturing uses, allowing a limited amount of office, residential, institutional or commercial uses.	Future development in this area should be primarily light industrial, food processing, wholesale, distribution, work/live, residential, parks, and public open spaces.	FAR of 2.0 per parcel. 30 units per gross acre.
PWD-2: Planned Waterfront Development (Con-Agra/Lone Star/Ready Mix)	Provide for the continuation of existing industrial uses, allowing for their future transition to a higher density mix of urban uses if the existing uses prove to be no longer viable in this area.	Future development in this area should be primarily industrial, manufacturing in nature, and other uses that support the existing industrial uses.	FAR of 2.0 per parcel. 40 units per gross acre.

**Definition of Terms:****Intent:** the purpose of the classification**Desired Character of the Area:** a broad description of the character, types of uses, and activities that are desired in areas designated with the classification. This is descriptive and not an exclusive definition of use or activity.**Intensity:** the maximum intensity of building form, or density in terms of housing units per gross acre. Gross acreage includes all land in the neighborhood, including streets and parks. To calculate permitted density on any given lot, refer to the Ordinance No.12054 C.M.S.: *Guidelines for Determining General Plan Conformity 100-31.*

Land Use Classification	Intent	Desired Character	Maximum Intensity
RMU: Residential Mixed Use (Kennedy Tract Waterfront)	Enhance and strengthen the viability and attractiveness of the Kennedy Tract as a mixed-use residential neighborhood of low to medium-density housing within a fine-grained fabric of commercial and light industrial uses.	Future development in this area should be primarily residential, work/live, light industrial, neighborhood-serving retail, offices, public parks, and open spaces.	FAR of 1.0 per parcel. 40 units per gross acre.
HI: Heavy Industrial (Owens-Brockway)	Retain the existing glass recycling and manufacturing functions within this area, and promote an enhanced relationship with the adjoining Kennedy Tract neighborhood, Fruitvale Avenue, and the waterfront.	Future development in this area should be primarily heavy industrial uses.	FAR of 0.75 per parcel.
GC-1: General Commercial (42 <sup>nd</sup> /High Street/ Super K-Mart)	Provide for the expansion of regional-serving retail and commercial uses that can benefit from freeway accessibility.	Future development in this area should be primarily retail, office, general commercial, hotel, light industrial, parks, and public open spaces.	FAR of 1.0 per parcel.
LI-3: Light Industrial (East of High Street/ North of Tidewater)	Maintain light industrial, wholesale/retail, manufacturing, and public utility uses while providing for enhancement of the waterfront environment.	Future development in this area should be primarily industrial, manufacturing, commercial, and a variety of other uses.	FAR of 0.5 per parcel.
PWD-3: Planned Waterfront District (East of High Street/ South of Tidewater)	Provide for the continuation of existing industrial uses on properties south of Tidewater Avenue, allowing for their transition to light industrial, research and development, and office uses in a waterfront business park setting.	Future development in this area should be primarily industrial, manufacturing, commercial, office, research and development, public parks, and open spaces.	FAR of 0.5 per parcel.
GC-2: General Commercial (from Oakport site to 66 <sup>th</sup> Ave)	Provide for commercial or light industrial uses that sensitive to the area's proximity to the Martin Luther King Jr. Shoreline Park, the I-880, 66 <sup>th</sup> Avenue, sports field, and adjacent industrial facilities.	Future development should be primarily light industrial, commercial, public utilities, park, or open space.	FAR of 1.0 per parcel.

**Definition of Terms:****Intent:** the purpose of the classification**Desired Character of the Area:** a broad description of the character, types of uses, and activities that are desired in areas designated with the classification. This is descriptive and not an exclusive definition of use or activity.**Intensity:** the maximum intensity of building form, or density in terms of housing units per gross acre. Gross acreage includes all land in the neighborhood, including streets and parks. To calculate permitted density on any given lot, refer to the Ordinance No. 12054 C.M.S.: *Guidelines for Determining General Plan Conformity 100-31*.

***POLICY MF-4: CREATE A JOINT CITY-PORT PROCESS FOR PROJECT DEVELOPMENT, REVIEW AND APPROVAL, WITH A SUITABLE FORUM FOR PUBLIC INPUT, TO PROMOTE HIGH QUALITY PROJECTS WITHIN THE PORT AREA (EXCEPT FOR SEAPORT AND AIRPORT PROJECTS) TO INSURE CONSISTENT, COMPLEMENTARY ACHIEVEMENT OF OBJECTIVES BETWEEN THE CITY AND THE PORT, WITHIN 90 DAYS OF APPROVAL OF THE ESTUARY POLICY PLAN. FAILURE TO COMPLY WITH THE FOREGOING SHALL RESULT IN ALL PROJECTS FOLLOWING THE CITY OF OAKLAND'S STANDARD DEVELOPMENT APPROVAL PROCESS.***

Neither the City nor the Port can achieve the objectives articulated in the Estuary Policy Plan by working alone. Consistent complimentary achievement of mutual objectives is required. To bridge these objectives and to promote high-quality projects, the two agencies will create a joint process for the review and approval of specific projects. The specifics of this process should be researched and detailed as quickly as possible, so as to give the Estuary area the high priority it deserves, and to avoid project

inefficiencies and incremental planning decisions.

***POLICY MF-5: CLARIFY THE IMPLICATIONS OF ADOPTING SPECIFIC MAPS AND TEXT IN THE ESTUARY POLICY PLAN ON PRIVATE PROPERTY RIGHTS.***

Several policies, maps and/or text presented in the Estuary Policy Plan make reference to privately-owned land and/or property rights. These policies, goals, objectives, text sections, and/or maps are NOT intended to establish absolute development criteria for specific parcels.

Further, the Estuary Policy Plan is not intended to and does not authorize, direct or mandate the City, Port or any other entity to acquire any specific parcel or property interest.

All policies, objectives, text sections and maps in this document shall be subject to the legal maxim that City and Port policies, regulations, and actions cannot deny an owner economically viable use of his or her property, and that such policies, goals, objectives, regulations, and actions cannot cloud private property titles or interests. Therefore, all policies, goals, objectives, text sections, and actions recommended by the Estuary Policy

Plan shall be interpreted to allow each property owner and each individual or entity holding a protected property interest an economically viable use for each parcel or property interest held by that property owner, individual, or entity.

The policies, goals, objectives, text, and maps of the Estuary Policy Plan, where they relate to private property or private property rights, are not intended to, and shall not be interpreted as extinguishing or otherwise changing any existing property right or interest. In particular, Estuary Policy Plan maps, including but not limited to maps relating to public access, public parks, public promenades, public streets and other public places, shall be considered only illustrative. Actual locations of such facilities shall be determined at a later date through a public process.

The Estuary Policy Plan is not intended to and shall not be interpreted as creating any property right for the Port, City, or the public that is greater than those rights existing prior to the adoption of this Plan.

The policies, goals, and objectives included in the Plan are intended to be implemented over time. It is assumed that lawfully existing land uses will continue. The Estuary Policy Plan does not require, nor does it specifically endorse, any property acquisition method or ac-

tion, including but not limited to, amortization, dedication, eminent domain, friendly purchase or gift, that will extinguish or diminish existing private property rights or interests.

In addition, the Estuary Policy Plan shall not prohibit the City or Port from accepting and processing development applications, including but not limited to General Plan amendments.



# A Appendix

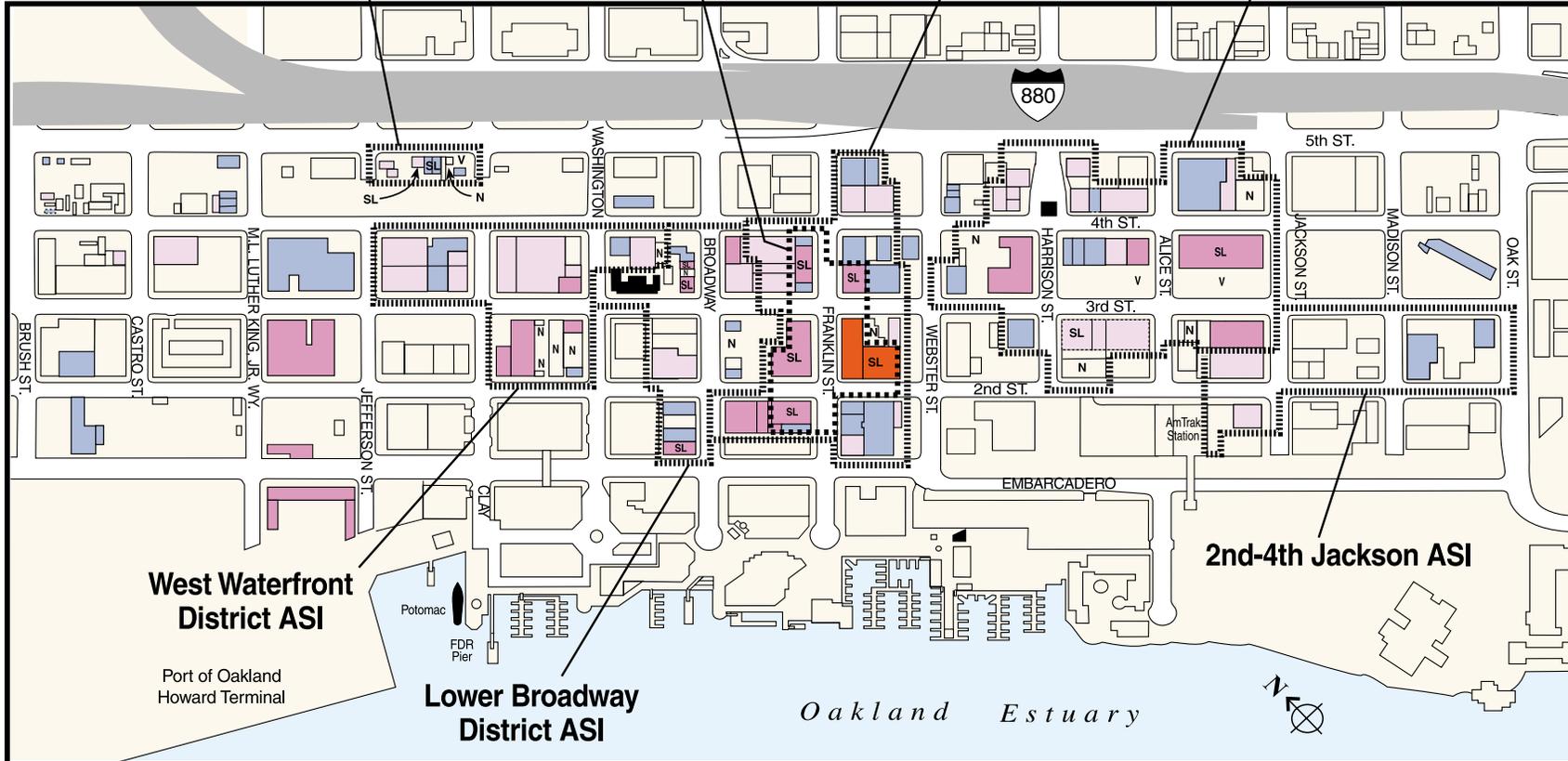


**Bret Hart Boardwalk District ASI**

**Wholesale Produce Market Bldg. Group API**

**Produce Market District API**

**Waterfront Warehouse District API**



Source: Oakland Cultural Heritage Survey, 9/5/96

**APPENDIX-A: Jack London District Potential Designated Historic Properties & Districts**

- National Historic Landmark
- Highest importance
- Major importance
- Minor importance
- Secondary importance
- SL** Preservation Study List
- N** Noncontributor
- V** Vacant
- Potential Historic District
- Building group/complex

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**Roma Design Group**

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- Jim Adams
- David Barnard
- Bonnie Fisher
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- Laura Nardoza
- Carolyn Radisch
- Alfredo Valiente

**Hanson Murikami Eshima, Inc**

- John Nelson
- Lisa Sullivan

**Hausrath Economics Group**

- Linda Hausrath
- Sally E. Neilson
- Robert Spencer

**Gabriel-Roche, Inc.**

- Janet Roche
- Michael Fajans

**Korve Engineering**

- Hans Korve
- Larry Grove
- Chi Hsin Shao

**John T. Warren & Associates**

- John T. Warren

**Economics & Planning Systems, Inc.**

- James Musbach
- David Zehnder

**Archview Media Design**

- Thomas M. Simmons
- Norberto Melendez

**CREDITS**

**CITY OF OAKLAND**

**Mayor & City Council**

Elihu M. Harris, Mayor  
 Jane Brunner, District 1  
 John Russo, District 2  
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 Henry L. Chang, Jr., At Large

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Linda R. Bytof, Chair  
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 Glen Jarvis  
 Vincent B. Reyes  
 Frazier M. Scurry-Scott  
 \* Anthony Pegram  
 \* C. Peter Smith  
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**Robert C. Bobb, City Manager**

William E. Claggett, *Director,*  
*Community & Economic Development Agency*

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 Leslie M. Gould, *Acting Chief of Planning*

Katrina A. Koh  
 Andrew Thomas  
 Ralph Wheeler  
 Renee Dowlin (reprinting)

**ESTUARY PLAN  
 ADVISORY COMMITTEE**

George Bolton  
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 Dr. Eleanor Engram  
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 C. Peter Smith  
 Sandy Threlfall  
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 Cheryl Wong

**Oakland Sharing the Vision**

Steve Costa, *Executive Director*  
 Toya Ash  
 \* Deborah Kirtman

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Tay Yoshitani, *Deputy Executive Director*  
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\_\_\_\_\_   
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\_\_\_\_\_  
\* Former Officials/Staff

# OAK-TO-NINTH MIXED-USE DEVELOPMENT

RESPONSE TO REQUEST FOR QUALIFICATIONS  
SUBMITTED BY OAKLAND HARBOR PARTNERS, LLC



APPROVED CONCEPTUAL ESTUARY PLAN, 1999

The Oak-to-Ninth mixed-use development on Oakland's waterfront presents an opportunity to revitalize an underused piece of property into a thriving water-oriented residential/retail/commercial environment. Oakland Harbor Partners, LLC, is proud to respond to your Request for Qualifications with a plan that includes:

- ☞ A series of open spaces and promenades designed to maximize public access to the shoreline and the estuary. The plan will make possible a range of recreational and maritime activities, which may include revitalized marinas, provisions for waterborne transit and taxis, and open water for aquatic sports;
- ☞ **A waterfront retail complex, envisioned with a strong regional and local character in the tradition of Granville Island in Vancouver or Pike Place Market in Seattle.** The retail component will be carefully planned to complement and enhance existing retail opportunities in the area;
- ☞ A residential village, which includes both rental and for-sale housing. The concept includes apartments, condominiums, live-work lofts, townhomes and studios consistent with the loft district adjacent to Jack London Square.

*"Make no little plans. They have no magic to stir men's blood and probably themselves will not be realized. Make big plans; aim high in hope and work, remembering that a noble logical diagram once recorded will never die, but long after we are gone, will be a living thing, asserting with growing intensity."*

DANIEL BURNHAM  
PLAN FOR CHICAGO, 1909



## DEVELOPER IDENTIFICATION

1. The lead development entity of OAKLAND HARBOR PARTNERS, LLC.

**SIGNATURE PROPERTIES**

4670 Willow Road, Suite 200,  
Pleasanton, CA 94588  
Phone: (925) 463-1122

Oakland Harbor Partners, LLC, is a California limited liability company formed in May 2001.

2. The principal point of contact and the person with the authority to represent and make legally binding commitments on behalf of Oakland Harbor partners, LLC, is:

**Michael Ghielmetti, Vice President**

Signature Properties  
4670 Willow Road, Suite 200  
Pleasanton, CA 94588  
Phone: (925) 463-1122  
E-mail: mghielmetti@sigprop.com

3. Oakland Harbor Partners, LLC, is comprised of the following companies:

**SIGNATURE HARBOR VENTURE, LLC, a California limited liability company**

A Signature Properties Company  
c/o Signature Properties  
4670 Willow Road, Suite 200  
Pleasanton, CA 94588  
Phone: (925) 463-1122  
Fax: (925) 463-0832  
E-mail: mghielmetti@sigprop.com

**REPRESENTATIVES:**

**James C. Ghielmetti**  
**Michael J. Ghielmetti**

**R & B HARBOR VENTURE, LLC, a California limited liability company**

A Reynolds & Brown Company  
c/o Reynolds & Brown  
1200 Concord Avenue, Suite 200  
Concord, California 94520  
Phone: (925) 674-8400  
Fax: (925) 689-1535  
E-mail: rnb@reynoldsandbrown.com

**REPRESENTATIVES:**

**Jon Q. Reynolds**  
**Dana G. Parry**

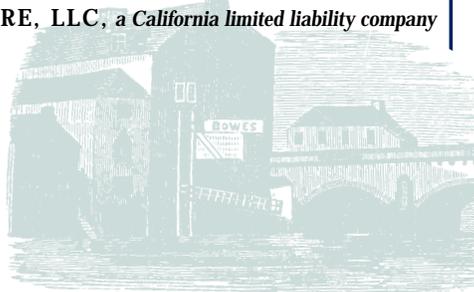
**BAY AREA SMART GROWTH FUND I**

c/o Pacific Coast Capital Partners  
601 Montgomery Street, Suite 1088  
San Francisco, CA 94111  
Phone: (415) 732-7545  
Fax: (415) 732-7547  
E-mail: kuemmeler@pccpllc.com

**REPRESENTATIVE:**

A TEAM TO  
MAXIMIZE VALUE  
AND FULFILL THE  
VISION OF THE  
CITY OF OAKLAND

- Extensive experience with large-scale mixed-use projects
- First-hand experience developing and building economically successful high-density projects in urban centers, including Oakland
- A proven commitment to the City of Oakland
- A demonstrated ability to work in historic districts with public regulatory agencies, including the Community Economic and Development Agency of the City of Oakland
- The proven ability to obtain complex entitlements in a timely manner



4670 Willow Road, Suite 200, Pleasanton, CA 94588 (925) 463-1122

**Representatives: James C. Ghielmetti, Michael J. Ghielmetti**

**Role: Residential, retail and office development**

### **QUALIFICATIONS AND EXPERIENCE**

Signature Properties is a privately-held California corporation dedicated to the development of high quality mixed-use projects, master-planned communities, new home neighborhoods and commercial/retail properties. Since its founding in 1983, Signature Properties has constructed more than 5,000 condominium and single-family residences throughout the greater San Francisco Bay and Sacramento areas, as well as the development of over 1,000,000 square feet of office and retail properties.

Throughout its history, Signature Properties has specialized in obtaining entitlements and redesignating both suburban and urban in-fill sites. Most transactions involve complicated approvals including the Clean Water Act, Endangered Species Act and a host of local and regional regulations. The company has successfully worked with the following agencies: Army Corps of Engineers, U.S. Fish and Wildlife, California Department of Fish and Game, DTSC, Regional Water Quality Control Board, and the Bay Conservation and Development Commission.

Over the years, Signature Properties has earned a reputation for creative land planning and innovative architecture. The long-term success of Signature Properties is due in large part to its management team and pride of ownership as a privately held company. The company recently received the 2000

“Home\*Buyers\*Choice” award for customer service—a distinction it has held for over a decade. The award, which is based on a homebuyer satisfaction survey by National Survey Systems, ranked Signature Properties #1 in California for “Overall Home Buyer Satisfaction” out of the 42 major California

*“For beauty is not an ornament to be stuck on. Its essence lies in its structural unity.”*

CHARLES MULFORD ROBINSON  
PLAN OF CIVIC IMPROVEMENT  
FOR THE CITY OF  
OAKLAND, CALIFORNIA, 1905



**Durant Square**

*Ruby Hill Clubhouse*

homebuilders evaluated. Signature Properties' mission is to make every one of its projects an asset to its community and a source of pride to its homeowners.

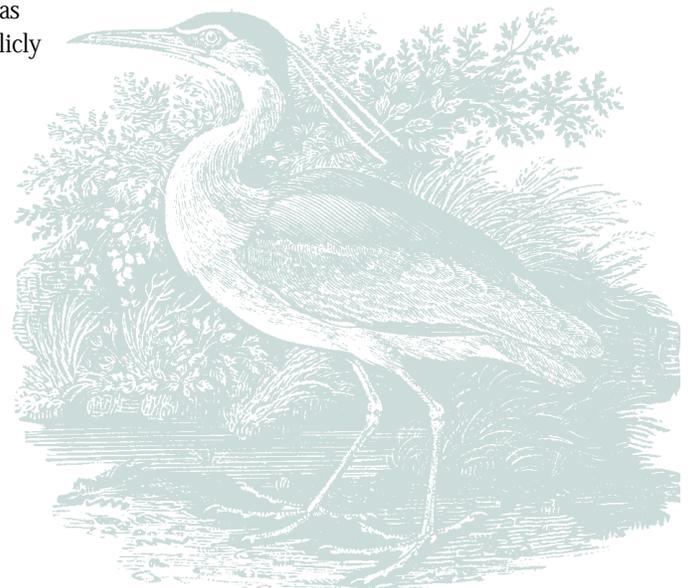
#### **KEY PRINCIPALS**

##### ***James C. Ghielmetti, Owner and Chief Executive Officer***

James C. Ghielmetti founded the land development and homebuilding firm of Signature Properties in 1983. Throughout his career, Mr. Ghielmetti has been responsible for the construction of over 25,000 residential units and more than 3,000,000 square feet of office and commercial space.

Prior to founding Signature Properties, Mr. Ghielmetti was President of Shapell Industries of Northern California, a publicly traded homebuilding and land development company. His responsibilities included management of all aspects of developments and operations. He received a Bachelor of Science degree in Business Administration with an emphasis in Real Estate from Denver University in 1968.

Mr. Ghielmetti is active in civic, business and philanthropic efforts. He is a member of the Tri-Valley Business Council, the Board of Directors of the Bay Area Council, has served on the Alameda County Transportation Authority Expenditure Development Committee, and was recently appointed by Governor Gray Davis to the Governor's Commission for the 21st Century. He has served as Vice Chairman of the United





Way of the Bay Area Construction Division Campaign and was a member of the United Way Circle Club. Mr. Ghielmetti is also active with the ALS Foundation, Good Samaritan House and The Congressman George Miller Youth Fund.

***Michael J. Ghielmetti, Vice President***

Michael Ghielmetti is responsible for planning and development at Signature Properties, Inc. In this capacity, Mr. Ghielmetti represents the company in the purchase, entitlement and implementation of new properties. He is responsible for working with city government as well as regional, state and federal agencies in securing the necessary approvals and entitlements. In addition, he is responsible for the design of new communities.

Mr. Ghielmetti began his career in the homebuilding industry with David Weekley Homes in Houston, Texas, where he was a Construction Manager for several master-planned communities. He joined Signature Properties in 1995 as Director of Sales and Marketing and assumed his current position in 1998. He studied Economic History at the University of California at Santa Barbara.

He has served on the Board of Directors of the Homebuilders Association of Northern California, is a member of the Urban Land Institute and has been a speaker at its annual meeting. Mr. Ghielmetti has served on the Board of Directors of HomeAid, which provides transitional housing for victims of domestic violence. He is currently on the Board of Directors for both the Livermore Valley Winegrowers Association and its charitable arm, the Livermore Valley Winegrowers Foundation, which raises money for children's causes.

***Marc Stice, General Counsel***

Marc Stice represents the company in all of its legal affairs. His duties include the drafting of agreements for the purchase of new properties, oversight of risk management issues and processing and securing permits from environmental regulatory agencies. Mr. Stice joined Signature Properties in 1996 as Assistant General Counsel and assumed his current position in 2000. He earned his Juris Doctor Cum Laude from the Pepperdine University School of Law and his Bachelor of Arts from the University of California at



***Durant Square***

Santa Barbara. He is a member of the California State Bar Association and its Real Property and Environmental Sections. Mr. Stice currently serves on the Board of Directors and Public Policy Subcommittee of the Homebuilders Association of Northern California and has been appointed to the Department of Real Estate Commissioner's Committee on Residential Subdivision Issues. Mr. Stice also served on the East Contra Costa Biodiversity Working Group.

**Robert E. Fregulia,  
Vice President and  
Controller**

Mr. Fregulia directs and implements the financial management of Signature Properties, including accounting, coordinating the financial reviews, forecasting and cash flows, project controls and information systems. He is involved with strategic planning and maintaining



management, developing  
*Ruby Hill*



1200 Concord Avenue, Suite 200, Concord, CA 94520 (925) 674-8400

**Representatives: Jon Q. Reynolds, Dana G. Parry**

**Role: Retail, Office and Residential Developer**

**QUALIFICATIONS AND EXPERIENCE**

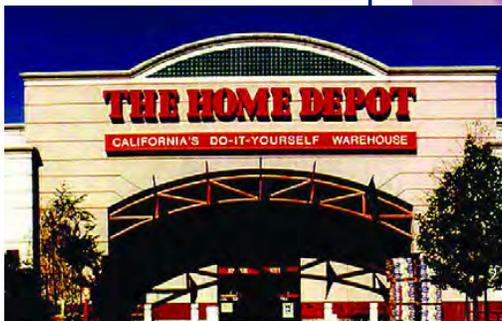
Reynolds & Brown has developed more than 8,000,000 square feet of commercial real estate and has established an impressive history of success in development of real estate throughout the San Francisco Bay Area since its founding in 1963. The Reynolds & Brown portfolio includes a diverse balance of retail centers, business parks, research and development parks, mid-rise office buildings, entertainment and recreational complexes, warehouse and distribution facilities and residential properties.

The company's reputation has been shaped to a large degree by the commitment to quality, service and innovation first articulated by its founders, Jon Q. Reynolds and David A. Brown. The foundation of the company's strength is based on these fundamental objectives: maintaining identity as a local firm, building a capable team of professionals who are leaders in their profession; developing first-class projects that reflect strong exterior and interior design. Structural integrity, functional design and finish detail are well-known trademarks of a Reynolds & Brown development.

Involvement in community affairs is an integral part of the Reynolds & Brown philosophy. A strong local presence has enabled the company to establish and maintain long-term relationships and visibility with area businesses, tenants, public officials and other community leaders.

*"If California ever becomes a prosperous country, this bay will be the centre of its prosperity."*

*RICHARD HENRY DANA  
TWO YEARS BEFORE THE  
MAST, 1840*



*Pleasanton Park*



*Marina Square***KEY PRINCIPALS*****Jon Q. Reynolds, Chairman of the Board***

Mr. Reynolds has been an investment developer for 41 years and co-founded Reynolds & Brown in 1963. He served as a trustee of the Urban Land Institute for 12 years and is past chairman of its Industrial and Office Park Council. He is a member of the Urban Land Foundation and Chairman and co-founder of the Oakland Housing Foundation. He co-sponsored a chair for real estate development at the University of California and is Chairman of the Policy Advisory Board of the University's Fisher Center for Real Estate and Urban Economics.

Mr. Reynolds was appointed by Governor Pete Wilson to serve on the California Military Base Reuse Task Force, which has completed its report. He has also served as a Commissioner on the Oakland/Alameda County Coliseum Board of Directors and is currently a member of the Oakland/Alameda County Coliseum Foundation. He was a director of the East Bay Municipal Utility District for nine years, serving as Chairman for five of those years. He has served as a Commissioner of the Oakland Housing Authority, and performed many other civic duties, including membership in the Airspace Advisory Commission for Caltrans. A graduate of the University of California, Berkeley, Mr. Reynolds is currently a Trustee of the University's Museum of Modern Art and a trustee of the University of

California Berkeley Foundation.

***Dana G. Parry, General Counsel***

Dana G. Parry has more than 20 years of experience in the fields of construction, development and real estate law. Mr. Parry currently serves as general counsel to Reynolds & Brown and as an officer, director and managing member of several of Reynolds & Brown's affiliated entities, including ECS Corp., a California general contractor, Zone Four, LLC, a manufacturer of seismic retrofitting hardware, and JQR Development Corporation, the corporate general partner of many of Reynolds & Brown's development entities. Prior to his association with Reynolds & Brown in 1991, Mr. Parry was a partner with the Los Angeles law firm of Wyman, Bautzer, Kuchel & Silbert and in that capacity represented some of the nation's leading real estate developers and financial institutions, including the Trammell Crow Company, the Shidler Group, Cabot, Cabot & Forbes, Sierra Capital Companies, Bank of America, N.A. and Wells Fargo Bank, N. A. In his role as general counsel and a development manager at Reynolds & Brown, Mr. Parry has enjoyed extensive legal and development responsibility for office, retail, research and development, entertainment, hotel, residential and other projects. Mr. Parry is a member of the State Bar of California, and is a graduate of the UCLA School of Law and a Phi Beta Kappa graduate of the University of Southern California.



***Embarcadero Lofts***

# BAY AREA SMART GROWTH FUND I

## DEVELOPMENT PARTNER

601 Montgomery Street, Suite 1088, San Francisco, CA 94111 (415) 732-7545

**Representatives: Don H. Kuemmeler**

**Role: Financial Partner and Advisor**

### QUALIFICATIONS AND EXPERIENCE

The Fund has a 10-year life and is sponsored by the Bay Area Council. The Smart Growth Fund I invests in mixed-use mixed-income commercial, industrial and housing developments. Private equity capital is invested in the Funds. The Funds are managed by private investment managers with strong track records.

The investment managers, with financial incentives, have the sole responsibility for all investment decisions. The investors in the Funds include banks, institutional investors and other corporations. To date, \$100 million in investment commitments have been received.

### KEY PRINCIPALS

#### **Don H. Kuemmeler**

Don Kuemmeler is a founding partner of Pacific Coast Capital Partners, LLC. Mr. Kuemmeler, a former Senior Vice President at Wells Fargo Bank, N.A., originated more than \$1 billion in commitments; has a B.S. in Business Administration, UC Berkeley, and a MBA, UC Berkeley Haas School of Business.

#### **Aaron Giovara**

Aaron Giovara, formerly a Vice President at Wells Fargo Bank, originated more than \$600 million in real estate loans. He holds a B.S. Real Estate/Finance from UC Berkeley.

#### **Nick Colonna**

Nick Colonna is responsible for more than \$1 billion in loans and \$150 million in equity. He was previously a Senior Vice President at Wells Fargo Bank and holds a B.S. in Business Administration/Real Estate Finance, University of Southern California.

#### **Bill Lindsay**

Bill Lindsay was previously a partner in Gibson, Dunn & Crutcher, LLP. He served as Law Clerk to the Honorable William H. Rehnquist, Chief Justice, United States Supreme Court. He holds a law degree from UC Berkeley.

*"This is a critical time in Oakland's history. It is to choose its destiny."*

CHARLES MULFORD ROBINSON  
PLAN OF CIVIC IMPROVEMENT  
FOR THE CITY OF  
OAKLAND, CALIFORNIA, 1905



## ROMA DESIGN GROUP

1527 Stockton Street, San Francisco, CA 94133 (415) 616-9900 roma@roma.com

**Representatives: Boris Dramov, Jim Adams, Bonnie Fisher**

**Role: Land Planners, including the Specific Plan (with support from McLarand Vasquez Emsiek & Partners)**

### QUALIFICATIONS AND EXPERIENCE

ROMA Design Group is an interdisciplinary firm of architects, landscape architects and planners based in San Francisco. The firm undertakes projects throughout the United States and abroad. A medium-sized firm, ROMA Design Group has, over the past 20 years, established a reputation for design excellence and commitment to the improvement of the urban environment. The firm focuses on the transformation of the post-industrial city, the creation of livable communities and the design of public spaces. In each of its projects, the company strives to make a significant contribution to the attractiveness, character, and livability of cities, towns and regions.

### KEY PRINCIPALS

**Boris Dramov, AIA**  
**Architect and Urban Designer**

Boris Dramov is the ROMA principal who established the current interdisciplinary focus of the firm. Significant project experience includes the redevelopment of the Northwestern Waterfront in San Francisco, which was acclaimed by the San Francisco Chronicle as “the most striking success to date— anywhere in the country and perhaps the world—of a citizen participatory planning turned into a work of civic art. The result has not been a patched-up popular compromise, but a lordly urban vision.” This work includes the planning of 1-1/2 miles of urban shoreline, the reuse of obsolete industrial facilities and the creation of the new South Beach residential neighborhood and the Rincon Pointe mixed-use area. In addition, Mr. Dramov led the design team for the transportation and open space improvements for the downtown waterfront in front of the landmark Ferry Building at the foot of market Street. Those improvements are just being completed, and received this year’s National AIA Urban Design Award of Excellence. Additional projects on the San Francisco waterfront include Pier 7, a public access and recreational pier, the Embarcadero Promenade, and the Downtown Ferry Terminal, which is currently under construction.

Mr. Dramov was a Loeb Fellow in Advanced Environmental Studies at Harvard University in 1980; he received a Master’s of Architecture from Columbia University and a Bachelors of Architecture from the University of Southern California. He is a registered Architect and a Fellow of the American Institute of Architects. He was also featured in the PBS special aired in 1996, “Back from the Brink,” regarding his work in the design and planning for the revitalization of urban settings.



**Jim Adams, AIA**  
**Director of Urban Design**

Jim Adams is in charge of urban design plans for specific development projects, as well as special districts of cities and transit-oriented mixed-use neighborhoods. He has managed large multidisciplinary consultant teams of complex urban projects and worked effectively with multiple client and community groups. He has special expertise in the revitalization of urban communities and focuses upon the need to preserve the unique characteristics of each community in a changing economic environment. He has led numerous projects involving the design of major transportation facilities and their integration with the urban fabric to create sustainable, livable communities. Key projects include the reuse master plan for the Southern Pacific Railyards in Sacramento, which received a National AIA Urban Design Award, and the Midtown, Tasman, Bascom and Fruitvale transit-oriented developments in the Santa Clara Valley. He received his Masters of Urban Design (with distinction) from Harvard University, his Bachelor of Architecture (honor graduate) from the University of Toronto. He is a registered architect and a member of the American Institute of Architects.

**Bonnie Fisher**  
**Director of Landscape Architecture**

Bonnie Fisher brings to ROMA Design Group her environmental design orientation and knowledge of arboriculture as well as the design of urban landscapes. She played an important role in the planning and design of the San Francisco waterfront, including the design of Pier 7, which received a National ASLA Honor Award. She also prepared the award-winning Recreation and Open Space Plan and Downtown Urban Design Plan for the City of Santa Monica, and participated in the design of the Third Street Promenade. She is currently working on the design of a five-acre public park within a new neighborhood for the City of San Jose. Ms. Fisher is a registered landscape architect, educated at the University of California and the Harvard Graduate School of Design. She holds a Masters of Landscape Architecture in Urban Design from the University of California at Berkeley and a Bachelors of Arts (Cum Laude) from UCLA. She is a founding board member of the museum for art at technology at Yerba Buena Center (Zeum).



1900 Main Street, 8th Floor, Irvine, California 92614 (949) 809-3388  
evasquez@mve-architects.com

**Representative: Ernesto M. Vasquez**  
**Role: Project Architect**

**QUALIFICATIONS AND EXPERIENCE**

McLarand Vasquez Emsiek & Partners, Inc., and its predecessor firm, McLarand, Vasquez & Partners, Inc., is one of the country's most innovative and respected design organizations, encompassing an experienced team of facility programmers, planners, architects, computer graphic specialists and interior designers. The firm provides an extensive variety of architectural, planning and interior design services to sophisticated clients, having established a successful reputation based on its expertise, strength and diversity of work. The over 100-person firm is recognized for its award-winning designs of large-scale urban office buildings, mixed-use developments, entertainment complexes, business parks, specialized hotels and international facilities. McLarand Vasquez Emsiek & Partners is also at the forefront of the housing industry as one of the recognized leaders and innovators in residential design. The firm's expertise lies in its demonstrated abilities to design highly attractive and functional architecture, creating unique environments where people want to work and live.

Significant in the wide range of projects in which McLarand Vasquez Emsiek

& Partners is involved is its sensitivity to the human scale, as evidenced by an awareness of architectural context and an attention to detail. Through close working relationships with clients and technical expertise, the company is able to achieve high-quality designs of distinct complexity and style, while being responsive to market demands, space utilization and construction costs. The firm's work has received hundreds of national and regional awards for excellence in commercial, mixed-use and residential projects.



*Bridgecourt, Emeryville, California*

**KEY PRINCIPALS****Ernesto M. Vasquez, AIA****Principal/Vice President, McLarand Vasquez Emsiek & Partners**

Mr. Vasquez has personally directed the design of over 11,000 residential units throughout California and the West. His projects range from infill urban redevelopment sites to neo-traditional new town planning. Mr. Vasquez received the Professional Builders 1991 Achievement Award for innovation in High Density Design. Since 1976, Mr. Vasquez's creativity and expertise have brought the firm recognition throughout the real estate industry as an innovator in the fields of commercial, mixed-use and residential design. He holds a Bachelor of Architecture, with Honors, from California State Polytechnic University, San Luis Obispo. Mr. Vasquez has been a featured speaker for the Urban Land Institute, the American Institute of Architects, the Building Industry Association and the Pacific Coast Builders Conference, and has participated on the jury for several design award programs.

**Richard F. Emsiek, AIA****Principal, McLarand Vasquez Emsiek & Partners**

Mr. Emsiek joined McLarand, Vasquez & Partners in 1985, was named co-director of design in 1992 and principal in 1993. In January 2000, the firm changed its name to McLarand, Vasquez, Emsiek & Partners. Mr. Emsiek demonstrates a keen sense of detail and quality in the generation of new and innovative residential products. He brings to the design team an understanding and flexibility that have been acknowledged in the industry through the receipt of several design awards for his sensitivity with hillside developments. Mr. Emsiek holds a Bachelor of Architecture from California State Polytechnic University, Pomona, College of Environmental Design. He has been a featured speaker at the Pacific Coast Builders Conference, National Association of Home Builders, Building Industry Association, Builder Magazine's Design Symposium, and is an active member of the AIA Orange County Chapter.



## MICHAEL WILLIS ARCHITECTS

246 First Street, Suite 200, San Francisco, California 94105 (415) 957-2750

**Representative: Michael Willis**

**Role: Architectural Team**

### QUALIFICATIONS AND EXPERIENCE

Michael Willis Architects, established in 1988, focuses on civic and community facilities, multifamily housing and urban design. By advocating public participation in the design process and in the built form, MWA has successfully used architecture as a unifying social force. MWA designs are humane, welcoming and reflect the community's values and concerns. Since its founding, MWA has consistently promoted the use of sustainable materials and energy-efficient design.

MWA has completed several large complex infrastructure and civic projects worth several hundred million dollars each in construction value. These projects have been consistently recognized with design awards from the American Institute of Architects, the National Trust for Historic Preservation, the California Preservation Foundation and the national Organization of Minority Architects. This recognition underscores the accomplishment of the firm: to create public buildings that engage the public and promote and improved civic life, even if they are used by private individuals or companies.



*Jack London Square*



*Pacific Bell Park, San Francisco*

#### *KEY PRINCIPALS*

**Michael E. Willis, FAIA**  
**Principal-in-Charge**

Michael Willis founded Michael Willis Architects in 1988 and since that time has gained a national reputation for integrating urban design and community participation in appealing housing and neighborhood revitalization projects. He has served as principal on several large public projects, including the New International Terminal at San Francisco Airport and the renovation of Oakland City Hall. Mr. Willis is past president of the San Francisco Chapter of the American Institute of Architects and served as a member of its executive committee. He holds Master of Architecture and Master of Social Work degrees from Washington University, St. Louis.

**Rod K. Henmi, AIA**  
**Principal/Design Director**

Rod Henmi joined Michael Willis Architects in 1994. He is responsible for directing the design of MWA projects. He has worked on West Oakland Transit Village, Jack London Square Revitalization and the Bayview/Hunters Point Revitalization. He received a Master of Architecture and Urban Design



*Contra Costa Entertainment Village*

## KAY & MERKLE

100 The Embarcadero Penthouse, San Francisco, CA 94105 (415) 357-1200  
stevenkay@kmlaw100.com

### QUALIFICATIONS AND EXPERIENCE

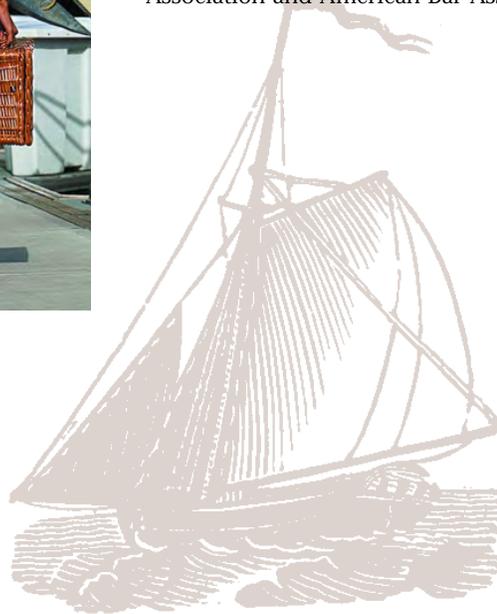
Steven Kay of Kay and Merkle currently represents entrepreneurs, developers, the San Francisco 49ers Football Team, and numerous entities involved in the business of developing and owning improved and unimproved real property. Mr. Kay was, in addition, the attorney and a participant in the unsuccessful bid to purchase the Oakland As baseball Team in 1999. Mr. Kay and his firm have been involved in the development of significant real estate projects, including residential and commercial projects. Mr. Kay has also been a principal in many businesses and real estate transactions.



### KEY PRINCIPALS

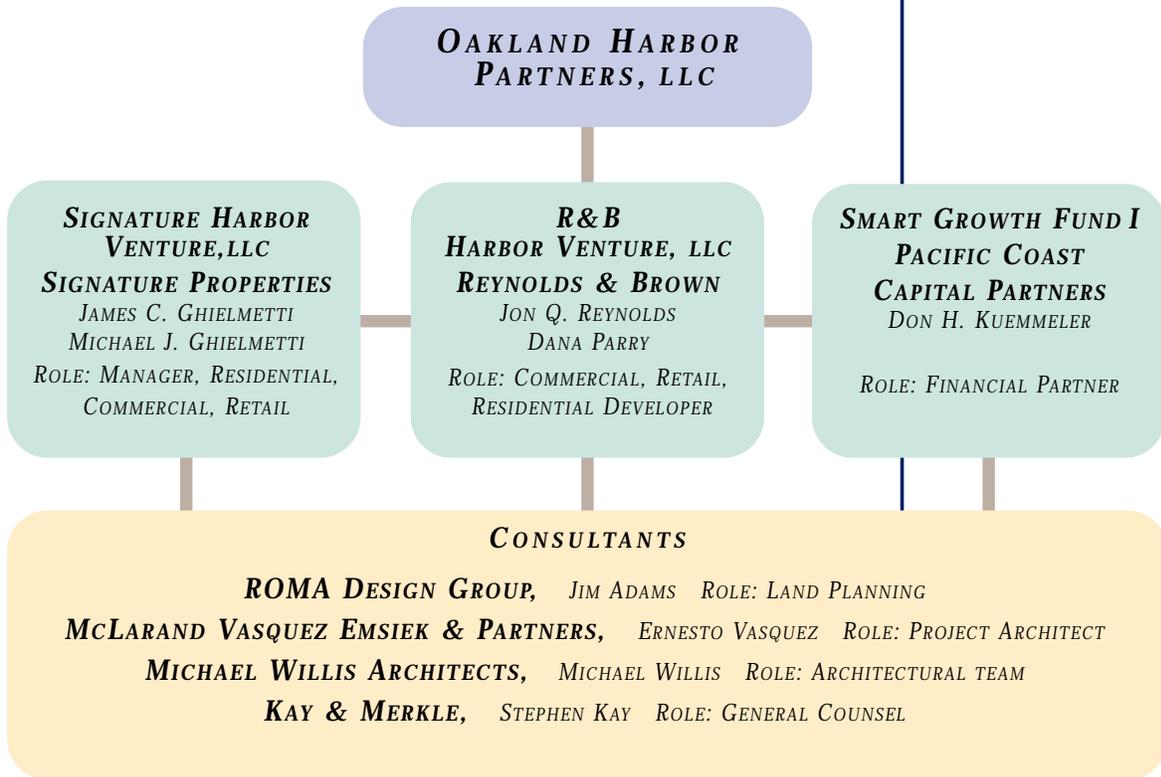
#### **Steven Kay, Senior Partner**

Stephen Kay has been engaged in the practice of law in the State of California since 1974. He has been a guest lecturer for the Practicing Law Institute (PLI), involved with many charitable organizations and is a member of the San Francisco Bar Association, Alameda County Bar Association, California State Bar Association and American Bar Association.



# ORGANIZATON CHART

The structure of Oakland Harbor Partners, LLC, is as follows:



## *DURANT SQUARE*

*OAKLAND, CALIFORNIA*



### *DESCRIPTION*

Durant Square is a 20-acre property located in East Oakland along the San Leandro border. Signature Properties is in the early stages of building this mixed-use project that includes 168 condominium units and 43 single-family units along with 250,000 square feet of retail and 60 rental live-work lofts. The project is an adaptive reuse of the 1920's Durant Motor Company headquarters and factory, a facility that was designated as a B+ rated historic site. At build-out, the commercial component will include: a 50,000 square foot grocery store, a 50,000 square foot international marketplace comprised of small businesses, 90,000 square feet of rental live-work units, the largest and most successful charity Bingo facility in Oakland, 20,000 of office space, a restaurant and a coffee shop. The historic industrial Gothic-style facade is being preserved while remodeling occurs in the interior. Sales of the condominiums will commence in June 2001 and are estimated to range from the low \$200,000's to the low \$300,000's.

### *DEVELOPMENT*

Signature Properties entered into an option agreement for the property in March 1999 and closed escrow after securing entitlements in May 2000. Construction commenced in June 2000 and is expected to be complete in June 2004. The total cost of the project is approximately \$95 million and Signature Properties is the owner and developer. The project does not involve public financing or subsidy. Wells Fargo Bank provided institutional financing. McLarand Vasquez Emsiek & Partners provided architectural and planning services for the condominiums and single family units. Flynn Craig + Grant was the architect for the commercial buildings.



### *ENTITLEMENTS*

Entitlements included unanimous approval from the Oakland Landmarks Board, Oakland Planning Commission and Oakland City Council. Durant required a PD approval, rezone and certification of an environmental impact report. During the entitlement process Signature negotiated with the existing tenant base of over 75 small businesses and 20 live-work residents. Not one tenant has been displaced as a result of the development efforts. Development activities will include Removal and Remedial Actions involving subsurface organics and metals and shallow ground water contamination. This process is expected to include development and implementation of a Remedial Investigation and Feasibility Study (RIFS), Remedial Action Plan (RAP) and Determination of No Further Action under supervision of the



R E Y N O L D S &amp; B R O W N



## **CONCORD AIRPORT PLAZA**

**CONCORD, CALIFORNIA**

### **DESCRIPTION**

Concord Airport Plaza is a 364,220 gross square foot “Class A” office complex located at the intersection of Concord Avenue and John Glenn Drive in the City of Concord, California. Two six story building groups, each consisting of two offset building wings connected by a common elevator/atrium core enclose a large, central plaza. A four story parking garage, providing 611 spaces is located on the south portion of the site. Another 594 spaces are located on grade.

### **DEVELOPMENT**

Reynolds & Brown acquired the 11.44 acre site in 1978 from the Redevelopment Agency of the City of Concord. The project was built in two phases, the first phase consisting of approximately 175,011 square feet of net leased area was completed in 1984 and the second phase consisting of approximately 175,153 square feet of net leased area was completed in 1985. The phases are elevated on a heavily landscaped island at the middle of the site and surrounded by landscaped parking areas to create a suburban, campus like setting. The project is 100% leased to nine tenants and anchored by Wells Fargo Bank, N.A., which occupies 93% of the project. The office building was constructed at a cost of \$43,000,000, the majority of which was funded in a construction loan from Wells Fargo Bank, N.A. A \$43,000,000 permanent loan was obtained from Teacher’s Insurance and Annuity Company in 1989. Jon Reynolds oversaw all aspects of the development process, including acquisition, financing, construction and leasing of Concord Airport Plaza.

### **CHALLENGES AND ENTITLEMENTS**

Challenges and Entitlements: A planned unit development permit, mitigated negative declaration, zoning change and design review approvals for each phase of the project were obtained in connection with the development of Concord Airport Plaza.



R E Y N O L D S &amp; B R O W N



## NEW MARKET LOFTS

OAKLAND, CALIFORNIA

### DESCRIPTION

New Market Lofts is a 46-unit live/work mixed use project located at 201 Fourth Street in the Jack London Square Neighborhood of Oakland, California. New Market Lofts involves the adaptive reuse of a 103,000 square foot steel reinforced concrete building built in 1929 as warehouse and headquarters operation for Safeway Stores, Inc.



### DEVELOPMENT

The property was acquired in late 1998, construction started in September 2000 and the New Market Lofts, when completed in August of this year, will be the crown jewel of the Waterfront Warehouse District. New Market Lofts is being developed under the supervision and direction of Jon Reynolds with Dana Parry of Reynolds & Brown, as the day-to-day project manager, being principally responsible for all legal and transactional aspects of the development including acquisition, financing, environmental remediation, design, construction, marketing and sale of the project.

The total construction budget for this project is \$18,000,000, with approximately \$12,700,000 being provided in the form of a construction loan from Wells Fargo Bank, N. A. and the balance in equity from Reynolds & Brown. No public financing mechanisms were used in this project.



### ENTITLEMENTS

Reynolds & Brown worked with the Jack London Neighborhood Association and other members of the community to entitle the project. The entitlements obtained include a limited CEQA review approval, design review and a conditional use permit. Given the age of the building, it was necessary to abate the asbestos and lead in the building and remove an underground storage tank prior to commencing

its redevelopment.

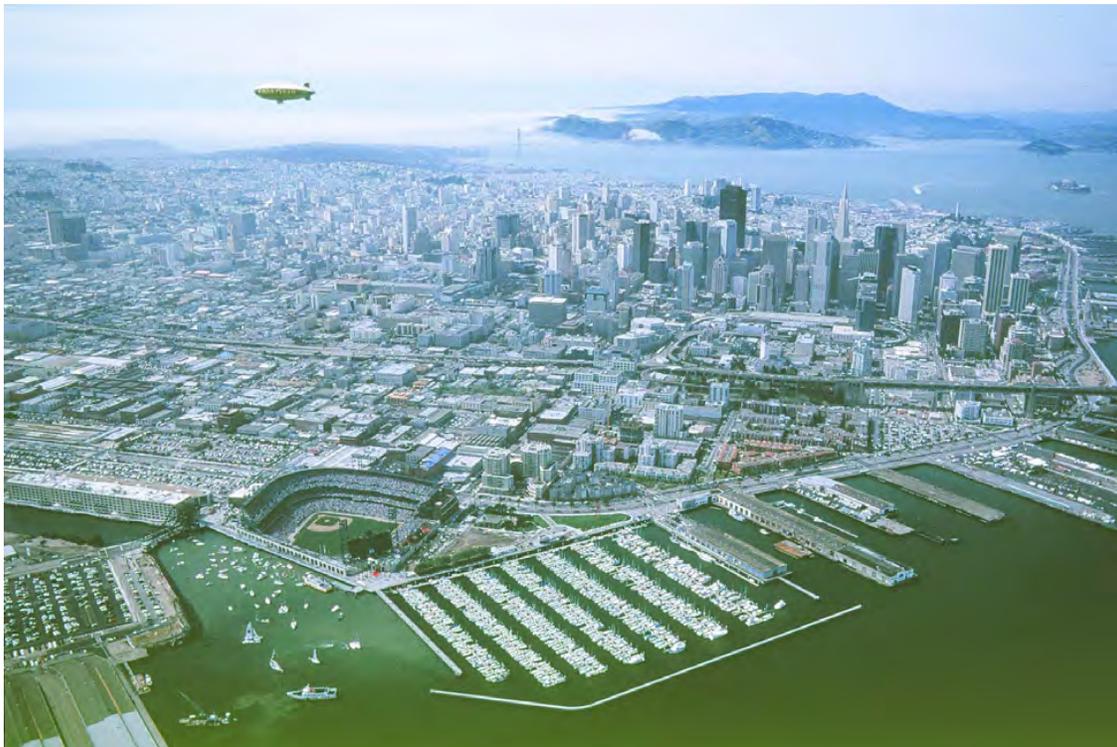


## *NORTHEAST WATERFRONT PLAN*

### *SAN FRANCISCO, CALIFORNIA*

#### *DESCRIPTION*

ROMA Design was commissioned to lead a multidisciplinary team of consultants in the preparation of a master plan and implementation program for one and a half miles of the San Francisco downtown waterfront, which had historically been used for cargo handling, rail operations, warehousing and manufacturing purposes, and had long been left vacant and under-utilized as a result of public controversy and debate. In this project, ROMA worked with a multi-agency client team and a 27-member advisory committee. The Plan was adopted by all City and regional agencies having jurisdiction in the area, and has now resulted in the construction of more than 2,000 residential units and one million square feet of commercial space along the waterfront. The Plan has also provided the framework for major public open space and recreational improvements, many of which have been implemented.



## **RUBY HILL**

**PLEASANTON, CALIFORNIA**



### **DESCRIPTION**

Ruby Hill, developed and built by Signature Properties, is an 850-unit master planned, gated golf course community set on approximately 2,000 acres in Pleasanton. Ruby Hill includes a Jack Nicklaus designed

18-hole championship golf course, which is wholly owned and operated by Signature Properties. The private golf club includes pro shop, clubhouse and swim and tennis facilities. Homes range from \$900,000 to over \$3,500,000. Ruby Hill also includes 32 vineyard estates, which consist of 20-acre parcels that have 2-acre homesites and 18 acres of vineyards. There is also an entitled commercial component of 40,000 square feet of retail space. The project is currently 85% complete and will have an estimated assessed value of over \$1.8 billion at build out.

### **DEVELOPMENT**

The property was acquired in 1987 and entitlements were obtained in 1991. Construction commenced in 1993 and build-out is expected in 2003. The total project cost was \$360 million. There was no public financing. Financing came from Wells Fargo Bank and Signature Properties. Signature Properties, the managing partner, has a 50% interest in the development company and developed, built and owns 100% of the Ruby Hill Golf Club. Planning services were provided by Guzzardo & Associates, Frisbie Planning and Robert Lamb Hart.

### **ENTITLEMENTS INCLUDED**

Approval and environmental certification from Alameda County Board of Supervisors, annexation into the City of Pleasanton, Section 1603 permit from the California Department of Fish & Game and a Section 404 permit from the Army Corps of Engineers that included a Section 7 consultation with the U.S. Department of Fish and Wildlife for mitigating impacts to wetlands and the California Tiger Salamander. Signature also



# JACK LONDON SQUARE REVITALIZATION

## OAKLAND, CALIFORNIA

**Michael  
Willis  
Architects**



### DESCRIPTION

MWA has been selected as one of two master architects for this large-scale urban development project. Jack London Square is a regional destination drawing 6 million visitors a year for shopping, recreation and entertainment—with the potential to attract even greater numbers of visitors by increasing the specialty retail, hotel, commercial office and recreation opportunities on site. Our master plan, developed with associated architect Simon Martin-Vegue Winkelstein Moris, enriches the site with the addition of two major developments at the project's north and south ends, linked by a series of smaller development sites. The north end of Jack London Square will hold the Festival Terminal complex. This includes the creation of a new ferry terminal with a marketplace and restaurants, outdoor festival grounds and the redevelopment of the Cost Plus site. Cost Plus will receive a new store with an adjacent parking garage and street-front retail. The south end of Jack London Square will be totally redeveloped, including a new four block hotel, a retail and commercial complex on the site of the current Jack London Village. These smaller retail sites will link Jack London Square with downtown Oakland. Our plan also provides improved public transit throughout the district to strengthen Jack London Square's presence as a regional destination.





## *ESTUARY PLAN*

### *OAKLAND, CALIFORNIA*

#### *DESCRIPTION*

ROMA worked with a 27-member advisory committee and the City of Oakland and the Port of Oakland in a collaborative effort to prepare a waterfront plan for the four mile reach of shoreline bracketed on the one side by the Oakland Airport and the other by the Port of Oakland. The purpose of this planning effort was to knit these waterfront lands back into the city, reclaim them as an integral part of the city fabric and create new opportunities for development to occur. The plan calls for a system of open spaces and parks to be developed comprising more than 55 acres, and proposes a variety of mixed uses and transformations which will strengthen Oakland's position as an urban center and accommodate growth and development that complements the downtown and adjacent neighborhoods.



# MVE & PARTNERS



## BRIDGECOURT EMERYVILLE, CALIFORNIA

- **Client:** Catellus Residential Group
- **Size:** 220 Units
- **Stories:** Four
- **Density:** 55 du/ac
- **Shell Cost:** \$86/sq. ft.
- **Contractor:** Catellus Residential Construction
- **Completed:** July 1998

### Awards

**1998 Gold Nugget Grand Award**

**1998 AIA Honor Award**

**1998 ULI Award of Excellence Finalist**

This mixed-use component of a large redevelopment project revitalizes a former industrial zone through the efforts of the community, neighbors, local planning departments and the Redevelopment Agency of the City of Emeryville. This project responds to the unique urban/industrial setting by providing affordable residential "live/work" opportunities in a high employment-based community. The development team has designed a distinctive concept of affordable rent-to-own housing, whereby the units may be converted to ownership after 15 years.

The four acre site consists of two buildings, with three levels of residential over an on-grade parking garage and retail spaces. A 4,000 s.f. leasing/community center and exercise facility are centrally located on the site. The pedestrian enriched base treatment of the 6,800 s.f. of retail/gallery spaces creates opportunities to enrich the street scene and encourage social interaction, while still allowing controlled access to the residential components and ensuring security for the residents.



R E Y N O L D S &amp; B R O W N

## EMBARCADERO LOFTS

SAN FRANCISCO, CALIFORNIA



### DESCRIPTION

The Embarcadero Lofts is a 47-unit “loft-style” mixed-use development located at the corner of Folsom and Beale streets in San Francisco. The Embarcadero Lofts was the result of the adaptive reuse of an existing 115,000 square foot, six story, steel reinforced concrete warehouse building dating from 1933.

### DEVELOPMENT

The project was acquired by Reynolds & Brown in March of 1995 after several developers had unsuccessfully tried to redevelop the property. At the time the building was acquired, it had been vacant for several years and had been ravaged and vandalized.

The property was acquired for the purchase price of approximately \$5,000,000, the total cost of the project was approximately \$21,500,000 with the \$16,500,000 balance of funds being provided in the form of a construction loan from Wells Fargo Bank, N.A. The project was designed as a mixed-use project with ground floor restaurants (to be occupied by “Elroy’s” and “301” restaurants), commercial spaces and residential units on floors 2 through 6. The project was parked entirely on site.

The project was completed in February 1997 at an average cost of \$187 per square foot. Reynolds & Brown, through its affiliated entities, continues to own 12 units within the building. The Embarcadero Lofts is listed on the National Register of Historic Places and qualified for approximately \$2,100,000 in historic rehabilitation tax credits. Embarcadero Lofts is generally regarded as one of, if not the, finest renovated loft project in the City of San Francisco.



### CHALLENGES AND ENTITLEMENTS

In order to entitle the project, a mitigated negative declaration, design review approvals and a conditional use permit were obtained from the City and County of San Francisco. Given the age of the building, it was necessary to completely abate all lead paint and asbestos and to take the building down to its original concrete shell prior to commencing its redevelopment. In addition, approximately \$1,500,000 in seismic upgrades to the building were made.

## MISSION BAY

### SAN FRANCISCO, CALIFORNIA



### DESCRIPTION

Signature Properties will break ground in July 2001 on a 100-unit condominium building within the Mission Bay plan area in the City of San Francisco. The project features a seven story, type 1 building along the Mission Creek, four blocks west of PacBell Park. The average unit size is approximately 1,400 square feet with a total building size of 230,000 square feet. The project will be the first to offer for-sale units within Mission Bay, which is a master-planned area that will consist of over 6,000 residential units and 6,000,000 square feet of office and retail uses at build-out. The project achieves a density of approximately 100 units per acre. Prices are estimated to be from \$750,000 to over \$1,500,000.



### DEVELOPMENT

Signature Properties entered into a purchase and sale agreement with Catellus in August 2000 and closed escrow on the property after receiving approval by the Redevelopment Agency in April 2001. Construction will commence in July 2001 and will be completed in the winter of 2002/2003. The total cost of the project is \$65 million and Signature has an 80% interest in a partnership with The Riding Group. Wells Fargo is providing the financing. Architectural services provided by McLarand Vasquez Emsiek & Partners. The general contractor is Devcon Construction. Local business outreach is provided by Butler Enterprises.

### ENTITLEMENTS

Entitlements include approval from the San Francisco Redevelopment Agency and an expected

approval from Bay Conservation and Development Commission in July 2001.



# MASTER PLAN AND OPEN SPACE

## SUISUN CITY, CALIFORNIA



### DESCRIPTION

Over the past eight years, ROMA has acted as the design architects for Suisun City's dramatic revitalization, preparing the initial master plan and serving as architects and landscape architects on numerous projects including the Town Plaza, all of the new commercial buildings, the Harbormaster's Building, the new marina and rehabilitated train station. ROMA also planned the new residential neighborhood which has been built and a mixed-use live/work complex south of the downtown. The Town Center, which includes new commercial residential and live/work development has been highly acclaimed throughout the country for its innovative mixed-use approach, design that is responsive to the historic character of the community, creating a pedestrian orientation and a vital mixed use center which is the focus of city life.





## *SOUTH DOWNTOWN WATERFRONT PLAN*

### *PORTLAND, OREGON*

#### *DESCRIPTION*

ROMA was commissioned by the Portland Development Commission to prepare a development plan for a 73-acre site on the downtown riverfront. The plan called for the extension of the City's fine-grained urban fabric, with residential development in close conjunction with retail, office and recreational activities. The plan was adopted by the PDC in the mid-eighties, and the first phase, known as River Place, has been implemented by Cornerstone Development. This project, which has been received with much enthusiasm by the public-at-large, includes 165 units of housing, a specialty hotel and approximately 50,000 square feet of retail and restaurant uses oriented along a major pedestrian promenade, waterfront park and marina. The second phase, which include 250 additional units and a public park, is nearing completion.



R E Y N O L D S &amp; B R O W N



## MARINA SQUARE

SAN LEANDRO, CALIFORNIA

### DESCRIPTION

Marina Square is a nationally recognized 163,320 square foot promotional retail center located at the intersection of Marina Boulevard and the I-880 Nimitz Freeway in the City of San Leandro, California. Marina Square brought many national retailers to a then-under-served retail market, including Nordstrom's Rack, Marshall's and the first Old Navy store.

### DEVELOPMENT

Marina Square was constructed in phases from 1991 through 1993. Reynolds & Brown acquired the first phase, the former Pacific High School site containing 13.8 acres of land in 1989 and acquired the second phase, containing 1.76 acres of land, in a ground lease transaction with CalTrans in 1993. The Center was constructed at a cost of \$21,150,000, Reynolds & Brown invested approximately \$1,650,000 in equity and the \$19,500,000 balance was funded in a construction loan from Wells Fargo Bank, N. A.

Marina Square was the first project in Alameda County to use Measure B, 1/2-cent sales tax funds, for the Marina Boulevard/Fairway Drive roadway improvements.

Jon Reynolds oversaw all aspects of the development process, including acquisition, financing, construction, leasing and ultimate disposition of the center. Dana Parry served as legal counsel and documented various construction and leasing issues and negotiated and closed the sale of Marina Square to a pension fund advised by RREEF in 1995 for a sale price of approximately \$29,000,000. At the time, this was one of the highest per square foot sales prices achieved for a promotional



center in the country.

### CHALLENGES AND ENTITLEMENTS

A mitigated negative declaration, zoning change and design review approvals for each phase of the project were obtained in connection with the development. Some minimum environmental remediation was necessary which involved the pre-demolition removal of asbestos from the former school buildings.

## UNIVERSITY SQUARE EAST PALO ALTO, CALIFORNIA



### DESCRIPTION

University Square is a 24-acre redevelopment project located in the City of East Palo Alto. Signature Properties, in partnership with Ponderosa Homes, Law & Associates and The Riding Group is in the final phase of construction of a Specific Plan that includes 500,000 square feet of office space, 350,000 square feet of retail, 217 single-family units, including 22 below market rate units, and a 189 unit rental site including a 50% below market component. The apartment site was sold to Bridge Housing, a non-profit housing developer. Signature is also building a public park and a day care facility that will be donated to a local non-profit provider. Sales prices now range from between \$500,000 to \$700,000.

### DEVELOPMENT

Signature entered into a purchase and sale agreement in January 1999 and closed on the property in April 1999. Construction commenced in June 1999 and is expected to be complete in December 2001. The total cost of the project is \$72 million and Signature is a 50% partner. Wells Fargo provided the financing. Bassenian Lagoni provided architectural services for the single-family houses.



### ENTITLEMENTS

Entitlements included approval from the East Palo Alto Redevelopment Agency, Planning and City Council of a Specific Plan, PD and rezone, along with the certification of an environmental impact report. Development activities included the remediation of pesticide-impacted soils, lead paint and asbestos under the supervision of the Regional Water Quality Control Board and the San Mateo County Health Services Agency, which included the development and implementation of a Work Plan to address the clean up process and a Risk Management Plan to address

community outreach and long term risk management goals.

### AFFORDABLE HOUSING

The project included 22 for sale, below market rate units. Signature worked with the Redevelopment Agency and local non-profits to develop and implement (1) an outreach program to inform the community of the BMR Units and (2) a weighted lottery system to generate priority lists that determined the eventual purchasers.

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## HACIENDA

PLEASANTON, CALIFORNIA



### DESCRIPTION

Hacienda is a 52-acre, 485-unit residential master plan within the Hacienda Business Park in the City of Pleasanton. The site is located within one quarter mile of the Dublin/Pleasanton BART station and was one of the first "in-fill" and Transit Oriented Developments in the San Francisco Bay Area. It includes three different product types of two single-family products and one townhouse product. Densities ranged from 7 units per acre to 16 units per acre. Sales prices at build-out in 1997 ranged from \$300,000 to \$550,000.

### DEVELOPMENT

Signature entered into purchase and sale agreement with Prudential in 1992 and closed escrow after receiving entitlements in 1994. Construction commenced in 1994 and was complete in 1998. The total cost of the project was \$114 million. The project did not involve any public financing. Wells Fargo provided the institutional financing and Prudential Insurance provided the participating mortgage. Signature Properties was the developer and owner. Planning and architectural services provided by The Dahlin Group, Richardson Nagy Martin and William Hezmalhalch & Associates.

### ENTITLEMENTS

Entitlements included approval of a general plan amendment, rezone and environmental certification by the City of Pleasanton Planning Commission and City Council.



R E Y N O L D S &amp; B R O W N

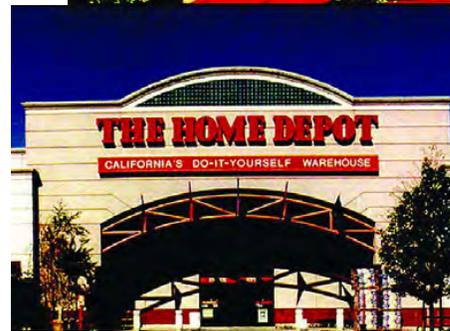
## PLEASANTON PARK

PLEASANTON, CALIFORNIA



### DESCRIPTION

Pleasanton Park is a 56 acre master planned mixed use park located at the Hopyard Road exit of the I-580 freeway close to the I-580/680 freeway interchange in Pleasanton. Phase 1 consisted of 8 single story office buildings totaling 140,000 square feet and was completed in 1983. Phase 2 consisted of 11 single and two story buildings totaling 225,000 square feet and was completed in 1985. Phase 3 consisted of a 152,000 square foot home furnishing retail center and was completed in 1990. The retail center, known as Pleasanton Square, is anchored by a 104,000 square foot Home Depot and contains an additional 48,000 square feet of retail shop space and restaurant pads. Phase 4 consisted of an additional 52,000 square foot expansion of the retail center anchored by CompUSA and was completed in 1997. In addition, a 2.5 acre site was sold to the Candlewood Hotel Group in 1997 and, with the oversight and participation of Reynolds & Brown, developed into a hotel. An additional one-acre site was sold in 1997, and with the oversight and participation of Reynolds & Brown, developed into a 20,000 square foot furniture showroom. Pleasanton Park is characterized by extensive water features, coordinated landscaping and landscaped medians.



### DEVELOPMENT

Reynolds & Brown acquired Pleasanton Park in 1980. Each phase of the project was funded by developer equity with construction financing provided by Wells Fargo Bank, N.A. A planned unit development master plan was implemented with the City of Pleasanton for the project. Approximately \$6,000,000 in "intract" bond financing was obtained from the City of Pleasanton and used to build Pleasanton Park's streets and infrastructure. The PUD was subsequently modified to allow the development of the Pleasanton Square retail center along the freeway.

Pleasanton Park is regarded as one of the most successful mixed use office/retail projects in the Bay Area and has set the standard for quality mixed use projects in the Tri-Valley.

### CHALLENGES AND ENTITLEMENTS

Reynolds & Brown working with CalTrans and the Federal Highway Administration also assisted in the redesign of the I-580/I-680 Freeway Interchange and Fly Over now under construction so as to ensure ready access to Pleasanton Park. A mitigated negative declaration was obtained in connection with the PUD and design review approvals were obtained in connection with each phase.

## *VIADUCT HARBOUR*

*AUCKLAND, NEW ZEALAND*

**ROMA**  
DESIGN

### *DESCRIPTION*

ROMA is the master plan architect for a major site on the Auckland waterfront. The project is a mixed-use community to be constructed in conjunction with the America's Cup facilities, and will include 1,000 residential units and 200,000 square feet of retail space.





# MVE & PARTNERS

## PROMENADE AT RIO VISTA SAN DIEGO, CALIFORNIA

- **Client:** PLC/Greystone Apartments
- **Size:** 970 Units
- **Stories:** Four
- **Shell Cost:** To Be Determined
- **Contractor:** PLC/Greystone
- **Completion:** Summer 2002

The Promenade at Rio Vista is a unique 13.8 acre walkable, mixed-use community which takes advantage of the site's characteristics of light-rail transit and riverfront trails. Totalling 970 units, the development consists of six individual structures of four stories over a two-level subterranean garage, with commercial/retail activities in buildings surrounding a commons. This commons is the heart of the community and provides a destination environment for residents and transit ridership alike. The space is enlivened by arcades fronting commercial activities, with outdoor patios for sidewalk dining, a large fountain as a memory point, and a well-landscaped palette framing comfortable human-scaled seating areas.

Based upon the architecture of Irving Gill, the flat and low-pitched roofs of The Promenade acknowledge the benign climate of the San Diego area, and relate to an architectural tradition indicative of the region. Trellises, pergolas, courtyards, patios and arched windows tie the interior spaces to a landscape set-off by simple, light-colored building forms. Awnings and recessed windows shade and cool spaces naturally. A network of private streets and pedestrian paths provide clean connections to destinations both within and outside the community. Retail parking is parallel on the street or integrated into the guest parking of the structured garage, with access to the commons through the lobbies of each building.

**VERONA AT CUPERTINO CITY CENTER  
CUPERTINO, CALIFORNIA****MVE**  
& PARTNERS

- **Client:** Promethius Development Group
- **Units:** 206
- **Stories:** Four to Nine
- **Density:** 206 du/ac
- **Shell Cost:** \$145/sq.ft.
- **Contractor:** Webcore Builders
- **Completion:** Fall 2002

Nestled in the heart of the Silicon Valley, Stevens Creek Apartment development meets Cupertino's goals of creating a new gateway entrance to the city. Located at the Cupertino City Centre, this mixed-use project offers an urban live, work and entertainment experience for many upwardly mobile dot-com industry executives and other professional business persons in this high-tech region. Stevens Creek is a development venture with the Kimpton Group's luxury hotel anchoring the overall development next to the city's celebrated Four Seasons urban plaza.

The luxury apartment complex varies from a low-rise of 4-story to a 9-story high-rise, and ranges from Type V to Type I construction. Unit plans range from 800 sq.ft. to 1,600 sq.ft., with penthouses on the upper level providing a two-story townhome living experience. The building character captures classical California mission theme in a modernist expression through use of limestone and sandstone. A landscaped promenade over the garage connects residents to boutique retail shops and restaurants located adjacent to the Four Seasons park.



## ELAN AT RIVER OAKS SAN JOSE, CALIFORNIA

- **Client:** Shea Business Properties
- **Size:** 940 Units
- **Stories:** Three and Four over Two Parking
- **Density:** 43 du/ac
- **Contractor:** Shea Homes
- **Completed:** 1991

### Awards

#### 1992 Gold Nugget Award

Set within a high-tech business park, this apartment and retail complex fulfills the role of village center for a unique 76-acre, masterplanned residential community. The retail center, tucked within the apartments, provides a necessary amenity for the surrounding residential and neighboring commercial districts. The site, formerly zoned for additional R&D space, offered few positive adjacencies, a flooding creek, and had lost its market need through oversupply. The development team envisioned a village-type center with a variety of housing opportunities close to employment, plus amenities that take people out of their cars and off the freeway.

A "sense of place" was established using this village architectural character resulting in an expressive, active, urban "Bay Area" style. Set on 22 acres, the 940-unit project is set above two levels of parking and a 19,000 square foot retail promenade. Coverage is limited to 48% of the site. Open spaces contain watercourses to resolve site problems of flooding and noise attenuation. Its proximity to the regional light rail transit system links the community with downtown shopping, entertainment and businesses, and has been an important factor in the overall success of the development.



## *FINANCIAL CAPACITY*

Evidence that the development entity has the financial capacity to carry out the proposed project is provided under separate cover.



## OAK-TO-NINTH DISTRICT DEVELOPMENT CONCEPT

The redevelopment of 60 acres of property on the Oakland Estuary is an unprecedented opportunity for the City and Port of Oakland. Oakland Harbor Partners, LLC, understands the importance of the Oak to Ninth area in helping to realize the community's longstanding vision of a more accessible and vibrant waterfront. We are enthusiastic about the opportunity of partnering with the City and the Port in this exciting endeavor.

Our development concept for the Oak to Ninth area involves the creation of a new mixed use neighborhood for Oakland—one that builds on the unique qualities and geography of this waterfront site, and introduces a mixture of activities and open spaces that will give the area new meaning and life for all Oakland and Bay Area residents. Oakland Harbor Partners has not developed a comprehensive plan for the area at this time. We are looking forward to the opportunity of working creatively with the Port, City and community at large during the Specific Plan process. The development concept presented in this proposal has not been refined to plan level detail, as it is the belief of Oakland Harbor Partners that the next step must be preceded by an outreach program to develop input from the City, the Port and the community-at-large. However, we have formulated some preliminary ideas on the basis of our own experience in, and commitment to, infill development and the recycling of underutilized urban land.

More specifically, our goals include:

- ☞ The creation of a series of open spaces and promenades along the estuary shoreline, with linkages to Estuary Park and Jack London Square, Lake Merritt and Lakeside Park;
- ☞ The activation of the area's diverse water spaces with a range of appropriate recreational and maritime activities, including revitalized marinas, guest slips, provisions for water-borne transit and taxis, and open water for boating, rowing and other aquatic sports;
- ☞ The introduction of waterfront-oriented retail and marine services that have a strong local and regional character, including a major market-

*Well-being of the people demanded that the city should take advantage of its superb natural attractions, and develop these public places of rest and recreation.*

*A Review of Municipal Activities in The City of Oakland, Cal. 1905-1915.*



LEAL CHARONNAT  
**PRELIMINARY  
CONCEPT**

RESPONSE TO BROOKLYN BASIN MARINA DSEIR

- AUGUST 1, 2021



*Granville Island, Vancouver*

place that features California produce and local products;

- ☞ Uses that complement and enhance the existing artisan community at 5th Avenue Point, with complementary uses including studio and workshop space, galleries, live-work lofts, and the potential for a related educational and cultural institution;
- ☞ A new neighborhood to provide a full range of living opportunities including apartments, condominiums, live-work lofts, townhouses and studios; and
- ☞ The possible preservation and re-use of some or all of the Ninth Avenue

Terminal for a mixture of commercial and community-oriented uses that maintain the historic character of the Oak to Ninth area.



*Pike Place Market, Seattle*

Views to the waterfront from upland areas and I-880 will be essential in creating value and preserving the character of the Oak to Ninth area. The scale and pattern of new development will need to maintain and create new view corridors to the estuary, while establishing a “fabric” of buildings that form an interactive urban environment. We envision low and mid-rise buildings that frame views and rein-

force and define open spaces, promenades and streetscapes within the plan area. We envision buildings that are respectful of the site’s maritime heritage, and that employ forms and materials that recall the bold warehouse sheds and industrial structures of the working waterfront. Rather than a series of individ-

**PRELIMINARY  
CONCEPT**

ual development projects, we envision a cohesive new district that draws its identity and sense of place from the synergy of public-spirited activities.

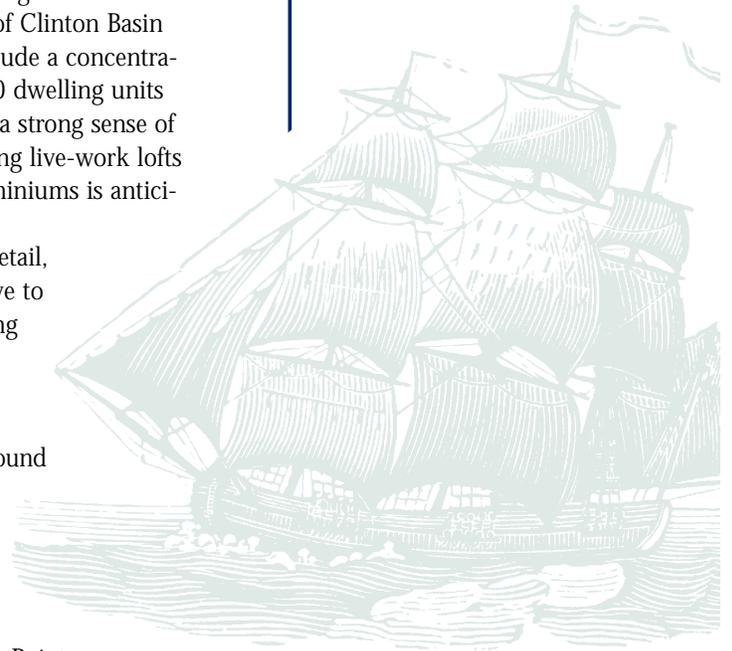
We envision a unique district that draws on the qualities of the site and the region—a district that combines the home grown commercial vitality of Pike Place Market in Seattle or Granville Island in Vancouver, with the mixed-use/residential qualities of River Place in Portland or the South Beach neighborhood in San Francisco. We envision a district with a diversity of open space experiences including parklands with open vistas to the estuary, performance and gathering spaces, promenades that provide continuous public shoreline access, and protected courtyards and paseos that offer a range of more intimate public experiences. We envision a district that will complement the activities and retailing of Jack London Square rather than duplicating or competing with them.

The creation of a mixed-use waterfront neighborhood on a maritime industrial site will require some bold moves at the outset. In order to establish a new image for the district, we anticipate a significant first phase of development on the portion of the site east of Clinton Basin including the Ninth Avenue Terminal. This could include a concentration of housing at appropriate densities (e.g., 20 to 70 dwelling units per acre) to establish a new identity for the area, and a strong sense of community. A range of housing opportunities including live-work lofts and workshops, townhouses, apartments and condominiums is anticipated.

Clinton Basin offers an opportunity for a mix of retail, restaurant, cafes and marine service uses that can serve to activate the shoreline promenade and to create a strong activity focus around this protected water body. Second-story commercial and residential uses could also be developed to provide further definition and activity. (The absence of Tidelands Trust designation around Clinton Basin affords this opportunity). A marketplace that features local produce, prepared foods, wines and other goods could serve as a strong anchor for the district.

To the west of Clinton Basin, we would propose activities that complement and extend the 5th Avenue Point community, including additional commercial space, live-work studios and workshops, galleries, and the possibility of an educational institution that is oriented to the visual and/or performing arts.

Access to the Oak to Ninth area is currently constrained by the lack of north-south streets and the barrier of the I-880 freeway. We concur with the Estuary Plan recommendations related to the recon-

*Artist's live/work*

figuration of 5th Avenue and its interchange with I-880, and will work cooperatively with the City, Port and Caltrans to facilitate its implementation. We are also enthusiastic about longer term opportunities for a new BART station north of the Embarcadero that could serve this new neighborhood and the Laney College area.

The realignment and extension of 5th Avenue into the project area is particularly important in creating a strong linkage between the waterfront and upland neighborhoods, and in avoiding disruption to the 5th Avenue Point artisan community. A network of small-scaled pedestrian-friendly streets connecting to 5th Avenue and the Embarcadero is envisioned throughout the project area, offering a variety of routes and a diverse series of streetscapes.

Parking must be designed in a way that provides convenience to area patrons, but that does not undermine the creation of a compact and pedestrian-friendly environment. Pockets of well-landscaped surface parking that lead to well-designed and encapsulated mixed-use parking structures are envisioned. Convenient public parking to serve public open spaces will also be an important consideration.

The redevelopment of the Oak to Ninth area will involve considerable public



*Riverplace, Portland*

and private sector investment.

Oakland Harbor Partners is excited about the prospect of working with the Port and the City to develop a world class district on this strategic waterfront site. We are committed to Oakland and share the vision of a resurgent city and waterfront that captures the spirit

and vitality of this great community.

## *SPECIFIC PLAN PROCESS*

Under California law, a Specific Plan is intended to implement the policies of a community's General Plan, by providing more specific direction on: the location, type, mix and intensity of land uses and open space; the configuration and pattern of transportation facilities; the public services, facilities and infrastructure necessary to support new development; standards and guidelines that promote community design objectives; and an implementation program that describes the phasing, financing and regulatory actions necessary to realize the plan. An accompanying environmental impact report is required under the California Environmental Quality Act (CEQA).

For the Oak to Ninth area, the Specific Plan will include the entire 120 acre planning area on both sides of the Embarcadero. This will be important in establishing the context for planned waterfront development, and in ensuring future activity linkages between the city and the estuary. Oakland Harbor Partners has commissioned ROMA Design Group, an internationally recognized design firm specializing in waterfront redevelopment to lead the Specific Plan process. They will be supported by McLarand Vasquez Emsiek & Partners and Michael Willis Architects and an EIR consultant acceptable to both City and Port staffs, that has experience in handling projects of this magnitude.

The Specific Plan process affords us the opportunity to create a meaningful dialogue with the Oakland community regarding the future of this key waterfront asset. Community outreach will be an important aspect of our Specific Plan process. At the outset of the planning process, we will undertake a community-wide symposium with key individuals and groups who have a stake in the future of the area, including community and business representatives, property owners, tenants, members of the 5th Avenue Point community, policy makers, etc.



**3rd Street Promenade, Santa Monica**

We also propose a series of public workshops at key milestone points that will provide opportunities to review the Plan with the community as it unfolds to continually receive ideas and input, and to identify and resolve outstanding issues as they arise. Five such workshops are envisioned over an eleven month period including:

- ☞ Month 2: Workshop 1: Objectives, Issues and Opportunities: exploring broad community objectives for the planning area; issues and parameters related to change (e.g., site remediation and preparation, preservation of existing activities, infrastructure development, financing and



implementation); and the range of opportunities that could be imagined for the area.

- ☞ Month 4: Workshop 2: Alternative Visions: reviewing a range of options, and their ability to meet community objectives as well as the economic imperatives of real estate development.
- ☞ Month 6: Workshop 3: Concept Plan: presenting a preferred concept that describes the overall vision for the area, the mix of land uses, the pattern of open spaces, the configuration of circulation and transportation improvements, and a preliminary strategy for implementation.
- ☞ Month 8: Workshop 4: Draft Specific Plan and EIR: Presentation and review of the draft Specific Plan and policies related to land use, urban design, open space, transportation, public services, and implementation. Review of the draft environmental impact report.
- ☞ Month 11: Workshop 5: Final Draft Specific Plan and EIR: Presentation and review of the final Draft Specific Plan and the response to comments from the EIR.

Oakland Harbor Partners and its consultant team will make regular presentations to the Port Commission, Planning Commission and City Council to provide information on the status of the project and to seek policy direction on key issues.

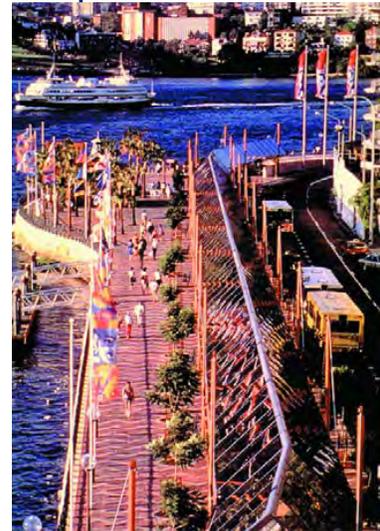
The environmental review process will be undertaken parallel with the preparation of the Specific Plan. During the first six months, a comprehensive environmental setting will be established for the planning area, including key issues associated with hazardous materials, site remediation, water quality, natural resources and wildlife habitat, traffic, noise, air quality and aesthetics. Following completion of the Concept Plan and the development of a Project

Description and Project Alternatives, a comprehensive review of environmental impacts will be analyzed and documented.

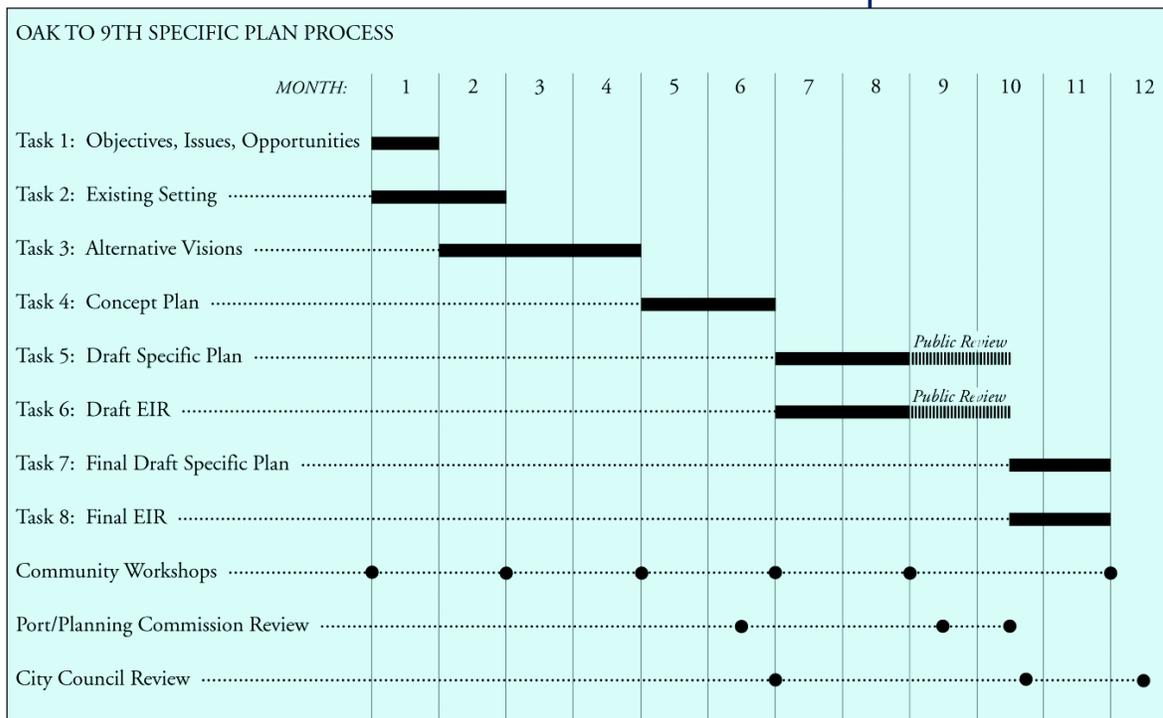
By Month 8, a draft Specific Plan and Environmental Impact Report will be ready for public circulation and review. A series of public hearings (in addition to Workshop 4) will be held throughout the community to review the draft Plan and EIR. By the eleventh month, a final series of presentations to the Port and Planning Commission and to City Council will be undertaken leading to EIR certification and Plan adoption. (Note: If the Port and Oakland Harbor Partners wish to enter into a development agreement, this document could also be the subject of public review, and Council execution).

The Plan will include a general level of specificity related to land use, open space, circulation, public services, and implementation policy for all 120 acres, and a more detailed development plan with site specific design standards and guidelines for the 60 acre waterfront portion. The approach will be consistent with Specific Plan requirements under State law.

The planning team will use current information and studies that are available related to existing site conditions and traffic. Additional investigations (e.g., traffic analysis, geotechnical, natural resource and hydrological, etc.) will be undertaken as required to augment this information, and to meet CEQA guidelines. Oakland Harbor Partners will establish as its goal a land use plan that relies first and foremost on traditional sources of private financing to underwrite common area infrastructure, open space and shoreline improvements; with minimal reliance on the establishment of commercially based assessment districts and the use of tax increment generated from retail sales.



*Waterfront Promenade,  
 Sydney*



## **FINANCIAL REFERENCES**

OAKLAND

HARBOR

PARTNERS, LLC

### **SIGNATURE PROPERTIES**

Mr. David Hoyt  
Group Executive Vice President  
Wells Fargo Bank  
420 Montgomery Street, 12th Floor  
San Francisco, CA 94163  
(415) 396-7220

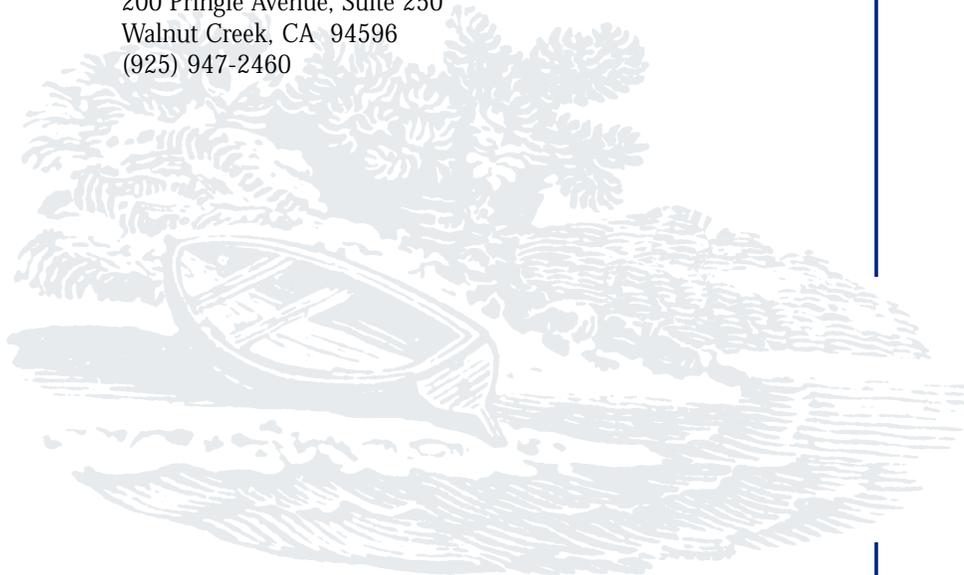
Mr. David Petrone  
President  
Housing Capital Company  
1825 South Grant Street, Suite 630  
San Mateo, CA 94402  
(650) 377-0354



### **REYNOLDS & BROWN**

Ms. Kathleen Slote  
Senior Vice President  
Real Estate Industries Group  
Wells Fargo Bank, N.A.  
2835 Mitchell Drive, Suite 101  
Walnut Creek, CA 94506  
(925) 942-4253

Mr. James Wohleb  
Vice President and Manager,  
Real Estate  
Union Bank of California  
200 Pringle Avenue, Suite 250  
Walnut Creek, CA 94596  
(925) 947-2460



## **RETAIL TENANT RELATIONSHIPS**

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PARTNERS, LLC

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ROUND TABLE PIZZA  
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COFFEE WORLD  
COST CUTTERS  
MAILBOXES ETC.  
PARK PLACE CLEANERS, INC.  
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### **PLEASANTON SQUARE**

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TARGET GOLF, INC.  
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GTE MOBILNET/VERIZON WIRELESS  
FURBELOWS  
1001 TREASURES COMPANY  
TACO BELL  
LEATHER FACTORY  
WOODWORKS FURNITURE  
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SPORTMART  
TACO BELL  
JIFFY LUBE

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### **MARINA SQUARE**

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EDDIE BAUER, INC.  
NORDSTROM RACK  
OFFICEMAX  
PUBLISHERS OUTLET  
THE GLASSWARE OUTLET  
BASIC BEAUTY SUPPLY  
GIOVELI'S PIZZERIA  
TCBY YOGURT  
PARTY AMERICA  
OLD NAVY  
STUDIO 5 CLOTHING  
NINE WEST & CO. OUTLET  
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KINKO'S NORTHWEST  
MARINA BAKERY & CAFE  
ANN TAYLOR  
THE TALBOTS, INC.  
THE ATHLETE'S FOOT OUTLET  
MIKASA FACTORY OUTLET



## GENERAL REFERENCES

HARBOR

PARTNERS, LLC

Adolph Martinelli  
Agency Director  
Alameda County Development Agency  
224 W. Winton Ave., Suite 110  
Hayward, CA 94544  
(510) 670-5400

Joe Calibrigo  
Town Manager  
Town of Danville  
510 La Gonda Way  
Danville, CA 94526  
(925) 314-3388

Rod Gould  
City Manager  
City of San Rafael  
P.O. Box 151560  
San Rafael, CA 94915  
(415) 485-3070

Deborah McKechan  
City Manager  
City of Pleasanton  
123 Main Street  
Pleasanton, CA 94566

Sheila Young  
Mayor  
City of San Leandro  
835 East 14th Street  
San Leandro, CA 94577  
(510) 577-3355

Sharifa Wilson  
Mayor  
City of East Palo Alto  
2415 University Ave.  
East Palo Alto, CA 94303  
(650) 853-3100

Mr. John Jermanis  
City Manager  
City of San Leandro  
835 East 14th Street  
San Leandro, CA 94577  
(510) 577-3358  
F(510) 577-3340  
mjjerma@ci.san-leandro.ca.us

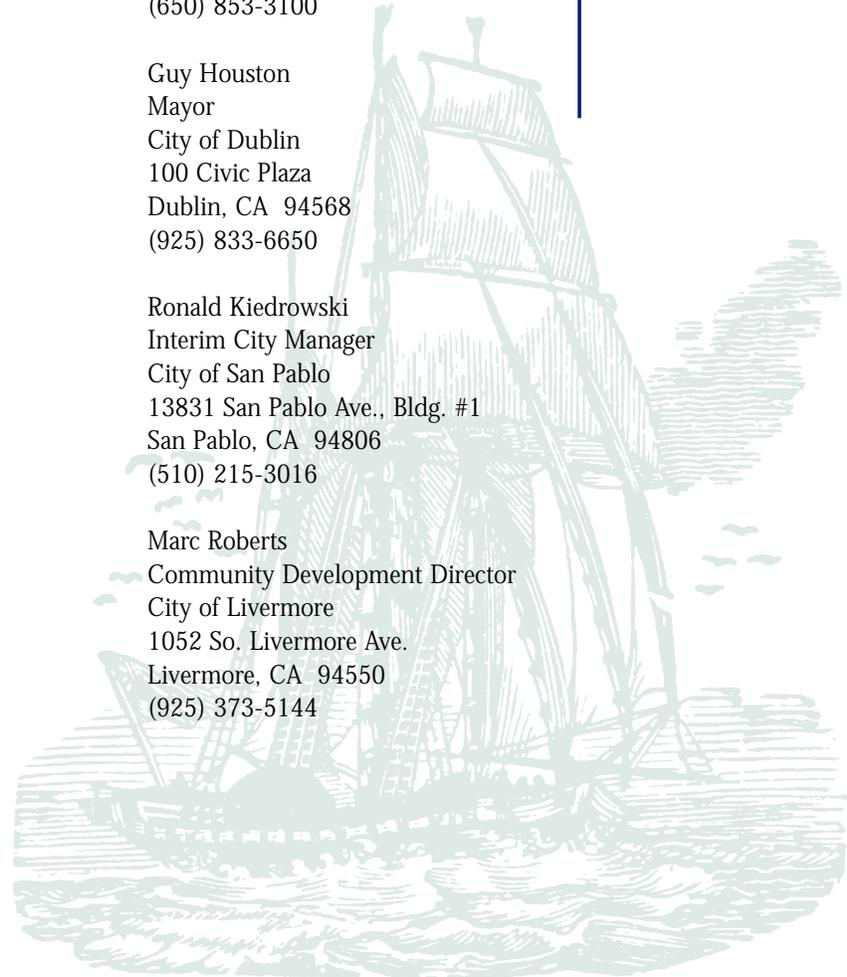
Guy Houston  
Mayor  
City of Dublin  
100 Civic Plaza  
Dublin, CA 94568  
(925) 833-6650

Jon Elam  
City Manager  
City of Brentwood  
708 3rd St.  
Brentwood, CA 94513  
(925) 634-6940

Ronald Kiedrowski  
Interim City Manager  
City of San Pablo  
13831 San Pablo Ave., Bldg. #1  
San Pablo, CA 94806  
(510) 215-3016

Jesus Armas  
City Manager  
City of Hayward  
777 B Street  
Hayward, CA 94541  
(510) 583-4305

Marc Roberts  
Community Development Director  
City of Livermore  
1052 So. Livermore Ave.  
Livermore, CA 94550  
(925) 373-5144



## GENERAL REFERENCES

HARBOR

PARTNERS, LLC

Gus Morrison  
Mayor  
City of Fremont  
P.O. Box 5006  
Fremont, CA 94537  
(510) 494-4800

Ms. Sunne McPeak  
President and CEO  
Bay Area Council  
200 Pine Street, Suite 300  
San Francisco, CA 94104  
(415) 981-6600  
F(415) 981-6408  
info@bayareacouncil.org

Mr. Phil Batchlor  
County Administrator (retired)  
Contra Costa County  
651 Pine Street  
Martinez, CA 94553  
(925) 646-4086  
F(925) 646-4098

Mr. Mark DeSaulnier  
District 4 Supervisor  
Contra Costa County  
2425 Bisso Lane, Suite 110  
Concord, CA 94520  
(925) 646-5763  
F(925) 646-5767  
dist4@bos.co.contra-costa.ca.us

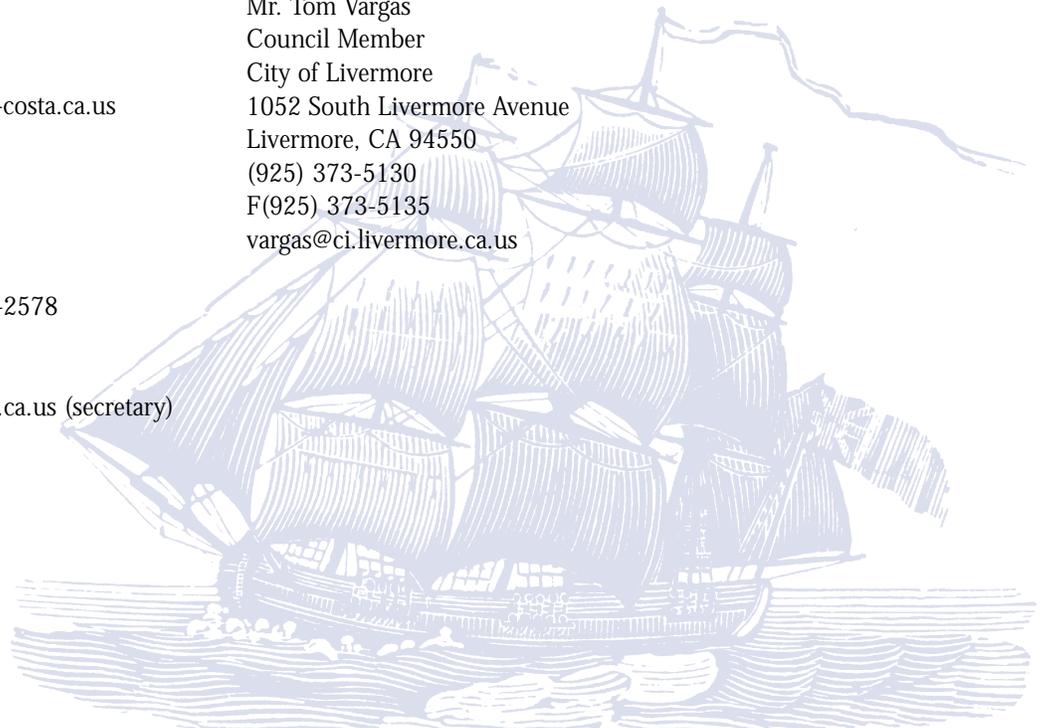
Mr. Ed James  
City Manager  
City of Concord  
1950 Parkside Drive  
Concord, CA 94519-2578  
(925) 671-3150  
F(925) 798-0636  
maryrea@ci.concord.ca.us (secretary)

Mr. Bill McManigal  
Vice Mayor  
City of Concord  
1950 Parkside Drive  
Concord, CA 94519-2578  
(925) 671-3150  
F(925) 798-0636  
maryrea@ci.concord.ca.us (secretary)

Mr. Mike Ramsey  
City Manager  
City of Antioch  
PO Box 130  
Antioch, CA 94509  
(925) 779-7011  
F(925) 779-7003  
mike\_ramsey@ci.antioch.ca.us

Mr. Sean Quinn  
Head of Planning & Development  
City of Fairfield  
1000 Webster Street  
Fairfield, CA 94533  
(707) 428-7456  
F(707) 428-7621  
squinn@ci.fairfield.ca.us

Mr. Tom Vargas  
Council Member  
City of Livermore  
1052 South Livermore Avenue  
Livermore, CA 94550  
(925) 373-5130  
F(925) 373-5135  
vargas@ci.livermore.ca.us





AXONOMETRIC VIEW

# Brooklyn Basin - Oak to 9th Development Plan

*Prepared for Oakland Harbor Partners by ROMA Design Group in association with MVE Architects, Moffatt & Nichol and BKF Engineers*

DECEMBER 2005

SHEET NO.  
I.I

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**From:** Adrian <drainage@gmail.com>  
**Sent:** Wednesday, July 28, 2021 1:59 PM  
**To:** cpayne@oaklandca.gov  
**Subject:** comment for draft SEIR for Brooklyn Basin: Clinton Basin expanded marina

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

19-1 I am writing to Oppose the extended marina in Clinton Basin around the marsh restoration.

Before this little park was cut off by construction, it was a frequent stop for me. I discovered it as I was exploring the shoreline, and would get over there whenever I could. It was an excellent little spot to watch birds at different times of the year, some ducks would winter there, loons, various shorebirds like killdeer, and resting and hunting cormorants and terns. There were the occasional hunting hawks, and song birds, as well as butterflies and other insects.

[\(here's a partial list from iNaturalist\)](#)

As it stands now with the construction around it, it will never be the escape it once was: The Osprey nest that stood just across the basin is gone (it was on a industrial light pole that was removed) and some of the resting places for the killdeer and cormorants have been removed. I'm sure with the boats already planned for the basin, the birds might not return in the same way.

But there is still a lot of possibility here, and a place for the coming residents that is unlike anything else in the city. The rest of our shorelines, with the exception of Lake Merritt and channel, Middle Harbor, and the John Sutter regional shoreline/Toll plaza beach (the latter three relatively inaccessible) there is no natural shoreline left to us, no beaches to explore -- or care for.

If this little park is surrounded by boats, in addition to the boats and housing on either side, it will likely neither be good for people or critters. The beach might remain (though I imagine there would also be effects on the beach and marsh from the change in water flow and the additional pollutants in the water).

The shoreline is important for all the people -- not just those who own boats. As we have seen with this past year, open space is important to our mental health. There are other options nearby, but I don't think the addition of this marina is worth it compared to what it might offer the new residents of the buildings and regular visitors like myself. It's also a place that people could help maintain and improve (attending to the accumulation of trash and helping the plant life).

If we should do anything with it, we should make it a more welcoming little park (it already has a lovely sign above the gate, I hope that stays).

Thanks for your attention and care of our Public shores.

Adrian Cotter  
(not speaking for, but a member of)  
Community for Lake Merritt (friend organization for the Rotary Nature Center)  
Measure DD coalition

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**From:** Chelsea Crandall <chelseacrandall@gmail.com>  
**Sent:** Tuesday, August 10, 2021 5:03 PM  
**To:** cpayne@oaklandca.gov  
**Subject:** Response to Brooklyn Basin DSEIR  
**Attachments:** Community Request Brooklyn Basin Expansion Project.docx

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Ms. Payne,

- I10-1 | I am a resident of 5<sup>th</sup> Avenue Marina and a member of the Shadetree Community, a historical artisan-focused live-work property. Our community is recognized and protected in the Estuary Plan of 1999, in that policies should be "carefully applied, so as not to adversely affect property values and inadvertently change the very essence of what makes it unique."
- I10-2 | The proposed developments for the Brooklyn Basin DSEIR (e.g., parcels K, L, M) —announced without consultation with our community— will significantly affect our community and the numerous species the Estuary Plan was designed to protect.
- I10-3 | Negative impacts of the 9th Avenue Marina expansion are already at our doorstep: parking demand for Township Commons events already spills into our community. The addition 600 units (current: 607 --> 1207) will surely impact our delicate infrastructure. A few weeks ago, when walking to Rocky's Market, I noticed blackwater rising from the streets between the newly developed residential buildings. I worry greatly about similar human health hazards happening as development occurs here.
- I10-4 | In particular the Shadetree community is adversely and negatively impacted by many elements of the Brooklyn Basin project including losing its driveway access to the building courtyard when the historical driveway easement was "removed" in favor of the Brooklyn Basin developers. Proposed designs for 5<sup>th</sup> Avenue ignores our historical community and setbacks and parking are badly neglected for impact. The proposed development revised plans as reviewed in the DSEIR have ignored the impacts on this vital part of the 5<sup>th</sup> Avenue Point community. From the outside, it does not appear that demand for the 9th Avenue buildings is very high or even reached full capacity, and [Google Reviews](#) from the Orion building are far from positive. In light of COVID-19 and the rise of remote work, it remains unclear to me whether demand for Bay Area housing will increase enough to sufficiently justify the addition of 600 units. The requested amendment will increase the unit density far higher than 60 units. If added, I strongly encourage that the additional units be scattered across all remaining development parcels. I am very concerned by the lack of affordable units, and that while convenient, Rocky's Market is not an affordable option for local low-income residents. It makes me question who the demographic is that this development seeks to support. In Brooklyn Basin negating our historical community easements and setbacks, we have already lost access to our community garden —an important source of community bonding and food security— in addition to potentially losing our driveway.
- I10-5 |
- I10-6 |
- I10-7 |
- I10-8 | Furthermore, the relocation of a tower from Parcel H or J to Parcel L or M is concerning. It will create sufficient challenges in the ability of our community with regards to flooding/stormwater management, access to sunlight, privacy, and quality of life, while in return only providing slightly better views of the waterfront to a select group of high rise residents, the exact additional units in the tower also being unclear in the DSEIR. To me, the benefits do not seem to outweigh the great quality of life cost that will impact our community.
- I10-9 | Since the 1990s, our community has worked very hard to protect our local wetland —a 0.6 acre mudflat— and to be good stewards of our local flora and fauna. The additional Marina slips seems unnecessary and invalidates the Estuary Plan's intent to have 50:50 development-open parks space ratio, tilting towards 60:40. It is a tremendous joy to see our waterfowl alive and thrive. The proposed marina expansion will benefit a handful of individuals, while reducing views and of the open water, the ability to enjoy by low-impact watercraft, and access to natural wetlands (a rarity in Oakland). I do believe, and ecologists have suggested, that waterfowl need "runway" to access this mudflat, which the proposed DSEIR completely overrides. I would love to see more environmental education programs to showcase our local natural ecology rather than privatized boat slips for a few privileged individuals, which would affect our quality of life, water quality, etc. Please see the attachment for more details.

I10-10 | Upon reading the IPCC's 6<sup>th</sup> Assessment Report this week, I am deeply concerned about climate change, which seems unavoidable. 30-50% of species are projected to become extinct by 2100, and I deeply care for our local wildlife. As the open space has been currently designed, I do not see nearly the same flourishing of rabbits, possums, skunks, hummingbirds, butterflies, herons, and other waterfowl at the Township Commons as I do here at Shadetree and the 5<sup>th</sup> Avenue Marina. With additional sea rise and king tide threats on the horizon, I worry deeply about our climate future here in our community.

Thank you for listening. I appreciate your time, attention, and service.

Sincerely,  
Chelsea

**Problem Statement:** Concern for a rare and hidden remnant of natural wetland habitat on the Oakland waterfront. The 0.6 acre wetland restoration project site is thriving with mudflat, waterbirds and marsh plants —nestled amidst the 64.2 acre Brooklyn Basin development project.

The City is currently reviewing a proposal by the developer, Signature Properties, to build 10 acres of marina docks directly in front of the restoration project, blocking meaningful access to resting places and food sources for wildlife and obscuring our view of the open water from shoreline parks.

The proposed project would privatize a large portion of open water space for the benefit of a few privileged individuals. Right now, many people can paddle through there on a canoe or a kayak, waterbirds frequently fly and fish there, and everyone can enjoy the view of the open water.

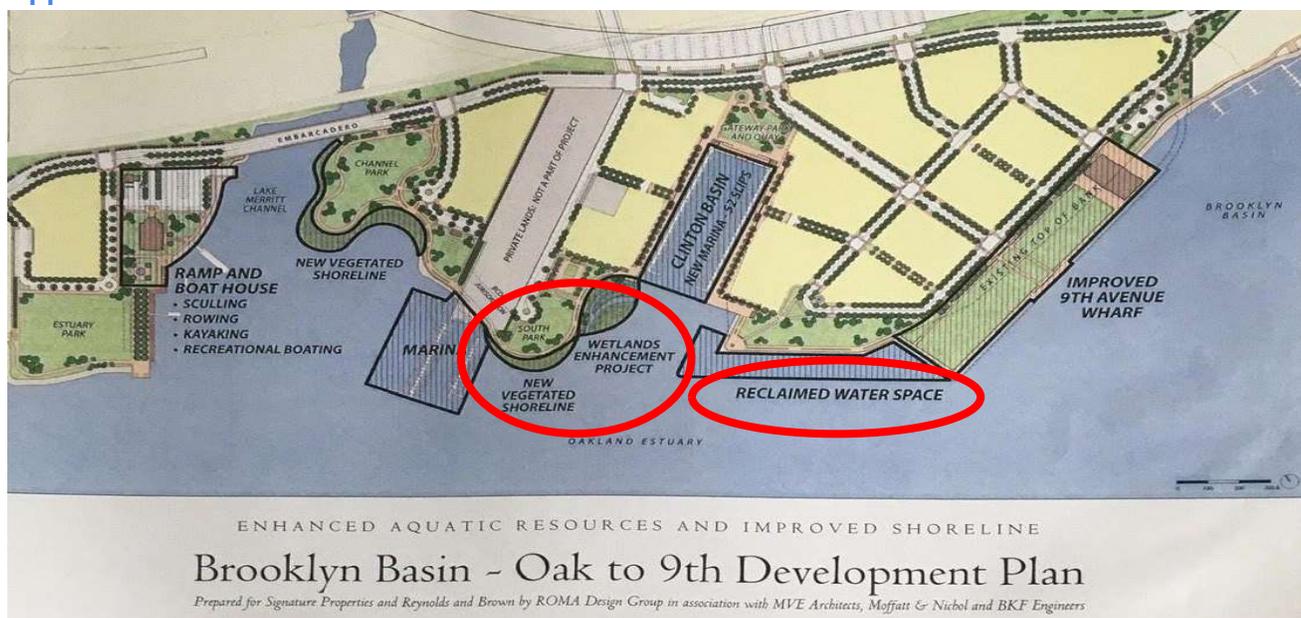
This particular marshland's proximity to high-density urban areas presents a rare opportunity for the public to view wetlands. We believe that this threat to our hard won open space is both an environmental and social justice issue.

Laura Cremin and John Bowers of the Golden Gate Audubon Society have visited the site and will be writing a response as will Naomi Schiff on behalf of the Oakland Heritage Alliance.

**Needs:**

- Urgent: Site visits from ecologists with local saltmarsh expertise would be helpful to assess the marsh and attest to its value. Virtual site visits can be arranged and additional times at your convenience.
- Ongoing: Support is needed to advance the project and its surroundings to their greatest potential as habitat.

**Approved Plan from 2005:**



**Proposed Expansion in 2021:**



## Background:

- In 1999, the Port of Oakland was fined \$180K by the RWQCB for spilling oil while removing a boat from the water. Neighbors were able to demonstrate the presence of a significant amount of wildlife in the area. The .6 acres was officially designated a restoration project site.
- While very little investment has been made into our estuary, the Coastal Conservancy stepped in and contributed funding for the design of the project. A channel was dug. 22 years later, and with no maintenance program whatsoever, the mudflat has blossomed with local flora and fauna. This site represents an easily replicable, model project that requires little-to-no maintenance.
- A 1993 League of Women Voters study spurred a public land reclamation initiative to open an underutilized section of the Port for public use. An exhaustive public input process followed, culminating in the profound [Estuary Policy Plan](#), adopted into Oakland's Master Plan in 2005.
- The first objective listed in that plan is "encourage the preservation and enhancement of wetland areas." Multitudes of people spoke up and said they wanted to see efforts like this one scaled, not stifled. The proposed marina expansion project is demonstrably incongruous to that worthy objective and belittles the public's participation. All Brooklyn Basin graphic illustrations used at public scoping meetings prior to 2018 showed shoreline parks with views of the open water.
- All previous planning documents clearly distinguished the .6 acre parcel as a separate, "not in the project area," and as a "wetland enhancement project." In the new expanded marina proposal, it is barely mentioned and no clear language is used that identifies the parcel as not included in the Brooklyn Basin development project area.
- The Brooklyn Basin development agreement was proudly unveiled as a 50% real estate development / 50% parks and open space deal. A marina expansion would contradict the City's promise to local residents, regional visitors, and wildlife, and would reduce the public benefit to only 42% of the pie. While we understand that —per the agreement— Signature Properties

needs to generate the income necessary to maintain the open space, we find it unethical to propose generating this income by privatizing and developing over protected and public open spaces. Additional wetland restoration in the area is an option that would lower the overall maintenance costs of our parks and lessen the burden on the developer's coffers.

#### Ambition:

- We believe:
  - Our wildlife deserves the protected habitat promised in the Estuary Policy Plan.
  - The public deserves an unobstructed, more democratic view of the open water that's environmentally low-impact.
  - The DSEIR is inaccurate in its assessment of the present conditions.
  - The negative impact of this project would significantly affect water quality, the space we occupy, and the air we breathe.
  - Traffic chokeholds on the Embarcadero would be further compounded and the waters themselves would become less navigable, increasing the trepidation of novice watercraft users rather than inviting them to it.
  - Both docks and boats would obstruct access to food sources in the water and resting places on the marshland for wildlife. Rigging poses aerial navigation hazards to birds.
  - Indigenous names should be considered for all public spaces in the region. These lands and waters were reclaimed over the last 25 years through a people's initiative to restore stolen and gated Port of Oakland land to public use.
  - Brooklyn and Clinton Basins, as envisioned in the Estuary Policy Plan, offer unique opportunities to introduce model interpretive programming that connects people to their environment, their history, and the social benefits of sharing open space.
  - Refocusing the Planning Commission's attention back to the objective of the Estuary Policy Plan and gaining the support of credentialed ecologists are both key to mitigating expansion projects that are harmful to local ecology and equitable access to it.

Local residents, part of the historic 5th Avenue artist and business community, are concerned about the threat to the wetland as they have been neighboring and stewarding it for decades. To give perspective on the relative size of the proposed marina, it is twice that of the entire pre-existing neighborhood. The Estuary Policy Plan calls for protecting the sanctity of this unique enclave, yet it too is being threatened by the marina expansion proposal which envisions an additional 600 residential units and a 240' ft tower immediately adjacent to them. This aspect of the proposed expansion is opposite to what was called for by the people who participated in the planning process. According to the fourth objective of the Estuary Policy Plan, the unique 5th Avenue character is to be the model for other uses and activities in the area. Like the wetlands, we want more of them.

We look forward to enjoying this precious and important natural site with you soon.



---

**From:** Renee de la Prade <squeezeboxgoddess@gmail.com>  
**Sent:** Wednesday, August 4, 2021 4:13 AM  
**To:** cpayne@oaklandca.gov  
**Subject:** Brooklyn Basin development comment for public record

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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Dear Ms. Payne and esteemed members of the Oakland City Planning Commission,

111-1 | I am Renee de la Prade, and am registered to vote in Oakland. Please add my comments below to the public conversation about the proposed update to the Brooklyn Basin housing development:

Oakland is a wonderful city known for its vibrant culture and its international port. It is NOT known for its beautiful waterfront beaches and wetlands, and the concern I raise is that the Brooklyn Basin development wastes an opportunity to expand Oakland's natural shoreline for community use.

111-2 | It's upsetting to see wasted potential of developing water access for local Oakland youth and tossing out the chance to preserve natural coastline in favor of offering a few more boat slips to rich people. Building a bunch of towers on landfill also seems like a past-century idea which is not in line with current science on climate change. Oakland will face regular flooding in the coming years as the sea levels rise. The Brooklyn Basin development is a host of problems waiting to happen.

I think it is a terrible idea to build this giant development in an ecologically sensitive area. I believe that a mixed development of wetlands park and community boating opportunity would be a far more economical, climate-change focused, and responsible community-planning move. Here is the model for my line of thinking, a public-oriented, open-access shoreline which is the pride of Boston:

<https://www.community-boating.org/>

111-3 | I appreciate and respect the council's wish to better Oakland's housing crisis. I also think that very few parcels have so much coastline attached to them; and that coastline is best used for the public good of a natural waterfront. New housing can and should be \built; but not at the expense of wetlands and community access to the shore.

Best regards,  
Renee de la Prade

---

**From:** Emilina Dissette  
**Sent:** Monday, July 19, 2021 3:00  
**To:** Subject: drarmstrong@oaklandca.gov;  
**Attachments:** July 21 Planning Meeting Screen  
BB  
MTG.pdf

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments you recognize the sender and expect the message.

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Hi there,  
I12.1-1 | Attached is a pdf Id like to use @ the meeting on Wed July 21 @  
3pm I will be in attendance as Emilina Dissette on Zoom.

Thank you!  
Emilina aka Emme  
9715339703



**SAY NO TO 600 MORE UNITS!**  
**SAY NO TO THE WATER TAXI & MARINA EXPANSE!**  
**SAY NO TO THE RELOCATION OF THE TOWERS!!**



---

**From:** Emilina Dissette <dearemilina@gmail.com>  
**Sent:** Wednesday, August 11, 2021 9:25 AM  
**To:** Payne, Catherine  
**Subject:** Re: Brooklyn Basin SEIR Comments for Public Record  
**Attachments:** Brooklyn Basin SEIR concerns for Public Record (2).pdf

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

I know this may be too late, but I did notice 2 typos in my previous response and edited them here in this attachment. if this could be kept for the record. That would be great. Thank you.

On Tue, Aug 10, 2021 at 11:11 PM Emilina Dissette <[dearemilina@gmail.com](mailto:dearemilina@gmail.com)> wrote:  
Attached is the PDF for Public Records, I will also include its text in this email..

I12.2-1 | Thank you for your time, reading, recording and forwarding this out to who needs to read this, Sewage/Black water back up @ the Orion in Brooklyn Basin is NOT OK!

Sincerely, a VERY concerned resident @ 5th ave.

Dear Mrs Payne, and the Oakland Planning Commission

*As a follow up to the Planning Commission Meeting that happened on July 21st, I have a few issues to address that are in response to the comments made @ the meeting. I am a resident of Shadetree, on 5th ave. I have been visiting the 5th ave Marina for over 11 years and also tend to use the embarcadero as my jogging route, so I tend to visit Township Commons as well as the adjacent pier in which Brooklyn Basin is currently developing. Here are my observations:*

I12.2-2 | *First, Parking.* The weekends always bring the greater Oakland public to attend events and skate at Township Commons. Parking continues to be an issue, for visitors and for tenants @ Orion, and customers of the Canoe and Kayak store, as well as Rocky's Market. Brooklyn Basin has mentioned that they have allotted more parking for visitors under the 1-80. **What they fail to mention is that they charge 10\$ to park and there are literally NO crosswalks from the parking lots across Embarcadero Ave.** *How do they expect those forced to pay for parking, to cross the main embarcadero street safely without providing any way for people to do so? Brooklyn Basin doesn't care. That's why. They don't account for the public influx with the beautiful park created because they don't have to. To encourage people to walk from bart is to encourage folks to potentially be put in harm's way. The sidewalks leading to Bart aren't safe, so people drive, and SOMEONE needs to account for the masses that show up on the weekends and evenings, I have witnessed road rage, near car accidents, speeding, illegal parking, and dangerous driving. The hotel and restaurant next door have signs blocking attendees of the park from entering their parking lots and we have seen our only street blocked, congested and filled up by random people as well.*

I12.2-3 | *WE DO NOT NEED TO EXPAND THE MARINA OR ADD 600 UNITS* if the parking and traffic issue aren't a bigger concern for the city and for Brooklyn Basin. We only have one access

↑  
I12.2-3  
cont. | road to emergency services and if the influx of traffic hinders our safety, that should NOT be allowed. The Estuary Plan states that 5th ave residents must be protected!

I12.2-4 | **SEWAGE BACK UP!**  
I was jogging around the Orion, the condo complex a Brooklyn Basin with my neighbors dog on July 31st, and noticed that Black Water had risen from the sidewalk drains and was flooding the mulch that lined the sidewalk. A horrible putrid smell had corrupted the block and I was so alarmed that I gripped the dog so close to me in fear it might get its nose or mouth exposed to it. What the heck was that? Did the sewage back up? I want you to investigate and make public the reason behind the back up. The Orion, the only completed building Basin has, appears to be scarcely lived in.. It has horrible reviews, and now the sewage is backing up? Why? Is it Brooklyn Basin pile driving the foundation of another future parcel that caused the plumbing to fail? Is it the pile driving they used in the first place? I felt so nauseous after being exposed and I want to know what happened. I'm worried that when they start to pile drive phase 2, our plumbing, structures and foundation will be negatively affected by the major impact that pile driving the estuary creates.. Also who would be held responsible in fixing it? I'd like to know if the Orion is held responsible for the sewage, grey or black water build up ,or did Brooklyn Basin take accountability? If not, I would like the city to get involved and manage this new project better than they can, before it becomes a literal "shitshow".

***PLEASE DO NOT RELOCATE TOWERS!***

The impact of the The amount of pile driving in the Estuary it takes to create foundations for these unlive d in, poorly reviewed buildings not only kicks up so much toxic dirt that covers tenants cars daily, but it also is affecting the health of the tenants, by creating an avoidable smashing sound continuously from 8am to 5pm... As I see the lackluster condo companies take over, I'm left to ponder what Brooklyn Basin actually takes account for, or if they even have to?

I12.2-5 | Traffic, Parking, Toxic elements in the ground being unearthed by construction and impacting tenants' lives are serious concerns that need to be better managed and I believe Brooklyn Basin does NOT have the intention to make good on what they originally offered with the zoning, planning, and reports written.

I12.2-6 | ***Please postpone any further approvals until more investigation is done on the condo's built, the land itself and foundational impact of this project!!***

Thank you so much for your time, energy and action moving forward in the right direction.  
Please Help!  
Sincerely, Emilina Dissette

## Chinonso Uzowihe

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**From:** Dan Franco  
**Sent:** Friday, July 16, 2021 8:32  
**To: Subject:** cpayne@oaklandca.go  
**Attachments:** 7/21 PC meeting over  
SEIR zoom call background image.pdf

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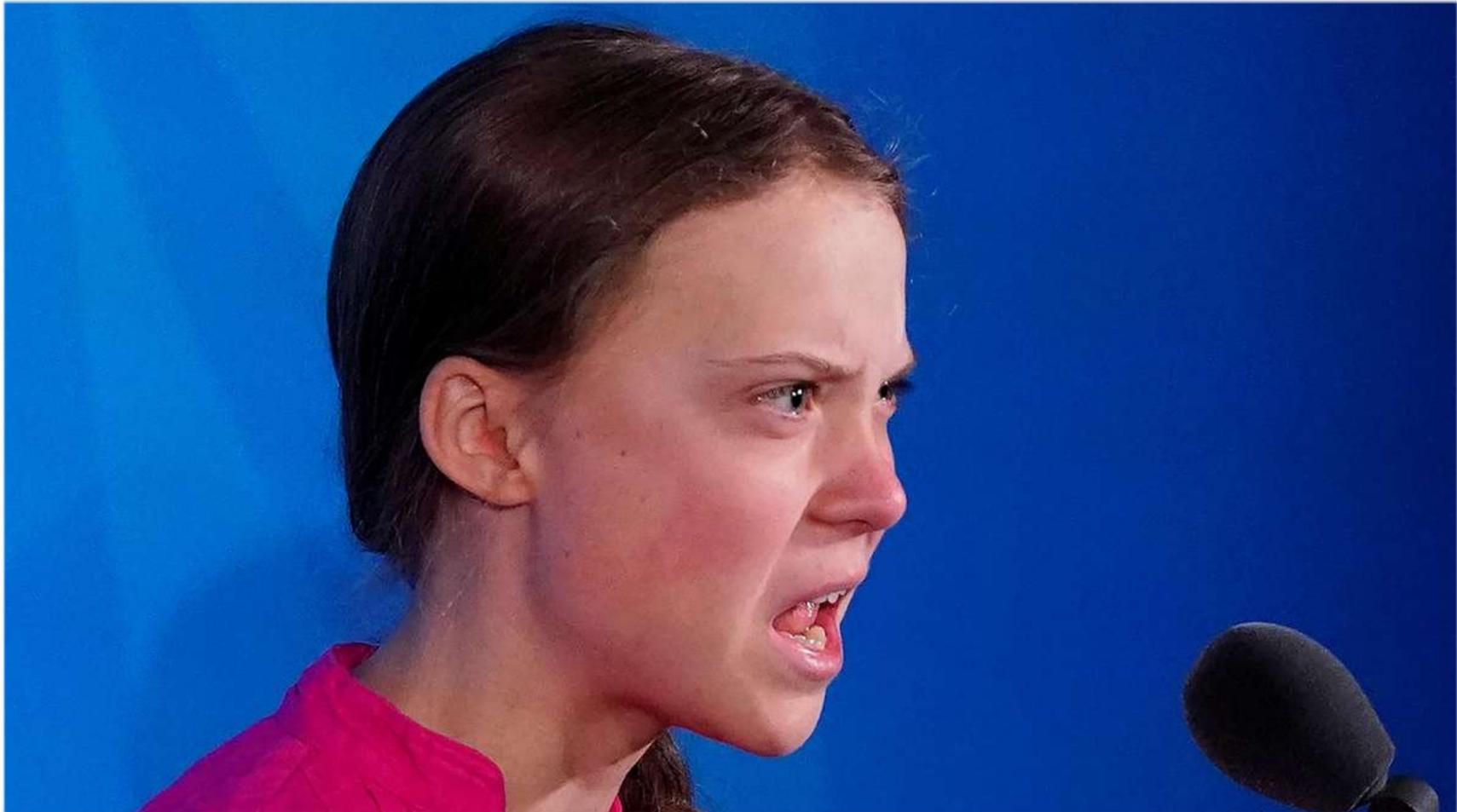
Greetings.

- I13.1-1 | Regarding the proposed SEIR modification to allow a mega-marina to obliterate a preserved wetlands: It is interesting that despite years and years of asking first Signature Properties, then Mr. Ghielmetti himself, and later Zarsion for details on this mega-marina, it's only now that they provide any details - - and I13.1-2 | suddenly we the public only get a few weeks to review and comment. That's backwards, and anti-resident.

At a minimum this public comment period should be 1 year in duration, so that effective scientific data can be collated and checked against this ill-begotten scheme. There is no way untrained citizens can do the proper science needed in such a short window of time, with none of the financial resources of Mr. Ghielmetti and his foreign-money backers. Accordingly; the Planning Commission should not stack the deck in Zarsion's favor. It should extend this period to 1 year from June 11th 2021 in recognition of the fact that we have been asking for these details for 16 years with no success. It's simply baffling to give their side 16 whole years to plan out an 800+ page document, yet expect the local citizens to process and respond properly in 45 days. No. Extend this to 1 year so that citizen research can be properly done. It's only 1/16th of the time they had, I don't see that as an unreasonable request.

That said, since this department and you personally, Ms. Payne, have carried water for Zarsion all along; I fully expect that any extension will not be granted. Accordingly I plan to speak on the issue at the next meeting to bring the full commission's attention to the matter. I am given to understand that on Zoom a speaker is allowed to have slides shown to the group, and so I attach below a 1 page PDF to be displayed.

**-Daniel  
Franco**



**“It is NOT an investment, if it is DESTROYING the planet.” - Vandana Shiva**

**“Whether we or our politicians know it or not, Nature is party to all of our deals and decisions. She has more votes, a longer memory, and a sterner sense of Justice than we do.” - Wendell Berry**

**“The Earth is not dying, it is being killed. And the people who are killing it have names and addresses.” - U. Utah Phillips**

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**From:** Dan Franco <franco.dan@gmail.com>  
**Sent:** Thursday, July 22, 2021 8:41 AM  
**To:** cpayne@oaklandca.gov  
**Cc:** vsugrueopc@gmail.com; leo.raylynch@hmcarchitects.com; Amanda Monchamp; SShiraziOPC@gmail.com; cmanusopc@gmail.com; jfearnopc@gmail.com; tlimon.opc@gmail.com  
**Subject:** Brooklyn Boondoggle DSEIR PUD06010-R02-ER01 proposal modification: rebuttal of their fictional fantasy  
**Attachments:** SEIR 2021 rebuttal Franco.pdf; Brooklyn-Basin-DSEIR-Notice-of-Availability-signed\_2021-06-10-160855\_sqji (2).pdf; ProtectingWetlands.pdf; Copy of Franco's Appeal Speech 2-16 to City Council .pdf

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Greetings.

**“Whether we or our politicians know it or not, Nature is party to all of our deals and decisions. She has more votes, a longer memory, and a sterner sense of Justice than we do.” - Wendell Berry**

I13.2-1 | Since the blood of dead critters will be on your hands if you approve this monstrosity, **the very least you can do is actually read the comments** that get sent in to you. Don't fob this one off on staffers, and glibly accept their summaries - this issue is too important. Do the work, it's part of your solemn duty. Then you will see that you *must* deny this request. You gave Zarsion 16 years to create their proposal, but the public got only 60 days to reply. They also, at every turn and every meeting, have been allowed to speak as long as they want while we only ever get 2 minutes. That is profoundly unbalanced. It is certainly not enough time for residents to commission & execute their own traffic study, for example.

Accordingly, the spirit of equity demands that at the very least you soberly and critically consider all the public comments, not leave the task to staffers. Consider the following:

I13.2-2 | Fire season is now year round. The sky turned red for a week. 12 Western states are out of drinking water & our Governor just declared water rationing for the whole state. Yet these chuckleheads, in their endless greed, are pretending that things are *juuuuust* fine. They want more, more, more. Instead of defending or expanding much needed wetlands, they want 325 pollution-spewing boats at Ghielmetti's Mega-Marina. Instead of trying to help the bivalves, butterflies, birds, frogs and fishes survive mankind's assault on their habitat, they want a super-skyscraper to blot out the sun.

I13.2-3 | For the sake of the animals who have no voice in this room, and for your children, do the right thing. **Do not build these travesties.** Build wetlands instead.

I13.2-4 | Put housing downtown where Transit actually exists - not here. Some such as Cmsr. Monchamp would tell you that BART is close to here but they don't see the reality of hobo-alley and how hard it is to get to BART unless one drives. Don't listen to their delusions. Further, Zarsion OHP's traffic & parking allegations are lies that do not conform with present-day

113.2-4  
cont. ↑ parking and traffic jam realities. Our concern is not that our ShadeTree / 5th Ave. buildings are like the Ghost Ship scenario. Those allegations are lobbed at us by the city agencies all the time - - and we refute them too. BUT, the ability to evacuate in a fire, flood, earthquake or other disaster is presently nearly ZERO, due to the 1 lane road bottleneck. **More residents will guarantee more deaths** when that time comes. You can avoid those extra deaths, by denying this permit modification.

113.2-5

113.2-6 We continue to be in a global pandemic that has killed millions. American society immediately reacted by dropping all use of mass transit. Now that the Delta Variant is on the rise, society again is abandoning mass transit. You must see that cars are the future, because the entire nation has so deemed it. A lofty but abstract .75 spot/apartment rule will not overcome their reservations about dying via an agonizing plague. Accept reality, build lots of electric charging stations, and be done with the fantasy that these residents will behave the way you imagine. Help folks migrate to electric vehicles - that's a realistic, doable task.

**“The Earth is not dying, it is being killed. And the people who are killing it have names and addresses.” - U. Utah Phillips**

113.2-7 Brooklyn Boondoggle has been a blunder since the beginning. This is your moment, Planning Commissioners, to fix a great wrong. This land was meant to be set aside for the critters in perpetuity, and it's up to you to finally tell this greedy developer what perpetuity means. Say NO to yet another playground for the rich, say YES to avian habitat. Say NO to thousands of dead Oaklanders who will not be able to evacuate during the next emergency, and allow fewer or NO people to move to an area with only 1 escape route; not 600 more sardine can units. **Listen to your own city planning manager Laura Kaminksi, who notes that “just because we built housing in areas where we shouldn't have, doesn't mean we should continue to.”**

Do the right thing - insist on wetlands and ONLY wetlands at the shoreline.

Say NO to their endless greed; say NO to a 16% expansion of their takings for free. Zarsion got this entire property for \$18 million bucks, then sold a chunk of it back to the city for \$24 million. But even getting waterfront land for **negative** six million bucks wasn't enough of a swindle, now they want 10 more acres for free too. No way, no how should you allow this farce to continue.

113.2-8 Bear in mind also that despite Zarsion's fib, important stakeholders such as the US Coast Guard were never noticed or consulted about the mega-marina and the hazards to navigation that will be imposed upon them and their efforts to save lives on a daily basis. I leave it to them to comment on this matter; but I bring it to your attention because when I notified them of the situation they were horrified. And also concerned - - because in order to reply in any form they must first go through several bureaucratic layers all the way up to Washington DC. Since they didn't get 45 days, (and if I understood them probably even IF they had the full 45 days), it's simply impossible for them to turn around a proper legal response. So if you do not hear from them do not presume they are in favor of it, rather; conclude that they were sand-bagged by this unfair process.

**“It is NOT an investment, if it is DESTROYING the planet.” - Vandana Shiva**

I13.2-9 | I came before this body years ago during the last round of objections. I compared all developers to the slave-traders who once sold human beings in public marketplaces. I noted that future generations would see all developers as exactly the same because they are in fact committing a huge injustice and hiding behind the law to do so.

Well I am here today to correct the record.

I was wrong.

I'm big enough to admit it, I was wrong.

I was wrong because it's not actually *future* generations that see developers as criminals destroying the planet, it is in fact TODAY'S young folks who already see that and they are very clear in stating such. If you listen to groups such as Extinction Rebellion, and you should, you will know that the time has come to completely abandon our suicidal march to oblivion. STOPPING THIS HEINOUS PROJECT MUST BE THE STARTING POINT. **Build nothing here**, unless it expands and preserves the wetlands and mudflats, and creates more 'managed retreat' spaces for the future storm surges and flooding that are surely coming soon.

Close to a billion shellfish died in the heatwave the Pacific Northwest just endured. Smoke from the NW fires blackened the skies of *New York City* while you were meeting on Zoom yesterday - - 2800 miles away from BC and Oregon. [Thousands drowned in subway cars](#) in Henzen Province of China as well, due to unexpected flooding. It's time to stop pretending that Oakland is exempt, that these things cannot happen here. It's time for you to plan for the worst.

The whole planet is telling humanity, in no uncertain terms, to stop its' taking of animal habitat. Will you listen? Or will you keep on dooming the ecosphere to extinction with your continued 'death by a thousand cuts' of perfectly legal, but perfectly immoral approvals of these fiendish projects? This developer is pretending that because all the critters were dead or barely hanging on when they began their harvesting of the critter's habitat, NOW they should be allowed to keep on killing off critters. Nothing could be further from the truth.

You need to exercise a larger perspective: the planet's ecosphere is literally dying, and if the animals all die then humanity will not be far behind them. Do not create a tombstone for humanity that is boat-shaped. To quote an old movie, "if you build it, they will come." So if you build wetlands, the animals will return. If you build a playground for the rich, well... guess who's coming to dinner? 'Managed Retreat' is the scientifically proven best defense. Heck, Hayward is already doing that, why not try it here? To do so, though, there will need to be available shoreline to build wetlands and swales on.

I13.2-10 | Here before you sits the golden opportunity; the best place to start. Cancel the condos, sink the marina, preserve the habitats.

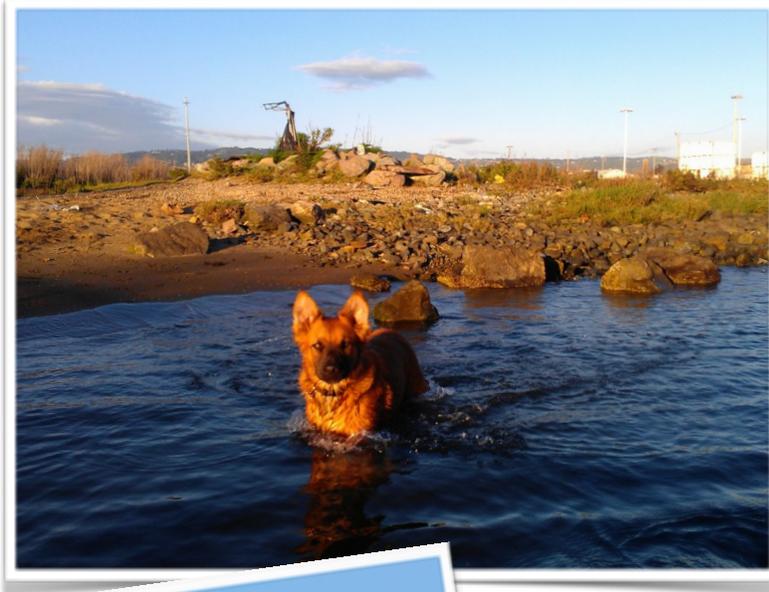
I13.2-11 | Several attachments follow, below.

-Daniel Franco

 [1999 EstuaryPlan.pdf](#)

# PUD06010-R02-ER01, et al.

## Citizen Response Document



**Draft Supplemental Environmental Impact Report  
Response, from Daniel Franco, Oakland Resident**

**“It is NOT an investment, if it is  
DESTROYING the planet.” - Vandana  
Shiva**

**“Whether we or our politicians know it  
or not, Nature is party to all of our deals  
and decisions. She has more votes, a  
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killed.**

**And the people who are killing it have  
names and addresses.” - U. Utah Phillips**

# “No Project, No Marina Expansion, No Tower Relocation.”

- IIC alternative 1

In reference to the above quote, all I can add is this: *Exactly.*

Just say **no** to the Brooklyn Boondoggle! Say **yes** to the Clinton Basin as wetlands habitat instead. As we residents have been saying all along, and now it's commonly accepted as a mainstream idea: the long term needs of the planet's biosphere must come first and they outweigh the petty short term desires of a local developer. In the following pages I seek to refute point-for-point Zarsion's proposal and the tissue of lies it is built upon. There can be no valid path forward for a marina, let alone a mega-marina. Herewith you will learn why that is the case, what the SEIR failed to address in the past **and continues to ignore now**. Then you must act accordingly and fully deny these modifications and permits.

I13.2-12 |

## Opening Remarks

New members of the Planning Commission are requested to do their homework. This project has been a travesty of bad faith negotiations, intentionally misused data points, and lawsuits ever since the 1st day it was proposed. The document that was prepared for you continues this sorry policy and that choice by Zarsion should not be rewarded. As well, given that in 2021 society as a whole knows much more about the ongoing threats to water, air, (and from fire and drought for this region), it is incumbent on Commissioners to stop this project in it's entirety for the good of the wildlife, the city, and the region.

Specifically where the mega-marina is concerned, bear in mind their original position could be summarized as "Nah, we're not gonna do that." A few years back, under pressure, they admitted "Well, sure maybe we'll put in 100 boats." And today they come to you with the truth, at last: "Actually, it's 325 boats. Oopsie, our bad!"

The proper number of additional boat slips to add here is Zero. Say **no** to boats, say **yes** to fish.

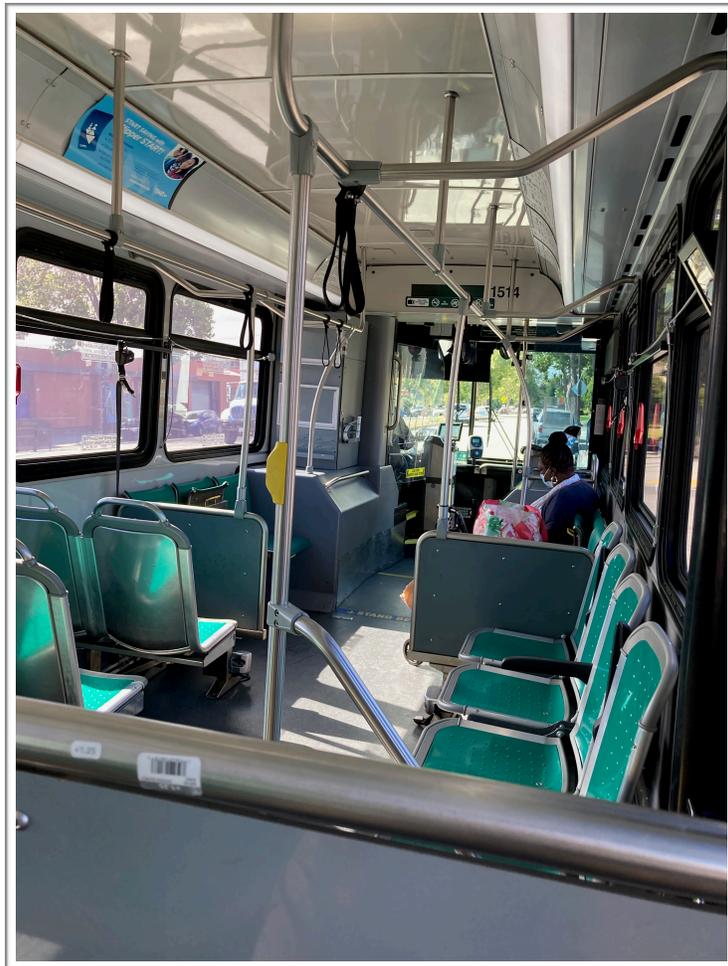


## **Specific Comments, ordered by section heading**

### Chapter I

I13.2-13 | I.a.3 pp1- It is the wrong approach to remove parking, in fact all trends are in the opposite direction. Due to Covid, essentially nobody uses public transit anymore. There is no reason to expect they will do so in the next 5-10 years, either, given our nations' horrific and inept response to the

outbreak of Q1 2020. Put simply, no one trusts their fellow citizen to do the right thing and wear a simple mask, let alone stay home if they have illness. So like it or not, cars and trucks are the future. Putting in less parking is therefore idiotic. Mass transit is a fine idea, a noble idea. Society said “No” to noble, regrettably.



*(Pictured: AC Transit bus at rush hour, 6/21)*

Please note the words *Covid*, *Pandemic*, or *Worldwide Plague* appear nowhere in their request document, a sure sign of how divorced from reality and current events it is.

What needs to happen instead is to wipe out the (soon-to-be) empty storefront requirements (since no retailer will use them due to having been bankrupted by Amazon.com) and instead use that space for more guest parking.

I.a.3 pp2- There shall be no 'shifting' of building envelopes, per the previous court battle and subsequent agreement with the ShadeTree / 5th Ave. neighbors. To install any skyscrapers next to shade tree will violate the agreement (Case No. RG06-280345) in place and blanket this existing neighborhood in darkness for most of the day. As it is, the Brooklyn Boondoggle project to-date has wiped out much of the bird, waterfowl and ground animals from this neighborhood, so blocking out the sun as well cannot be allowed. The sun tends to send light from a southerly angle year round here. Too much has been lost already, allowing this change to happen would be obscene; and be most likely actionable. Note that everything in the last sentence of PP2 is a lie, all of those things would be forced to happen. For them to pretend 20 extra stories is a tiny little insignificant change is the height of arrogance and double-talk.

I13.2-14

I.a.3 pp4- Removing the existing marina will doom it's current residents to homelessness, given the fact that there are no other marinas for them to go to. So that's strike one against this marina project. I see no reason why rich folks should get to evict these longtime residents just because they covet these blue-collar-boaters' location. Enough with the gentrification, Oakland Planning Commission! Your job is to support existing residents, not future rich folks from China who buy second properties or boat slips and then never use them.

**SUPPORT EXISTING RESIDENTS, DENY THIS EVICTION ACTION. Duh.**

Further, the region cannot support even one (1) more boat slip, at all. There is no credible case that can be made to support doing so, in fact. Here is why. For those of you new to the Planning Commission, this will be news, but in actual fact the entire 90 acre plot of land was set aside in 1998 to be a wetlands preserve. Objective 1.1 of that plan, still holding force of law, calls for Wetlands Preservation to be the highest goal here. That deal was crafted over the entire decade of the 90's with citizen input and great fanfare, then quietly pooped all over in a back-room deal a few years later. Now here we are, with less than 2 acres currently still under any kind of 'Wetlands' designation or protection. And guess where it's located?

Right at the mouth of this proposed mega-marina expansion. Their drawing on Pg. 63 doesn't even show this wetlands, in their view it's now a sidewalk. No. That's wrong. It was shown on their drawings until recently, quite rightly, as "not part of this project" but suddenly those caveats are gone. Existing legal settlements via the Port of Oakland, (for polluting 60K gallons of fuel while destroying the m/v Moby Dick), call for this spot to be **preserved in perpetuity**. "Perpetuity" is a very simple legal concept, too bad Zarsion pretends not to understand it: it means forever.

As a former boater, who worked 10 years on a tugboat, I can attest first hand that **no boat or ship on earth exists that does not pollute to some degree**. Zarsion is proposing to place 325 boats in a wetlands, and wants you to believe that those boats will not dump feces, oil, and loose waste into the water. Even the best managed marinas have spills all the time. Zarsion is in denial of reality. If you endorse this project YOU will be in denial of reality. The fish and fowl have as much right to exist as you, your child, or your fellow resident. To poison them even further with this marine waste would be unconscionable. Every single day that marina exists, boats would be passing in and out of the dockage. This would prevent the birds and crawling critters from having any semblance of a normal life, deny them access to the

Estuary, and kill off the last of the survivors. In short - the city of Oakland has already commandeered 90% of its' entire shoreline for commerce, so do your jobs and protect and strengthen the protections for this tiny little spit of land. It is in fact the very least you can do for the non-human community that is trying to co-exist with us. Do it, deny this permit. Otherwise, when the frogs all go extinct, when the last bird song is heard, you will know that it was your actions that were responsible.

From Wikipedia: "*The **public trust doctrine** is the [principle](#) that the sovereign holds in trust for public use some [resources](#) such as shoreline between the high and low tide lines, regardless of private property ownership.[1] The [ancient laws](#) of the [Byzantine Emperor Justinian](#) held that the sea, the shores of the sea, the air and running water was common to everyone.[2] The [seashore](#), later defined as waters affected by the ebb and flow of the tides could not be appropriated for private use and was open to all. This principle became the law in England as well. Centuries later, [Magna Carta](#) further strengthened public rights. At the insistence English [nobles](#), [fishing weirs](#) which obstructed free [navigation](#) were to be removed from [rivers](#).*

*These rights were further strengthened by later laws in England and subsequently became part of the [common law](#) of the [United States](#). The Supreme Court first accepted the public trust doctrine in [Martin v. Waddell's](#)*

*Lessee in 1842, confirming it several decades later in [Illinois Central Railroad v. Illinois](#), 146 U.S. 387 (1892). In the latter case the [Illinois Legislature](#) had granted an enormous portion of the [Chicago](#) harbor to the [Illinois Central Railroad](#). A subsequent legislature sought to revoke the grant, claiming that original grant should not have been permitted in the first place. The court held that common law public trust doctrine prevented the government from alienating the public right to the lands under navigable waters (except in the case of very small portions of land which would have no effect on free access or navigation).*

*The public trust applies to both waters influenced by the tides and waters that are navigable in fact. **The public trust also applies to the natural resources (mineral or animal) contained in the soil and water over those public trust lands.***"

The question as to whether the Public Trust Doctrine applies to a project such as this one is presently being adjudicated in the US federal court system, more information on that case will be supplied if it is decided by time of filing.

Further, there is no rational plan for actual use of this mega-marina by actual boaters. They speak of a pump-out station, with no mention of the smells and sights of

what a station looks like. There is no way it will be located here, tenants would not stand for it. There are also no proposals for on-shore facilities, such as a bath house, engine davits, or any of the other things a typical marina has. They omitted them from these drawings because they hope you don't know they are needed and they sure know there are no spots of land to site them. Do your own homework. Go to Marina Bay Yacht Harbor in Richmond, study the features and amenities that it offers - - none of them can be squeezed onto the sidewalks they are proposing. Finally, every marina in CA is in financial peril, there is no economic case for building a new one.

I.b.1 pp4- Lies, half truths, and obfuscations. Folks we are only 15 pages into this document, and already Zarsion has used up every adjective for 'dissembling' in the English language. Buckle up, it's gonna be a long ride.

Ok: of course this is a project change and a significant one, because it is removing the last shred of Wetlands, the very last 1-3 acres on the entire project, and replaces it instead with a gentrified dock for the rich to park their tax-write-off yachts. Killing fowl and frogs and fish so that the rich can park another yacht is HUGE, there is no way to pretend it's anything but a major modification of the existing plans, settlement agreements, and common sense. Therefore it is obvious and irrefutable that should

this travesty proceed, massive mitigation efforts will need to take place. For example an equal or greater amount of shoreline elsewhere in Oakland will need to be conserved instead. NOT WAY DOWN SOUTH IN REDWOOD CITY MIND YOU, right here in Oakland. Birds do not understand smoke-filled backroom deals that trade away wetlands for spots in another county 30 miles away. They understand that their food and their young live **here**. It is estimated that close to a billion shellfish died in the Pacific Northwest just in the past month due to a heat wave. *Of course destroying habitat is a huge change, of course they are lying.*

I.b.3 pp1- It is interesting that despite years and years of asking first Signature Properties, then Mr. Ghielmetti himself, and later Zarsion for details on this mega-marina, it's only now that they provide any details - - and suddenly we the public only get a few weeks to review and comment. That's backwards, and anti-resident. At a minimum this comment period should be 1 year in duration, so that effective scientific data can be collated and checked against this ill-begotten scheme. There is no way untrained citizens can do the proper science needed in such a short window of time, with none of the financial resources of Mr. Ghielmetti and his foreign-money backers. Accordingly; the Planning Commission should **not** stack the deck in Zarsion's favor. It should extend this

period to 1 year from June 11th 2021 in recognition of the fact that we have been asking for these details for 16 years with no success. It's simply baffling to give their side 16 years to plan out an 800+ page document, yet expect the local citizens to process and respond properly in 45 days. No. Extend this to 1 year so that citizen research can be properly done. It's only 1/16th of the time they had, I don't see that as an unreasonable request.

## Chapter II

I13.2-15 | II.a pp5- Already here in the neighborhood we have huge traffic problems created by the new residents, the ongoing construction, and often both. Note that since Planning Commission so graciously allowed Zarsion to be doing construction all the way into 2038, it is folly to pretend the construction delays and traffic hassles are not impactful. They are and will be an ongoing nuisance well after your kids are out of college. Accordingly no new residents should be allowed. In fact, fewer would be wiser. Make them do a realistic traffic study, at a bare minimum.

Further, of course moving the super-skyscraper from the farthest to the closest possible spot next to Shade Tree will be a huge modification of the approved design parameters. It cannot happen, there is no scenario you can countenance that will let these developers literally block out the sun from an existing neighborhood populated

with hundreds of longtime tax paying residents. Once again, planning commission, your job is to support existing Oaklanders, not out of town developers and their soon-to-be-bankrupted schemes. Do your job and deny them the ability to move the super-skyscraper next to Shade tree.

II.a pp6- Here we get down to it: 325 slips total, spaced out juuuuust enough so that no possibility will exist for waterfowl to nest anywhere. No. Maybe in 1946 this would have been a good idea but we know better now. We must find ways to allow animal and plant life to coexist or we will drive our own species of humanity into extinction. Any biologist will tell you this, just ask them. You, right now, have in your hands the power of life and death for several types of animals here in Oakland. Don't let them down, for venal and petty reasons (like building another playground for the wealthy). Not 325, the right and proper number of boat slips is ZERO. Do not reward them with 10 free acres, a 16% enlargement of an already corrupt land taking, by permitting this misbegotten folly.

113.2-16 | II.a pp7- Again, your parking formula is hopelessly wrong and out of touch with current citizen needs. As well, none of it addresses the problems boaters will cause to your parking formula. Have you ever been to a marina? Boaters do not drive Prius's, instead it's gonna be giant Bro-dozer trucks and boat trailers. Which this proposal

utterly fails to take into account. So where will they go? Not into the nearby Condo parking garage because they cannot fit and they have a giant trailer. Instead they will roll their coal right into the ShadeTree / 5th Avenue area and park where ever they bloody well choose since Zarsion sure isn't going to be policing their actions. Again - I am a former boater, I know well how parking goes near existing marinas. There is presently no rational plan for accommodating these boaters land-based needs. One cannot presume that the Condo residents will be the same users as the marina boaters. At best the overlap will be a tiny sliver of the two populations; and so Zarsion must plan accordingly.

II.a pp8- No, there are already going to be too many folks at the Brooklyn Boondoggle. Allowing them to add 600 more just poops all over the existing residents and their rightful pursuit of the quiet enjoyment of their homes.

I13.2-17 | As it stands now, in a crisis there is only 1 path IN or OUT of the area, the Embarcadero. That's a choke point, and with all the new residents coming in already during a fire or flood many will be trapped and die due to being unable to evacuate. Fire season, we now know, lasts nearly all year. Don't make that problem worse with 600 more residents.

Already, with just a small portion of the project functioning, our crime has massively spiked: gun-point muggings, car thefts, break-ins, catalytic converter thefts, you name it. These were all unheard of until Ghielmetti put us on the map for criminals. They don't plague him over in Danville, nope. They see these shiny new properties here in Oakland, see the empty storefronts, and rightly conclude that it must be open season for their criming. This has been true in every city on earth since the dawn of cities. Zarsion served up the blight, and the criminals responded in kind. Sure, it's shiny new blight but it's no different than old run-down blight. As we predicted, as we warned, crime is now horrid here. So NO, no you cannot reward their dishonesty by allowing even more residents to crowd in here.

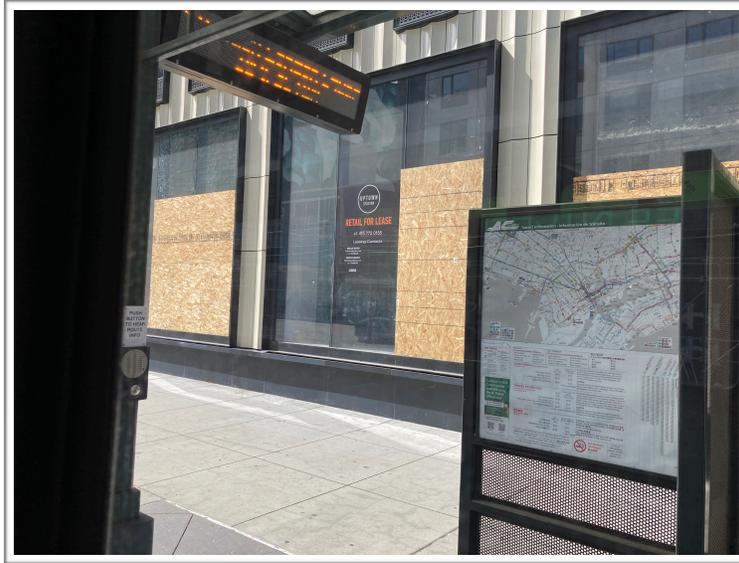




*(Pictured: 'insta-blight')*

Table II-1 - 200K square feet of Retail? Are they joking? No. Jeff Bezos and the Walton family laugh and laugh when they read that. I ask you, Planning Commission, who exactly will put that space to use? Restaurants? Nope, they are all closed thanks to the pandemic; or are just barely hanging on. New merchants? Nope, every new empty storefront you build here is a literal DAGGER TO THE HEART of existing commercial landlords in Oakland. Go around the rest of Oakland, Emeryville, Hayward. We are in danger of having more plywood-covered stores than actual open stores, and yet Zarsion seeks to add 200K more footage? No, that is unreasonable and wishful thinking. Turn those spots into parking or more housing, but stop giving this part of town insta-blight.

I13.2-18



*(Pictured: at the heart of an AC Transit hub, no \$\$ case can be made for retail. Stores are boarded up. But here, at the edge of nowhere, Zarsion pretends there is a case. It's a fib and a folly.)*

As well, since the retail idea will fail, and no retail taxes will come in, the city should instead apply for Measure AA funds to build the protected wetlands that are needed.

325 slips, but only 65 regular-car sized parking spots. Has the author of this document ever visited any marina, ever, on a weekend? These numbers are laughably out of touch with reality and the actual needs of boaters, their guests, their boats, and the poor, poor suckers who will be forced to compete with them at their own home for precious parking spots. At a minimum go to the Berkeley marina or any of the marinas in Half Moon Bay and compare the parking lot sizes and actual usage of those lots. I don't know the exact ratio but it's darn sure higher than the .2 that this document seems to be using.

Ilc alternative 1, No Project - Yes, here finally 26 pages in there is a glimmer of common sense. “No Project” is the only rational response, the only path to endorse going forward. But while we’re talking common sense, I will note that there should also be “No Marina Expansion”, and “No Tower Relocation”. Why stop there, I say? But for purposes of this document, I will simply reiterate that none of these proposed changes are in the best interest of Oakland, it’s current residents, or the flora and fauna that are trying to survive here.

Ild - For all the reasons stated above, everything in this modified proposal is controversial must therefore be addressed fully as the process continues.

Ile - Many issues have been raised, above, and in good faith Zarsion must rethink its entire strategy. And then it must withdraw these poorly thought out ideas. There are no feasible alternatives to killing wildlife. This land must be protected and in fact protections that exist must be shored up so that future generations can exist too.

II-2 part iv.b - Over and over this chart talks about reducing vehicle miles driven and trips needed but this is at odds with the facts. If you build an attraction such as a marina on top of a wetlands, then naturally more traveling will happen because people will come to the attraction. Last

time I checked, you cannot fit a 24'-0" boat on BART. You cannot drag a 60# ice chest onto AC Transit. Reality: boaters will drive, in their Bro-dozers, and they will bring tons of crap with them. Then after stealing legit parking from locals, they will leave all their trash to further poison all the nearby critters that survived the loss of habitat. This is unconscionable, even though it's been tidied up into a fancy chart. This is legalized murder of waterfowl - - disguised as VMT's & VTR's. No one is fooled here. Deny this permit modification, protect the critters.

II-2 part iv.d - Of course it is wholly significant that destroying the last remnant of wetlands cannot be allowed. Of course BCDC will have to step in, once again, and do the job you on the Planning Commission should be doing. Recall that y'all allowed them to lie about their sea-level rise calculations, and they would have kept using them if not for the BCDC having recently forced them to abandon that lie. They were forced to account for more recent science, and will now be raising these future buildings by 3 feet. Here again in IV.D, they are outright lying, please do not countenance their lies with approval.

II-2 part iv.f - Taking away every bit of mudflat soil to install a series of sidewalks **does** count as the "loss of topsoil" by any definition one could think up. They are lying here, straight up lying.

II-2 part iv.g - Again it must be noted that construction has been ongoing for years and promises to keep on doing so until 2038. That's "permanent". The fiction that the endless pile driving and other noisy actions will abate anytime soon is not to be allowed. You can't hear it from your house, Ghielmetti cannot hear it from his mansion in Danville, but we sure suffer from hearing it every day. Especially during this covid-year, when we were all forced to stay home. Enough is enough. Just say no to the mega-marina and spare us more years of noise pollution.

II-2 part iv.h - WHO DO THEY THINK THEY ARE KIDDING. Boats leak. New boats leak, old boats just leak more. Toxic runoff in the form of diesel and fecal matter will increase, and do so dramatically from current levels, once those 325 pollution-vectors arrive. Do not be fooled by their fibs.

As well, do recall that while building to-date they have already polluted the bay, at some times even throwing whole shipping containers of tooling into the bay. So it's not as if you should give them the benefit of the doubt on the matter of hazardous waste.

II-2 part iv.i - Here I refer you to the 1998 Estuary Plan, which does declare otherwise from Zarsion's fibs in column 1. Biological Resources, aka birds, fish, frogs, and

other critters do not get to speak up during this 45 day comment period. SO THEN YOU, PLANNING COMMISSIONERS, WILL HAVE TO SPEAK FOR THEM. They have so very little habitat left, please don't take the last shreds of it from them.

**ESTUARY PLAN  
EXECUTIVE SUMMARY**



The Estuary Plan includes objectives, policies, and implementation measures for the future of the area between Adeline Street and 66th Avenue. The plan is a result of community concerns articulated by the League of Women Voters and the goals, objectives, and policies established by the General Plan Congress. The basic premise of the plan and its preceding efforts is that the Estuary is a resource of citywide and regional significance. This area cannot be viewed as a single-purpose district isolated from the City of Oakland, but rather as a diverse and multifaceted place that connects the city and the bay.

The Estuary Plan calls for a system of open spaces that provides the opportunity for recreational use, fosters environmental enhancement and interpretive experiences, and establishes significant gathering places. A necklace of individual open spaces and parks will be developed comprising more than 55 acres of land, connected by a continuous landscaped parkway with promenades, bikeways, and shoreline trails. New parks will be built at the mouth of the Lake Merritt Channel and

Ninth Avenue Terminal, as well as at Union Point and within the Jack London District.

The Estuary Plan proposes a variety of uses that will strengthen Oakland's position as an urban center and accommodate growth and development that complements the downtown and adjacent neighborhoods. The plan proposes the preservation of industrial areas, which are necessary to support Oakland's port, as well as its role in food processing, manufacturing, and distribution. The plan reinforces the Jack London District as a mixture of retail, dining, entertainment, and visitor-serving uses oriented to significant gathering places and public access areas along the water.

In addition, the emerging trend toward loft-type residential and off-price retail establishments in the Jack London District is encouraged to continue.

The plan creates opportunities for new uses and proposes the large-scale transformation of the area from the Lake Merritt Channel to the Ninth Avenue Terminal into a mix of artisan work/live lofts and hotel, cultural, and commercial-recreational uses that will complement the planned open spaces and parks along the water. Within a mixed-use context, the plan strengthens the livability of existing and future residential development within the Kennedy Tract, and creates new opportunities for small-scale office, business, and commercial establishments. In certain

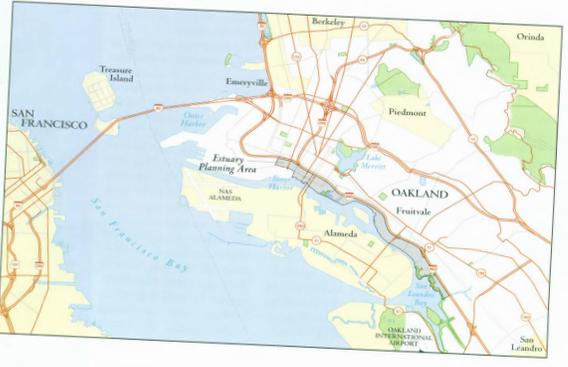
As the twenty-first century approaches, national and international trends have created new opportunities for the urban waterfront and its role within the city. Recognizing this potential and the strategic nature of the Estuary, the Port and City have undertaken the preparation of this plan to reinforce Oakland's identity as a livable city on the bay.

areas (e.g., around the Con-Agra facility in the San Antonio/Fruitvale District), the plan supports the retention of existing industries, but acknowledges that they may relocate for a variety of reasons, and therefore establishes land use priorities for an appropriate transition to new urban development in the future.

The Estuary Plan also proposes significant improvements to the transportation system, to improve both regional and local access. The proposed circulation system is aimed at clarifying on- and off-ramps and improving local vehicular access to inland areas. The plan calls for the creation of a continuous landscaped recreational parkway, accommodating pedestrians and bicycles as well as transit and vehicular access along the entire five-and-a-half-mile length of waterfront, from 66th Avenue to the Jack London District. This parkway will knit together the diverse parts of the Estuary shoreline, contributing to the identity of Oakland as a waterfront city and to a sense of orientation within the district.

The Estuary Plan emphasizes the connection between waterfront uses and inland areas. It calls for development in the Jack London District to create a stronger connection to the city center by extending waterfront activities along Lower Broadway toward the downtown. Development of the area between Estuary Park and the Ninth Avenue Terminal will create a significant gathering place for the city as a whole as well as significant new uses that will link to a larger open space system along Fifth Avenue and the Lake Merritt Channel to Lake Merritt and inland neighborhoods. The improvement and development of Embarcadero Cove is planned to create additional windows to the Estuary. The development of a new park at Union Point and improvements to the shoreline will create a new focus along the water for San Antonio, Fruitvale, and other inland neighborhoods. Extension of the Martin Luther King, Jr. Regional Shoreline westward to High Street will also provide open space opportunities for the Central East Oakland neighborhood.

Finally, the Estuary Plan establishes specific programs and strategies for implementation of the planning objectives. It includes regulatory, institutional, and financing policies that will guide conservation and development of the Estuary area over the next 20 years.



II-2 part iv.k - Once again, this is a series of lies. If you build a skyscraper next to the ShadeTree complex, you will bathe them in darkness. That is not what the court settlement called for and pretending otherwise may be actionable. If any building goes in there it must be the smallest of the entire Brooklyn Boondoggle complex, not the tallest. Existing residents have a right to enjoy their views, sunlight, wind patterns, and quietude.

II-2 part iv.L - It's not realistic to predict no schools will go in there. No merchants will be utilizing the 200K sq. ft. of empty retail, but eventually that space must get used somehow. A school would be a natural fit and thus everything written here will be called into question. If you insist on building all that wasted ground floor space, but do not allow for a school, who will use it?

As well, any marina on a weekend will have more than a usual neighborhood's share of drunks. So it's yet another fiction to claim there will be no need for extra maritime emergency services. It defies credulity to even claim this, honestly.

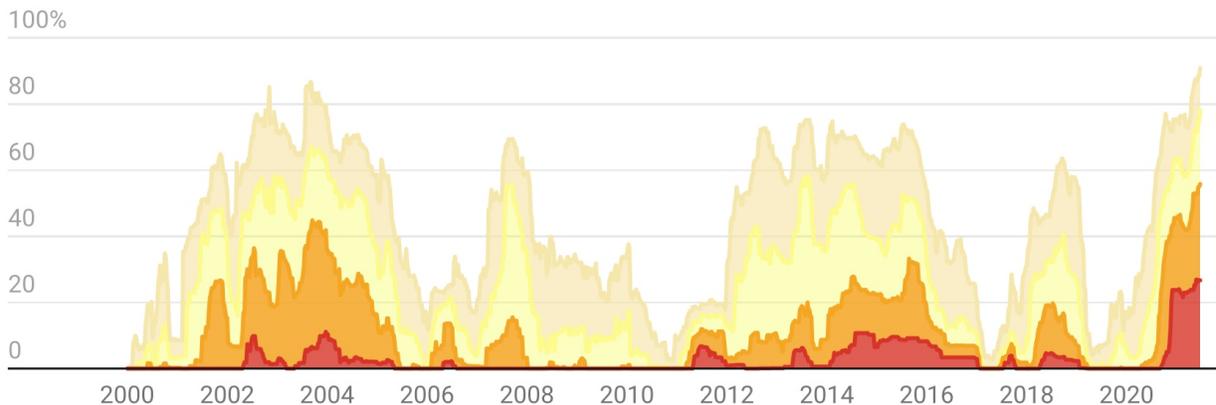
II-2 part iv.m - Won't increase water demand huh? Tell that to the 40 million current residents of this state, who are under drought rationing right now. Tell it to the 6 western states that are about to go dry because Lake

Mead is failing. There is NO venue in this state that can accommodate new residents, our water demands already far exceed actual availability. So your 'existing entitlements' go can pound salt. The potable water they will demand **does not exist**, regardless of your legal niceties. Accordingly, cancel this plan and instead, protect current residents.

## Drought worsens in the Western US

More than 90% of the U.S. West was in moderate drought or worse by late June 2021. More than a quarter was in exceptional drought, the highest level, indicating widespread risk of crop loss, fire and water shortages.

— Moderate drought or worse — Severe drought or worse — Extreme drought or worse  
— Exceptional drought



Data as of June 24, 2021

Chart: The Conversation/CC-BY-ND • Source: [Drought Monitor](#) • [Get the data](#)

### Chapter III (p.52)

III.B - These objectives could arguably have made sense in 2005, before we knew about climate change, sea level rise, the endless forest fires, the lack of water for 1/2 the nation, the draining aquifers, and the possible collapse of the world's ecosystems due to predation of animal habitats. They are laughably out of date now, and only a sociopath would countenance them in light of what society DOES know now. It's a fact borne out by every biologist and climate scientist alive today: if we destroy our wetlands then first the animals will perish... then we shall all perish too. How long can you survive without water?

### **How long?**

Every brick you put here at the water's edge hastens the death of waterfowl. Every boat that pollutes the bay that you sign off upon will be hoisting the jolly roger on oysters, smelt, rays, ducks, jellyfish, and frogs. It will be profoundly immoral for you to discount the rights of the biosphere and continue this project. It's childish to pretend these disasters will only happen decades from now, if at all. It's being willfully obtuse to pretend the Arctic ice isn't all melting; that enough of Antarctica might break off within a few years to raise sea levels globally by 10 feet.

Reputable scientist declare this daily, are doing everything they can to get every level of governments to act now NOT LATER. You are Planning Commission officials, the

change must begin with you. Here, now, on the ground level. You must stop this deadly project, and you must do it for the future.

III.e.2 - No, Tower L cannot grow taller, for reasons stated previously.

III.e.3 - No, just because once there was a marina, that does not translate to the present day as a good idea. Nature is on the brink, in a way that it was not threatened back when the 1st marina was created. To do our part for preserving the very sanctity of life itself, Oakland must take a stand and preserve this wee bit of land for the wildlife that need it to exist. You, Planning Commissioner, must be that guardian since they cannot do it themselves. Now is the time to do so.

III.e.4 - "In order to pamper spoiled rich folks, we'll keep 40'-0" ships idling bunker fuel all day every day at the newly built dock. But let's keep on pretending that there will be no environmental degradation from this marina." Give me a break. Later on in this proposal, they talk rosily of using electric boats and even make up KW numbers. Too bad no such water taxi's exist presently.

Just because the public can use it too does not mean that they will, in fact this point raises the class issue more

broadly. I have never once been to a marina that did not lock off its best & most useful parts from the general public. So despite the myths in this planning document, Planning Commissioners should carefully realize that **every inch of those drawings on the preceding pages is really, truly, denoting the areas that are going to be taken away and gated off from the public.** The issue raised here is no different from Pier 38 in SF: ostensibly the whole area is open to the public but in fact all one need do is walk around to realize that nothing could be further from the truth. Every inch of water access is tightly controlled and fenced. The water's edge is 100% denied to the general public. There is no reason to replicate such tomfoolery here in Oakland.

III.e.5 - For reasons stated above, the entire parking ratio formulation must be entirely tossed out and redesigned in light of A} actual driving patterns post-covid, B} actual driving/parking patterns of marina users and guests, and C} actual needs of existing residents. Using a 2005-era formula is no longer acceptable in light of current events. Would you use your 2005 mobile phone to navigate across town or across the state in 2021? Of course not. Time to update these outdated assumptions with a better traffic study.

III.e.7 - Don't.

III.f.1 - Do none of these, either.

Chapter IV (p.77)

I13.2-19 | IV.i - Significant, unavoidable changes to the baseline **will occur** here if you allow the installation of this mega-marina. What baseline? The one from 2005? Oh please, BCDC dispensed with that fiction more than a year ago. One must start from the present day. And the present day is a dire one. Everywhere, but most crucially here in CA, plants and wildlife are under heavy predation. If the fires don't get them, our megayacht anchors or propellers surely will. No. The time is NOW to stand up for these animals and put their needs above the goals of the pleasure-craft industry. Say no to boats, say yes to fish. Forget for a moment the legal niceties that have brought our state and this project to such a dire place. Close your eyes, remember back to September of 2020 when the sky literally turned red. Know that that event is tied directly to the actions you take today re: this marina. Know that one cannot separate the 'wild' kingdom from our own. Stop allowing such travesties to proceed.

IV.a.2 - Well, as noted, last fall the sky turned red and remained so for a week. So, maybe, perhaps; **they are dissembling** when they say "nothing relevant has changed". Their stubborn refusal to see this project as a

travesty - that part has not changed. But in fact any scientist will tell you that the whole planet is in peril. Your own eyes and lungs will tell you that Oakland is in peril from fire and lack. There is no justifiable case, in light of our present crisis, for a mega-marina. None at all. The soothsayers once told the Emperor that Rome would never fall. They used flowery language, (much like Plan Bay Area 2040 for example). Rome fell anyway. The facts on the ground do not match up with this planning document. Every biome on earth is in danger of extinction - - there is no reason to believe Oakland is being spared from these dangers. Deny the permit modification.

113.2-20 | IV.b Transit services - It's notable that this document crows about the "Free B" bus, which never comes within a literal mile of this neighborhood. And nowhere does the document address that 90% of BART's riders abandoned it and most will not return ever. Similarly, AC Transit runs a heck of a lot of empty busses too nowadays. That is not their fault. But it does reflect the fact that society changed its' mind about mass transit, once a deadly plague was unleashed upon it.

Times have changed, it's folly to pretend that 'business as usual' will return. In the case of mass transit and THIS project, it's not just folly but in fact a recipe for disaster and traffic nightmares. No part of what they envision will come

true. We are a nation that would storm its' own capitol in service of a lie. We are a nation that would murder a store clerk because they asked a customer to wear a mask. This document pretends that everyone living at Brooklyn Boondoggle will be some peace loving hippy walking, biking, or shuttling around merrily. That fact pattern is not borne out by current residents, and surely will not be the case for the future ones. They will be driving cars and trucks, your failure to manage that fact will be great if you approve these changes.

“While no routes directly serve the Project site, several AC Transit lines can be accessed at the Lake Merritt BART station (about 0.9 miles or an 18-minute walk from the Project site) including Line 18, 62, 88, and 96. AC Transit’s Line 12 serves the Jack London Square Amtrak Station (about 0.8 miles or a 16-minute walk from the Project site). The Free Broadway Shuttle stops at the Webster Street / Embarcadero intersection about 1.0 miles or a 20- minute walk from the Project site. The BRT stops, northbound on International Boulevard at 5th Avenue and southbound on East 12th Street at 7th Avenue, are about 0.6 and 0.7 miles or a 14-minute walk from the Project site.” (p.110)

The above quote is risible. **Nobody does this!** I have lived here for just shy of a decade, and I can count on 1 hand the number of times I have walked to BART. It is

simply too dangerous, passing through the hobo-alley choke-point on 5th Ave. I do bike it, sometimes, only in daylight. Thanks to the recent developer-created blight at Orion Oakland, we now have the robbers coming to us, so perhaps even doing that is not safe anymore. But this document, after 16 years, can only dolefully note that “No Routes Directly Serve The Project Site”.

No Routes Directly Serve The Project Site.

113.2-21 |

### **No Routes Directly Serve The Project Site.**

They have done nothing to remedy this, other than sometimes offer a bus that seats 12. On some days, at inconvenient times. So mostly it runs empty and sits balefully at the BART station. That’s not a solution. You know what people do do? They get in their cars, and drive! That’s what they do. I don’t like it. They should take mass transit, or take their chances against the hobo bands. But they drive. **And they will continue to do so.** That’s reality, not this feeble pretend document.

Oakland Alameda Access Project - If the state removes the nearest ramps from Hwy. 24, even for a while, it will automatically force more traffic to use the 880 16th St. & 5th Ave. exit ramps. Which are right at the heart of the Brooklyn Boondoggle. Therefore Planning Commissioners

can safely toss out the entire paragraph here as just another pile of lies. 115 pages in, it's hard not to get actively angry at all their falsehoods. I wonder if your entity can sanction them?

IV.d.1 Flooding and Sea level rise - This document acknowledges that BCDC made them use more current reference points but otherwise; it continues to play the same dirty game. Page 174 states they are now using 2018 data. In olden days, that would have been seen as up-to-the-minute data and who could quibble with it? Well, I can. Because there are dire warnings coming out almost daily now. A chunk of Antarctica, it was disclosed a few months ago, threatens to break off and if it does the whole planet would see a 10'-0" sea level rise. It's got low odds, that is true. But the odds are far from zero - - there is a real danger. Nowhere does this document address that risk. A 36" water rise in 70 years would be awkward. 10'-0" within a decade would be a catastrophe, full stop. Where is their plan for it?

The world is in a crisis. These developers are pretending that everything is fine. **You, the Commission, must set them straight.** Do not accept 2018 data, it's out of balance with what scientists are saying TODAY. On the face of it, it sounds crazy to have to plan for 10'-0" rise. Preposterous. But science doesn't care how we feel

113.2-22

about it, it merely IS. Once people said that Man would never fly, since we lacked wings. Now it's an accepted fact that we can fly. Nobel prize winning scientists are telling you that we could see a 10'-0" rise within this decade. Do not ignore them nor turn them into Cassandra. Use *Caution* as your primary guiding principle, force them to make a plan.

113.2-23 | IV.g Noise - As noted above, every part of this document ignores or discounts construction noise such as pile driving, because they assume it is temporary. **But a noise which persists from 2015 to 2038 is permanent**, let us be clear on that fact. It's also not acceptable. Insist on mitigation.

IV.i.3 Environmental Impacts - The matter here at hand is not about one Spotted Owl, not about a certain endangered species. It is about every species because in the last two decades humanity has turned EVERY species into endangered species. Frog populations are crashing. Bee populations are crashing. Fish populations are crashing. And yet these developers pretend that their hands are clean. Do not allow them to take this last vestige of ecological habitat.

Daniel Franco  
June 18, 2021



## Golden Gate Audubon Society

2530 San Pablo Avenue, Suite G • Berkeley, CA 94702 • Phone: (510) 843-2222 • Fax: (510) 843-5351

Americans Committed to Conservation • A Chapter of the National Audubon Society

July 2, 1997

John S. Nelson, AIA  
Hansen, Murakami, & Eshima  
100 Filbert St.  
Oakland, CA 94607

Re: Estuary Plan Treatment of Lake Merritt Channel

Dear Mr. Nelson:

I am writing as a follow-up to the presentations regarding the Lake Merritt Channel that were made at the June 26 Waterfront Coalition meeting and our brief encounter and subsequent phone conversation following the meeting. I write on behalf of the Golden Gate Audubon Society (GGAS) and the Lake Merritt Channel Committee of the Lake Merritt Institute (LMI). At present the Committee is comprised of myself, on behalf of GGAS and LMI, Paul Matzner, who spoke at the Coalition meeting, and who is Curator of the California Library of Natural Sounds at the Oakland Museum of California, Nancy Rieser, who also spoke at the Coalition meeting, representing the Merritt Lakesiders, Bruce Taylor, President of LMI, and Siana Heame, on behalf of Citizens for the East Shore State Park (CESP).

As explained by Mr. Matzner and Ms. Rieser at the Coalition meeting, the Committee is concerned over what appears to us to be a failure of the "Oak Through Ninth District" segment of the Estuary Plan to recognize and acknowledge adequately the significant ecological values, as well as the vulnerability of these values to disturbance from human intrusion, of the Lake Merritt Channel. We believe these properties of the Channel to be amply demonstrated by the following considerations.

Oakland possesses outstanding tidally-influenced wetland resources at both its eastern (San Leandro Bay/Arrowhead Marsh) and western (Emeryville crescent extension) borders. Between these geographic extremities, however, the Lake Merritt Channel represents the last remaining remnant of Oakland's once abundant natural-edge, tidally influenced wetland resources.

As a result of its ecological uniqueness and scarcity, as well as its proximity to the Lake Merritt bird refuge, the Channel area supports some of the most valuable as well as rare wildlife habitat in Oakland. The cordgrass, pickleweed and other salt marsh vegetation that grows in and adjacent to the channel supports a detritus cycle that in turn makes the area extremely attractive as a feeding and resting area to an impressive diversity of migratory and resident shore and water birds. Many of these birds also inhabit the nearby Lake Merritt bird refuge, but some, such as American Widgeon and the very rare Barrow's Goldeneye, tend to be seen only in the channel area. (In Table 6 of the recently adopted Open Space, Conservation, and Recreation Element (OSCAR) of Oakland's

General Plan, the Barrow's Goldeneye is recognized as an "endangered, threatened, or rare" animal species under federal or state Endangered Species Acts and thus as a "Special Status Animal Species in Oakland." Table 6 also identifies the Lake Merritt Channel as the principal habitat within Oakland for the Barrow's Goldeneye. Shorebirds, such as sandpipers, willets, godwits, and curlews frequent the Channel's mudflats, particularly during winter months when concentrations of migratory waterfowl are at their peak.

As a direct result of the diversity and abundance of the wildlife resources that the Lake Merritt Channel supports, it has been widely used as a site for environmental education and passive, resource-dependent recreation. For at least 20 years educational institutions, including the Oakland Public Schools and the Oakland Museum have used the Channel area to educate thousands of Oakland schoolchildren about ecology in general and feeding and migratory behavior patterns of waterfowl in particular. In common with Lake Merritt itself, the Emeryville Crescent, and Arrowhead Marsh, the Channel is a state designated "Watchable Wildlife" site which attracts large numbers of visitors for wildlife observation purposes. The Channel is also an established site for bird censusing during GGAS's Annual Christmas Bird Count.

The scarcity and value of the Lake Merritt Channel as a relatively undisturbed natural resource in Oakland is matched by its sensitivity to disturbance and consequent fragility. In contrast to other shore and water bird habitat areas in Oakland to which reference has been made, where birds can easily escape the perceived threat represented by human intrusion or proximity by paddling or walking away, the only defensive reaction available to birds in the narrow area of the Channel is to flush. Ornithological studies, a copy of which can be provided to you on request, have documented the adverse effects of this "flushing" reaction on the health and resilience of migratory waterfowl who are dependent on undisturbed periods of rest and feeding to survive the rigors of long migrations.

The "Oak to Ninth" Estuary Plan segment repeatedly lists as an "important objective" the "linkage of the Estuary with Lake Merritt along the Lake Merritt Channel," an "extension [along the Lake Merritt Channel] of the public-oriented activities that ring Lake Merritt...to the waterfront" (p. 1), "a continuous system of public open spaces and activities between Lake Merritt and the Estuary" (p. 4; emphasis added), and the creation of "uninterrupted public access...between Estuary Park and the trail along Lake Merritt Channel" through construction of a "pedestrian overcrossing," and the creation adjacent to the Channel of "additional open space and recreational playing fields" (p. 11; emphasis added). The Plan also calls for a "transition toward a mix of new urban uses" to, among other goals, "contribute to an active public environment along Lake Merritt Channel" (p. 18; emphasis added). Finally, in its discussion of the proposed Pan Pacific Exposition, the Plan reveals the full extent of what it has in mind for the Lake Merritt Channel area when it endorses the extension of "exhibition venues...along the Lake Merritt Channel to Lake Merritt" (p. 18).

existing environmental values and will complement plans for similar wetland restoration activities that the LMI has developed for Lake Merritt itself. We strongly support these plan revisions as well as the others (such as deletion of the proposal to fill Clinton Basin) that were made in response to the concerns of the Fifth Avenue community.

If you feel a meeting in person to discuss our concerns in greater detail would be of assistance to you, we would be happy to cooperate. In any event we thank you for your consideration of these comments and look forward to assisting in the production of an Estuary Plan that can command universal support. If you have any questions regarding these comments please feel free to contact me during workdays at 415/904-5229.

Sincerely,

John Bowers  
Member, Board of Directors, LMI  
Member, Conservation Committee, GGAS

IV.i.3 Operational Impacts - **adding 325 pollution vectors to an area that presently has almost none certainly will vastly increase vessel activity.** It's true that most rich folks don't ever use their boats, they are content let their petty status symbols rot dockside and leak into the water without fear unless a diligent Harbormaster takes an active role. But most Bay Area marinas have a poor track record of enforcement of rules against their rich tenants. There is no reason to believe this new mega-marina will follow a different pattern, given that it will be controlled by people known for dumping containers full of tools into the bay. So Planning Commissioners must rightly conclude that both a large increase of activity will occur, and that such activity will dramatically increase spillage, dumping, peeing into the bay, etc. For the flora and fauna killed, there won't be 'mitigation', they will simply be dead.

IV.i.3 Impacts on Migratory wildlife corridors -  
Commandeering 100% of the shoreline for human activity denies 100% of migratory wildlife the ability to survive or thrive. Duh. Look, in 2018 the count of migrating Monarch butterflies for this area (the whole Bay Area) was 300 butterflies. That's down from millions, or tens of thousands from merely a decade ago. There is no credible argument that loss of shoreline and habitat isn't to blame for this butterfly apocalypse. So it is with every other species counted by biologists. Fish stocks are in

113.2-24

free fall, worldwide and here. Frogs are presently suffering an armageddon worldwide and here, too. So this marina must rightly be seen as the plague that it will be. Instead of giving flora and fauna a fighting chance to live, there will be a playground for the rich composed of leaky boats rotting at their docks.

I13.2-25 | “Migratory bird species that pass through the Project Site include waterfowl, shorebirds, pelicans and songbirds. These birds have numerous options for stopover habitat during migration through the San Francisco Bay Area, and would not be substantially impacted by the temporary loss of Project Site stopovers.” (page 254)

Yes, this is true! They can stop off at the Port of Oakland. No, wait, they cannot because there is too much human activity there. There goes 50% of the shoreline of the city. No problem, they can simply stop off at Jack London Square. No, wait, they cannot because a marina already exists there, denying them access or breeding grounds. Fine, how about south of this site? Nope, too bad, we put in a Military facility and several heavily used bridges so I guess you can all just keep on moving, migratory animals! Say hello to San Leandro!! Or, just do what every biologist laments, keep on dying off in record numbers that threaten the very biosphere we have lived within for millions of

*years. It's too bad for you, migratory animals, because Mike Ghielmetti wants a new boat slip.*

Fact is, the city's shoreline is impaired & impacted by human activity. To take away this last remnant would be a crime against nature.

Impact BIO-6 - Despite their assertions, the shoreline commonly known as "the end of the world" which is next to section L and will already be damaged by the "South Park" is the last remaining protected wetland. It is shown in a dramatically reduced form on page 87 of their planning document. **In their mega-marina drawings it is conveniently omitted altogether. It will be replaced by dock L1.** All the more reason to deny this permit entirely.

IV.k.1 - It is my understanding that the previous court case addressed the need for ShadeTree and it's existing neighbors to continue to enjoy access to southerly presenting sunlight, and so the placing of the tallest towers of the entire project next to the ShadeTree property is an idea that is already forbidden. As well, should the Planning Commission accept the fact that wetlands exist, this further constrains and argues AGAINST building skyscrapers on parcel K or parcel L. Migratory birds cannot access shorelines that they cannot locate. Duh. Commissioners should recall that the other portion of this

site intended to be some form of wetlands was instead turned into a sewage drain (over by parcel A). This occurred despite the promises of Signature Properties made during previous hearings. That cannot happen again, these mudflats must remain actually usable as habitat for the critters that already live there.

Figure IV.k-6 - **The name 'ShadeTree' is meant to be a poetic metaphor. Sadly Mr. Ghielmetti and his henchmen have taken the phrase all too literally.** No, it cannot be allowed for parcel L to bury the ShadeTree and 5th Avenue Marina residents under a pile of darkness. Zarsion has 90 acres to play with, 90 acres stolen from the birds and other fauna. Let them put their skyscraper far away from ShadeTree, as was previously stipulated after a long court battle.

I call into question the methodology of this series of drawings. Having lived at 5th ave. for nearly a decade, with only south-facing windows, it has not been my experience that sun and shade patterns follow these scenarios as laid out. Most especially, the afternoon projections appear to be completely drawn as fictional, wishful thinking. Where is the proof? Why do these calculations stop at 3pm? What are they hiding?

113.2-26

Figure IV.k-15 - This one, this is much closer to reality, and not just at 9am, not just at that time of year. We are not so far from the equator as to be the arctic circle, as these made-up drawings would have you believe. In fact all year round, the sun actually doesn't change a heck of a lot here. Use this and only this rendering as your guide for denying their permit, since this is the only accurate one.

Impact PS-2 - It really does get tiring reading all their lies. ALREADY we have a crime wave, with only 1.5 buildings open to the public. Already we had 3 people get mugged in April, for example. No one had been held up at gunpoint here since the 1970's - - but now it is a common matter. Already we have seen car thefts spike to a level never seen before. It may have been unwise of me, but it is factually the case that in 2014 I left my wallet sitting on the front seat of my car, parked on 5th Ave.; for 6 days. When I returned home the car was still there, the wallet was still there. That is how safe this neighborhood was, until Zarsion brought the criminals with their blight. Enough of this.

At a minimum this project and it's steady supply of drunken boaters will be taxing the first responders in a way they never have seen. Where is there proof that these modifications will be adequately served by law enforcement and emergency services? Those systems

I13.2-27

cannot even stop the crime happening today, let alone the surge of drunken frat-boys that will be attracted by the mega-marina.

Impact PS-6 - Considering that actual protected wetlands will be paved, re-shaped, and turned into sidewalk access for Dock L, (according to their own diagrams), this statement is manifestly false: “The Project Modifications would not alter the approximately 31 acres of public open space under the Approved Project.” If you accept the 1st sentence of this section as false, you may then presume the whole section is lies as well. Moving on...

IV.m - As noted before, right now there is not enough drinkable water for the current population of this state, let alone the entire Western United States. Do not build these monstrosity buildings which will only lure more people to CA and break even further our already broken water system. No credible argument can be made that resources exist to support new residents to the area. Relying on 2009 legal fictions will not change the reality - we are facing a multi-decade drought, and the results will be poor for all. Making the problem worse by bringing in new people would be a mistake. We are literally stealing water from our children and grandchildren by draining worldwide aquifers below replenishment levels and capturing all the snow runoff. Do not countenance making that problem worse just so that Zarsion can buy more

113.2-28

yachts for their C-suite. Do the right thing and cancel this mega-marina and these properties.

IV.m, Electricity - Since preparation of the 2009 EIR, PG&E has also destroyed a large chunk of San Bruno through incompetence, burned down entire cities 40 miles north of here, and cannot today as of this writing 6-18-21 even supply enough daytime power for existing residents of the East Bay. Literally nothing they have said can be trusted, and they have far too much blood on their hands to be considered a reliable source of data. Accordingly this entire section must be assumed to be falsehoods or erroneous. There is no credible case that adding all these power users to the existing grid is possible, feasible, or wise. Simply put - there is not enough to go around right now, and no plan exists to boost supply, so these buildings must not be built.

The Embarcadero has beneath it a main-line gas trunk. This is due to there once having been a 'Key-system' power plant and heavy industry along the road a century ago. So Zarsion COULD make an argument for supplying its' own electricity off-grid, via on-site turbines, but they are not doing so. As well, natural gas has been shown to be contributing to the climate problem and so cities and counties are now deprecating its use for residences. It is noteworthy that the former power plant was simply buried

on this exact site decades ago; meaning that methane, mercury, and other toxic wastes are likely still under this soil and should not be disturbed.

V.a Biological Resources Impacts BIO 2-8 - It is no longer acceptable to ignore the wildlife. By only looking for endangered species using the narrowest possible definition, this applicant seeks to dance around the fact that plenty of other wildlife will be wiped out by this construction and ongoing use of their homes for boat pollution, fecal waste, and other slop that the marina users will dump on a regular basis.

They are claiming, that because they horse-traded away wetland-credits to Redwood City a few years back, this means nowadays destroying the last bit still here does not count. That's not the case, not part of the Moby Dick ship destruction deal, and not fair to the critters who live there. No fish got to vote on that agreement. No bird was consulted. Nor for that matter were any humans who could have objected, such as the local Audubon Society. Zarsion should not be further rewarded for this new round of malfeasance.

V.c.2 - No Marina Expansion - sounds great. In fact, build no boat slips at all instead. *"No Marina At All"* << now that's the best alternative.

V.c.3 - No Tower Relocation - ibid. “The No Tower Relocation Alternative would not add two potential tower sites to Phases III and IV and would not alter the Approved Project’s aesthetics impacts from on-shore development.” Indeed, this is the only idea worth pursuing. “In summary, the No Marina Expansion Alternative is considered the environmentally superior alternative as it would avoid and/or substantially reduce new Biological Resources impacts.”

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**NO.**

No to any permit modifications, no to a mega-marina, no to a super-skyscraper blocking out the sun.

The ecological value of the site is incalculable. Deny all requests in this matter to protect it from becoming another venal playground for the rich.

## Supplemental Materials

### OBJECTIVES FOR THE OAK THROUGH NINTH DISTRICT

The Oak through Ninth District provides a uniquely different opportunity than other portions of the Oakland Waterfront. The considerable amount of publicly held land, its relationship to other parts of the community—including Lake Merritt and the Jack London District—and its unrivaled orientation to the Estuary contribute to its public significance, and to its potential to achieve larger citywide goals as well as specific objectives for the Estuary. Many of these objectives have been articulated by the community in previous planning efforts and in the current General Plan process. These include:

***Reconnect the Oak through Ninth District with the remainder of the city, and overcome the barriers presented by transportation facilities along the waterfront.*** This portion of the waterfront has been particularly isolated from the surrounding city by the I-880 Freeway and the Southern Pacific and Union Pacific rail corridors. As rail is consolidated and as maritime and industrial properties transition to new urban uses, new patterns of development and public infrastructure should be established to overcome the significant barriers and to create stronger linkages between the waterfront and inland areas.

***Create a system of open spaces and publicly oriented activities that link the waterfront with Lake Merritt.*** There is a considerable amount of public and quasi-public property along the waterfront and Lake Merritt Channel. Planning for these properties should be carefully coordinated to create a continuous system of public open spaces and activities between Lake Merritt and the Estuary. For instance, opportunities for consolidating and intensifying Laney College parking as well as the Peralta Community College District's corporation yard and offices should be considered as a means of creating additional open space along the channel.

***Balance public access with the conservation and enhancement of wetland areas along Lake Merritt Channel, so that it can continue to provide habitat for fish and wildlife.*** In addition to its role as a key public access link between Lake Merritt and the Estuary, Lake Merritt Channel serves as an important natural resource, supporting valuable and rare wildlife habitat. As such, the improvement of the corridor should be undertaken in a manner that maintains and enhances the ecological value of the area. To this end, improvements along the channel should include, but not be limited to restored wetland and marsh habitat along the channel; setting back of trails from the shoreline and installation of suitable buffer planting to prevent public intrusion in nesting and resting areas; seasonal routing of pedestrians to avoid sensitive habitats; pet restrictions; and informational signage. To the extent feasible, these treatments should also be extended along the shoreline at the mouth of the channel, west of Fifth Avenue.

**Establish a waterfront-oriented public open space that provides the city with a place for major civic celebrations and active recreation.** At least 20 acres of land at the mouth of Lake Merritt Channel should be designated for a major open space that can be used for civic celebrations and active recreation. This open space would connect to existing open spaces and recreational areas along the waterfront, including an expanded and enhanced Estuary Park as well as open space east of the channel. This is particularly important as major civic events (e.g., Cirque du Soleil) become too large to be accommodated in the Jack London District. In addition, the City is deficient in playing fields for its citywide recreational programs; the waterfront offers opportunities for the alleviation of this deficiency through the provision of soccer, softball and baseball fields, as well as water-oriented recreation activities along the shoreline.

**Provide for continuous public access along the shoreline between the Jack London District and Embarcadero Cove.** The redevelopment of the waterfront in the Oak through Ninth area should provide for the extension of shoreline public access from Estuary Park across Lake Merritt Channel and along the water's edge to Embarcadero Cove. The open spaces and accessways should offer a range of experiences in relation to the varying water spaces along the shoreline, including the protected nature of Lake Merritt Channel, the expansive views from the southern edge of Ninth Avenue Point, and the sheltered character of Embarcadero Cove and the Coast Guard Island.

**Preserve and expand the existing Fifth Avenue Point community as a mixed-use district of artists and artisan studios, small businesses, and water-dependent activities.** The Fifth Avenue Point community is a unique cultural and business district within Oakland. As such, the area should be preserved and enhanced through rehabilitation and replacement of existing structures and the expansion of the district east of Clinton Basin to create a vital mixed-use district devoted to artist and artisan live/work studios and small light industrial and water-dependent businesses. The area should be developed with a fine-grained parcelization pattern that promotes a pedestrian-oriented environment with a network of streets, walkways, courtyards, waterfront promenades, parks, and plazas.

**Reinforce the waterfront as a place for the expression of the city's arts and cultural life.** Oakland is a community with a rich and diverse cultural life and an active artist community. In conjunction with preservation of the Fifth Avenue Point community and the creation of public-oriented activities and open space, the redevelopment of the waterfront should also pursue the feasibility of the Oak through Ninth District as a site for the Artship, as well as for the Oakland Museum of California's Treasure House.

**Facilitate the relocation of break-bulk cargo operations from the Ninth Avenue Terminal.** In order to achieve the vision for the waterfront in the Oak through Ninth area, it is essential that the existing and related maritime activities at and adjacent to the Ninth Avenue Terminal be accommodated elsewhere. The Oakland army base provides a similar break-bulk cargo facility

2} <https://www.theguardian.com/science/2021/jun/17/earth-trapping-heat-study-nasa-noaa>

Scientists from the agency and NOAA say Earth's 'energy imbalance' roughly doubled from 2005 to 2019 in an 'alarming' way.

The Earth is trapping nearly twice as much heat as it did in 2005, according to new research, described as an “unprecedented” increase amid the climate crisis.

Scientists from Nasa, the US space agency, and the National Oceanic and Atmospheric Administration (Noaa), reported in a new study that Earth’s “energy imbalance approximately doubled” from 2005 to 2019. The increase was described as “alarming”.

“Energy imbalance” refers to the difference between how much of the Sun’s “radiative energy” is absorbed by Earth’s atmosphere and surface, compared to how much “thermal infrared radiation” bounces back into space.

“A positive energy imbalance means the Earth system is gaining energy, causing the planet to heat up,” Nasa said in a statement about this study.

Scientists determined there was an energy imbalance by comparing data from satellite sensors – which track how much energy enters and exits Earth’s system – and data from ocean floats.

This system of data-gathering floats, which stretches across the globe, allows for “an accurate estimate of the rate at which the world’s oceans are heating up”.

Because about 90% of excess energy from an imbalance winds up in the ocean, the satellite sensors’ data should correspond with temperature changes in oceans.

“The two very independent ways of looking at changes in Earth’s energy imbalance are in really, really good agreement, and they’re both showing this very large trend, which gives us a lot of confidence that what we’re seeing is a real phenomenon and not just an instrumental artifact,” said Norman Loeb, lead study author and a Nasa researcher.

“The trends we found were quite alarming in a sense.”

Upticks in greenhouse gas emissions keep heat in Earth’s atmosphere, trapping radiation that would otherwise move into space. This warming spurs other changes, including ice and snow melt. An increase in water vapor, and changes to clouds, could further exacerbate this warming, Nasa said.

The study found that this doubling is the result, in part, by an increase in greenhouse gases and water vapor, as well as decreases in clouds and ice.

Researchers also said that a “naturally occurring” shift in the Pacific ocean from a cool phase to a warm one probably had a significant role in amplifying this energy imbalance.

“It’s likely a mix of anthropogenic forcing and internal variability,” Loeb said. “And over this period they’re both causing warming, which leads to a fairly large change in Earth’s energy imbalance. The magnitude of the increase is unprecedented.”

Loeb did say, however, that this research provides only a glimpse in relation to longterm climate change, and, according to Nasa, that “it’s not possible to predict with any certainty what the coming decades might look like for the balance of Earth’s energy budget”.

The study did determine that unless the rate of heat uptake slows, greater shifts in climate should be expected.

2.1} [https://www.salon.com/2021/07/11/trees-are-dying-of-thirst-in-the-western-drought-\\_partner/](https://www.salon.com/2021/07/11/trees-are-dying-of-thirst-in-the-western-drought-_partner/)

“...according to the U.S. Forest Service, in California, **over 129 million trees** died as a consequence of a severe drought in the last decade, leaving highly flammable dry wood that can fuel future wildfires.”

3} <https://www.globalonenessproject.org/library/films/when-town-runs-dry>

When A Town Runs Dry: As the unusually early wildfire season begins in the west, I’m reminded of Terry Tempest Williams’s piece, “A Burning Testament,” which was written as an “obituary for the land” for The New York Times late last year. She writes, “To the power of these burning, illuminated western lands who have shaped our character, inspired our souls, and restored our belief in what is beautiful and enduring—I will never write your obituary— because even as you burn, you are throwing down seeds that will sprout and flower, trees will grow, and forests will rise again as living testaments to how one survives change.” In addition to the power of renewal, Williams writes of grief and love in this moment of undoing.

Most of the mid-west is experiencing a severe drought this year. National Geographic describes this 'megadrought' as the longest-running stretch which "rivals anything in the last 1200 years, a sign of climate-change induced 'aridification'." Two million people in Northern California, where I live, have been placed under a water shortage emergency.

We explored the impacts of drought in California in our short film *When a Town Runs Dry* by Joris Debeji. The story explores the California drought through the eyes of three residents—a farmer, a shopkeeper, and a high school football coach—living in the small Central Valley farming town of Stratford. All three men lament the loss of a way of life dependent on a consistent supply of water as they prepare for an uncertain future.

The Western United States has been facing a long-term, "mega-drought" for approximately 15 years. Some farmers in the California's Central Valley, the country's most productive agricultural region, have responded by selling land or cutting back on farmed acreage, while others dig deeper wells to maintain crop yields. Groundwater in the area has significantly diminished due to over-use. According to National Geographic, scientists warn that this drought will likely worsen in time, transitioning to a "35-year or longer" mega-drought impacting much of the West.

The last mega-drought to hit the United States began in 1934 and lasted ten years. Now referred to as "the dust bowl," that drought impacted three-quarters of the Western United States. Caused by weather patterns, its impacts were exacerbated by farmers who removed the native grasses, which are known for their long and thick roots, to plant crops that were not drought resistant.\* These thinly rooted crops failed with the lack of rainfall, leaving dusty fields behind. According to the National Oceanic and Atmospheric Administration (NOAA), approximately 50,000,000 acres of land were affected by that drought. The human and socio-political impacts were significant, creating the largest migration event in U.S. history, as people fled the area. By 1940, 2.5 million people had left the plains states, 200,000 of those went to California.

4} <https://www.theguardian.com/us-news/2021/may/30/california-drought-water-shortage-photo-essay>

5} <https://www.theguardian.com/environment/2021/may/01/florida-rights-of-nature-lawsuit-waterways-housing-development>

“Our waterways and the wildlife they support have been systematically destroyed by poorly planned suburban sprawl. They have suffered in silence and without representation, until now.”

A network of streams, lakes and marshes in Florida is suing a developer and the state to try to stop a housing development from destroying them.

The novel lawsuit was filed on Monday in Orange county on behalf of the waterways under a “rights of nature” law passed in November. It is the largest US municipality to adopt such a law to date.

The listed plaintiffs are Wilde Cypress Branch, Boggy Branch, Crosby Island Marsh, Lake Hart and Lake Mary Jane.

Laws protecting the rights of nature are growing throughout the world, from Ecuador to Uganda, and have been upheld in courts in India, Colombia and Bangladesh. But this is the first time anyone has tried to enforce them in the US.

The Orange county law secures the rights of its waterways to exist, to flow, to be protected against pollution and to maintain a healthy ecosystem. It also recognizes the authority of citizens to file enforcement actions on their behalf.

The suit, filed in the ninth judicial circuit court of Florida, claims a proposed 1,900-acre housing development by Beachline South Residential LLC would destroy more than 63 acres of wetlands and 33 acres of streams by filling and polluting them, as well as 18 acres of wetlands where stormwater detention ponds are being built.

In addition to seeking to protect the waterways’ intrinsic rights, the suit claims the development would disrupt the area’s hydrology and violate the human right to clean water because of pollution runoff from new roads and buildings.

Chuck O’Neal, president of campaign group Speak Up Wekiva who will be representing the wetlands in court, told the Guardian he looks forward to giving them a voice. “Our waterways and the wildlife they support have been systematically destroyed by poorly planned suburban sprawl. They have suffered in silence and without representation, until now.”

The housing development, known as the “Meridian Parks Remainder Project”, needs a development permit from the city of Orlando and a dredge-and-fill permit from the Florida department of environmental protection to proceed. The suit seeks to block these from being issued.

O'Neal said he hopes the court "reaches beyond current conventional thinking" in considering the case. "This is how the evolution of rights has occurred in western law since the signing of the Magna Carta through the abolition of slavery, through women's suffrage and through court decisions such as Brown vs the Board of Education and most recently the acceptance of marriage equality."

Thomas Linzey, senior legal counsel at the Center for Democratic and Environmental Rights who helped secure Orange county's rights of nature law last year, said: "Given the rampant development that's occurred in Florida over the past 30 years, and the power struggle between the state government and local government over these issues, there are multiple grounds for a court to hold that the development cannot proceed as proposed."

The center calculates that more than 9m acres of wetlands have been destroyed in Florida since it became a state in 1845. They say this has had profound impacts on water quality and species, as well as flood control.

The Florida department of environmental protection said it would not comment on pending litigation. Beachline South Residential could not be reached directly for comment. But in its November application for a dredge-and-fill permit it said it would offset the damage caused by buying federal mitigation credits.

Since the success of Orange county's charter amendment, which was approved overwhelmingly by voters, the Florida Rights of Nature Network has received requests for assistance from citizens in municipalities around the state.

The case echoes global developments, such as a lawsuit filed on behalf of the Vilcabamba River in Ecuador, which pioneered the establishment of nature rights in that country's constitution. The court ruled in favor of the river in 2011 and ordered damage caused to it by a road-widening project to be remediated.

In 2017, an Indian court declared that the Ganges and Yamuna rivers as well as Himalayan glaciers, lakes and forests should be given legal personhood in an attempt to protect them from environmental damage.

6} <https://arstechnica.com/science/2020/10/projecting-peak-water-and-peak-grain-for-the-us-high-plains/>

“Peak oil” is a familiar phrase that refers to the point when oil production ceases its steady upward climb and begins to decline. It has its roots in a mathematical curve proposed by geologist M. King Hubbert in the 1950s, which he applied to total US production.

That same curve has been used to describe the depletion of groundwater in regions where water is replenished much too slowly for heavy use to be sustainable. In the United States, that famously includes the Ogallala Aquifer beneath the croplands of the High Plains region.

Hubbert’s curve is fairly simple, rising and falling symmetrically on either side of the peak. More specific forecasts of “peak water” require a bit more sophistication. To capture that complexity while keeping things simple enough to easily generate a big-picture view, a new study led by Assaad Mrad at Duke University actually used some math that’s similar to another familiar relationship: the predator-prey interactions of the food chain.

Preying on water: Just as predators and prey each respond to changes in the other, the mathematical model here allows for feedbacks between the costs of chasing a shrinking resource and the profits of agricultural output through irrigation. Set up to represent Texas, Kansas, and Nebraska, the model tracks the area and volume of groundwater aquifers, the amount of rainfall that infiltrates to recharge them, and the irrigation techniques that turn water into crop yields.

In the model, potential gains in crop yields can drive expansion of wells and pumping, but the energy costs of pumping from deeper depths can also drive investment in more efficient irrigation. Overall, the model produces two curves: one for groundwater use over time and the other for total crop production over time. Both can peak and decline.

Let’s take Kansas first. The model curve represents increasing groundwater use as irrigated cropland area rose through the 1970s and peaked in the 1990s. The model now forecasts declining groundwater use over the coming decades.

It also forecasts that crop production has peaked in the last few years. Part of the continuing growth in production is attributable to trends in the *type* of crop, the researchers say. Winter wheat and sorghum yield less per acre than corn does, and corn’s share of irrigated cropland has grown over time. That helped delay the peak a bit, but it peaked nonetheless.

In Texas, the analysis gets more complicated. Groundwater use peaked in 1966, the researchers say, with peak crop production arriving in 1975. But around the 1980s, both started to rise again. That's due to the adoption of much more efficient irrigation—what's known as Low Energy Precision Application techniques. This involves sprinkler heads that hang down nearly to ground level, with furrows in the soil to catch water and keep it from moving far.

With more “grain per gallon,” increased water use became profitable for a while until depletion and energy costs caught up again. A second, lower peak in groundwater use occurred around 1997, while the model sees a *higher* second peak in grain production around 2012.

Water in, water out: Nebraska, by contrast, actually has a relatively steady outlook. Nebraska has the best groundwater resource of these states, both in terms of volume of water and the rate at which it replenishes. That's not due to rainfall, as these states are actually similar in that regard, although warmer temperatures in Texas can drive more evaporation. Instead, the researchers say, Nebraska's sandier soils allow more rain to infiltrate into the ground and recharge the aquifer.

As a result of combining this advantage with the use of efficient irrigation, Nebraska's groundwater use reached stable plateau around the year 2000. Because of that stability, the model projection allows grain production to increase through to the end in 2050.

One takeaway here is obvious: the future of irrigated agriculture in Nebraska looks much healthier than in Kansas or Texas. It's certainly possible for another technological advance to come along and improve things, as the sudden uptake of more efficient irrigation in Texas showed. But reversing these trends is unlikely. A plausible but large future efficiency gain in Texas could cause a third grain peak, the researchers say, but it would fall short of the second peak.

As for the Hubbert curve, the researchers point out that the closer you are to sustainable water use, the less Hubbert-like things look. Texas was so far from equilibrium that the curves come out pretty symmetrical (double hump notwithstanding). But when the ledger is a little less dire, the trends on either side of the peak can be markedly different, necessitating a different mathematical approach.

The researchers argue that their particular approach is useful and applicable to other regions facing the same problems. But on the simplest level, this just expands on a reality that's well-known to anyone with a bank account: you cannot keep taking out more than goes in.

PNAS, 2020. DOI: [10.1073/pnas.2008383117](https://doi.org/10.1073/pnas.2008383117)

7} <https://www.vox.com/21452781/zogg-fire-glass-wildfire-california-climate-change-hurricanes-attribution-2020-debate>

Why we're more confident than ever that Climate Change is driving disasters: there are long-term changes underway that could have an impact on all of these blazes. In a [2016 study](#), Abatzoglou reported that half of the increasing fuel dryness in western forests since the 1970s was attributable to climate change caused by humans.

"...California is also still reeling from the effects of a [massive drought](#) from 2011 until 2017 that helped kill off more than [140 million trees](#) across the state. That drought was [exacerbated by climate change](#), and warming has increased the likelihood of extreme drought in the region."

Back in [2017](#), record-breaking [hurricanes](#) like Maria and [wildfires](#) like Tubbs hammered the United States. But the specific role of long-term global warming was a tentative part of the discussion, with scientists speaking of it cautiously, in broad strokes.

Compare that with 2020, where researchers now [have far more data](#) showing just how much climate change affects the frequency and likelihood of heat waves (and fires that follow them), [ocean heat waves](#), droughts, and intense storms. That has risen alongside a growing public awareness of how climate change is playing out. A 2019 [Pew Research](#) poll found that 62 percent of Americans said climate change was impacting their local community. [CBS News](#) reported that a majority of Americans now believe climate change is contributing to extreme weather.

In turn, more public officials and media personalities are directly connecting climate change to some of the disasters underway.

During Tuesday's first 2020 presidential debate, moderator Chris Wallace posed a question to President Donald Trump, after referencing the wildfires raging in the West: "Do you believe that human pollution, greenhouse gas emissions, contributes to the global warming?" Wallace asked.

"I think a lot of things do," Trump responded, before launching into a meandering answer blaming California's wildfires solely on forest management.

That such a question was asked during a presidential debate is a stark shift from the 2016 campaign, where climate change barely came up at all, let alone its role in disasters.

"I think the question has started to change from, 'Was this event due to climate change?' to, 'How was this event changed because of climate change?'" said Kevin Reed, an associate professor at Stony Brook University who leads the climate extremes modeling group. "The science has definitely improved. But I think a big part of what's improved is also the dialogue about trying to understand the nuances of what is the impact of climate change on extreme events."

While the long-term heating of the planet resulting from humans' greenhouse gas emissions is not the "cause" of massive wildfires and powerful hurricanes, it can be a component in their severity, frequency, or likelihood. We have more certainty about that, thanks to an emerging scientific field known as extreme-event attribution. Here, scientists construct models to evaluate the counterfactual of what would have happened in a certain event without climate change and compare it to observed results.

Scientists working in this field acknowledge that for phenomena as complicated as wildfires and hurricanes, there are many other factors at play. That includes natural variability from climate cycles like El Niño, as well as policy decisions like the suppression of naturally occurring wildfires and allowing forest fuel to accumulate.

Yet as even attribution science has become more and more important to the public understanding of climate change and extreme events, some in conservative circles dismiss it, particularly around the disasters this year.

President Trump has long been dismissive of climate change. When told about the role of climate change in wildfires during a White House briefing, he said, "It'll start getting cooler. You just watch." Environmental

Protection Agency administrator Andrew Wheeler also diminished the role of climate change in wildfires. “I do believe most of it is forest management issues,” he told [Cheddar](#) on September 22.

Some right-wing personalities have been much more blunt, claiming such events have “[nothing to do with climate change](#).” Others promoted [conspiracy theories](#) like the one claiming wildfires are purely due to a wave of [arson](#).

Understanding the interplay of all the variables in extreme weather isn’t just an academic discussion; the role of climate change in disasters affects how we plan for the future, how we reduce risk, and how we adapt. That’s why it’s worth highlighting how our understanding of these phenomena has improved in recent years, why it’s important to unpack how rising average temperatures are fueling destruction, and why it’s critical to address these concerns now.

### **Climate change is priming fuels to create massive wildfires**

Just this past weekend, another round of wildfires ignited in Northern California, prompting middle-of-the-night emergency evacuation orders in places like Butte County and Sonoma County. The new blazes have killed at least three people. By Wednesday evening, the Glass Fire in Napa and Sonoma Counties and the Zogg Fire in Shasta County, California, had together consumed close to 100,000 acres.

Meanwhile, the [National Weather Service](#) has issued a red-flag warning for wide swaths of Southern California as another heat wave and high winds are raising fire risks.

These blazes are only adding to what has already been an [unprecedented wildfire season](#) across much of the Western United States. In California, it’s now the [worst fire season on record](#) in terms of area burned. And [more blazes](#) are likely in store.

Wildfires are a natural and essential part of many ecosystems, particularly in the Western United States. Periodic fires help clear decay in forest and grasslands, help plants germinate, and return vital nutrients to soils.

However, humans have been making wildfires worse in recent years, expanding their scale and their devastation. People are building closer to fire-prone regions, increasing the opportunities to ignite fires and raising the damage tolls of fires that do occur.

Paradoxically, decades of suppressing naturally occurring fires have led to vegetation in these ecosystems accumulating to high levels so that when they do dry out, there's far more fuel to burn. In some forests, that fuel also changes the nature of fires, from low-intensity burns close to the forest floor to towering flames that torch tree canopies.

And humans are changing the climate.

There's now a growing pool of research identifying the specific role of human-caused climate change in wildfires. A study from the [World Weather Attribution](#) research consortium examined [Australia's massive bushfires](#) this year. It found that climate change increased the likelihood of the conditions that fueled the blazes by at least 30 percent.

Another study looking at 2017's record-breaking [fire season in British Columbia](#) reported that climate change made the conditions behind those fires two to four times more likely and increased the burned area between seven- and elevenfold.

In Arizona and New Mexico between 1984 and 2015, a study in the journal *Forest Ecology and Management* found that climate change is increasing wildfires, particularly high-severity fires.

One key risk factor for wildfires is the [vapor pressure deficit](#). This is the difference between how much moisture the air could hold and how much moisture is actually there. Air can absorb about 7 percent more water for every degree Celsius the air warms. But just because the air *can* hold on to more moisture doesn't mean that it does.

A high vapor deficit means that the air is very dry, which means it can draw more moisture out of vegetation. That leaves grasses, trees, and shrubs primed to burn.

This year, California experienced some of the [highest vapor pressure deficits](#) in decades, leaving the state's forests and its semi-arid shrub land known as [chaparral](#) parched as [record-breaking heat](#) baked the state. Scientists have found that this metric has been increasing since the 1970s due to climate change.

"Among the many processes important to California's diverse fire regimes, warming-driven fuel drying is the clearest link between anthropogenic climate change and increased California wildfire activity to date," researchers wrote in a 2019 study in the journal *Earth's Future*.

John Abatzoglou, one of the co-authors of the study and an associate professor of climatology at the University of California Merced, however, noted that there are also unique elements at play in every wildfire.

“The climate change argument is going to be the strongest for measures of fuel dryness, measures of vapor pressure deficits, and less so for individual weather events,” he said. “Each fire has its own story.”

One variation between wildfires is in the ecosystems where they can burn. Ponderosa pine forests burn typically burn at different times of year, frequency, and intensity compared to coastal redwood forests or chaparral across Southern California. These ecosystems all receive a distinct combination of rainfall, heat, humidity, and vegetation, so the effects of climate change don't emerge in all these areas in the same way at the same time.

Another variable is how the fires burn. Some smolder across forest floors while others produce towering flames that tear through tree canopies. Some wildfires inch across the landscape while others driven by high winds can consume a football field's worth of vegetation in minutes.

But there are long-term changes underway that could have an impact on all of these blazes. In a 2016 study, Abatzoglou reported that half of the increasing fuel dryness in western forests since the 1970s was attributable to climate change caused by humans.

California is also still reeling from the effects of a massive drought from 2011 until 2017 that helped kill off more than 140 million trees across the state. That drought was exacerbated by climate change, and warming has increased the likelihood of extreme drought in the region.

And it's not just the summer heat that's rising due to climate change. Winters are warming up too. In fact, in some parts of the country, winters are warming faster than summers. That has critical effects on fire activity and lays the foundation for major fires months in advance.

Snow accumulated in the winter in places like the Sierra Nevada acts as a battery for water. As it melts throughout the spring, it discharges much-needed moisture for plants. But with shorter winters, less snow has time to build up, leading to drier vegetation.

As winters warm up, snowpack can melt earlier in the spring, which leads to a process that causes soils to become drier, an effect that can compound over years. That reduces the amount of water available to

plants. Snow also reflects sunlight back into space, and with less snow on the ground, the soil can absorb more heat and dry out further.

A warmer winter also means more precipitation falls as rain rather than snow. Rain doesn't store as easily, so it can contribute to flooding early in the season but quickly run off into the ocean, leaving less moisture for the rest of the year.

"From a climate change perspective, we've been predicting lower snowpack values," said Sarah Kapnick, deputy division leader at the Geophysical Fluid Dynamics Laboratory at NOAA. "Observational records have been showing an earlier timing of snow melts, and those have been increasing. That's one factor that affects fire risk, because it leads to drying."

Climate change is also tipping the scales toward larger fires. Monica Turner, a fire researcher and a professor of integrative biology at the University of Wisconsin Madison, said in an email that climate is a big driver of megafires, those burning through an area larger than 100,000 acres.

This year, both long-term trends and seasonal variability converged, causing extreme heat and dryness, as well as some unusual ignition events, like a [dry lightning storm](#) in Northern California that sparked more than 300 fires.

Turner also noted that when weather conditions reach extremes like those across the West this year, they tend to overwhelm other wildfire factors like the amount of fuel present. "With weather like 2020, fires will burn through forests of all ages, structures and densities," she wrote in a [Q&A for the University of Wisconsin](#).

So while the Western wildfires in 2020 have been unusual in their severity, many of their most important ingredients will continue being amplified by climate change.

### **The most destructive elements of hurricanes are getting worse as temperatures rise**

The Atlantic hurricane season this year has been [extremely active](#), so active that forecasters have completely run through their list of names for storms and are now using the Greek alphabet. There have already been [23 named storms](#) as of September 25, some of which formed before the official start of the Atlantic storm season. Earlier in September, [Hurricane Beta](#) became the ninth named storm this year to make landfall in the United States, tying a record set in 1916.

There were several unique factors this year. Researchers were able to see some of this coming in the spring when they detected warmer than average sea surface temperatures in the Caribbean Sea and the Atlantic Ocean. The waters continued to heat up over the summer. That's important because hurricanes need surface water to be at least 26°C (79°F). More warm water means more energy for hurricanes, lending them strength as they spool up.

“Our seasonal predictions back in May were that this was going to be a massive [tropical storm] season,” Kapnick said.

Another factor was that El Niño, a periodic warming and cooling pattern in the Pacific Ocean, was in its neutral phase this year, leading to more stable air over the Atlantic. Phenomena that result from unstable air like wind shear can rip apart hurricanes before they can gather strength, so calmer skies above the ocean served as ideal breeding grounds for tropical storms this year.

So those were the unique seasonal effects. Then how does climate change fit in?

One problem with finding climate change signals in tropical storms is that they are relatively infrequent events, and having the right mix of ingredients doesn't always mean that a storm will form. There is a lot of variability in hurricane patterns, both year to year and over the course of decades. That makes it hard to suss out trends and even harder to identify signals in individual storms.

Hiroiyuki Murakami, a scientist at the Geophysical Fluid Dynamics Laboratory at NOAA, likened the link between climate change and hurricanes to the link between smoking and cancer.

“When you look at the individual person, it's really difficult to say that this person got lung cancer because they smoke a lot, because there are many people who smoke a lot but still they don't get cancer,” Murakami said. “This is really similar. I think that probably there are some storms affected by climate change, but it's really difficult to say that this storm is only attributable to climate change.”

That said, scientists are starting to see some trends underway. With rising average temperatures, oceans are warming. That means when hurricanes do form, they can be stronger.

“We've identified that global warming, climate change, can intensify storm mean intensity,” Murakami said. “In terms of storm intensity, it's really simple: The source of energy for a tropical cyclone is warm ocean evaporation. When we get a much warmer ocean surface, it will lead to more evaporation to energize a tropical cyclone.”

According to a study last year in the *Proceedings of the National Academy of Sciences*, tropical cyclones have grown more intense between 1979 and 2017. “The results should serve to increase confidence in projections of increased [tropical cyclone] intensity under continued warming,” the authors wrote.

As for the frequency of hurricanes, that’s more complicated, and it’s not clear how climate change will alter the number of major storms that do occur. “A lot of models project a decreasing tropical cyclone number, but still we don’t know yet why climate models show decreasing tropical cyclones in the future,” Murakami said.

He pointed out that even in 2020’s extremely active season, only a couple of the tropical storms turned into major hurricanes. So climate change doesn’t necessarily mean more hurricanes, but a growing proportion of those that occur will likely be more powerful.

Perhaps the most concerning impact of climate change on tropical storms is that it is worsening the most destructive elements of these events. It’s not the wind that usually does the most damage during a hurricane, but flooding. That’s why changes in precipitation patterns can be a major concern.

“A difference between 1 to 2 inches of rainfall is the difference between whether your house gets flooded or not,” said Stony Brook’s Reed.

That flooding in the wake of hurricanes is caused primarily by rainfall and storm surges. Winds from tropical storms can push coastal water inland, creating storm surges. Melting ice and warming oceans due to climate change are causing sea levels to rise, so when storm surges do occur, they reach greater depths and further inland, causing more destruction.

As mentioned earlier, warmer air can hold onto more moisture. So when air heats up over the ocean, it mobilizes more water for rainfall. This warming has led to a rise in extreme rainfall events and increased the deluge from tropical storms.

There’s also some evidence that the movement of tropical cyclones like hurricanes is slowing down due to climate change. That means they are spending more time in a given area, dispatching more rainfall over a smaller space and increasing flood risks.

Another climate signal emerging in recent hurricanes is rapid intensification, which NOAA defines as a gain of 35 mph or more in wind speed over 24 hours. Such storms spool up quickly and can catch forecasters off-guard, making it hard to plan evacuations. A 2019 study in the journal *Nature*

Communications found that the number of Atlantic tropical storms that have rapidly intensified increased significantly between 1982 and 2009, in part due to warming caused by humans. Climate models show that this pattern of rapid intensification will increase as average temperatures rise.

Some of these effects were visible in recent storms like 2017's Hurricane Harvey, which drenched Houston in more than 50 inches of rain as it slowed down over the city. Hurricane Laura this year also rapidly surged from Category 2 strength to Category 4 strength as it blasted the Gulf Coast with winds topping 140 mph.

"The rapid intensification was very clear in Hurricane Laura, but still weather forecast models could not predict the timing of the intensification," Murakami said.

Scientists have also begun to tease out the specific ways that climate change worsened recent storms, constructing counterfactuals to compare effects with and without climate change. Reed's research group at Stony Brook University estimated that Laura dispatched about 10 percent more rainfall due to climate change.

His team conducted a similar assessment for Hurricane Florence, which struck North Carolina in 2018. Scientists estimated that climate change increased the storm's rainfall by 50 percent. Another team of researchers found that sea-level rise since 1970 caused Florence to flood an additional 11,000 homes than would have been inundated with constant ocean levels.

But there are other factors that can change tropical storm patterns over time. Air pollution, dust clouds, the stability of the upper atmosphere, and the relative warmth of the Atlantic Ocean compared to the Indian and Pacific Oceans can all influence the intensity and frequency of hurricanes. Climate change is certainly a growing factor in hurricane trends, but it's important to account for other variables, too.

### **We're still not doing enough to reduce the looming disaster risks**

The fact that so many human elements are driving the growing risk of these disasters means that humans can alter these variables to reduce ongoing and potential destruction.

That will require a concerted suite of strategies, from cutting greenhouse gases, to more resilient infrastructure, to controlled burns of forests, to retreating from high-risk fire and flood zones. It will take time. And it will also take a more sophisticated understanding of rising average temperatures and their myriad ripple effects. Otherwise the disasters of 2020 will become more common and more dangerous.

“All of these things are coming together to make an extreme year, and we need to better understand the factors and how each of them affected it,” Kapnick said. “The question we need to be asking is, what is the climate risk? What is it today? What was it in the past? And what is it in the future?”

Yet at the same time, greenhouse gas emissions show little sign of reversing course. Roughly 40 percent of the US population lives in a coastal county and people are continuing to build in coastal areas facing inundation from rising seas. Homes are still being planned and built in fire-prone regions as residents get priced out of safer areas. Based on recent trends, California will have 645,000 homes in “very high” fire risk areas by the middle of the century.

Even as the dangers of climate change become more vivid, humanity continues to lurch toward them.

8} <https://projects.propublica.org/climate-migration/?>

According to new data from the Rhodium Group analyzed by ProPublica and The New York Times Magazine, warming temperatures and changing rainfall will drive agriculture and temperate climates northward, while sea level rise will consume coastlines and dangerous levels of humidity will swamp the Mississippi River valley.

Taken with other recent research showing that the most habitable climate in North America will shift northward and the incidence of large fires will increase across the country, this suggests that the climate crisis will profoundly interrupt the way we live and farm in the United States. See how the North American places where humans have lived for thousands of years will shift and what changes are in store for your county.

Heat alone, however, won't determine Americans' fate. A new climate analysis — presented for the first time here — projects how humidity and heat will collide to form “wet bulb” temperatures that will disrupt the norms of daily existence.

Today, the combination of truly dangerous heat and humidity is rare. But by 2050, parts of the Midwest and Louisiana could see conditions that make it difficult for the human body to cool itself for nearly one out of every 20 days in the year. New projections for farm productivity also suggest that growing food will become difficult across large parts of the country, including the heart of the High Plains' \$35 billion agriculture industry. All the while, sea level rise will transform the coasts.

Combined, these factors will lead to profound economic losses — and possibly mass migration of Americans away from distress in much of the southern and coastal regions of the country. Meanwhile, the northern Midwest and Great Plains will benefit, in farm productivity, in economy and in overall comfort.

Taken together, some parts of the U.S. will see a number of issues stack on top of one another — heat and humidity may make it harder to work outside, while the ocean continues to claim more coastal land.

9} <https://gizmodo.com/californias-red-skies-arent-just-a-glimpse-of-our-futur-1845016129>

Apocalypse has arrived on the western landscape. The Bay Area is shrouded in a layer of smoke so thick, it broke everything from camera sensors to weather models.

The situation has sparked comparisons to the future, real and imagined. Blade Runner and Blade Runner 2049 have both been touchpoints for the scenes of a futuristic city bogged down in haze. Others referenced The Martian, a science fiction movie set in the future on another planet entirely (though astronomers pointed out that Venus and Titan are also perfectly acceptable analogs). And the situation in the West has, in part, been painted as a glimpse of the climate future we may all soon face.

The 2020 wildfire season has made time and space feel elastic, the present and future, Earth and space colliding like a snap of a rubber band. But I can't help feeling the elasticity link the present and the past and the fate of those choking under a blood-red sky with decisions made in board rooms around slick mahogany tables. Our atmosphere and forests are haunted by those decisions, and we forget them at our own risk.

Let's start with the forest side of the equation. Indigenous groups managed lands using fire as an integral part of the landscape long before there was a National Forest Service. But after the U.S. government extirpated them from their lands, things started to go haywire. Then, the catastrophic firestorm in the Northern Rockies in 1910 dubbed the Big Burn changed everything.

Eventually, the federal government implemented the 10 a.m. rule, decreeing all fires be put out by, you guessed it, 10 a.m. the day after they were spotted. William Greeley, the head of the Forest Service at the time, was certain that the fires were evidence that "Satan was at work." He also said that "the conviction burned into me is that fire prevention is the number one job of American foresters."

This was, on its face, a public safety thing since communities were expanding into the forests and the Big Burn killed 87 people, including a number of firefighters. But underlying it was cold, hard economics. The Forest Service's mission is (emphasis added) "to sustain the health, diversity, and productivity" of the land. One of the core pillars of the agency is leasing land for timber.

Fire suppression, then, was really about trying to preserve as much of the forest to chop down with some racism thrown in (Greeley derided the Indigenous approach as "Piute forestry"). The Forest Service was hardly alone in this; a former Wisconsin's conservation director who served around the time of Greeley noted that "every foot of land we possess as a nation has value, that there is a possible utilization for all of it." And the mindset of making money off the land continues to this day. In 2017, companies chopped down \$179 million worth of timber on Forest Service land alone. While the agency and other land managers have course-corrected to recognize the value of fire on the landscape, there are decades of built-up fuels in forests ready to ignite.

Then there's the climate side of the equation. This one you might know a little better. But let's recap to really get the blood flowing and because frankly, feeling rage is a lot more fun than the numb feeling I've had lately.

Fossil fuel companies spent decades lying about the risk of burning their products. The disinformation campaign from Exxon, Chevron, and others was widespread and continues to this day.

Fossil fuel companies have been aided by pliant politicians, particularly Republicans, in stalling any meaningful climate action. These companies have shifted from hardcore denial to a kinder, gentler form of denial. The party line now is climate change is real, but we'll be fine. There's perhaps no better distillation of this mindset than former Exxon CEO and Secretary of State Rex Tillerson saying the following in a 2012 interview:

"If you take a, what I would call a reasonable scientific approach to that, we believe those consequences are manageable. They do require us to begin to exert—or spend more policy effort on adaptation. ...

And as human beings, as a species, that's why we're all still here. We have spent our entire existence adapting, OK? So we will adapt to this."

I'm sure the people whose houses burned down or those who are breathing the most polluted air on Earth agree, Rex.

Policymakers had plenty of advice on how to avoid the morass we're in now, of course. The most famous is former NASA climate scientist James Hansen alerting Congress in 1988, but it's far from the only warning or even the earliest.

We have seen California swing into deep, dangerous drought this decade that has helped fuel fires. And the risk of a much more ominous multi-decade "megadrought" rise there and in Texas, just as Revelle predicted. Despite this, Congress has done nothing to act.

Oh, and then there are developers who have spent decades luring people to the wildland-urban interface and local governments who have enabled sprawl. From 1990 to 2010, a staggering 13.4 million homes were built in this fire-prone landscape. And half of all homes burned down by fires are rebuilt within five years, putting people back in harm's way.

While it's tempting to look forward and warn of a more fiery future, looking at the past has never been more important. We need to understand how exactly we ended up here and who is captured by the special interests that continue to advocate for what futurist Alex Stefan calls "predatory delay." Only then can we find our way out of the spider webs that have entrapped us in this moment of crisis and fight for a future we won't constantly compare to dystopia.

10} <https://www.popsci.com/story/environment/worst-case-climate-scenario-realistic/>

With news every day of [environmental protections being stripped away](#), [hotter summers](#), more powerful storms, and [biodiversity in crisis](#), it's perhaps easy to assume we're on a dangerous path for climate change. However, among climate scientists, there's a surprising amount of debate around the so-called "worst-case" scenario and whether it's fair to say we're going down that route.

The technical term for this worst-case scenario is Representative Concentration Pathway (RCP) 8.5. The Intergovernmental Panel on Climate Change first used the [RCPs](#) in preparing their Fifth Assessment

Report, published in 2014. There are four main RCPs: 2.6, 4.5, 6.0, 8.5. The numbers represent different values for radiative forcing, a measure of how much of the sun's energy the atmosphere traps. Starting with 2005, the RCPs project the trajectory of greenhouse gas into 2100. Each projection has different assumptions about future human population, economic activity, and fossil fuel use.

All except RCP 8.5 include climate change mitigation. For that reason, it's sometimes also called a "business-as-usual" scenario—in which we continue to pump carbon dioxide into the atmosphere with abandon, including by increasing coal use by about 500 percent by 2100.

On Monday, Christopher Schwalm and colleagues at the Woods Hole Research Center [published a report in \*Proceedings of the National Academy of Sciences\*](#) that argues we are indeed in line with RCP 8.5's trajectory. But other scientists argue that RCP 8.5 doesn't provide an accurate picture of what's happening now, and is especially unlikely as a future scenario moving into 2100.

Schwalm found that, since the RCPs were developed, we've been closest to that worst-case pathway. For the past 15 years, our greenhouse gas emissions have tracked most closely with those projected under RCP 8.5. "It was designed to track the high end of what might be plausible," says Schwalm. But it appears to match what's happened since then and into the near future. "It is a very good characterization of where we are going to be if current trends are simply extrapolated out forward in time ... And it tracks historical emissions within 1 percent."

Schwalm and his team also considered where we might be heading. Putting together historical emissions, energy-related emissions forecasts created by the International Energy Agency, and policy commitments by countries, they projected where we might end up in 2030 and 2050. That pathway, it seems, is

somewhere between the emissions of RCP 4.5 and 8.5. The authors argue that if you consider some of the factors the RCPs don't include—including [complex feedback loops like permafrost degradation](#) that will probably result in greater emissions—it's best to plan for an RCP 8.5 world.

Schalm thinks that, considering how close we are to matching the RCP 8.5 path now and into the next couple decades, it's worth using it as a tool in planning. If you're building a dam today that needs to sustain the impacts of a warmer climate, it may be wise to consider what an RCP 8.5 world will do to the intensity of storms in 2050 just in case. "The overall terms of the debate, in terms of trying to understand what a useful scenario is, really have to be much more focused on the near term as opposed to the end of the century," says Schwalm. "That is much more important, both from a policy standpoint and just from a standpoint of human relatability, than some technical discussion about the level of coal use that may or may not happen 80 years from now."

Not all climate scientists agree with Schwalm. Some, including Zeke Hausfather, director of climate and energy at the Breakthrough Institute, have issues with describing RCP 8.5 as similar to our current track because its underlying assumptions about energy use don't match reality. For example, it projected that the world will use five times as much coal as it did in 2005, due to a growing population and weak market for alternative energy. As Hausfather explains, global coal use peaked in 2013 and the especially-dirty fossil fuel seems to be slowly losing steam. Although our emissions on the surface are similar to the 8.5 track right now, we've already started moving away from its assumptions on fossil fuels.

Hausfather says that framing this climate scenario as the one we're on track for is misleading. He says that RCP 8.5 way underestimates emissions that rise from changing land uses (think, a forest being chopped down for use in agriculture), and conversely overestimates energy emissions. Therefore, while

total emissions so far match the worst-case projection, it's not because we've been burning fossil fuels at quite the rate projected by RCP 8.5. As Hausfather put it, "It's the right answer for the wrong reason."

The RCPs were formulated in 2005, and a lot has changed in energy and policy since then. Experts have estimated that, based on the policy commitments countries have made since then, we're most likely [on track to warm the planet by 3°C](#) at the end of century. RCP 8.5, however, puts us at around 5°C. This is important because numerous studies use the 8.5 trajectory to predict the resulting impacts of a world warmed under that scenario. Hausfather thinks researchers should use less-extreme climate scenarios than RCP 8.5 to provide a clearer picture of what we're potentially in store for.

Where the two scientists agree is that we should not just throw away this worst-case pathway. As Hausfather explains, there are certainly scenarios in which we could reach an RCP 8.5 level of warming by 2100, or at least close to it. And it's probably best not to ignore a worst-case scenario with something as profoundly impactful as climate change.

Adding another dimension to the RCP projections could help. As part of its next assessment, the IPCC has developed [Shared Socioeconomic Pathways](#), or SSPs, which interact with the RCP scenarios to influence the pathways of our emissions. For example, in a world of "resurgent nationalism," as one SSP describes, countries may fail to cooperate on climate agreements, and spiral toward a future of 4°C warming in 2100. Considering these SSPs, which also include information about land use change, will help scientists make better predictions.

Even as climate scientists improve these projections, though their main message hasn't shifted much over the decades. "The overall narrative that was articulated some 30, 40 years ago, is really the exact

same one that we have today, which is we have to wean ourselves off of fossil fuels," says Schwalm.

"And the sooner we do that, the better."

11} <https://www.salon.com/2020/06/23/the-affluent-are-consuming-the-planet-to-death-study/>

A new study published this month in the academic journal Nature Communications argues that, despite all of the talk about using green technology to address man-made environmental problems, the only way for human consumption to become sustainable is if we rein in the affluent.

"The key conclusion from our review is that we cannot rely on technology alone to solve existential environmental problems – like climate change, biodiversity loss and pollution – but that we also have to change our affluent lifestyles and reduce overconsumption, in combination with structural change," Professor Tommy Wiedmann from the University of New South Wales Engineering told that college's newspaper regarding the study.

The paper itself argued that "the affluent citizens of the world are responsible for most environmental impacts and are central to any future prospect of retreating to safer environmental conditions." The authors added that "existing societies, economies and cultures incite consumption expansion and the structural imperative for growth in competitive market economies inhibits necessary societal change" and advocated "a global and rapid decoupling of detrimental impacts from economic activity," pointing out that the efforts made by global North countries to reduce greenhouse-gas emissions are "highly unlikely" to occur rapidly enough on a global scale to stave off catastrophic environmental impacts.

"This is because renewable energy, electrification, carbon-capturing technologies and even services all have resource requirements, mostly in the form of metals, concrete and land," the authors point out. "Rising energy demand and costs of resource extraction, technical limitations and rebound effects aggravate the problem."

After observing that "the world's top 10% of income earners are responsible for between 25 and 43% of environmental impact" while "the world's bottom 10% income earners exert only around 3–5% of environmental impact," the authors that environmental damage is largely caused by the world's "affluent" and therefore needs to be confronted by demanding lifestyle changes among the wealthy.

In other words, the world's poorest have a negligible effect on overall environmental devastation; focusing on their consumption or behavior is a fool's errand when it comes to environmental policy.

"Considering that the lifestyles of wealthy citizens are characterised by an abundance of choice, convenience and comfort, we argue that the determinant and driver we have referred to in previous sections as consumption, is more aptly labelled as affluence," the authors point out. They advocate reducing avoiding or reducing consumption "until the remaining consumption level falls within planetary boundaries, while fulfilling human needs," with the wealthy abstain from purchasing overly large homes and secondary residences, large vehicles, excessive quantities of food, and engaging in leisure activities that require a great deal of flying and driving.

The authors also argue for consumption patterns "to be shifted away from resource and carbon-intensive goods and services, e.g. mobility from cars and airplanes to public buses and trains, biking or walking, heating from oil heating to heat pumps, nutrition — where possible — from animal to seasonal plant-based products." In addition, they call for "the adoption of less affluent, simpler and sufficiency-oriented lifestyles to address overconsumption — consuming better but less." This approach would need to include "addressing socially unsustainable underconsumption in impoverished communities in both less affluent and affluent countries, where enough and better is needed to achieve a more equal distribution of wealth and guarantee a minimum level of prosperity to overcome poverty."

The authors acknowledged that there are several schools of thought regarding how to best meet these goals.

"The reformist group consists of heterogeneous approaches such as a-growth, precautionary/pragmatic post-growth, prosperity and managing without growth as well as steady-state economics," the authors write. "These approaches have in common that they aim to achieve the required socio-ecological transformation through and within today's dominant institutions, such as centralised democratic states and market economies." By contrast the second group, which is "more radical," posits that "the needed socio-ecological transformation will necessarily entail a shift beyond capitalism and/or current centralised states. Although comprising considerable heterogeneity, it can be divided into eco-socialist approaches, viewing the democratic state as an important means to achieve the socio-ecological transformation and eco-anarchist approaches, aiming instead at participatory democracy without a state, thus minimising hierarchies."

Salon [interviewed several scientists and scholars](#) earlier this month about how the coronavirus pandemic has illustrated many of the sustainability problems inherent in capitalism. One problem with capitalist economic systems is that they rely on constantly increasing consumption in order to maintain periods of

prosperity. If unexpected disasters interrupt that consumption — such as the pandemic requiring an economic shutdown — the whole system grinds to a halt.

"Going with the structural metaphor concept, there always huge cracks underneath the facades of capitalism, and the huge weight of this pandemic has widened those cracks," Norman Solomon, co-founder and national coordinator of RootsAction.org and a Sanders delegate to the 2016 Democratic National Convention, told Salon. After pointing out how the poor wind up being hurt the most, he added that "the entire political economy is geared to overproduction and over-consumption to maximize corporate profits."

Michael E. Mann, a distinguished professor of atmospheric science at Penn State University, told Salon that "I think that there are larger lessons and messages here about the sustainability of a global population of nearly 8 billion and growing people on a planet with finite resources."

He added, "And what COVID-19 has laid bare is the fragility of this massive infrastructure which we've created to artificially maintain consumption far beyond the natural carrying capacity of the planet. And continued exploitation of fossil fuels, obviously, is inconsistent with a sustainable human society."

12} <https://gizmodo.com/climate-change-could-force-millions-of-americans-to-fle-1841261940>

By the end of the century, sea level rise could force 13 million people to move away from the U.S. coasts. But it's not just the coasts that will be affected—so will the places where those migrants end up.

In a study published last week in PLOS One, researchers used artificial intelligence to predict where those places are. The findings could have huge value to people not only living on the coast, but the communities that may deal with an influx of climate refugees inland over the coming century.

"Our findings indicate that everybody should care about sea-level rise, whether they live on the coast or not," Bistra Dilkina, a Computer Science Assistant Professor at the University of Southern California who led the study, said in a statement. "This is a global impact issue."

To predict where migrants could go, the new study examined projections of rising sea levels and population projections. Then, using data on where people moved after Hurricane Katrina and Hurricane Rita, they trained machine-learning models to predict migration patterns.

The findings show that migrants will mostly head to land-locked cities like Atlanta and Dallas and rural and suburban areas in the Midwest. Houston could also see an influx of climate migrants because it's near other cities that will be affected by sea level rise sooner, though recent floods show that might not be the wisest place to settle. That mass migration would vastly increase job competition and drive up housing prices.

"When migration occurs naturally, it is a great engine for economic activity and growth," Juan Moreno Cruz, an economist who co-authored the study, said in a statement. "But when migration is forced upon people, productivity falls and human and social capital are lost as communities are broken apart."

The future the researchers predicted is not far away. In fact, it's already here in some ways. Research published late last year shows that Americans are already retreating. Since 1989, the Federal Emergency Management Agency has bought out over 40,000 flood-prone households, often in the aftermath of a disaster. By 2100, six feet of sea level rise could redraw the coastline of southern Florida, parts of North Carolina and Virginia, and most of Boston and New Orleans. And storms riding the higher tides will do plenty of damage before then.

This type of research could help urban planners and policymakers to prepare by expanding infrastructure in areas where people are likely to resettle, from roads to medical services. It also shows that local economies will have to plan for impacts as well. And the results also indicate migrants may have unique needs as their previous communities are broken apart, which speaks to the need for coastal communities to begin assessing how to retreat in the most manageable ways to minimize devastation.

"Understanding these migration decisions helps economies and policy makers prepare for what is to come and do as much as possible to make the influx of migration a positive experience that generates positive outcomes," said Moreno Cruz."

<https://www.washingtonpost.com/climate-environment/2020/02/05/worlds-oceans-are-speeding-up-another-mega-scale-consequence-climate-change/?>

New research finds a surprising and worrying acceleration across 76 percent of the world's oceans.

Three-quarters of the world's ocean waters have sped up their pace in recent decades, scientists reported Wednesday, a massive development that was not expected to occur until climate warming became much more advanced.

The change is being driven by faster winds, which are adding more energy to the surface of the ocean. That, in turn, produces faster currents and an acceleration of ocean circulation.

It's the latest dramatic finding about the stark transformation of the global ocean — joining revelations about massive coral die-offs, upheaval to fisheries, ocean-driven melting of the Greenland and Antarctic ice sheets, increasingly intense ocean heat waves and accelerating sea level rise.

“The Earth is our patient, and you look for symptoms of how it is reacting to anthropogenic greenhouse gas forcing,” said Michael McPhaden, a National Oceanic and Atmospheric Administration researcher and one author of the new study in *Science Advances*. “This is another symptom.”

The new research found that 76 percent of the global ocean is speeding up, when the top 2,000 meters of the ocean are taken into account. The increase in speed is most intense in tropical oceans and especially the vast Pacific.

Scientists aren't certain of all the consequences of this speedup yet. But they may include impacts in key regions along the eastern coasts of continents, where several currents have intensified. The result in some cases has been damaging ocean hotspots that have upended marine life.

The study was led by Shijian Hu, a researcher with the Chinese Academy of Sciences, who worked with McPhaden and other experts in China, Australia and the United States. The researchers used a global network of devices called Argo floats, as well as other data sets, to reach their conclusions.

They found a global increase in wind speed over the ocean of about 2 percent per decade since the 1990s, which translates into about a 5 percent increase per decade in the speed of ocean currents.

Since these currents do not move very fast to begin with, the change would not be noticeable from, say, the bow of a ship. One current, the Pacific's South Equatorial Current, typically moves at about a mile per hour, so the speed increase over one decade would only be to around 1.05 miles per hour, McPhaden said.

Still, taken across the entire planet, this represents an enormous change and a tremendous input of wind energy. And it was not expected to happen yet.

The study notes that in extreme climate warming scenarios, a speedup of global winds also occurs — but the change was expected to peak at the end of this century, after vastly more warming than has happened so far. This suggests the Earth might actually be more sensitive to climate change than our simulations can currently show, McPhaden said.

The researchers admit they cannot prove that the change they've detected is driven solely by greenhouse gases. The oceans, particularly the Pacific, have natural cycles that drive them as well. However, they argue that the changes that have occurred are “far larger than that associated with natural variability.”

And this is not happening in isolation — multiple large changes have been detected in the world's oceans of late.

“It's analogous to the changes in sea level in terms of the accelerated rise over the last 25 years,” McPhaden said. “And these may be connected, and likely are.”

Having detected a massive global change, the researchers say they have not yet teased out the local consequences. But they are bound to be substantial.

“Perhaps the most important consequence is the increased redistribution of heat around the planet that stronger circulation would bring,” said Alex Sen Gupta, an ocean and climate expert at the University of New South Wales in Sydney, who commented on the study but was not involved in the research. “This would affect temperature distributions and could affect weather patterns — but more work would be needed to make these links.”

Another ocean and climate expert, Edward Vizy of the University of Texas at Austin, said he suspected the scientists were onto something with their findings but also that the change may not be as large as they are reporting.

“I'm sure our ocean observations have improved in the early 2000s, so I wonder how much of the change in the ocean reanalyses is a reflection of the inclusion of this information,” he said.

So far, when it comes to the effect of climate change on ocean currents, the largest amount of attention has been paid to the North Atlantic region. Here, a major current system — the Atlantic Meridional Overturning Circulation, or AMOC — is moving not faster, but slower.

This circulation, however, is not driven simply by winds — it is also propelled by the density of cold seawater, which determines how much water can sink and flow back southward in the deep ocean. So, the results are not necessarily contradictory.

In related research, McPhaden and his colleagues have found that around the globe, a key set of ocean currents, which are located on the western side of ocean basins, have been shifting their movements and in some cases, intensifying. As they've done so, these currents have often left behind zones of extreme warming as they transport warm waters to new places.

These changes, too, are being driven by shifting ocean winds, so they could be connected.

Off the eastern coast of Australia and Tasmania, for example, a current called the East Australian Current has intensified and pushed farther southward, bringing warmer waters to the Tasmanian coast and devastating the native kelp forest ecosystem that had once thrived there. The new study shows a marked current intensification in this region.

“There is a compelling logic that says that these are related,” McPhaden said.

The current study does not focus on local impacts, however, but rather, on the global picture.

“It’s just sort of taking the pulse of the planet,” McPhaden said. “It’s a surprise that this kind of result comes out so robustly.”

13} <https://www.theguardian.com/commentisfree/2020/jan/22/defending-life-earth-extremist-police-extinction-rebellion>

"Our government is helping propel us towards a catastrophe on a scale humankind has never encountered before: the collapse of our life-support systems. It does so in support of certain ideologies —

consumerism, neoliberalism, capitalism – and on behalf of powerful industries. This, apparently, meets the definition of moderation. Seeking to prevent this catastrophe is extremism. If you care about other people, you go on the list. If you couldn't give a damn about humankind and the rest of life on Earth, the police and the government will leave you alone. You might even be appointed to high office.” - George Monbiot

In his Letter from Birmingham Jail, Martin Luther King Jr, subjected to smears very similar to those now directed against XR and other environmental groups, noted: “The question is not whether we will be extremists, but what kind of extremists we will be. Will we be extremists for hate or for love? Will we be extremists for the preservation of injustice or for the extension of justice?”

Good citizens cannot meekly accept the death of the living planet. If seeking to defend life on Earth defines us as extremists, we have no choice but to own the label. We are extremists for the extension of justice and the perpetuation of life.

14} <https://ny.curbed.com/2020/1/2/21046581/new-york-city-climate-change-managed-retreat-development?>

Managed Retreat: NYC's coastline could be underwater by 2100. Why are we still building there?

Soon after Mayor Bill de Blasio announced the city's ambitious plan to extend lower Manhattan into the East River, Klaus Jacob, a special research scientist with Columbia University's Lamont-Doherty Earth Observatory, received a surprising invitation. The Milken Institute, a global think tank, was hosting an event to discuss financing the mayor's proposal. “Everyone from Wall Street was there,” Jacob recollects. “I don't know why [they invited me] because I told them upfront I don't think much about this thing.”

Jacob has based his scientific career on studying climate change and New York City—and pointing out that most residents, planners, and politicians haven't fully confronted how its effects will transform the city to its core. At the event, he listened as people in the room strategized funding for the \$10 billion plan, including development schemes on top of the extended land. “I was sitting there, my jaw dropped down, and finally I raised my name card as an indicator I had to say something,” Jacob says.

He intimately knows the official scientific forecast for lower Manhattan: about six feet of sea level rise in the next 80 years, which would bring regular flooding and more frequent intensive storm surges to the shoreline. The carbon levels in the atmosphere guarantee that sea level will continue rising past 2100; by how much depends on if the world can mobilize around climate change.

Extending the landmass of lower Manhattan may serve as a short to mid-term solution, but he believes it cannot stand up to long-term climate threat.

Jacob wanted to tell the crowd as much. “I said, ‘Well, congratulations how quickly you found a way to finance this,’” he recalls. “‘But I want to tell you how it looks to me. You just declared war to sea level rise. As many politicians declare war quickly, I want to know your exit strategy when you can’t sustain it any longer.’”

Silence followed. Without a response, the group decided to break for lunch.

This tense moment reveals a larger disconnect looming in a city with 578 miles of shoreline. Since New York City’s inception, its residents have turned to the waterfront for myriad reasons: industry, commerce, housing, leisure, and tourism. But a growing chorus of scientists, planners, activists, and academics is suggesting a wholly different relationship given the threat of climate change. It’s known as managed retreat, or “the strategic relocation of structures or abandonment of land to manage natural hazard risk.”

This is an overwhelming proposal for a city defined not only by water, but its ability to build its way out of a crisis. In lower Manhattan—an area that includes the Financial District (and other neighborhoods), the World Trade Center redevelopment, a half-million jobs, 90,000 residents, and nexus of almost all our subway lines—the city has proposed all manner of fixes: extending the southernmost shoreline of the island by two blocks, berms, barriers, dams, sand bags, physical walls, and “deployable flip-up barriers.”

The work in lower Manhattan reflects citywide resiliency planning that has been underway in the seven years since Hurricane Sandy: a strengthening of 2.4 miles of coastline as part of the contentious East Side Coastal Resiliency Project, flood walls and flip-up barriers for Two Bridges Coastal Resilience, an integrated flood protection system for Red Hook, zoning changes, and improved transit as part of a “Resilient Neighborhoods” plan for Rockaway Park and Rockaway Beach, among other projects.

But scientists like Jacob say the billions of dollars the city will spend on such measures are temporary solutions to a larger and longer-term crisis. It can be hard to conceptualize such a threat, especially

because sea level rise still depends on if the world can enact urgent and unprecedented measures against climate change, and its effects will not look the same for every community in New York.

But retreat is already happening here, and elsewhere across the United States. Efforts in a few New York neighborhoods offer a hint of what's to come. But the city has no official strategy on utilizing retreat to address the long-term sustainability of New York's most vulnerable neighborhoods. The longer the city waits to integrate retreat into its climate planning, the harder and more uncertain it will be transitioning New York shorelines back to nature.

"Is New York City on the right path, in the long term, to deal with climate change?" asks Jacob. "The city has done certain measures that will work for certain storm or flood heights. It's not that they have been complacent, but all these are short or mid-term at most solutions. It's probably fair to say we have no concept, right now, of what the city might steer for the year 2100 and beyond."

When Hurricane Sandy hit New York in 2012, it revealed how much the city has at stake in the face of a major storm. Sandy killed 43 New Yorkers; 6,500 patients were evacuated from hospitals and nursing homes; 90,000 buildings were affected in the inundation zone; 2 million people lost power; all seven subway tunnels under the East River flooded, and it took six days to restore 80 percent service. (Repair of the subway tunnels is ongoing.) There was a total of \$19 billion in damage, according to the city.

In the months following, then-Mayor Michael Bloomberg announced a recovery plan called Build it Back. "As New Yorkers, we cannot and will not abandon our waterfront," he said at the time. "It's one of our greatest assets. We must protect it, not retreat from it." In defiance of retreat, Build it Back consisted of repairing damaged homes, rebuilding them in place, and acquiring properties so the city could "strategically redevelop."

"Bloomberg was talking right away about framing Sandy in terms of climate change, but using that to double down on this waterfront redevelopment agenda," explains Liz Koslov, assistant professor of Urban Planning and Environment and Sustainability at UCLA. (Throughout his three mayoral terms, Bloomberg upzoned waterfront land across Long Island City, Williamsburg, Greenpoint, and the west side of Manhattan—now Hudson Yards—all of which became hotbeds of luxury development.)

Koslov is working on a book about Staten Island communities that rejected the rebuilding narrative. She recalls the first community meeting she attended in the borough, a few months after Sandy: "It was striking," she says. "A church basement packed to the gills with residents affected by the storm,

overwhelmingly saying, ‘We don’t wanna live here anymore, no one should live in these neighborhoods anymore, buy us out and return this land to mother nature.’” City officials’ preferred approach, by contrast, was to densify and redevelop the shore, which had the highest Sandy death toll in the city.

Koslov followed a coordinated grassroots effort by residents of eight waterfront neighborhoods demanding buyouts of their properties to return the land to nature. Oakwood Beach residents, the first to organize in favor of buyouts, found little support from local and city officials, so moved on to the state. In January of 2013, Gov. Andrew Cuomo announced a state pilot for buyouts focused on Oakwood Beach; by March, more than 2,500 residents formally registered interest in such a program. “My sense is that the state didn’t expect there to be so much demand,” says Koslov.

The pilot did become an official state program, but eligibility was restricted in Staten Island to a small number of designated “enhanced areas” and excluded many households whose owners sought buyouts in the aftermath of the storm. Those enhanced areas were picked due to a variety of factors, according to Koslov, including the expression of collective interest from the community, past flood damage, and the makeup of renters versus owners.

Though Staten Island emerged as a model of what grassroots retreat could look like, remaining residents still receive “mixed signals,” as Koslov puts it. Properties that the city, rather than the state, acquired under Build it Back can be auctioned off and redeveloped, for example. In Ocean Breeze, not far from newly vacant land, developers have erected two new blocks of luxury townhouses.

It’s one of two vulnerable areas of New York where formal retreat is happening alongside development. The other is Edgemere, Queens, a long-neglected community that sits between the Atlantic Ocean and Jamaica Bay. Sandy damaged or destroyed much of its housing, leaving predominantly low-income residents without electricity, heat, or clean water for weeks.

It took a few years for the city to take full inventory of Sandy’s damage, then establish a formal community assessment of the area. In 2015, the city launched a joint community planning effort, with the Department of Housing Preservation and Development (HPD) now overseeing the resulting Resilient Edgemere Community Plan.

The city owns about 30 percent of Edgemere’s land, according to HPD, and the plan calls for keeping the most vulnerable properties uninhabited, as well as buyouts to facilitate relocation from extreme flood hazard. (The city has acquired about 15 acres of land to keep as open space, according to HPD, and

bought out and relocated seven households out of the neighborhood and three households into less-vulnerable property within the neighborhood.) It also calls for sizable investments into an elevated berm along the shore and at NYCHA's Beach 41st Street Houses, as well as the construction of affordable housing and mixed-use retail.

"We are trying to draw back housing development from the coast and concentrate it more on the transit and commercial spine in the neighborhood," explains Leila Bozorg, HPD's deputy commissioner for neighborhood strategies. But it's unclear if Edgemere's commercial spine will be habitable by 2100. The low-lying neighborhood isn't only at high risk during storms; frequent "sunny day" tidal flooding will be exacerbated by sea level rise. By 2050, two and a half feet of sea level rise predicted by the New York City Panel on Climate Change puts a significant portion of the neighborhood at risk of daily inundation from high tide alone.

For Bozorg, city planning in a still-populated community, especially one that's faced significant neglect from city government, can't only focus on the long-term climate future. "If you take a bird's eye view of a flood map, for example, you can easily ask questions of if we should be investing in this neighborhood at all," she says. "But when you get down to the ground, and realize there are thousands of people in Edgemere, we can't just have a binary conversation about whether you invest or not. We have to have a nuanced conversation about how you make the neighborhood more resilient, how we support current residents, and what type of investments are sound."

Such complicated questions about planning in the face of climate change are now seeping into the New York offices of urban planners, architects, politicians, and developers. "It's affected the design industry, and especially my office and a lot of my colleagues, in a profound way," says Illya Azaroff, founder of architectural studio +LAB. "When we are asked to design in areas of known risk ... if we're building to a 50- to 100-year life cycle, there's a lot of science behind advising that client to find a different place to build. It's an ethical question; it's what we have to do."

But, Azaroff says, "this realization has not caught up with actionability." Ask anyone deeply engaged with New York climate science about continued development along the waterfront and you'll get an impassioned response. Jacob is pointed: "That we are still putting high-rises into flood zones like Two Bridges ... it is absolutely in my mind, bordering on being criminal, though maybe reckless is a better word."

Still, there is much working against a comprehensive proposal for retreat. At a time of federal tax cuts, many U.S. cities have become increasingly dependent on financing through development growth; in New York, that means a dependence on property taxes. And in the post-industrial era, the most enticing growth opportunities have been along the water, as Bloomberg's upzonings proved. (Years of aggressive rezoning and environmental cleanups that culminated under Bloomberg primed sizable tracts along 600 miles of waterfront in all five boroughs for development, according to the *New York Times*.)

"Now, there's a desire to utilize this highly-valued land and not prohibit development," Koslov explains. "Then for the city to protect people already living in places like the lower East Side, what pays for protective infrastructure and adaptation is more development."

Buyouts, on the other hand, have high upfront costs, though Koslov argues they can generate longer-term savings. "The story I've found, over and over in my research, is there are often demands from people recurrently flooded to get bought out, but buyouts are 75 percent federally funded with a 25 percent local match," she says. "Often local municipalities aren't willing to support homeowner's applications because they completely depend on property taxes."

Lost property taxes are backed by a slew of other concerns, according to Koslov. Those include fears about setting a precedent, losing affordable housing, and the fact that buyouts can benefit higher levels of government, which don't have to pay out future flood insurance claims or disaster aid, while local governments are left with costs of maintaining newly-vacant land and providing local services to a reduced population.

Then there are the numerous unanswered questions. Who makes the decision to stop rebuilding, and when? If we're moving people away from the waterfront, shouldn't we upzone less vulnerable, inland neighborhoods to accommodate them? Who pays for relocation? And what does retreat look like for the astounding variety of buildings and other developments along the New York waterfront, from luxury condos to public housing to the city's largest food hub? "There are 800,000 people in New York City's floodplain," Koslov says, "Once you decide to grant a buyout, how do you draw the line and stop?"

Such questions have discouraged local politicians from touching the subject. (Roland Lewis, president and chief executive of the Waterfront Alliance, called retreat "the third rail of resiliency discussions in politics—most politicians don't want to go near.")

But the sooner we delve in, Koslov suggests, the sooner we can flesh out “a vision for what ‘just retreat’ would look like and how it would actually happen.” Climate change disproportionately affects low-income communities across the world, New York included. If retreat takes place without government support, residents in luxury condos will likely have more resources to implement their own ad-hoc plans than residents of public housing. A well-planned managed retreat, on the other hand, “can be potentially empowering and a force for reconstructing communities and making the waterfront public again,” she says.

Equity is front of mind for the Resilient Edgemere Community Plan, according to Bozorg. “We’re engaging [community members] in a way that is meaningful, co-creating goals and strategies that address the core issues, which is resulting in a plan that clearly lays out what the city is committing to do and how we plan to get there,” she says. She believes that community engagement, particularly around the buyout program, could serve as a model for other neighborhoods threatened by climate change.

Voluntary buyouts are not part of the city’s resiliency efforts at this time, according to the Mayor’s Office of Resiliency, though the city is employing some land-use tools, such as designating select high risk areas as Special Coastal Risk Districts, to limit future density in flood prone areas. It still remains a question if, and when, the city will release a comprehensive plan across the five boroughs that tackles retreat and fully restricting waterfront development, like what happened on Staten Island.

Roland Lewis, of the Waterfront Alliance, and Kate Boicourt, that organization’s director of resilience, argue that New York’s current initiatives should not substitute for a long-term plan that addresses hard questions. “We don’t have a public study of where more density can be built based on infrastructure and need, and where it can’t,” explains Boicourt. “There’s no study of pathways if individuals and communities decide to leave, what are their options, and how many resources we need.”

In lieu of that, Waterfront Alliance will launch a major campaign in 2020 to encourage increased public discourse around the threat of climate change, mobilize voters around those issues, and push public officials to address the climate crisis with more urgency. “There’s a large public disconnect from the reality of no matter what we do with greenhouse gases, we are facing six feet [of] sea level rise, or more, by the end of the century,” Boicourt says. “We really need a campaign to get people to that reality, which means Coney Island and the Rockaways may no longer exist.”

**“We can’t build our way out of it,”** Lewis simply says.

It is a terrifying, uncertain future. And also one of possibilities. “We have to rediscover the fact we are a water city,” suggests Azaroff. “Sandy made us afraid of water. Yet, how do we celebrate being a great coastal city, and contend with water in a positive way? That’s our trajectory, and we’re still at a tension place. It’s something that could be—and must be—tackled together, in a positive way.”

15} <https://www.theguardian.com/environment/2019/dec/30/environment-2050-flooded-cities-forced-migration-amazon-turning-savannah>

‘Good morning. Here is the shipping forecast for midday, 21 June, 2050. Seas will be rough, with violent storms and visibility ranging from poor to very poor for the next 24 hours. The outlook for tomorrow is less fair.’

All being well, this could be a weather bulletin released by the Met Office and broadcast by the BBC in the middle of this century. Destructive gales may not sound like good news, but they will be among the least of the world’s problems in the coming era of peak climate turbulence. With social collapse a very real threat in the next 30 years, it will be an achievement in 2050 if there are still institutions to make weather predictions, radio transmitters to share them and seafarers willing to listen to the archaic content.

I write this imaginary forecast with an apology to Tim Radford, the former Guardian science editor, who used the same device in 2004 [to open a remarkably prescient prediction](#) on the likely impacts of global warming on the world in 2020.

Journalists generally hate to go on record about the future. We are trained to report on the very recent past, not gaze into crystal balls. On those occasions when we have to venture ahead of the present, most of us play it safe by avoiding dates that could prove us wrong, or quoting others.

Radford allowed himself no such safe distance or equivocation in 2004, which we should remember as a horribly happy year for climate deniers. George W Bush was in the White House, the Kyoto protocol had been recently zombified by the US Congress, the world was distracted by the Iraq war and fossil fuel companies and oil tycoons were pumping millions of dollars into misleading ads and dubious research that aimed to sow doubt about science.

Radford looked forward to a point when global warming was no longer so easy to ignore. Applying his expert knowledge of the best science available at the time, he predicted 2020 would be the year when the planet started to feel the heat as something real and urgent.

“We’re still waiting for the Earth to start simmering,” he wrote back in that climate-comfortable summer of 2004. “But by 2020 the bubbles will be appearing.”

The heat of the climate movement is certainly less latent. In the past year, the world has seen Greta Thunberg’s solo school strikes morph into a global movement of more than six million demonstrators; Extinction Rebellion activists have seized bridges and blocked roads in capital cities; the world has heard ever more alarming warnings from UN scientists, David Attenborough and the UN envoy for climate action, Mark Carney; dozens of national parliaments and city councils have declared climate emergencies; and the issue has risen further to the fore in the current UK general election than any before it. With only weeks to go until 2020, the bubbles of climate anxiety are massing near the surface.

Radford’s most precise predictions relate to the science. Writing after the record-breaking UK heat of 2003, he warned such scorching temperatures would become the norm. “Expect summer 2020 to be every bit as oppressive.” How right he was. Since then, the world has sweltered through the 10 hottest years in history. The UK registered a new high of 38.7C this July, which was the planet’s warmest month since measurements began.

He also correctly anticipated how much more hostile this would make the climate – with increasingly ferocious storms (for the first time on record, there have been category 5 hurricanes, such as Dorian and Harvey, for four years in a row), intensifying forest fires (consider the devastating blazes in Siberia and the Amazon this year, or California and Lapland in 2018) and massive bleaching of coral reefs (which is happening with growing frequency across most of the world). All of this has come to pass, as have Radford’s specific predictions of worsening floods in Bangladesh, desperate droughts in southern Africa, food shortages in the Sahel and the opening up of the northwest passage due to shrinking sea ice (the huge cruise liner, Crystal Serenity, is among the many ships that have sailed through the Bering Strait in recent years – a route that was once deemed impossible by even the most intrepid explorers).

A couple of his predictions were slightly premature (the snows on Kilimanjaro and Mt Kenya have not yet disappeared, though a recent study said they will be gone before future generations get a chance to see them), but overall, Radford’s vision of the world in 2020 was remarkably accurate, which is important

because it confirms climate science was reliable even in 2004. It is even more precise today, which is good news in terms of anticipating the risks, but deeply alarming when we consider just how nasty scientists expect the climate to become in our lifetime. Unless emissions are slashed over the next decade, a swarm of wicked problems are heading our way.

How wicked? Well, following Radford's example, let us consider what the world will look like in 2050 if humanity continues to burn oil, gas, coal and forests at the current rate.

The difference will be visible from space. By the middle of the 21st century, the globe has changed markedly from the blue marble that humanity first saw in wondrous colour in 1972. The white northern ice-cap vanishes completely each summer, while the southern pole will shrink beyond recognition. The lush green rainforests of the Amazon, Congo and Papua New Guinea are smaller and quite possibly enveloped in smoke. From the subtropics to the mid-latitudes, a grimy-white band of deserts has formed a thickening ring around the northern hemisphere.

Coastlines are being reshaped by rising sea levels. Just over 30cm at this stage – well short of the 2 metres that could hit in 2100 – but still enough to swamp unprotected stretches of land from Miami and Guangdong to Lincolnshire and Alexandria. High tides and storm surges periodically blur the boundaries between land and sea, making the roads of megacities resemble the canals of Venice with increasing frequency.

On the ground, rising temperatures are changing the world in ways that can no longer be explained only by physics and chemistry. The increasingly hostile weather is straining social relations and disrupting economics, politics and mental health.

Generation Greta is middle aged. Their teenage fears of the complete extinction of the human race have not yet come to pass, but the risk of a breakdown of civilisation is higher than at any previous time in history – and rising steadily. They live with a level of anxiety their grandparents could have barely imagined.

The world in 2050 is more hostile and less fertile, more crowded and less diverse. Compared with 2019, there are more trees, but fewer forests, more concrete, but less stability. The rich have retreated into air-conditioned sanctums behind ever higher walls. The poor – and what is left of other species – is left exposed to the ever harsher elements. Everyone is affected by rising prices, conflict, stress and depression.

This is a doorway into peak climate turbulence. Global heating passed the 1.5C mark a couple of years earlier and is now accelerating towards 3C, or possibly even 4C, by the end of the century. It feels as if the dial on a cooker has been turned from nine o'clock to midnight. Los Angeles, Sydney, Madrid, Lisbon and possibly even Paris endure new highs in excess of 50C. London's climate resembles Barcelona's 30 years earlier. Across the world, droughts intensify and extreme heat becomes a fact of life for 1.6bn city dwellers, eight times more than in 2019. For a while, marathons, World Cups and Olympics were moved to the winter to avoid the furnace-like heat in many cities. Now they are not held at all. It is impossible to justify the emissions and the world is no longer in the mood for games.

Extreme weather is the overriding concern of all but a tiny elite. It wreaks havoc everywhere, but the greatest misery is felt in poorer countries. Dhaka, Dar es Salaam and other coastal cities are hit almost every year by storm surges and other extreme sea-level incidents that used to occur only once a century. Following the lead set by Jakarta, several capitals have relocated to less-exposed regions. But floods, heatwaves, droughts and fires are increasingly catastrophic. Healthcare systems are struggling to cope. The economic costs cripple poorly prepared financial institutions. Insurance companies refuse to provide cover for natural disasters. Insecurity and desperation sweep through populations. Governments struggle to cope.

"By 2050, if we fail to act, many of the most damaging, extreme weather events we have seen in recent years will become commonplace," warns Michael Mann, the director of the Earth System Science Center at Pennsylvania State University. "In a world where we see continual weather disasters day after day (which is what we'll have in the absence of concerted action), our societal infrastructure may well fail ... **We won't see the extinction of our species, but we could well see societal collapse.**"

Adding to the anxiety is the erratic temperature of the planet. Instead of rising smoothly it jolts upwards, because tipping points – once the stuff of scientific nightmares – are reached one after another: methane release from permafrost; a die-off of the tiny marine organisms that sequestered billions of tonnes of carbon; the dessication of tropical forests. People have come to realise how interconnected the world's natural life-support systems are. As one falls, another is triggered – like dominos or the old board game, Mouse Trap. In some cases, they amplify one another. More heat means more forest fires, which dries out more trees, which burn more easily, which releases more carbon, which pushes global temperatures higher, which melts more ice, which exposes more of the Earth to sunlight, which warms the poles, which lowers the temperature gradient with the equator, which slows ocean currents and weather systems, which results in more extreme storms and longer droughts. It is also now clear that positive climate feedbacks are not limited to physics, but stretch to economics, politics and psychology. The Amazon is

turning into a savannah because the loss of forest is weakening rainfall, which makes harvests lower, which gives farmers an economic motivation to clear more land to make up for lost production, which means more fires and less rain.

On our current course, carbon concentrations in the atmosphere will pass 550 parts per million by midcentury, up from around 400ppm today. Katharine Hayhoe, an atmospheric scientist and director of the Climate Science Center at Texas Tech University, explains how this stacks the odds in favour of disaster.

“By 2050, we’d be seeing events that are far more frequent and/or far stronger than we humans have ever experienced before, are occurring both simultaneously and in sequence.”

Her greatest concern is that food production and water supply systems could buckle under the strain, with dire humanitarian consequences in areas that are already vulnerable.

Hunger will rise, perhaps calamitously. The United Nations’ International Panel on Climate Change expects food production to decline by 2% to 6% in each of the coming decades because of land-degradation, droughts, floods and sea-level rise. The timing could not be worse. By 2050, the global population is projected to rise to 9.7 billion, which is more than two billion more people to feed than today.

When crops fail and starvation threatens, people are forced to fight or flee. Between 50 and 700 million people will be driven from their homes by midcentury as a result of soil degradation alone, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) estimated last year. Fires, floods and droughts will prompt many others to migrate within and across borders. So will the decline of mountain ice, which is a source of meltwater for a quarter of the world’s population. The poorest will be worst affected, though they have the least responsibility for the climate crisis. For the US author and environmentalist, Bill McKibben, this injustice will make the greatest impact in 2050.

“Forcing people to move from their homes by the hundreds of millions may do the most to disrupt the world. And, of course, it’s a deep tragedy, because these are precisely the people who have done the least to cause the problem,” he says.

In 2050, climate apartheid goes hand-in-hand with increasingly authoritarian politics. Three decades earlier, worried electorates voted in a generation of populist “strongmen” in the hope they could turn back the clock to a more stable world. Instead, their nationalism made a global solution even harder to achieve.

They preferred to focus on the immigration consequences of global heating rather than the carbon-capital causes. When voters realised their mistake, it was too late. The thugocracy refused to give up power. They no longer deny the climate crisis; they use it to justify ever-more repressive measures and ever-wilder efforts to find a technological fix. In the past 20 years, nations have tried volcano mimicking, cloud brightening, albedo modification and carbon dioxide removal. Most were expensive and ineffective. Some made weather circulation even less reliable. Powerful countries now threaten rivals not just with nuclear weapons, but with geo-engineering threats to block sunlight or disrupt rainfall patterns.

This is not an inevitable future. Unlike Radford's prediction for 2020, this vision of 2050 factors in human behavior, which is more volatile and less predictable than the laws of thermodynamics. Many of the horrors above are already baked into the climate, but our response to them – and each other – is not predetermined. When it comes to the science, the dangers can be substantially reduced if humanity shifts decisively away from business-as-usual behavior over the next decade. When it comes to the psychology and politics, we can make our situation better immediately if we focus on hope in shared solutions, rather than fears of what we will lose as individuals.

That means putting faith in institutions, warning one another about risks, and treasuring shared eccentricities and traditions – a bit like the shipping forecast.

A storm is certainly brewing. The science is clear on that. The question now is how we face it.

16} <https://www.theguardian.com/us-news/live/2019/sep/18/trump-greta-thunberg-news-today-live-latest-climate-change-testimony-updates>

**'Wake up and face facts'** : Greta Thunberg pleads with politicians to lead fight against climate crisis.

17} <https://gizmodo.com/a-global-water-emergency-is-right-around-the-corner-unl-1836980981>

When Chennai, India's main reservoir disappeared earlier this summer, the world was rightfully shocked. A city of more than 4.6 million people had lost its main sources of drinking water, forcing authorities to rely on water shipped in by train.

But Chennai's plight is part of a much bigger issue: The world is increasingly water-stressed as water demand outstrips supply and groundwater is disappearing at an alarming rate. Nearly 1.8 billion people, almost a quarter of the global population, live in countries that are extremely water-stressed, according to a new report by World Resources Institute ranking the world's most water-stressed countries and regions. The results are a warning, but the report authors also note that the solutions to our broken-ass water system are right in front of us. We just need to implement them before we drain our reservoirs and suck aquifers dry.

The idea of water stress goes beyond just how much rain fell in a given year. Instead, the team used a mix of data on water regulations, how water systems are structured, and a number of environmental factors, from rainfall variability to groundwater depletion rates, to come up with its water-stress rankings. All told, the researchers used 13 indicators to create their rankings. The new report is an update to WRI's Aqueduct Water Risk Atlas, a map-based tool that lets users visualize just how screwed different locations are by water stress.

The results show that the Middle East is home to eight of the 10 most water-stressed countries in the world. There are 17 countries with "extremely high" water stress, including two more Middle Eastern countries as well as India. An additional 27 countries have high water stress, and the ranks include a number of European countries, showing this is a global issue. Adding the whole group of 44 countries together means that 2.6 billion people are living in regions where water is becoming a precious commodity.

Within countries with relatively lower water stress, there are also hot spots. The U.S., for example, has 10 states with high or extreme water stress (New Mexico has it the worst, followed by California). And as we saw last year in Cape Town, South Africa, which approached a Day Zero where water ran out, individual cities can also feel the pinch.

"We're likely to see more of these kinds of Day Zeroes in the future with major, growing cities and water stress," Betsy Otto, the director of WRI's Global Water Program, said during a press call.

The problems facing our water systems are manifold. Climate change means that in some locations, extreme drought is increasingly likely to be followed by extreme rainfall (hello, California). In some places like around the Mediterranean, scientists expect less rain to fall, period. Leaky pipes and overusing water

for agriculture or energy ensure water gets wasted while tapping groundwater supplies with aplomb means drawing down a very finite resource.

“Beneath our feet, there’s a groundwater crisis we’re not even seeing,” Otto said. **“Our underground savings accounts of water are being rapidly overdrawn.”**

18} <https://slate.com/business/2019/07/urban-flooding-is-getting-more-common.html>

Over the past three weeks, three major U.S. cities have been hit by flash flooding events, the kinds of storms that send cars floating down the street. On July 8, early morning rainstorms drenched Washington D.C. and its suburbs. On July 10, big bands of rain submerged parts of New Orleans. And then on Monday, a set of cracking thunderstorms left parts of New York City underwater and impassable.

Is this the opening salvo of the long, doomed fight between American cities and climate change? Or has ubiquitous streaming video just made everyone hyperaware of what was once routine street flooding?

A little of both. There’s no doubt that a good degree of social-media-inspired panic-mongering surrounded, for example, the flooding in New Orleans—a relatively routine street flooding event turned into a national news story by the approach of Tropical Storm Barry—or the flooding in New York, whose significance seemed amplified by the city’s recent struggles with heat waves, black outs, and transportation crises. In New York, for example, one viral Twitter video posited that the disgusting Gowanus Canal had broken its banks and flowed two blocks uphill.

It is harder to generalize about the rate of urban flooding, in part because we don’t have great historical (or current) data on property damage caused by rainfall. (There are a few reasons for this, chief among them that most of it doesn’t get reported to insurance companies.) But we do know that rainstorms are getting more intense. Since 1991, according to the 2014 National Climate Assessment, the biggest storms have dropped more than 30 percent more rain than the 1901-1960 average in the Northeast, Midwest, and Upper Great Plains. So-called “one-percent” storms—the heaviest storm out of every hundred—are also dropping much more rain in the Southeast too. This is likely a consequences of climate change, and events like these are projected to occur as much as five times more often by the end of this century.

We know that rainfall flooding already causes an enormous amount of damage that goes both ignored and unaccounted for. Two in three flood insurance claims during hurricanes are attributed to freshwater flooding, not storm surge. A recent report estimates that America has experienced an urban flooding event once every 2-3 days for the past 25 years. In Illinois, urban flooding caused \$2.3 billion in damage between 2007 and 2014, mostly in Chicago.

We also know that the phenomenon is getting worse in places where it has been studied. In Canada, rainfall has surpassed fire as the leading cause of damage to homes, and damage has “been rising at an unsustainable rate for more than 25 years.” In Houston, manmade flood plains of asphalt and concrete have expanded unpredictably as sprawl sealed off natural land west of the city. Between flooded rivers and swamped cities, extreme rainfall may be the most damaging early consequence of climate change to come for the U.S. Maybe cities should start replacing firefighters with floodfighters.

What makes urban flooding hard to manage is that it doesn't hew neatly to FEMA flood plain maps, or align with FEMA's designations of vulnerable areas at all. It isn't dictated by natural landscapes but is instead reliant on an unmapped series of impermeable roads and parking lots. Its outlets aren't river mouths, but storm drains of varying capacity.

Some cities have tried to tackle the problem by building underground holding pens for stormwater, so-called “deep tunnels,” where water can collect. But these are expensive, vulnerable to changing rainfall patterns, and only as good as the sewers that feed them.

The newer theory is to stop the water from entering the sewers in the first place, with the implementation of technologies like green roofs and bioswales (those green areas you see around tree beds). With more water falling from the sky, we'll need to keep more of it where it falls.

19} <https://arstechnica.com/science/2019/07/wells-are-getting-deeper-as-groundwater-gets-depleted/>

Groundwater is an "invisible resource," [writes](#) environmental engineer Debra Perrone. It "flows slowly under our feet through cracks in rocks and spaces in sediments," she says, contrasting it with the more visible and obvious dams and rivers on the surface. This invisible resource is a quiet hero, supplying around a quarter of the US' daily freshwater needs.

Its distributed nature makes groundwater a challenging resource to manage. Unlike on the surface, where we can manage through public infrastructure like dams and reservoirs, groundwater is mostly tapped through millions of wells drilled by individuals, businesses, and farms. But current levels of groundwater use are not sustainable: resources are being steadily depleted as groundwater use outpaces natural replenishment.

This depletion means that shallower wells may run dry. Across the US, people are drilling deeper and deeper wells, report Perrone and her colleague Scott Jasechko in a paper in *Nature Sustainability* this week. That suggests that the easy-to-access water is already vanishing. But it's also not sustainable to keep going deeper.

### **Where the wells are**

Perrone and Jasechko drew on 64 state-, regional- or county-level public databases recording the construction of wells, allowing them to pull together a database of nearly 12 million wells in the US. They looked across five large systems of water-carrying rock layers, called aquifers: the High Plains aquifer in the Central US and aquifer systems in California's Central Valley, Florida, the Mississippi embayment, and the Northern Atlantic Coastal Plain.

They found that wells across the US have generally been getting deeper since 1950. This trend toward deeper wells showed up across the majority of areas that were included in the database. Deeper wells and depleting groundwater may be related, but it's not necessarily that simple. There are other reasons why people might drill deeper wells—to avoid contamination in shallower wells, for example, or because improved technology or laxer legislation makes it possible where it wasn't before.

And even if people would like to drill deeper as shallower wells dry up, it's not always possible: as you drill deeper, groundwater may no longer be high quality or may not be as easy to extract in useful quantities.

To explore the relationship between groundwater depletion and deepening wells, the researchers used data on groundwater levels from the US Geological Survey. They found different patterns in different regions: for example, while depletion and well depth seemed to be moving in concert in California's Central Valley, the same was not true in the Floridan and North Atlantic Coastal Plain aquifers. The complex and varying features of different aquifers probably make deepening a viable response in some places but not others.

### **Deeper isn't a long-term answer**

Although shallower wells are at risk of drying out, drilling deeper comes with a host of concerns. For one thing, it's expensive: it may be an option available to some users, but it's not possible for everyone. It's also more energy-intensive to pump water from deeper wells, meaning that a trend toward deeper wells would likely increase the energy cost and carbon emissions of groundwater use.

Finally, there's just a limit to how far it's possible to go—because of poor-quality water at very deep levels, as well as the difficulty of extracting useful amounts of water in certain kinds of rock layers.

This study looks at the US, but this is really a global issue, the authors write. Not only is the US one of the world's largest food exporters (with a great deal of that food reliant on groundwater), but similar dynamics will be at play in other countries that rely on depleting groundwater, including China and India.

Ultimately, better management of this crucial resource requires data, which in turn can help to inform policy. That kind of policy is likely to become increasingly important as the climate crisis changes rainfall patterns: groundwater resources, write Perrone and Jasechko, "may become increasingly valuable because they are generally more resilient to short-term climate variations than surface waters."

*Nature Sustainability*, 2018. DOI: [10.1038/s41893-019-0325-z](https://doi.org/10.1038/s41893-019-0325-z)

20} <https://www.globalonenessproject.org/collections/13934?>

21} <https://gizmodo.com/how-can-we-stop-the-collapse-of-nature-1834719626>

**Scientists warned last week that a million species could go extinct, and it's all our fault.** Well, not "our" as in you and I, but "our" as in humanity.

No single person is responsible—maybe a few oil executives exempted— but our collective actions seem to have pushed the natural world toward collapse. Bad news, sure, but there are also choices the world can make to stop that from happening. Nothing is preordained.

Some solutions are better than others for saving nature, though. For this week's Giz Asks, we asked scientists, including authors of the bombshell extinction report, about the most important actions society can take today to avert catastrophe. While you and I can eat a low impact diet or try to help scientists save endangered species or natural areas, ultimately those actions will never be enough. But if you want to know what will make a difference and what our mindset should be, these are the biggies according to science.

Sandra Díaz

Co-Chair of the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES, the group that wrote the report) and biologist at National University of Cordoba, Argentina

"We should realize that that nature underpins all aspects of our life, so we are not truly ourselves without it. We should realize this in all aspects of our individual life and, critically in our economy, in the way we do business, in the way we develop infrastructure. We can stop the collapse of nature by no longer considering nature as unavoidable collateral damage of the human enterprise. By incorporating nature considerations in all sectors of the economy. Every time that something is done in business, construction, trade, travel, agriculture, mining, ask whether it is good or damaging to nature. If it is damaging, make sure that the right carrots and sticks are there to change this. If it is good, make sure it is given priority over other measures. If it is neutral, ask ourselves what could be done to make it positive."

Patricia Balvanera

IPBES author and biologist at the Research Institute in Ecosystems and Sustainability, Mexico

"Basically [we need to] address harmful economic instruments such as subsidies, financial transfers, subsidized credit, tax abatements, commodity and industrial goods prices that hide environmental and social costs, which favor unsustainable production and wasteful use of natural resources. We can stop the collapse of nature and of societies by shifting radically the current dominant paradigm:

From: more economic growth, more consumption, higher yields, more profit NOW To: more sustainable, more resilient, more equitable, more responsible societies TOWARDS THE FUTURE.

Patricia Miloslavich

IPBES author and chair of the South American Research Group on Coastal Ecosystems, Simón Bolívar University, Venezuela

We need to do some very serious transformative change. By transformative change we refer to profound changes in the way we do things as a society. For these changes to happen, we need to implement the three “I’s”:

Integration - across all stakeholders and all people. Each one of us is part of the solution, and we need to share these solutions, from citizens, to scientists, to policy makers, to decision makers, being inclusive. The problems need to be tackled jointly, the solutions fit for purpose with the participation of everyone.

Innovation - by developing sustainable, environmentally friendly technologies and products that support our needs but that help lower or even revert the impact caused by the major drivers of this collapse. The drivers causing nature’s collapse are mostly the intervention and expansion in the use of land and ocean, exploitation of living resources, pollution (chemical and solid - plastics), climate change, and invasive species.

Information - we cannot manage what we do not know, so information is key. Monitoring of biodiversity and ecosystems needs to be done on a long-term and sustainable way to collect data to support decision making.

Katarzyna Nowak

Fellow at the Safina Center

**Large landscape conservation (LLC) is the best approach we have to mitigating climate change and biodiversity loss.**

There are prime examples of LLC endeavors in North America for example the Yellowstone to Yukon Conservation Initiative that seeks to boost landscape connectivity, biodiversity conservation, and collaboration including at the transboundary level and across five U.S. states, two Canadian provinces, two Canadian territories and the Traditional Territories of more than 30 indigenous groups. The Yellowstone to Yukon region contains core habitats and linkages and sustains a big diversity of wildlife species and significant wildlife migrations.



23} <https://www.salon.com/2020/06/23/the-affluent-are-consuming-the-planet-to-death-study/>

We do not need yet another playground mega-marina, because “...**it is not enough to invest in green technologies; the world's affluent must stop over-consuming.**”

24} <https://news.yahoo.com/crushing-climate-impacts-hit-sooner-010253436.html?>

The report details the sobering consequences of humanity's greenhouse gas pollution, by Marlowe Hood with Patrick Galey and Kelly Macnamara; Tue, June 22, 2021, 6:02 PM·

Climate change will fundamentally reshape life on Earth in the coming decades, even if humans can tame planet-warming greenhouse gas emissions, according to a landmark draft report from the UN's climate science advisors obtained by AFP.

Species extinction, more widespread disease, unlivable heat, ecosystem collapse, cities menaced by rising seas -- these and other devastating climate impacts are accelerating and bound to become painfully obvious before a child born today turns 30.

The choices societies make now will determine whether our species thrives or simply survives as the 21st century unfolds, the Intergovernmental Panel on Climate Change (IPCC) says in a draft report seen exclusively by AFP.

But **dangerous thresholds are closer than once thought**, and dire consequences stemming from decades of unbridled carbon pollution are unavoidable in the short term.

"The worst is yet to come, affecting our children's and grandchildren's lives much more than our own," the report says.

By far the most comprehensive catalogue ever assembled of how climate change is upending our world, the report reads like a 4,000-page indictment of humanity's stewardship of the planet.

But the document, designed to influence critical policy decisions, is not scheduled for release until February 2022 -- too late for crunch UN summits this year on climate, biodiversity and food systems, some scientists say.

In response to AFP's reporting, the IPCC released a statement saying it "does not comment on the contents of draft reports while work is still ongoing".

- Allies into enemies -

The draft report comes at a time of global "eco-awakening" and serves as a reality check against a slew of ill-defined net-zero promises by governments and corporations worldwide.

The challenges it highlights are systemic, woven into the very fabric of daily life.

They are also deeply unfair: those least responsible for global warming will suffer disproportionately, the report makes clear.

And it shows that even as we spew record amounts of greenhouse gases into the atmosphere, we are undermining the capacity of forests and oceans to absorb them, turning our greatest natural allies in the fight against warming into enemies.

It warns that previous major climate shocks dramatically altered the environment and wiped out most species, raising the question of whether humanity is sowing the seeds of its own demise.

**"Life on Earth can recover from a drastic climate shift by evolving into new species and creating new ecosystems," it says.**

**"Humans cannot."**

- 'Irreversible consequences' -

There are at least four main takeaways in the draft report, which may be subject to minor changes in the coming months as the IPCC shifts its focus to a key executive summary for policymakers.

The first is that with 1.1 degrees Celsius of warming clocked so far, the climate is already changing.

A decade ago, scientists believed that limiting global warming to two degrees Celsius above mid-19th century levels would be enough to safeguard our future.

That goal is enshrined in the 2015 Paris Agreement, adopted by nearly 200 nations who vowed to collectively cap warming at "well below" two degrees Celsius -- and 1.5 degrees if possible.

On current trends, we're heading for three degrees Celsius at best.

Earlier models predicted we were not likely to see Earth-altering climate change before 2100.

But the UN draft report says that prolonged warming even beyond 1.5 degrees Celsius could produce "progressively serious, centuries' long and, in some cases, irreversible consequences".

Last month, the World Meteorological Organization projected a 40 percent chance that Earth will cross the 1.5-degree threshold for at least one year by 2026.

For some plants and animals, it could be too late.

"Even at 1.5 degrees Celsius of warming, conditions will change beyond many organisms' ability to adapt," the report notes.

Coral reefs -- ecosystems on which half a billion people depend -- are one example.

Indigenous populations in the Arctic face cultural extinction as the environment upon which their livelihoods and history are built melts beneath their snow shoes.

A warming world has also increased the length of fire seasons, doubled potential burnable areas, and contributed to food systems losses.

- Get ready -

The world must face up to this reality and prepare for the onslaught -- a second major takeaway of the report.

"Current levels of adaptation will be inadequate to respond to future climate risks," it cautions.

Mid-century projections -- even under an optimistic scenario of two degrees Celsius of warming -- make this an understatement.

Tens of millions more people are likely to face chronic hunger by 2050, and 130 million more could experience extreme poverty within a decade if inequality is allowed to deepen.

In 2050, coastal cities on the "frontline" of the climate crisis will see hundreds of millions of people at risk from floods and increasingly frequent storm surges made more deadly by rising seas.

Some 350 million more people living in urban areas will be exposed to water scarcity from severe droughts at 1.5 degrees Celsius of warming -- 410 million at two degrees Celsius.

That extra half-a-degree will also mean 420 million more people exposed to extreme and potentially lethal heatwaves.

"Adaptation costs for Africa are projected to increase by tens of billions of dollars per year with warming greater than two degrees," the report cautions.

- Point of no return -

Thirdly, the report outlines the danger of compound and cascading impacts, along with point-of-no-return thresholds in the climate system known as tipping points, which scientists have barely begun to measure and understand.

A dozen temperature trip wires have now been identified in the climate system for irreversible and potentially catastrophic change.

**Recent research has shown that warming of two degrees Celsius could push the melting of ice sheets atop Greenland and the West Antarctic -- with enough frozen water to lift oceans 13 metres (43 feet) -- past a point of no return.**

Other tipping points could see the Amazon basin morph from tropical forest to savannah, and billions of tonnes of carbon leech from Siberia's permafrost, fueling further warming.

In the more immediate future, some regions -- eastern Brazil, Southeast Asia, the Mediterranean, central China -- and coastlines almost everywhere could be battered by multiple climate calamities at once: drought, heatwaves, cyclones, wildfires, flooding.

But global warming impacts are also amplified by all the other ways that humanity has shattered Earth's equilibrium.

These include "losses of habitat and resilience, over-exploitation, water extraction, pollution, invasive non-native species and dispersal of pests and diseases," the report says.

There is no easy solution to such a tangle of problems, said Nicholas Stern, former chief economist at the World Bank and author of the landmark Stern Review on the Economics of Climate Change.

"The world is confronting a complex set of interwoven challenges," said Stern, who did not contribute to the IPCC report.

"Unless you tackle them together, you are not going to do very well on any of them."

- 'Transformational change' -

There is very little good news in the report, but the IPCC stresses that much can be done to avoid worst-case scenarios and prepare for impacts that can no longer be averted, the final takeaway.

Conservation and restoration of so-called blue carbon ecosystems -- kelp and mangrove forests, for example -- enhance carbon stocks and protect against storm surges, as well as providing wildlife habitats, coastal livelihoods and food security.

Transitioning to more plant-based diets could also reduce food-related emissions as much as 70 percent by 2050.

But simply swapping a gas guzzler for a Tesla or planting billions of trees to offset business-as-usual isn't going to cut it, the report warns.

"We need transformational change operating on processes and behaviors at all levels: individual, communities, business, institutions and governments," it says.

"We must redefine our way of life and consumption."

25} <https://www.nbcnewyork.com/news/national-international/cause-of-miami-condo-collapse-unclear-but-experts-say-barrier-islands-present-risks/3124480/>

There are more questions than answers after a 12-story building collapsed in Surfside, Florida, on Thursday.

Local officials appeared to have few ideas about what may have caused wings of the 136-unit building to inexplicably crumble.

**Scientists, however, have long noted the risk of building on the shifting sands of a barrier island like Miami Beach, especially with rising sea levels.** That may not be the reason for this collapse, but it remains an engineering challenge in the region.

Surfside's mayor, Charles Burkett, told reporters that he often jogged by the condo building, which was built in the early 1980s. He said he knew it had undergone some minor construction and roof work that included a recent crane, but he noted that many buildings undergo similar maintenance.

"There's no reason for this building to go down like that," Burkett said, "unless someone literally pulls out the supports from underneath, or they get washed out, or there's a sinkhole or something like that, because it just went down."

"I mean it looks like a bomb went off, but we're pretty sure a bomb didn't go off," the mayor told NBC's "TODAY" show.

'Buildings don't just collapse'

Kenneth Direktor, an attorney for Becker, a law firm that has worked for the building since 1993, told the Miami Herald that the building had hired an engineer to undergo a 40-year recertification process, as is required under Miami-Dade County building code.

"They were well into the review with the engineer about the project," Direktor told the Miami Herald.

Any property in the county that was built four decades or longer ago is required to complete the inspection process within a few years of that anniversary to certify "each building or structure is structurally and electrically safe for the specified use for continued occupancy," according to the county's notice sent to property owners.

There are recent examples of the local government shutting down condo buildings in Miami Beach and forcing residents to move out if they fail their inspections, said Peter Zalewski, principal of Condo

Vultures, a South Florida real estate market analysis company. Miami Beach closed the Castle Beach Club to residents for more than two years in 2005 after the building failed to address structural damage and electrical defects, he said.

“I’ve been here since 1993, and I’ve never seen something like this happen,” Zalewski added, referring to Thursday’s condo collapse. “You would think any problems that large would have been detectable. If a recertification was being done, expect reports that say what problems currently exist in the building.”

“I have a feeling that something else is going to be discovered that happened that we can’t assume right off the bat,” Zalewski added. “Forty-year-old buildings don’t just collapse, and there’s a whole series of them lining up and down the coast.”

Public records did not show many issues regarding the building beyond two lawsuits over cracks in a unit’s exterior wall.

One condo owner sued the unit association for failing to fix the cracks in the outside wall of her unit in 2015, according to a lawsuit filed in Miami-Dade County. The condo owner, who could not be reached for comment, said the cracks led to water damage that cost \$15,000. The court documents noted that because the cracks were a structural issue the building association was liable for the expense.

The condo owner had previously filed a lawsuit against the building association in 2001 due to a similar issue. The two sides settled outside of court, but that kind of cracking is described as “of interest” in the county’s Structural Recertification Form.

Becker, the law firm that works for the building and represented it in the 2015 lawsuit, did not provide a response to a request for comment.

### **‘A real awakening’**

Another issue at hand for the Surfside community is one shared with all of Miami Beach: The towns are built on a barrier island. Climate scientists and geologists have long warned that these islands cannot be developed responsibly. They are made of a loose mixture of sand and mud and provide a natural protection for the shoreline.

“These are very dynamic features. We didn’t understand that these islands actually migrate until the 1970s,” said Orrin Pilkey, a professor emeritus of geology at Duke University who has long studied sea-level rise and the over-development of the coast. “As sea level rises, they move back.”

An analysis of satellite images taken of Miami Beach, which includes the town of Surfside, found that the area had moved slightly each year through the 1990s, according to a study published in the journal Ocean & Coastal Management in April 2020. The report noted that these issues can lead to greater flooding and hazards for local communities.

Americans have built approximately \$3 trillion worth of property on barrier islands and coastal floodplains, according to “The Geography of Risk,” a book by Pulitzer Prize winner Gilbert Gaul that analyzes the real estate investment in beach communities over the past century.

**“It’s a tough conversation to have, but the building shouldn’t have been there,” Pilkey said, “along with a lot of other buildings. We’re due for a real awakening.”**

In the meantime, Zalewski said he believes buildings of a similar age will probably undergo fresh analyses and inspections in the aftermath of this tragedy. He said he wouldn’t be surprised if Florida began requiring building reports to be handed to the state for review in the future.

“At the end of the day,” he said, “this is going to be a dramatic change for condos.”

26} <https://gizmodo.com/california-s-megadrought-is-making-water-taste-like-ass-1847164891>

Thanks to the ongoing drought and increased heat in California, waterways are experiencing unusually low levels and high temperatures. It comes after a not-great snow year and a blistering spring that melted out what snowpack there was early and dried everything out. Those are ideal conditions for blue-green algae to form.

“Due to the dry conditions, river levels are lower and water temperatures are higher sooner than usual—causing more organic materials—so it’s not too surprising to get these calls now,” said Mark Severeid, Sacramento’s water quality superintendent, in a press statement.

No one knows how much algae and geosmin will form in the Sacramento and American rivers in the near future, but since they're continuing to dry up, concentrations are likely to rise. **The gnarly water is one symptom of a punishing drought that's gripped the West and has diminished water supplies for farmers as well as hydropower generators.**

27} <https://gizmodo.com/a-record-breaking-and-dangerous-heat-wave-is-about-to-h-1847157954>

"We have human-caused climate change, making a moderate drought turn into a super megadrought," Stewart Cohen, a retired climatologist after 35 years with Environment and Climate Change Canada, told the CBC. **"We have a warmer climate because of greenhouse gases. It's making droughts worse, dryer, and it's making heat waves also worse."**

This is only the beginning, though. Climate change is expected to keep increasing the odds of heat and megadrought this century. The records that could fall this weekend and early next week will surely not be the last. But if what we're seeing out West is any indication, we have a lot of work to do to ensure water systems, cities, and forests are ready for what comes next.

28} <https://oaklandside.org/2021/06/03/oakland-considers-banning-adus-in-the-hills-to-avoid-fire-danger/>

**The fire department says adding more people and cars will clog streets in a crisis.** Homeowners say a backyard-cottage ban would be misguided and inequitable.

The Oakland hills, where houses are nestled inside forests of dry, volatile trees, are uniquely vulnerable to devastating fires like the [1991 tragedy](#). The narrow, winding roads with dead-ends and few connections to major streets make it especially challenging for residents to flee the area or for emergency vehicles to enter it.

Desperate to limit the number of people and cars that would need to evacuate the area in a crisis, the Oakland Fire Department and city planners want to ban the construction of new "accessory dwelling units," or ADUs, in the hills, fearing more backyard cottages would create too much deadly density.

In recent years, state and local laws have encouraged the construction of ADUs to address concerns over housing supply shortages. These structures can refer to any independent residential unit built on the

same lot as a main house: granny flats, in-law units, garages converted into one-bedrooms, or basement apartments. ADUs are widely considered a cheaper and quicker, and often less controversial, means of building much-needed housing.

On Wednesday, the Oakland Planning Commission considered a staff proposal to update the city's ADU law, mainly to bring the policy into compliance with new state rules that make it easier for homeowners to get approval to build the units. But the bulk of the meeting focused on another aspect of the proposal, which would ban all ADUs across the entire area of Oakland considered by the state to be at high risk for wildfires, which is largely in the hills.

More than 50 people called into the meeting, most of whom bashed the proposal and implored the city to take a more "surgical" approach by considering the unique safety risks of individual streets or certain neighborhoods instead of blocking off the entire hills area. Many said they'd bought their homes with the expectation that they could build an ADU for aging parents or adult children. Others said the policy was unethical, placing the burden of easing the housing crisis on poorer, already highly developed neighborhoods.

Commissioners seemed startled and moved by the outpouring of concern, ultimately continuing the item to another meeting instead of voting to send it on to the City Council. They asked city staff to come back with an updated proposal and more information in the future.

"This pits three things against each other," said Commissioner Amanda Monchamp. "Fire risk, the need for housing, and equity. There's no win here."

Higher temperatures, stronger winds, statewide droughts: **climate change is making Oakland more and more susceptible to fire.**

**"We used to call this the 'new norm' in the fire service," said OFD Deputy Chief Nicholas Luby at Wednesday's meeting. "We've changed that nomenclature to the 'new extreme.'" The East Bay already had its first red flag warning this year, a fire-danger alert typically only issued in the fall, and recent mass tree death in regional parks has emergency responders extra concerned about this year's wildfires and those to come in the years ahead.**

Typical fire prevention measures like vegetation management are still important, said Luby, but “when we reach winds at this ferocity, homes become fuel.” The solution? “Reducing occupancy in the area,” he said.

The city has begun using new modeling software, called Zonehaven, which uses the number of people, cars, structures, and escape routes in an area to simulate emergencies and aid in planning for evacuation. (Members of the public will soon be able to use the software to figure out their own evacuation plans, too.) While emergency responders have always been concerned about the narrow streets in the hills, Luby said “chokepoints,” where cars can get backed up at intersections as they’re fleeing, appear to be the bigger issue.

ADU construction should be prohibited “where the existing infrastructure cannot support the increase in population density without significantly compromising public safety because of ‘bottleneck’ issues in traffic flow from vehicles and evacuation choke points,” wrote the Planning Department in its staff report.

Since 2017, Oakland policy has limited ADU construction in some narrow parts of the hills. The new proposal greatly expands the ban to include the whole area deemed the “very high fire hazard severity zone” by Cal Fire, the state’s fire department. That zone includes most of the hills, with a very rough bottom boundary along Highway 13, and along I-580 from Mills College to San Leandro. In some cases it includes neighborhoods below those freeways.

In a sobering presentation, Luby described the challenges of evacuation during the 2018 Camp Fire in Paradise, where wider, less densely populated roads, and thorough evacuation planning did not stop people from dying in their cars.

**“They didn’t anticipate that when winds picked up, power lines and trees came down and routes got blocked. There were double the cars on the street,” Luby said. “Our infrastructure can’t support large-scale evacuations.”**

More ADUs will inevitably mean more cars, city planners said, since transit access is poor in the hills, and ADU law does not typically require homeowners to add off-street parking. Already, many people noted at the meeting, residents frequently disobey parking restrictions in the hills, blocking emergency vehicle access.

**“Just because we built housing in areas where we shouldn’t have, doesn’t mean we should continue to,” said Laura Kaminski, a city planning manager.**

At Wednesday’s meeting, speakers said they were blindsided by the proposed ADU ban, some becoming emotional describing how the policy would thwart their plans to care for family members.

“For us, the ADU is probably going to be the thing that allows our adult children to reside in a community where they can’t afford to go buy a home,” said Shumsha Hanif-Cruz. “And it’s eliminating the possibility of sources of income as we get older and retire.”

Another speaker mentioned moving their mother into an Oakland hills garage unit from a fire zone in Oregon, and another said their disabled neighbor depends on a caretaker who lives in an ADU at their house.

Many speakers questioned the lack of details provided by the city regarding how many ADUs are expected to be built in the hills, and how many cars they’d add to the streets. In many cases, ADUs are for senior relatives who don’t drive or a millennial who’d rather bike, they argued.

“There’s been no data presented, so it seems a bit hasty to come to a decision tonight to halt all ADU construction in this heterogenous zone,” said a speaker named Sarah. “It seems ironic that there’s no pause on [other] development.” Many mentioned the paradox of this proposal and the existence of Oakland’s vacancy tax, which requires owners of undeveloped lots, including in the hills, to pay a fine for *not* building on their land.

Hanif-Cruz was among the many speakers who took issue with the breadth of the proposed ban. She lives in the Eastmont hills and said she’d evacuate down any number of available roads, like 82nd or 73rd avenues, not clogging a freeway or major intersection. “Not all of these neighborhoods are the same in terms of access to escape routes,” she said. Others said the state boundary lines seemed arbitrary, in some cases including portions of a given block but not others.

But a handful of speakers, most survivors of the 1991 Oakland-Berkeley firestorm, sided with the city.

**“I still remember the horror of the chokepoints and people trying to get out,”** said Howard Matis.

“You can’t take a bike—I had a young child. If you allow ADUs in the hills, you’ll be personally sentencing your fellow Oaklanders to die in the next fire.”

After listening to the residents, Planning Commissioners said they didn't feel confident enough in the staff proposal to send it to the City Council for a vote.

"My concern is we still are lacking information," said Chair Tom Limon. "Who in the hills is interested in building an ADU, and what kind? That would be really helpful to know in determining the risks." He noted that many people who lost their houses in the 1991 fire rebuilt much larger homes, which now house two aging residents who could accommodate an ADU.

City records show that Oakland granted 346 permits for ADUs across the city in 2020, and 292 in 2019, but it's unclear how many were built in the proposed fire zone.

Commissioner Leopold Ray-Lynch recused himself from the discussion after noting that he lives in the high-fire-risk area and intends to build an ADU.

It may not be appropriate to expand Oakland's ADU exemption area to that full Cal Fire zone, said Monchamp.

"I appreciate it as a state designation, but it seems like it really encompasses a whole lot more in area and we probably could find a way to go somewhere in between," she said. "I was not quite convinced that we've looked at it enough in terms of balancing all the competing factors."

The commission voted unanimously to ask staff to respond to questions raised Wednesday and to work more closely with the state on crafting the policy, eventually coming back with an updated proposal on an unspecified date.

29} [https://arstechnica.com/science/2021/06/climate-driven-coastal-flooding-in-the-us-likely-to-get-worse-suddenly/?](https://arstechnica.com/science/2021/06/climate-driven-coastal-flooding-in-the-us-likely-to-get-worse-suddenly/)

Our warming planet is melting lots of ice and heating the waters of the oceans, creating a clear trend of rising oceans. In some areas of the US, this is starting to cause what's called nuisance flooding, where high tides cause coastal flooding even in the absence of storms. As the oceans continue to rise, figuring out what areas are likely to become vulnerable to coastal flooding and when is going to be critical to understanding how to manage coastal development.

Figuring out coastal development is complicated. The rate of sea level rise can vary from year to year, the local ocean levels can vary as the land settles or rises, and the pace of sea level rise is increasing. And now, a team of researchers has quantified an additional factor: regular variations in the Moon's orbit, which influence the levels reached by high tide. The team goes on to show that these changes can suppress the impact of rising seas for a time but can then contribute to a rapid increase in floods.

### **Cycling the Moon**

The plane of the Moon's orbit isn't located exactly at the equator; instead, it's tilted slightly. That means, for part of its orbit, the Moon is orbiting above the Northern Hemisphere, and for the other part, it's over the Southern Hemisphere. The locations in its orbit where the Moon crosses between the two hemispheres are called nodes, and these shift over time. It takes a bit over 18 years for a node to complete an orbit around the Earth.

This cycle has consequences for the tides, although the impacts vary in time and based on geographic location. But in general, a high-tide mark at one point in the 18-year cycle can differ in elevation from the high-tide mark at a different point. Put in concrete terms, in St. Petersburg, Florida, the peak high tide at one point of the lunar nodal cycle is 4.7 centimeters higher than it is at the low point.

That complexity is layered on top of all the additional factors that cause variations in sea level rise. To figure out what this might mean for flooding, the researchers turned to data and models from NOAA. NOAA has determined the level of high tide that will trigger flooding at locations throughout the US, including minor and moderate levels of flooding. The agency also maintains different projections for sea level rise to the end of the century, based on whether we expect the total rise to be at the low, middle, or high end of the range of what's expected by the century's end.

All of this was combined with the Moon's influence to create an ensemble of models that project daily flood risk out through the next few decades. The team made estimates for 89 different locations throughout the US, including some of its island territories.

### **The Moon and more**

Given that sea levels are expected to rise through the remainder of the century, it's no surprise that these projections show an increased rate of flooding. But the Moon's influence often had a surprising impact on

the rate. In many locations, the Moon acted to suppress flooding for a while, blocking what would normally have been a gradual increase. As the orbit shifted, it would then act to accelerate the rate of flooding.

This creates what's termed an inflection point, where the behavior of the system changes relatively suddenly. Specific locations go from a very gradual increase in flooding days to a significantly more rapid rise. In most of the US, that inflection point occurs in the 2030s to 2040s—not very far from the present. For example, Boston is expected to see about six additional days of moderate flooding per year by the end of the decade from 2031 to 2041. But by the end of the decade following, the city will see an extra 46 days of moderate flooding. Similar trends were seen in many other cities.

While that's a significant influence, it's not the only one. There's a nonlinear relationship between sea level rise and flooding days, since a smaller margin between flooding and not makes it much easier for high tides to cause flooding.

One factor the ensemble can't take into account is the fact that sea level rise tends to vary over time, in part due to short-term influences like El Niño. If you look at [global sea level data](#), for example, you'll see that there are a number of short-term drops in sea level (such as around 2010), and they're often interspersed with periods when the ocean's rise is faster than its average pace (see 2015-2017). These fluctuations can't be predicted in advance, but they could easily slow or boost the rate of flooding.

Finally, many areas of the US are gradually subsiding as the sediment upon which they're built compacts. Other areas that were buried in ice during the last glacial period are still rebounding from the elimination of that added mass. These also create differences between locations that influence the rate at which flooding becomes a problem.

### **Flooding clusters**

The data also makes apparent that the rising waters aren't evenly distributed around the year. For example, by 2050, Honolulu is expected to experience about 63 days of flooding a year. But nearly half of those days are likely to occur within a three-month period. This occurs both because factors that tend to cause flooding don't necessarily go away the next day and partly just because the average rate of occurrence tends to include lots of variation over the course of a year.

Overall, a number of conclusions can be drawn from this work. Right now, flooding from sea level rise is something that, unless you live in a handful of locations, you can ignore. But the authors estimate that, **in a little over a decade, sea level rise will stop being a regional issue and become a widespread national problem. And within a decade of that, a lot of places will have passed the inflection point and will be on a path of rapidly increasing flooding events.**

**Finally, all of this is based on low-to-moderate sea level rise scenarios. Should things happen faster than that, the time window we'll have before needing to deal with these problems is going to be considerably narrower.**

All of that makes it essential that these floods are taken into consideration immediately. Infrastructure we are building at present is unlikely to reach its end of life before flooding becomes far more frequent. Housing, roads, and other facilities that we are currently using will likely need to be protected or abandoned. And coastal states may want to start setting aside money to deal with the flooding that will invariably occur.

Nature Climate Change, 2021. DOI: [10.1038/s41558-021-01077-8](https://doi.org/10.1038/s41558-021-01077-8)

30} <https://www.theguardian.com/environment/2021/jul/02/canadian-inferno-northern-heat-exceeds-worst-case-climate-models?>

Canadian inferno: northern **heat exceeds worst-case climate models**

Scientists fear heat domes in North America and Siberia indicate a new dimension to the global crisis

Fri 2 Jul 2021 11.28 EDT

If you were drawing up a list of possible locations for hell on Earth before this week, the small mountain village of Lytton in Canada would probably not have entered your mind.

Few people outside British Columbia had heard of this community of 250 people. Those who had were more likely to think of it as bucolic. Nestled by a confluence of rivers in the forested foothills of the Lillooet and Botanie mountain ranges, the municipal website boasts: "Lytton is the ideal location for nature lovers to connect with incredible natural beauty and fresh air freedom."

Over the past seven days, however, the village has made headlines around the world for a freakishly prolonged and intense temperature spike that turned the idyll into an inferno.

The US president, Joe Biden, and Canadian prime minister, Justin Trudeau, have warned worried populations to brace for more. **Shocked climate scientists are wondering how even worst-case scenarios failed to predict such furnace-like conditions so far north.**

Johan Rockström, the director of the Potsdam Institute for Climate Impact Research, said the recent extreme weather anomalies were not represented in global computer models that are used to project how the world might change with more emissions. The fear is that weather systems might be more frequently blocked as a result of human emissions. “It is a risk – of a serious regional weather impact triggered by global warming – that we have underestimated so far,” he said.

In Lytton, it felt as if the weather itself had stagnated. Trapped in a vast heat dome that enveloped western Canada and the north-western US, temperatures had nowhere to go but up.

In Lytton, the Canadian national heat record was broken on Monday, smashed on Tuesday and then obliterated on Wednesday when the local monitoring station registered 49.6C (121F).

After the insufferable heat came choking fire. First the forest burned, then parts of the town. On Wednesday evening, the mayor, Jan Polderman, issued the evacuation order. “It’s dire. The whole town is on fire,” he said on TV. “It took, like, a whole 15 minutes from the first sign of smoke to, all of a sudden, there being fire everywhere.” By Thursday, satellite images showed an eruption of blazes around the village and a widening smoke cloud across the region.

Police stations and hospitals reported a surge in heat-related deaths – 486 in British Columbia, and dozens more south of the border. Roads buckled as asphalt expanded. At least one city suffered power cuts.

The psychological, political and economic impacts are harder to quantify, but for many, along with the horror came a sense of bewilderment that these northern territories were hotter than the Middle East. David Phillips, the Canadian government’s senior climatologist, summed it up in an interview with CTV. “I mean, it’s just not something that seems Canadian.”

More people in more countries are feeling that their weather belongs to another part of the world. Across the border, in Washington state, the maximum heat measured at Olympia and Quillayute was 6C higher

than the previous all-time record, according to the Weather Prediction Centre. In Oregon, the town of Salem hit 47C, smashing the previous record by 9C. Several areas of California and Idaho also saw new highs.

The previous week, northern Europe and Russia also sweltered in an unprecedented heat bubble. June records were broken in Moscow (34.8C), Helsinki (31.7C), Belarus (35.7C) and Estonia (34.6C).

Further east, Siberia experienced an early heatwave that helped to reduce the amount of sea ice in the Laptev Sea to a record low for the time of year. The town of Oymyakon, Russia, widely considered to be the coldest inhabited place on Earth, was hotter (31.6C) than it has ever been in June. This followed a staggeringly protracted hot spell in Siberia last year that lasted several months.

Carlo Buontempo, director of the Copernicus Climate Change Service, said there was a clear human fingerprint on this “very freakish” event. Without emissions from cars, farms and industry, he said, the record temperatures in the western north Americas would be expected only once in tens of thousands of years, but the probability rises along with the levels of the greenhouse gas. “In the present-day climate, getting an extremely hot June is common and is likely to occur twice in three decades. However, an analysis from many computer models suggests that by the end of the century these extreme temperatures are more likely than not. Human influence is estimated to have increased the likelihood of a new record several thousand times.”

Rising temperatures can be seen across the world. Even in the Middle East, temperatures of 50C plus were once outliers, but parts of Pakistan, India, Australia, the US and Canada are now regularly approaching or passing that mark.

But the intensity of the heat in the north-west Americas this year and Siberia last year has taken many scientists by surprise and suggested extra factors may be involved in northern latitudes.

One theory is that the recent temperature spike might have been caused not just by global heating, but by slowing weather systems that get stuck in one place for an extended period, which gives them time to intensify and cause more damage. This was an important factor in the devastation in Texas caused by Hurricane Harvey in 2018, which sat above Houston for several days rather than blowing inland and weakening. Blocked high-pressure fronts were also blamed for the blistering heatwave in Europe in 2019.

Experts at the Potsdam Institute and elsewhere believe the rapid heating in the Arctic and decline of sea ice is making the jet stream wiggle in large, meandering patterns, so-called Rossby resonance waves, trapping high- and low-pressure weather systems in one location for a longer time.

This theory remains contested, but Michael Mann, director of the Earth System Science Center at Pennsylvania State University, said this week's unexpectedly fierce heat at Lytton and elsewhere should prompt climatologists to consider additional impacts of human activity.

"We should take this event very seriously," he wrote in an email. "You warm up the planet, you're going to see an increased incidence of heat extremes. Climate models capture this effect very well and predict large increases in heat extremes. But there is something else going on with this heatwave, and indeed, with many of the very persistent weather extremes we've seen in recent years in the US, Europe, Asia and elsewhere, where the models aren't quite capturing the impact of climate change."

Regardless of which interactions are to blame, scientists are agreed that the simplest way to reduce the risk of further temperature jolts is to cut fossil fuel emissions and halt deforestation.

"It appears that this heatwave is still a rare phenomenon in the current climate, but whether it stays that way depends on our decisions," Friederike Otto, associate director of the Environmental Change Institute at the University of Oxford, said. "If the world does not rapidly eliminate fossil fuel use and other sources of greenhouse gas emissions like deforestation, global temperatures will continue to rise and deadly heatwaves such as these will become even more common."

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31} <https://arstechnica.com/science/2021/07/seawalls-might-just-make-floods-someone-elses-problem-study-suggests/>

Sea walls might just make floods someone else’s problem, study suggests

Protecting the coasts in the United States from the impacts of climate change comes with a hefty price tag. But new research shows that using sea walls to safeguard land can just make the rising tides a problem somewhere else.

The paper, published in PNAS, looks into the effect of erecting sea walls in one location and what that means for other places along the coast. Using the San Francisco Bay as a case study, it also assesses the economic impacts of flood scenarios in the nonprotected regions. According to the paper, defending individual parcels of the shore can increase flooding elsewhere by as much as 36 million cubic meters. This can result in \$723 million in damages for a single flooding event in the most dire situations—costs can even exceed the damages that would have resulted otherwise in the protected region.

### Sea change

As the sea level around the world rises, humans are inevitably going to be putting up structures to protect themselves—and, in the case of the US, that includes 350,000 structures near the coast. But this can have detrimental effects on those places we choose not to protect.

Robert Griffin, an assistant professor at the University of Massachusetts, Dartmouth's School of Marine Science and Technology, decided to look into what happens to unprotected areas. Griffin and his team combined hydrodynamic and economic modeling to investigate flood damages in the San Francisco Bay under a variety of different scenarios—with different parts of the shore protected by walls with different lengths, for instance. (For the sake of the experiment, the sea walls were modeled as being infinitely high.)

The team focused on problems brought on by tidal events, rather than storms, and broke the results down by amount of sea-level rise: 50 cm, 100 cm, 150 cm, and 200 cm above 2010 levels. The study "can be useful in a variety of outcomes through time," Griffin told Ars, adding that the 200 cm scenario is close to the high end of current projections for the year 2100.

"Displacement effects relate to the morphology of the land. Places that are low-lying, and valleys, can potentially accommodate more water in a tidal flooding scenario. If you block those places in the case of a flood, those waters go elsewhere. If those other places aren't also similarly defended, then it can increase the damages on those places," Griffin said.

For example, if you protect the Napa-Sonoma shoreline, the Santa Clara Valley and San Leandro in the South Bay can expect to experience \$82 million and \$70 million in flooding damages, respectively, with a sea-level rise of 200 cm. San Rafael would also be hit with an additional \$53 million in damages in the case of a flood.

On the positive side of things, protecting parts of the South Bay could lead to small but widespread damage reductions. Protecting Alameda, for instance, could reduce flood damages in areas south of there, including San Lorenzo and Newark. It would also cut down damages on the opposite side of the shoreline, near Palo Alto and Silicon Valley, the paper notes.

Though the modeling done in this research focuses on the San Francisco Bay, Griffin noted that other parts of the world's coasts could see similar effects. Further, around 468 million people live close to bays and estuaries, according to the paper. Considering sea walls are already in place along many coasts, these displaced damages could already be happening—though potentially to a lesser extent than if the sea level reached the paper's more dire levels.

Not all shores created equal

The economic damages of a flood—whether impacted by a distant tidal wall or not—will vary from place to place. For instance, in the Bay Area, Napa County is relatively sparsely populated compared to Oakland and other urban regions. However, the region at large is still quite densely populated compared to elsewhere in the US, Griffin noted.

**Theoretically, using sea walls, the flood waters could be redirected into ideal areas. The paper notes that strategic flooding of certain shoreline segments, such as sloping regions with a good amount of space to accommodate the influx of water, could be used to mitigate damages elsewhere.** There are other considerations when making decisions about protecting parts of the shore, according to the research. These include the protection of vulnerable populations, places with historic significance, places of agricultural importance, etc.

Griffin said that he hopes that different jurisdictions—cities, states—begin to work together to consider the potential impacts of their efforts to protect their shores.

"Planning in a small-scale and doing so without considering impacts elsewhere can lead to these unintended consequences that, only now, are we starting to get a measure or a value for," he said.

## Unintended consequences

These findings aren't terribly surprising to Jeremy Porter, head of research and development at First Street Foundation, as other efforts to mitigate damages from climate change often come with their own issues. For example, in Miami Beach, the city elevated the roads to keep flood waters away—but that water just flows into other areas, Porter told Ars.

"There's always this conflict, this sort of tension, between adaptation—adding physical infrastructure to manage that type of flooding—and the unintended latent consequences that occur," he said. "The water has to go somewhere."

Porter agreed that planning to redirect flood waters to strategic places would be a good idea. Further, he noted that cooperation between different jurisdictions isn't, at the moment, likely. Right now, the funding for large climate adaptation projects comes from the federal government or the local one. In either case, there's not a lot of incentive for the local government to think about the impacts in other places.

According to Porter, for a long time, people steered clear from building in places prone to floods—and this was before the current state of the climate. For example, the Outer Banks islands of North Carolina were relatively undeveloped. Now, the barrier islands are a popular tourist destination, and they and their infrastructure are threatened by floods. Going forward, buildings probably shouldn't be constructed in areas likely to see this much water.

"A lot of the unintended consequences that are occurring are because people didn't look far enough out to see what the climate is like 30, 40, 50 years into the future," Porter said.

PNAS, 2021. DOI: 10.1073/pnas.2025961118.

32} <https://www.theguardian.com/environment/2021/jul/16/climate-scientists-shocked-by-scale-of-floods-in-germany>

Climate scientists shocked by scale of floods in Germany

**The intensity and scale of the floods in Germany this week have shocked climate scientists, who did not expect records to be broken this much, over such a wide area or this soon.**

After the deadly heatwave in the US and Canada, where temperatures rose above 49.6C two weeks ago, the deluge in central Europe has raised fears that human-caused climate disruption is making extreme weather even worse than predicted.

Precipitation records were smashed across a wide area of the Rhine basin on Wednesday, with devastating consequences. At least 58 people have been killed, tens of thousands of homes flooded and power supplies disrupted.

Parts of Rhineland-Palatinate and North Rhine-Westphalia were inundated with 148 litres of rain per sq metre within 48 hours in a part of Germany that usually sees about 80 litres in the whole of July.

The city of Hagen declared a state of emergency after the Volme burst its banks and its waters rose to levels not seen more than four times a century.

The most striking of more than a dozen records was set at the Köln-Stammheim station, which was deluged in 154mm of rain over 24 hours, obliterating the city's previous daily rainfall high of 95mm.

Climate scientists have long predicted that human emissions would cause more floods, heatwaves, droughts, storms and other forms of extreme weather, but the latest spikes have surpassed many expectations.

"I am surprised by how far it is above the previous record," Dieter Gerten, professor of global change climatology and hydrology at the Potsdam Institute for Climate Impact Research, said. "We seem to be not just above normal but in domains we didn't expect in terms of spatial extent and the speed it developed." Gerten, who grew up in a village in the affected area, said it occasionally flooded, but not like this week. Previous summer downpours have been as heavy, but have hit a smaller area, and previous winter storms have not raised rivers to such dangerous levels. "This week's event is totally untypical for that region. It lasted a long time and affected a wide area," he said.

Scientists will need more time to assess the extent to which human emissions made this storm more likely, but the record downpour is in keeping with broader global trends.

“With climate change we do expect all hydro-meteorological extremes to become more extreme. What we have seen in Germany is broadly consistent with this trend.” said Carlo Buontempo, the director of the Copernicus Climate Change Service at the European Centre for Medium-Range Weather Forecasts.

The seven hottest years in recorded history have occurred since 2014, largely as a result of global heating, which is caused by engine exhaust fumes, forest burning and other human activities. Computer models predict this will cause more extreme weather, which means records will be broken with more frequency in more places.

The Americas have been the focus in recent weeks. The Canadian national daily heat record was exceeded by more than 5C two weeks ago, as were several local records in Oregon and Washington. Scientists said these extremes at such latitudes were virtually impossible without human-driven warming. Last weekend, the monitoring station at Death Valley in California registered 54.4C, which could prove to be the highest reliably recorded temperature on Earth.

Daniel Swain, a climate scientist at the University of California in Los Angeles, said so many records were being set in the US this summer that they no longer made the news: “The extremes that would have been newsworthy a couple of years ago aren’t, because they pale in comparison to the astonishing rises a few weeks ago.” This was happening in other countries too, he said, though with less media attention. “The US is often in the spotlight, but we have also seen extraordinary heat events in northern Europe and Siberia. This is not a localised freak event, it is definitely part of a coherent global pattern.”

The far north of Europe also sweltered in record-breaking June heat, and cities in India, Pakistan and Libya have endured unusually high temperatures in recent weeks. Suburbs of Tokyo have been drenched in the heaviest rainfall since measurements began and a usual month’s worth of July rain fell on London in a day. Events that were once in 100 years are becoming commonplace. Freak weather is increasingly normal.

Some experts fear the recent jolts indicate the climate system may have crossed a dangerous threshold. Instead of smoothly rising temperatures and steadily increasing extremes, they are examining whether the trend may be increasingly “nonlinear” or bumpy as a result of knock-on effects from drought or ice melt in the Arctic. This theory is contentious, but recent events have prompted more discussion about this possibility and the reliability of models based on past observations.

“We need to better model nonlinear events,” said Gerten. “We scientists in recent years have been surprised by some events that occurred earlier and were more frequent and more intense than expected.”

33} I reference hereby the following court matters, in their entirety, as precedent-setting cases laying out the rationale for why this stretch of water’s edge must be conserved instead of ruined as a mega-marina. None of these were taken into account in 2006, 2009, or by the authors of Zarsion’s current request documents, but they must be considered.

33.a - Cabinet Mountains Wilderness/Scotchman’s Peak Grizzly Bears v. Peterson, 685 F.2d 678

(D.C. Cir. 1982);

33.b - Northern Spotted Owl v. Hodel, 716 F. Supp. 479 (W.D. Wash. 1988);

33.c - Northern Spotted Owl v. Lujan, 758 F. Supp. 621 (W.D. Wash. 1991);

33.d - Hawaiian Crow v. Lujan, 906 F. Supp. 549 (D. Haw. 1991);

33.e - Mt. Graham Red Squirrel v. Yeutter, 930 F.2d 703 (9th Cir. 1991);

33.f - Citizens to End Animal Suffering & Exploitation v. New England Aquarium, 836 F. Supp. 45

(U.S. D.Ct. Mass. 1993) (Marine Mammal Protection Act);

33.g - Marbled Murrelet v. Pacific Lumber Co., 880 F. Supp. 1343 (N.D. Cal. 1995);

33.h - Loggerhead Turtle v. County Council of Volusia County, Florida, 896 F. Supp. 1170 (M.D. Fla.

1995);

33.i - Marbled Murrelet v. Babbit, 83 F.3d 1068 (9th Cir. 1996);

33.j - Cetacean Community v. Bush, 386 F. 3d 1169 (9th Cir. 2004) (NEPA).

33.k - Palila v. Hawaii Department of Land and Natural Resources, 852 F.2d 1106 (9th Cir. 1988);

“In Palila, a suit to enforce the Endangered Species Act, we wrote that an endangered member of the honeycreeper family, the Hawaiian Palila bird, ‘has legal status and wings its way into federal court as

a plaintiff in its own right.’ We wrote, further, that the Palila had ‘earned the right to be capitalized since it is a party to these proceedings.’”



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Do not build these travesties. Build wetlands instead.  
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# Protecting Local Wetlands



A T O O L B O X F O R Y O U R C O M M U N I T Y

**SAVE** THE **BAY**

# Protecting Local Wetlands

## A Toolbox for Your Community



Save San Francisco Bay Association  
1600 Broadway, Suite 300  
Oakland, California 94612  
510-452-9261  
510-452-9266 (fax)  
[www.savesfbay.org](http://www.savesfbay.org)

**Save The Bay**

Cynthia J. Patton  
Amy H. Windrope  
Sarah S. Beamish

**Shute, Mihaly & Weinberger**

E. Clement Shute, Jr.  
Rachel B. Hooper  
Richard S. Taylor  
Brian A. Schmidt

**Editors**

Cynthia J. Patton  
Marilyn Kamelgarn

**Copy Editor**

Eugenia Larson

**Layout**

*i arte media*

**Cover Design**

Bobbi Sloan

**Production Assistance**

Paul Revier

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Marc Holmes  
Amy Hutzler  
Paul Revier  
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*Save The Bay has been working for four decades to protect and restore the San Francisco Bay and Sacramento-San Joaquin Delta and to improve public access to its shoreline. We are committed to keeping the Bay healthy and beautiful for future generations.*

***Disclaimers***

Save The Bay, in conjunction with Shute, Mihaly & Weinberger, prepared this handbook for informational purposes only. The handbook is not intended to serve as legal advice and may not reflect the most current legal developments, decisions, or settlements. Readers should not act upon this information without seeking professional legal counsel.

Additionally, this handbook includes several excerpts from the Draft Model Wetland Protection Ordinance. Although the California Coastal Conservancy prepared the Draft Model Ordinance, it never finalized the document or adopted it as an official project or publication. Use of this text does not imply that this constitutes the official policy of the California Coastal Conservancy.

*To order additional copies of this handbook, please contact:*

**Save The Bay**  
1600 Broadway, Suite 300  
Oakland, CA 94612  
(510) 452-9261

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# Protecting Local Wetlands

## A Toolbox for Your Community

*The creeks overflow; a thousand rivulets run  
'Twixt the roots of the sod, the blades of the marshgrass stir;  
Passeth a hurrying sound of wings that westward whirr;  
Passeth, and all is still, and the currents cease to run;  
And the sea and the marsh are one.*

**Sidney Lanier**  
from *The Marshes of Glynn*

*Wetlands are transitional areas between water and land. Three physical features characterize wetlands: standing water, hydric (water-saturated) soils, and hydrophytic plants. Wetlands have a positive effect on drinking water, flood control, shoreline erosion, and wildlife habitat.*

# Foreword

The last two decades have brought a sharp increase in public knowledge about the value of wetlands, thanks to the tireless efforts of scientists, educators, journalists, activists, and elected officials. The public now understands the urgency of protecting those wetlands we still have and the benefits of restoring degraded wetlands where we can. Save The Bay's *Protecting Local Wetlands: A Toolbox for Your Community* is designed to help government officials, stakeholder organizations, and individuals protect and restore their local wetlands.

Enormous opportunities for reclaiming and restoring wetlands await those with the will and the necessary skills. Residents living near the San Francisco Bay-Delta Estuary – which includes the San Francisco Bay Area and the Sacramento-San Joaquin Delta – are particularly challenged and blessed. Vast wetland riches in the Estuary have been destroyed over the past 150 years, dramatically changing the Estuary's shape and contributing to its decline. Through the efforts of many, wetland loss has decreased, and areas targeted for restoration are on the rise. But much work remains if we are to achieve a clean and healthy Bay, and to protect and restore wetlands throughout the state. It is our hope that this handbook provides both the encouragement and the essential tools for that undertaking.

As the regional membership organization devoted to protecting and restoring the San Francisco Bay-Delta Estuary, Save The Bay is taking a leadership role in restoring wetland habitat. We accomplish this by campaigning for specific restoration projects, sponsoring community-based restoration efforts, promoting policies that encourage restoration, and building alliances and partnerships to advance restoration throughout the region.



# Chapter One

## The Importance of Wetland Protection

*Wetlands are valuable resources that provide clean water, flood control, wildlife habitat, open space, and recreational opportunities. In addition, wetlands provide refuge for 43 percent of all threatened and endangered species. Unfortunately, California has lost more than 90 percent of its historic wetlands to agriculture, housing, industry, and airports.*

**S**wamps, bogs, marshes, and sloughs; prairie potholes and playas. No matter what you call them, wetlands rank among our most vital natural resources. They purify our drinking water, save our homes from floods, and protect our shorelines from erosion. Wetlands provide critical habitat for a vast diversity of plants and animals – including endangered species – and serve as nurseries for juvenile fish and shellfish. Wetlands are as biologically productive as tropical rainforests and coastal reefs. In fact, 43 percent of all threatened and endangered species rely on wetlands for their survival.

Wetlands, like many of our nation's once unspoiled natural resources, have been the focus of unhampered degradation, misuse, and destruction in the name of progress. Viewed contemptuously as pestilent, mosquito-infested wastelands swarming with snakes and other undesirable creatures, wetlands have been drained, filled, and converted to farmland, highways, sewage lagoons, landfills, industrial complexes, shopping malls, parking lots, housing developments, and airports. Since colonial times we have destroyed more than 50 percent of the wetland acreage once found in the United States. Less than 100 million acres remain today – representing less than 5 percent of the land mass in the continental United States. Twenty-two states have lost at least 50 percent of their original wetland acreage and seven states, including California, have lost more than 80 percent.

Despite laws enacted by Congress to protect wetlands and knowledge of the benefits wetland habitats provide, we continue to lose wetlands at an alarming rate. More than 90 percent of California's original wetland acreage has been destroyed, and many of the remaining wetlands are threatened. Even federally protected wetlands such as the Florida Everglades are in danger of being destroyed by

excessive runoff of pollutants and diverted water flow. The impetus of over 200 years of subsidized wetland destruction in the United States is difficult to slow, and our remaining wetlands can be saved only through a change in the public's attitude towards wetlands and the aggressive defense of wetlands nationwide.

The San Francisco Bay-Delta Estuary provides a dramatic example of the value of wetlands and the impact of their destruction.

### 1.1 WETLANDS IN THE SAN FRANCISCO BAY-DELTA: AN ECOLOGICAL TREASURE UNDER ASSAULT

The San Francisco Bay and the Sacramento-San Joaquin Delta form the West Coast's largest estuary, draining approximately 40 percent of California's land. With its blend of fresh and ocean waters, thousands of miles of rivers and streams, numerous microclimates and landscapes, the Estuary is an ecological treasure that supports an enormous diversity of animals and plants. Approximately 255 bird species, 120 fish species, 81 mammal species, 30 reptile species, and 14 amphibian species live in the Estuary, many relying on the wetland habitats and open waters of the ecosystem for spawning, nursing, and feeding. Nearly half the birds of the Pacific Flyway and two-thirds of California's salmon pass through the Bay.

This resource is also surrounded by the nation's fourth largest metropolitan region, bustling with shipping, commerce, and an expanding population. Historically, wetlands were considered unproductive unless they were diked, drained, filled, and converted to other uses. So over the last 150 years, the Estuary's wetlands have been decimated by conversion to agriculture and urban development, and by the combined effects of hydraulic mining, flood control, and water diversion. As a result,

*"Today's Estuary encompasses roughly 1,600 square miles, drains more than 40 percent of the state, provides drinking water to 20 million Californians, and irrigates 4.5 million acres of farmland."*

*—State of the Estuary Report 1992-1997, The San Francisco Estuary Project.*

*Tributary rivers and streams that feed the Estuary have been diverted so extensively that only 40 percent of the water volume that once flowed into the Bay still reaches it today. There remains only one free flowing river from the Sierra Nevada Mountains to the Bay – the Cosumnes River.*

California has plowed under and paved over some of the most fertile and economically beneficial ecological systems in the state.

Wetland habitats most severely impacted in the San Francisco Estuary have been the tidal freshwater marshes and riparian forests of the Delta and the tidal salt and brackish marshes of San Pablo, San Francisco, and Suisun Bays. The extent of open water in the Estuary has been reduced by about one-third since 1850. Tidal wetlands in San Francisco Bay have been reduced from approximately 190,000 acres to 40,000 acres and in the Sacramento-San Joaquin Delta from 345,000 acres to 9,000 acres. This represents a total loss of 92 percent throughout the Estuary. With similar losses of seasonal wetlands and riparian habitat, fisheries and wildlife populations have been crippled. Food chain productivity in the Estuary has plummeted, and the loss of wetlands is a primary factor.

This dramatic alteration and loss of habitat has accompanied a loss of species. California seablite (*Suaeda californica*), a salt marsh plant, is now considered extinct in the North Bay. California clapper rails were once so numerous that they were marketed for food in San Francisco. Today, these birds are at the brink of extinction, classified as endangered. Of the 32 endangered species that inhabit San Francisco Bay, 23 depend on wetlands for critical habitat, including the clapper rail and salt marsh harvest mouse.

Decreasing fresh water flows and extensive pollution also have taken their toll on the quality of the Estuary's ecosystem. Tributary rivers and streams that feed the Estuary have been diverted so extensively that only 40 percent of the water volume that once flowed into the Bay still reaches it today. To replace the natural marshes that once cleaned pollutants from the Bay, the public paid billions of dollars to finance sewage treatment plants. Raw sewage and garbage are no longer dumped directly into the Bay as they were for over a century, but the Bay's bottom contains pollutants dating from the Gold Rush. Despite increases in water quality standards, thousands of tons of municipal and agricultural contaminants continue to flow into the Estuary each year. The San Francisco Bay no longer boasts a bountiful commercial fishing industry, and the fish

consumed by subsistence fishermen and their families pose significant health hazards.

Together, all of these impacts jeopardize the Estuary's web of life. But the degradation has also prompted broader community interest in protecting existing wetlands from destruction and in restoring degraded wetlands and diked, former wetlands to productive habitat. Wetland protection and restoration activity in this region is increasing rapidly, improving the chances that the Estuary and the species dependent on it can be restored to health.

One such broad effort to protect and restore wetlands in the San Francisco Bay is the San Francisco Bay Area Wetlands Ecosystem Goals Project. Over 100 participants representing local, state, and federal agencies, academia, and the private sector formed an interdisciplinary coalition to determine the wetlands and related habitats needed to sustain a healthy Bay. Teams of environmental scientists assessed the past and present conditions of the baylands ecosystem and recommended ways to improve its ecological health. These teams collaborated for more than three years to write the *Baylands Ecosystem Habitat Goals Report*.<sup>1</sup> "This report presents recommendations for the kinds, amounts, and distribution of wetlands and related habitats that are needed to sustain diverse and healthy communities of fish and wildlife resources in the San Francisco Bay Area."<sup>2</sup> In other words, the Goals Report establishes a flexible vision for restoring bayland habitats.

## 1.2 WHAT ARE WETLANDS?

Differing viewpoints on what defines wetlands have resulted in a number of scientific and administrative definitions. Essentially, wetlands are transitional areas between water and land environments. They are areas where water is the primary factor controlling the environment and the associated plant and animal life. These transitional habitats occur between uplands and aquatic environments where the water table is at or near the surface of the land, or where the land is covered by shallow water up to 6.6 feet (2 meters) deep. This ecosystem imposes unusual conditions for survival on plants and animals, and it demonstrates varied and ingenious strategies for utilizing the rich

supply of nutrients found in wetlands. A wide variety of habitat types therefore qualify as wetlands.

Wetlands can be categorized in many ways. The categories most pertinent to the San Francisco Bay-Delta Estuary are:

- Tidal versus non-tidal.
- Permanent versus seasonal.
- Freshwater versus saline.
- Managed versus unmanaged.

Tidal wetlands are those regularly exposed to the ebb and flow of the tides. While most of the Bay's wetlands were formerly tidal, about 75 percent have been diked off from tidal action and are now classified as non-tidal. These diked, former wetlands are known as "baylands." Some of these baylands occasionally receive tidal waters when unusually high tides overtop the dikes.

Tidal wetlands provide essential feeding grounds for hundreds of thousands of shorebirds. The lowest of the tidal wetlands are called tidal mudflats, which are non-vegetated. Above these are low tidal marshes, followed by high tidal marshes. Low tidal marshes are covered with tidal waters for longer periods each day than are high tidal marshes. High marshes may have considerably higher soil salinity due to infrequent flushing by the tides. Tidal wetlands are the Bay's "bread basket," providing food and nutrients for the entire ecosystem.

Non-tidal wetlands can be classified as permanent or seasonal, depending on how long they are ponded or saturated with water each year. Permanent wetlands hold water year-round except in very dry years. Seasonal wetlands generally dry out each spring or summer. For example, vernal pools are shallow, intermittently flooded wet meadows that dry up during the warm summer months. Some wetland species must leave these wetlands during the dry season or, as in the case of many invertebrates and plants, enter a dormant stage.

Wetlands also can be divided into freshwater and saline types, based on the salinity of their soils. Wetland soils are strongly influenced by water salinity, but also by the degree to which salts are retained or leached from the soil. Wetlands of intermediate salinity are called brackish. Freshwater tidal wetlands are located

along streams near the upper end of tidal influence. For example, the Cosumnes River has numerous tidal freshwater wetlands. Saline tidal wetlands and connected freshwater riparian habitats provide corridors for anadromous fish that migrate upstream to spawn. For example, the Napa River, Sonoma Creek, and Petaluma River are principal migratory routes for silver salmon and steelhead trout. Riparian corridors also provide habitat for the California freshwater shrimp and nursery and spawning grounds for trout, salmon, steelhead, and other fish.

The term "managed wetlands" is generally applied to wetlands where water levels or vegetation are manipulated to achieve specific habitat objectives. Most managed wetlands in the San Francisco Estuary are located on state or federal wildlife refuges or private hunting clubs, and most are managed primarily to benefit wintering or breeding waterfowl. Unmanaged wetlands may receive occasional management such as weed control or levee repairs, but they are not managed intensively on an annual basis.

Additionally, farmed wetlands are areas that would function as wetlands if they were not drained, disked, and planted as part of an ongoing agricultural operation. These areas include nearly all the diked historic baylands that currently are being farmed. The farms surrounding San Pablo Bay between the Napa and Petaluma Rivers are good examples of farmed wetlands.

### 1.3 THE VALUE OF WETLANDS

Wetlands and riparian habitats play a vital and frequently overlooked role in maintaining a healthy ecosystem. These habitats perform many functions, including buffering the impact of floodwaters, cleansing pollutants from runoff, recharging overdrawn water supplies, protecting our shorelines from erosion, and providing habitat for hundreds of fish and wildlife species. Wetlands and riparian habitat also provide economic benefits by supporting commercial fisheries, offering recreational opportunities, and generally contributing to a higher quality of life for humans, especially in densely populated areas such as the San Francisco Bay Area.

#### **Examples of Tidal Wetlands:**

*Bothin Marsh in Mill Valley, Petaluma Marsh, Arrowhead Marsh near the Oakland Airport, and Palo Alto Baylands.*

#### **Examples of Non-Tidal Wetlands:**

*The South Bay salt ponds.*

#### **Examples of Tidal Freshwater Wetlands:**

*Cosumnes River and Delta meadows located near the towns of Walnut Grove and Locke.*

#### **Examples of Farmed Wetlands:**

*Subsided farmlands between the Napa and Petaluma Rivers and throughout the Delta.*

### **Wetland Functions:**

- *Provide crucial habitat for migratory bird and resident bird, mammal, and fish populations.*
- *Provide food for fish and wildlife.*
- *Enhance water quality by trapping sediments and filtering pollutants.*
- *Recharge groundwater.*
- *Protect upland areas from erosion and flooding.*

Recognition of the multiple functions and values of wetlands is relatively recent. For nearly 200 years, the federal government not only promoted wetland destruction, it also helped finance it. But public opinion in recent years has overwhelmingly shifted towards wetland preservation primarily due to our increased understanding of wetland functions and values.

Wetlands are valuable to both wildlife and humans. A 1992 study estimated that California's wetlands provided as much as \$22.9 billion in identifiable value to the state annually, not including the incalculable value of wetland species and biodiversity.<sup>3</sup> Among the most striking functions that wetlands provide to humans are:

- **Water supply** – Wetlands are increasingly important for the recharge of both ground and surface water because of the growth of urban centers and dwindling ground and surface water supplies.
- **Water quality** – The cleansing capabilities of wetlands are important for filtering out chemical and other water-borne pollutants.
- **Recreation** – Wetlands serve as recreation areas for hunting, fishing, boating, hiking, photography, and wildlife observation.
- **Habitat and food web support** – Wetlands provide essential habitat for hundreds of plant and animal species. Wetlands also support the food web, both by providing food for fish and wildlife and by exporting nutrients to downstream areas.
- **Open space and aesthetic values** – Wetlands are areas of great diversity and beauty, providing open space for recreational and visual enjoyment.
- **Economic value** – Wetlands provide millions of dollars of economic benefits to California communities and to the public at large, by performing a number of functions such as flood control and

water purification as well as recreation, ecotourism, and fishing jobs.

Wetlands perform many complex chemical and hydrological functions. As mentioned above, these functions include improvement of water quality, groundwater discharge and recharge, and flood and erosion protection.

#### **1.3.1 Water Quality**

Wetlands are important in maintaining the water quality of downstream areas because they remove pesticides, fertilizers, and other pollutants. Through a variety of physical, chemical, and biological mechanisms, wetlands filter pollutants that occur naturally as well as contaminants from municipal wastewater and urban stormwater inputs. They also can transform these pollutants into forms that are less toxic to plants and animals. However, the capacity of wetlands to absorb contaminants is finite, and this capacity has been exceeded in some areas.

Wetlands also maintain water quality by removing sediments. Trapping sediments is important because excessive sediments entering an estuary can smother bottom-dwelling organisms, degrade spawning and rearing habitat, and reduce food production for fish. Sediments often have a high organic content, and decay of this organic matter may harm fish and aquatic invertebrates.

#### **1.3.2 Groundwater Discharge and Recharge**

Groundwater discharge is the movement of groundwater up to the surface. Groundwater recharge is the movement of surface water down into the groundwater basin. Wetlands are more likely to function as groundwater discharge areas than as recharge areas. Groundwater discharge areas are represented on the surface by seeps and springs.

#### **1.3.3 Flood and Erosion Protection**

Wetlands reduce the effects of flooding by providing water storage within the floodplain, slowing water velocities, reducing peak flows, and increasing the duration of flow. Many freshwater and riverine wetlands are depressions that retain stormwater runoff and provide supplemental channel capacity when rivers overflow their banks. Additionally, some wetland soils retain water like a sponge and

slowly release it to the surface during periods of low water. This water retention also helps reduce the extent of flooding during periods of heavy rainfall and acts as a buffer against rising sea levels. Vegetation in floodplain wetlands can double the friction coefficient of water flow compared to non-vegetated channels, thereby decreasing water flow velocities and reducing potential flood-peaks in downstream areas as well as riverbank erosion. Vegetated river channels and wetlands can slow shoreline erosion and reduce the need along waterfronts and rivers for hard shore protection such as seawalls and rip rap. (Rip rap is a term for large stones placed against a stream bank for stabilization.)

#### 1.4 THE BENEFITS OF RESTORATION

Restoring degraded wetlands and re-creating historic wetlands offer dramatic positive impacts. For example, restoring wetlands in the San Francisco Bay-Delta Estuary would include the following benefits.

1. Revegetated tidal marshes and related wetlands will provide critical habitat for endangered and threatened species, including fish, waterfowl, and shorebirds.
2. Wetlands will improve water quality as they cleanse pollutants from the Bay and capture sediments. Tidal marshes that increase Bay surface area and water volume will improve circulation to aid water quality.
3. Wetlands will absorb floodwaters and protect our shorelines from erosion.
4. Wetland habitat will provide recreational, scenic, and educational benefits to the human inhabitants of the area, thereby improving the region's quality of life.

#### 1.5 WHAT HAPPENS NEXT?

For centuries wetlands were considered insect-ridden, unattractive, and dangerous areas wait-

ing to be drained and filled. Now, as we enter a new millennium, we recognize wetlands as beautiful and valuable places that serve a vital ecological role. This understanding has taught us the urgency of protecting those wetlands we still have and the benefits of restoring degraded wetlands where we can. This handbook is designed to help government officials, stakeholder organizations, and individuals protect and restore their local wetlands.

Appendix A, located towards the back of this handbook, contains a list of acronyms used throughout the text. A list of wetland-related Internet sites is provided in Appendix B.

*“To achieve, one must dream greatly, one must not be afraid to think large thoughts.”*

—Rachael Carson



# Chapter Two

## The Regulation of Wetlands by Federal and State Agencies

*Since the passage of the Clean Water Act in 1972, the federal government has played a central role in regulating and protecting wetlands. The role of the federal and state Endangered Species Acts has increased over time as wetland species populations have declined. California bolstered its wetland protection through the California Coastal Act and the California Environmental Quality Act.*

Chapter One demonstrated both the importance of wetlands and the jeopardy they face. In an effort to stem the loss of valued wetland resources, a complex system of federal and state wetland regulations has developed over the years. Navigating this regulatory maze can be extremely difficult. For example, the seemingly simple question, “What is a wetland?” has different answers depending on the regulatory agency involved.

Historically, wetland regulation has been achieved primarily through the federal Clean Water Act, Section 404. Increasingly, other state and federal laws are playing roles, the most important of which is the regulation of coastal wetlands under California law. In addition, federal and state endangered species laws are playing a greater role. As the amount of wetlands continues to shrink, the importance of wetlands as habitat for rare, threatened, or endangered species becomes increasingly evident. Truly effective local-level wetland protection must consider all these federal and state programs.

### 2.1 FEDERAL WETLAND REGULATORY PROGRAMS AND AGENCIES

Wetland regulation in the United States primarily involves three federal programs: the Clean Water Act, the Rivers and Harbors Act, and the Endangered Species Act.

#### 2.1.1 The Clean Water Act

Congress passed the Clean Water Act of 1972<sup>4</sup> to protect the nation’s water quality by regulating “discharges” of pollutants into “waters of the United States.”<sup>5</sup> The Army Corps of Engineers (Corps) and the Environmental

Protection Agency (EPA) were charged with implementing the Clean Water Act (CWA). They defined the term “waters of the United States” to include wetlands.<sup>6</sup>

Section 404 of the CWA governs uses that alter or destroy wetlands. It is the most important wetland regulatory program because it is the only one that uniformly covers wetlands throughout California and the rest of the United States. Because it dominates the wetland regulatory field, local wetland protection programs must be coordinated with the Section 404 program. For this reason, Chapter Three provides more details on Section 404. This section merely provides a general introduction to the Section 404 program and the roles various agencies play in that program.

**Section 404 Overview.** Section 404 of the Clean Water Act expressly prohibits the discharge of dredged or fill material into “waters of the United States” and their adjacent wetlands without prior approval from the Secretary of the Army. The Section 404 program is administered jointly by the Corps and the EPA, with the Corps taking the lead role. Other federal agencies have advisory roles, including the U.S. Fish and Wildlife Service (FWS) in the Department of Interior and the National Marine Fisheries Service (NMFS) in the National Oceanic and Atmospheric Administration.

**Permit Program.** With limited exceptions, any private party or government entity proposing to discharge dredged or fill material into wetlands must first obtain a Section 404 permit from the Corps.<sup>7</sup> The first step in the process is typically a pre-application consultation with the Corps. The applicant then requests a

*The Clean Water Act, Section 404 regulates the discharge of dredged or fill material into the “waters of the United States” and their adjacent wetlands.*

*Wetland policy is a prime candidate for coordinated action among the Corps, EPA, FWS, state agencies, and local governments.*

formal “jurisdictional determination,” providing the Corps with a description of the land, the proposed project, and a map. The Corps then identifies which of the lands affected by the proposed project meet its wetland definition, and therefore fall within its jurisdiction.

The Corps’ jurisdiction extends only to the “waters of the United States” and their adjacent wetlands. But in 1985 the U.S. Supreme Court upheld the Corps’ authority over wetlands adjacent to, but not hydrologically connected with, other waters of the United States.<sup>8</sup> The Corps will generally assert its jurisdiction to the limits of the Commerce Clause.<sup>9</sup> Under Section 404, it has jurisdiction over all wetlands that meet the criteria found in its definition, including tidal waters, tributaries to tidal waters, non-tidal wetlands, lakes, streams, intermittent streams, swamps, bogs, and prairie potholes. In other words, the Corps has jurisdiction over everything except isolated wetlands that have no interstate use (not even by migratory birds) and do not flow into or lie adjacent to an otherwise regulated body of water.<sup>10</sup>

Once the Corps’ jurisdiction has been established, the project proponent must apply for an “individual permit” unless:

1. The project is modified to avoid the jurisdictional wetlands.
2. The project is eligible for one of the “nationwide permits” that cover various activities, including placement of navigation aids, utility crossings, bridge construction, and survey work.
3. The project falls under a specific exemption to the permit process, such as normal farming activities, silviculture (forestry), maintenance of irrigation ditches, or maintenance of currently serviceable structures.<sup>11</sup>

An individual permit application typically consists of a detailed project description, an alternative analysis, and a mitigation plan. The Corps has sixty days to complete the permit processing; however, in practice the process often takes much longer. The Corps provides public notice, complete with a summary of the project proposal, to affected federal and state

agencies, interest groups, and individuals. A comment period follows, after which the project applicant is given an opportunity to prepare responses.<sup>12</sup>

Once the responses have been completed, the Corps evaluates the project to determine whether issuance of a permit would be (1) consistent with the EPA’s Section 404(b)(1) Guidelines and (2) in the public interest. The Guidelines require that fill be avoided whenever a less environmentally damaging practicable alternative exists.<sup>13</sup> Practicable alternatives are presumed to exist for all uses that are not water-dependent. If no practicable alternatives exist, the Guidelines require minimization of any unavoidable fill.<sup>14</sup> When making its public interest determination, the Corps can consider a broad range of factors including aesthetics, conservation, economics, and general environmental concerns.<sup>15</sup>

Project impacts that cannot be avoided must be fully mitigated by the project applicant. This ensures that no net loss of functional wetland values occurs. As compensatory mitigation, the applicant is normally required to create new wetlands on or near the project site, equivalent (if not greater) in size and quality to the wetlands destroyed by the project.<sup>16</sup>

**The Role of the EPA.** Although the Corps administers the Section 404 program, the EPA shares authority over the program and plays a very important, if often quiet, role. The EPA issues the Section 404(b)(1) Guidelines that describe how the program must be implemented. If the EPA disapproves of a particular permit decision, the agency can elevate that decision to a higher level within the Corps. Ultimately the EPA has veto power over the Corps’ permit decision if it finds that the discharge will have an adverse effect on municipal water supplies, shellfish beds, fishery areas, wildlife, or recreational areas.<sup>17</sup> This veto power is used sparingly, however – only 11 applications out of the estimated 150,000 permit applications issued between 1979 and 1993.<sup>18</sup> Nevertheless, because the EPA authors the Guidelines and has veto power over Corps determinations, its comments carry great weight.

**The Role of the U.S. Fish and Wildlife Service.** The FWS has no explicit regulatory power over

wetlands. Nevertheless, it has considerable influence on the Section 404 program. The Corps carefully considers the Service's comments on fish and wildlife matters, and if an endangered species uses the wetlands, the Corps *must consult* with the FWS.<sup>19</sup> Also, like the EPA, the FWS can elevate a permit decision to a higher level within the Corps hierarchy. It does not have, however, veto power over the permit decision.

### **Section 404 and Local Land Use Decisions.**

The Section 404 requirements often force project applicants to redesign their projects to avoid or minimize wetland impacts. Frequently this redesign occurs after project approval by the relevant local government, and thus requires another round of approvals by those same officials. In some cases, landowners abandon entire projects due to a failure to identify wetlands on the project site or a lack of understanding of the regulatory constraints. These factors make wetland policy a prime candidate for coordinated action among the Corps, EPA, FWS, state agencies, and local governments.

#### **2.1.2 The Rivers and Harbors Act**

The Rivers and Harbors Act of 1899<sup>20</sup> is the oldest law affecting wetlands. It was intended to keep clear those seas, lakes, and rivers that make up what was then considered the nation's "highways for transportation."<sup>21</sup> Pursuant to Section 10 of the Act, the Corps administers a regulatory program separate from the Section 404 program. It covers dredging and the placement of structures into any "navigable waters" of the United States.<sup>22</sup> In 1968 the Corps acknowledged the importance of environmental considerations in achieving the Act's purposes and revised the Section 10 program accordingly. Because jurisdiction under this program extends only to *navigable* waters, a Section 10 permit is not required in all situations where a Section 404 permit is required. When both programs do apply, the Corps normally conducts its Section 10 review concurrent with the Section 404 process.

#### **2.1.3 The Endangered Species Act**

The Endangered Species Act (ESA)<sup>23</sup> provides varying degrees of protection for animal and plant species listed as either threatened or

endangered. (These species are known as "listed species.") This law has become increasingly important in wetland regulation as the disappearance of wetland habitat imperils more and more species. While the ESA does not regulate wetlands directly, it has that effect in any situation where habitat modification adversely impacts a listed species present in wetlands.<sup>24</sup>

The ESA specifically affects wetland regulation in two ways. First, Section 7 of the ESA effectively prohibits the federal government from taking any action that jeopardizes the existence of a listed species and limits the government's ability to take actions that harm listed species.<sup>25</sup> Since issuing a Section 404 permit is considered a federal action, the Corps must deny any permit that does not comply with the ESA. Direct responsibility for complying with Section 7 procedures lies with the Corps, however, not with the landowner or the local government.

Second, Section 9 of the ESA prohibits *anyone* from harming a listed species except under an approved habitat conservation plan (HCP) and an incidental take permit issued according to Section 10.<sup>26</sup> This prohibition includes modifying habitats in ways that harm species, such as reducing the area available for foraging or breeding. It also prohibits actions that indirectly cause harm to species, including local regulations that allow activities that would harm listed species.<sup>27</sup> Section 7 supercedes Section 9, however, if the action requires a federal permit and the permit passes Section 7 review. As this is the case for almost all proposed fill activities, Section 9 rarely has an independent effect on wetlands. But because Section 9 and listed species strongly influence development projects in other types of habitat, local governments are developing broad HCPs that increasingly consider wetland areas as well.

California has a state version of the ESA, called the California Endangered Species Act.<sup>28</sup> The state law is similar to the federal law, but includes additional species not listed under the ESA.<sup>29</sup>

#### **2.1.4 Other Relevant Federal Laws**

A number of other federal laws prevent, limit, or discourage certain activities that adversely affect wetlands. For example, the "swampbuster" provision of the Food Security Act of

*"Endangered species" are those species determined to be currently in danger of extinction.*

*"Threatened species" are those species likely to become endangered in the foreseeable future.*

*“Over 300 fish and wildlife species breed, raise young, feed and rest in [the San Francisco Bay-Delta] Estuary wetlands. Over 60 plant and animal species in these wetlands are listed as rare, threatened, or endangered, or are candidates for such listing. Hundreds of other species – particularly birds, amphibians, insects, and freshwater fish – make their homes in the Estuary’s riparian zones.”*

*—State of the Estuary Report 1992-1997, The San Francisco Estuary Project*

1985 denies federal benefits or subsidies to anyone who converts wetlands into dryland agricultural use. Executive Order 11990 requires all federal agencies, to the extent practicable, to avoid undertaking, funding, or permitting any action which will adversely impact wetlands. **Table 1** provides a brief summary of the most important federal laws

that impact wetlands. Although these laws are unlikely to influence the substantive components of a local wetland protection program or to shape the program’s review process, public officials involved in wetland regulation should be familiar with these laws, their impacts on landowners, and the federal agencies that administer them.

**TABLE 1. FEDERAL LAWS THAT IMPACT WETLANDS**

<i>Name of law</i>	<i>Citation</i>	<i>Description</i>
National Environmental Protection Act	42 USC 4321, <i>et seq.</i>	Requires the federal government to prepare an environmental impact statement (EIS) for all federal actions (including approvals and funding) that may significantly impact the environment. The Act lists wetlands as one of the environmental parameters to be evaluated in an EIS. For example, the Corps must prepare an EIS for all projects issued an individual permit under Section 404.
Water Resources Development Act	PL 99-662, 100 Stat. 4082	Requires mitigation of displaced or degraded wetlands concurrent with project construction. The Act also authorizes the Corps to mitigate past wetland losses, and provides an annual budget of \$30 million for this purpose.
Coastal Barrier Resources Act of 1982	16 USC 3501, <i>et seq.</i>	Prohibits the use of federal funds for non-wetland restoration projects on designated coastal barrier islands and beaches.
Food Security Act of 1985	16 USC 3801	Creates the Erodible Land and Wetland Conservation and Restoration Program, which increases wetland acreage by discouraging farm practices that destroy wetland values. The Act provides for: creation of conservation reserves for highly erodible lands taken out of crop production; denial of federal subsidies for farmers who drain or plough wetlands; evaluation of foreclosed lands for wetland restoration; and consultation between the Farmers’ Loan Administration and FWS before any loan approval occurs.
National Flood Insurance Program	42 USC 4001, <i>et seq.</i>	Requires communities participating in the flood insurance program to control urban development within the 100-year floodplain. The Program prohibits unprotected structures or development that will exacerbate downstream flooding.
Executive Order 11988		Requires federal agencies to not fund development activities in the 100-year floodplain unless no practical alternative exists.
Executive Order 11990		Requires federal agencies to avoid activities that adversely impact wetlands unless no practical alternative exists.

## 2.2 STATE WETLAND REGULATORY PROGRAMS AND AGENCIES

California does not have a comprehensive wetland protection law. However, there are numerous state laws and administrative policies that either protect wetlands in certain regions or protect wetlands as part of a larger environmental program. Local governments should be familiar with these laws and the agencies that implement them. This information is critical because (1) in situations where jurisdictions overlap, the agencies' permitting processes may need coordination; (2) the agencies may participate in the local regulation's review process; and (3) the agencies have expertise that local officials may want to use. Agency expertise could be used when identifying local wetland resources, devising local regulatory programs, or implementing wetland restoration projects.

### 2.2.1 The California Environmental Quality Act

The California Environmental Quality Act (CEQA)<sup>30</sup> requires state agencies to identify and analyze a proposed project's significant impacts on the environment before approving the project. The agencies also must adopt any feasible alternatives and mitigation measures necessary to reduce or eliminate the identified impacts.<sup>31</sup> Determining what constitutes a significant impact is a central component of the CEQA process. The CEQA Guidelines encourage agencies to develop and publish "thresholds of significance," indicating that environmental impacts exceeding the threshold would typically be classified as significant.<sup>32</sup> The Guidelines also list several environmental impacts related to wetlands that should be considered during the environmental review process. These include whether the project:

- Affects rare or endangered plant or animal species, or impacts their habitat.
- Interferes with the movement of any resident or migratory bird, fish, or other wildlife species.
- Disturbs groundwater recharge or degrades the water supply.
- Causes flooding, erosion, or siltation.
- Reduces habitat for fish, wildlife, or plants.<sup>33</sup>

Additionally the CEQA Guidelines remove agency discretion in certain situations, requiring a finding of significant impact if the activity reduces habitat, threatens the continued existence of a fish, wildlife, or plant population, or reduces the number (or range) of any endangered, rare, or threatened species.<sup>34</sup>

Courts have required local governments to analyze and mitigate a project's adverse impacts to wetlands when conducting an environmental review, even when the amount of wetlands affected is quite small. For example, one court required the local government to conduct further environmental review and issue a supplemental environmental impact report when, after certification of the original environmental impact report, the agency discovered that the proposed project encroached on a wetland area one quarter of an acre more than previously thought.<sup>35</sup>

### 2.2.2 The California Coastal Commission: Local Coastal Plans

The California Coastal Act<sup>36</sup> authorizes the California Coastal Commission to regulate all development activities in the coastal zone, except for the San Francisco Bay Area (see Section 2.2.3 of this handbook). The coastal zone is defined as "land and water area(s) ... extending seaward to the state's outer limit of jurisdiction ... and extending inland generally 1,000 yards from the mean high tide line of the sea."<sup>37</sup> Within this area, the federal Coastal Zone Management Act<sup>38</sup> provides that the Corps may not issue a Section 404 permit unless the Coastal Commission certifies the project as consistent with California's coastal zone management program.<sup>39</sup> The Coastal Commission – or the relevant local government, if it has an approved coastal plan – has its own permit process as well.<sup>40</sup> Development in coastal zone wetlands is highly restricted, and these restrictions are significantly more stringent than the Section 404 standards.<sup>41</sup>

### 2.2.3 The San Francisco Bay Conservation and Development Commission

In the San Francisco Bay Area, the San Francisco Bay Conservation and Development Commission (BCDC) has jurisdiction over shoreline development activities rather than the California Coastal Commission. The BCDC requires project applicants to obtain permits

*The Bay Conservation and Development Commission (BCDC) was created in 1969, and was the first coastal protection agency in the country. Save The Bay was instrumental in creating the public awareness and political pressure needed to create the agency.*

*Anyone interested in local wetland protection should research applicable local ordinances and become familiar with their requirements.*

under its San Francisco Bay Plan for any project that involves placing fill, extracting materials, or making substantial changes in the use of any water, land, or structure within its jurisdiction.<sup>42</sup> In general, the BCDC has jurisdiction over all areas of the San Francisco Bay subject to tidal action. Its jurisdiction also includes a band along the shoreline extending 100 feet inland from the high tide line. This includes salt ponds, certain managed wetlands, and other waterways and their associated wetlands as specified in the McAtteer-Petris Act.<sup>43</sup> The BCDC regularly comments on Bay Area Section 404 permit applications, even on projects located outside its jurisdiction that may impact lands within its jurisdiction. The BCDC has authority to certify or veto Section 404 permits for projects located within its jurisdiction pursuant to the federal Coastal Zone Management Act.<sup>44</sup>

#### **2.2.4 The Department of Fish and Game: Streambed Alteration Agreements**

Any individual or public agency proposing to “divert, obstruct, or change the natural flow or bed, channel, or bank of any river, stream, or lake” must enter into a streambed alteration agreement with the California Department of Fish and Game (DFG).<sup>45</sup> The Department cannot refuse to enter into a streambed alteration agreement, but it can impose reasonable conditions on the proposed project. If negotiations with the DFG result in an impasse, the matter must be submitted to arbitration. All DFG decisions on project proposals are subject to CEQA review.<sup>46</sup>

The Department also participates in the Section 404 program and the CEQA process as a commenting agency. The Department generally endorses a policy of “no net loss” of wetland quality and acreage and adheres to the FWS’s broader definition of wetlands (discussed in Section 2.4 of this handbook).

#### **2.2.5 The State Water Resources Control Board and Regional Boards**

The State Water Resources Control Board (SWRCB) oversees nine regional water quality control boards. The SWRCB and the nine regional boards’ primary responsibility is to regulate the discharge of “waste” into waters of the United States under the authority of the Clean Water Act, Section 402.<sup>47</sup> (This is known

as the National Pollutant Discharge Elimination System or NPDES.) The state and regional boards review Section 404 applications to determine compliance with state water quality standards, and the boards can veto any project not in compliance with those standards.<sup>48</sup> The boards also participate in the Section 404 program as commenting agencies. While there is no statutory limitation on their comments’ subject matter, the boards’ veto power historically has been directed towards water quality, rather than effects on broader environmental issues.<sup>49</sup>

#### **2.2.6 The Tahoe Regional Planning Agency**

Created by an interstate compact between California and Nevada, the Tahoe Regional Planning Agency (TRPA) implements a regional plan for the Tahoe Basin. The plan ensures that future development in the Tahoe Basin does not exceed the Basin’s environmental carrying capacity. It sets minimum standards for a wide range of land use issues that affect wetlands, including grading, shoreline protection, soil and sediment control, and watershed protection. Development cannot occur within the Tahoe Basin without written findings demonstrating that the proposed project complies with the regional plan and all TRPA regulations.<sup>50</sup>

#### **2.2.7 The Suisun Marsh Preservation Act**

The Suisun Marsh, located in Solano County, is the largest remaining wetland in the San Francisco Bay Area, comprising 85,000 acres of tidal marsh, managed wetlands, and waterways. The Suisun Marsh Preservation Act of 1977<sup>51</sup> provides a mechanism to preserve and enhance the marsh’s wetland values and to ensure retention of the adjacent upland areas in compatible uses. Local governments have the primary responsibility for carrying out the Act’s provisions. Each must prepare a local protection program to protect the marsh’s wetlands and surrounding riparian habitat. The program also must limit urban development and other uses incompatible with the Act’s preservation goals.<sup>52</sup>

## 2.3 LOCAL WETLAND REGULATORY PROGRAMS AND AGENCIES

Numerous municipal and county ordinances protect local wetland resources, and each takes a unique approach to accomplishing this task. These local ordinances are too numerous to mention here. However, examples of local wetland protection ordinances are discussed in Chapters Four and Five of this handbook, and the text of several ordinances is provided in the appendices. Anyone interested in local wetland protection should research applicable local ordinances and become familiar with their requirements.

Municipal and county governments are the local agencies typically involved in wetland regulation. But many other agencies and organizations, such as open space districts, resource conservation districts, and land trusts are often involved in wetland acquisition, restoration, and enhancement. These local agencies and their roles are discussed in Section 6.4.4 of this handbook.

## 2.4 REGULATORY WETLAND DEFINITIONS

There is much disagreement in the scientific and regulatory communities over which lands actually have wetland values. One important point to draw from this dispute is that a non-expert cannot always be certain that wetlands are present or absent on a particular site. For example, a non-expert may not realize that wetlands could include seasonally dry streams, occasionally flooded forests, salt evaporation ponds, wetlands on sloped hillsides, farmed wetlands, degraded wetlands, and raised land with wetland-characteristic vegetation – depending on the particular definition used.<sup>53</sup>

Despite the dispute over which lands have wetland values, general consensus exists that three physical features characterize wetlands:

- Standing water throughout the year or on a seasonal basis.
- Hydric soils (i.e., soils having a chemistry that reflects frequent water saturation).

- Hydrophytes (i.e., plants displaying adaptations to hydric soils) under normal circumstances.

These three features constitute the building blocks of most federal and state agency wetland definitions.

Two broadly accepted federal wetland definitions currently exist: the Section 404 definition and the FWS definition. These definitions are described in more detail in the following two subsections.

### 2.4.1 Section 404 Wetland Definition

To be classified as a wetland subject to regulation under Section 404, the land in question must have *all three* physical features: standing water, hydric soils, and hydrophytic plants. Wetland areas without all three characteristics are not subject to Section 404. The wetland definition does not apply to non-wetland “waters of the United States” such as lakes and streams. Although they do not have hydrophytic plants, these areas are also regulated by Section 404. The procedures for determining whether an area possesses these characteristics are described in the *Field Guide for Wetland Delineation: 1987 Corps of Engineers Manual*.<sup>54</sup>

### 2.4.2 U.S. Fish and Wildlife Service Wetland Definition

The Service defines wetlands more broadly than the Corps in order to include those lands best suited for fish and wildlife habitat protection. Under the FWS definition (also known as the Cowardin definition), only *one* of the three physical features must be present: either standing water, hydric soils, *or* hydrophytic plants. Thus, the FWS definition includes all lands subject to the Section 404 program as well as those wetlands that lack plants adapted to living in saturated soils, such as tidal mudflats, or that lack hydric soils, such as rocky tidepools. As part of its National Wetlands Inventory, the FWS released maps of wetland areas meeting this definition. Although these maps do not cover all areas and cannot serve as the final basis for determining if a specific property contains wetlands, they can provide guidance to both regulators and landowners during initial site planning and design.

*Wetlands are transitional areas between land and water. Three physical features characterize wetlands: standing water, hydric (water-saturated) soils, and hydrophytic plants.*



# Chapter Three

## The Clean Water Act, Section 404

*Section 404 of the Clean Water Act dominates the wetland regulatory field and has broad implications for any local wetland protection program. The Army Corps of Engineers is responsible for implementing Section 404, and it regulates a limited number of activities. Local wetland protection programs should work in tandem with this section, but consider expanding its scope to better protect local wetland resources.*

Given that the enormous federal and state effort described in Chapter Two has slowed wetland loss but not stopped it, the need for local involvement is clear. Local governments must help reverse this trend if we are to regain even a small portion of our lost historic wetlands. Nevertheless, local wetland protection efforts work best when coordinated with existing federal and state programs. Coordination decreases the burden of regulatory compliance and helps identify the “regulatory holes” responsible for wetland loss.

Because Section 404 dominates the wetland regulatory field, a strong working knowledge of its requirements is essential for anyone involved in wetland protection or restoration. This is particularly true for local governments hoping to create a local wetland protection program. Any local effort must work in tandem with the Section 404 program. Therefore, Chapter Three provides a more in-depth look at the Clean Water Act, Section 404 and its regulatory requirements.

### 3.1 WETLAND DEFINITION

As discussed in Section 2.4 of this handbook, land must have three physical characteristics to be classified as a wetland under Section 404: standing water, hydric soils, and hydrophytic plants.<sup>55</sup> Wetland areas without all three characteristics are not subject to Section 404.

The Corps, however, will not regulate all wetlands meeting the Section 404 definition. The wetlands also must fall within the Corps’ jurisdiction. The Corps’ regulatory authority under Section 404 applies only to “waters of the United States.” This restriction merely reflects Constitutional limits on federal power and has no bearing on whether a particular parcel possesses wetland values that should be

preserved. The exact nature of this limit on the Corps’ regulatory authority is the subject of numerous court cases and has yet to be resolved.<sup>56</sup> These limits do not apply, however, to local land use regulations. A local wetland regulation adopting the Section 404 definition could apply to wetlands which are not “waters of the United States” under the federal regulation, and thus are not subject to Section 404 requirements.

### 3.2 REGULATED ACTIVITIES

If a parcel contains jurisdictional wetlands that meet the Corps’ definition, then the provisions of Section 404 will apply. Section 404 regulates the discharge of dredged or fill material into wetlands and other waters of the United States. Dredged materials are materials removed from the bottom of a waterbody (e.g., to deepen a waterway) and then redeposited elsewhere. Fill materials are materials used to convert a wetland into dry land or to raise the bottom elevation of a waterbody. Examples of regulated activities under Section 404 include:

- Building construction that requires fill for the foundation.
- Placement of fill that creates dry land or a reduced water depth for any recreational, industrial, commercial, or residential use.
- Road fills and causeways.
- Reclamation and property protection structures such as levees, groins, seawalls, revetments, and rip rap.
- Surface activities that remove and redeposit wetland soils (e.g., mechanized land clearing, ditching, channelization, and excavation).

*“Waters of the United States” include tidal wetlands, tributaries to tidal waters, non-tidal wetlands, lakes, streams, intermittent streams, swamps, bogs, and prairie potholes – everything but isolated wetlands that have no interstate use and do not flow into or lie adjacent to an otherwise regulated body of water.*

*“The care of rivers is not a question of rivers, but of the human heart.”*

– Tanaka Shozo

- Pilings that have the same physical effect as the placement of fill material (e.g., dense placement that increases the sedimentation rate, effectively replaces the bottom of the waterbody, or adversely alters or eliminates aquatic functions).

Because the statutory definition of activities subject to Section 404 is somewhat general, Corps and EPA decisions regarding the scope of regulated activities are often challenged. For example, there is continued controversy over the extent that mechanized land clearing and pilings constitute regulated uses.<sup>57</sup> Also, Section 404 is limited by the general statutory scheme of the Clean Water Act. In other words, because the Act’s primary purpose is to prohibit discharges of pollutants into waterways, the Corps’ regulatory authority only covers *discharges* into wetlands.

### **3.2.1 Unregulated and Less Regulated Activities**

Three categories of uses are not regulated under Section 404. Some uses which destroy or degrade the quality of wetlands simply do not constitute a discharge of dredged or fill material. Other uses could be subject to regulation but have been exempted by Congress. Still other uses are subject to a limited form of regulation known as “nationwide permits.”

#### **Activities That Do Not Involve Discharges.**

Section 404 regulates only *discharges* of dredged or fill material into wetlands. The Corps currently does not regulate excavation (dredging) of wetlands unless more than incidental fallback occurs or the wetland is subject to Section 10 jurisdiction.<sup>58</sup> It does not regulate uses, such as draining, flooding, burning, or land clearing, which do not result in fill or the conversion of a wetland to a non-wetland. Nor does Section 404 regulate non-invasive uses such as grazing and pesticide application.

These non-regulated activities may not involve discharges, but they nevertheless result in significant wetland loss. The Congressional Office of Technology Assessment (OTA) estimates that only six percent of the wetlands lost from the mid-1950s to the mid-1970s were filled for urban uses. The majority of these wetland conversions involved unregulated, legal

activities. The OTA estimates that approximately 80 percent resulted from farming activities.<sup>59</sup>

Moreover, if these activities result in physical changes that remove one or more of the three required wetland characteristics (such as hydrophytic plants), the landowner may argue that future fill activities are not subject to Section 404 because the land no longer meets the wetland definition. For example, under some circumstances, a landowner could first drain a wetland area, and then, once the area had lost its wetland characteristics, fill the area without a Section 404 permit.<sup>60</sup>

**Exemptions.** Section 404 exempts a number of activities that result in discharges of dredged or fill material. The exemptions reflect a wide range of Congressional policy judgments relating to the potential threat to wetlands, the regulated community’s ability to comply with the regulations, and, quite often, the Corps’ ability to regulate a wide range of relatively minor activities at the federal level. Exemptions include:

- Normal farming, silvicultural, and ranching activities as part of an ongoing operation.
- Maintenance of currently serviceable structures such as dikes, dams, levees, groins, rip rap, breakwaters, bridge abutments and approaches, causeways, and transportation structures.
- Construction or maintenance of farm and stock ponds or irrigation ditches and the maintenance (but not construction) of drainage ditches.
- Construction of temporary sedimentation basins for construction projects occurring in non-wetland areas.
- Construction and maintenance of farm roads, forest roads, and temporary mining roads in accordance with specified best management practices.<sup>61</sup>

An activity will not qualify for an exemption for three reasons: (1) if it is part of a larger activity whose purpose is to convert a wetland or other waters of the United States; to a use for which it was not previously subject (including any conversion of a wetland to a non-wetland); (2) if it will impair the flow or the

circulation of waters of the United States; or (3) if it will reduce the reach of waters of the United States.

**Nationwide Permits.** One of the most controversial components of the Clean Water Act, the nationwide permit system, provides some of the largest loopholes in Section 404. Under the guise of nationwide permits, the Corps identifies activities that it believes have minimal impact on wetlands and other natural resources, and that, if regulated like other discharges of dredged or fill materials, would impose a heavy administrative burden on the Corps and landowners. Therefore, these activities are lightly regulated through the issuance of general permits on a nationwide or regional basis. Nationwide permits (also known as NWP) constitute the most significant general permits, allowing landowners to conduct specific fill activities with little, if any, oversight. The Corps issues nationwide permits for over forty different categories of fill activities.<sup>62</sup>

The distinguishing feature of nationwide permits is that they are already issued. In other words, a project applicant does not have to obtain an NWP, but merely needs to establish that the proposed fill activity falls within the NWP conditions. There are exceptions to this feature. Under many NWPs, the landowner must give advance notice to the Corps. The Corps may disqualify the proposed project from the NWP process if the permit reviewer thinks the adverse impacts of the proposed fill are “more than minimal” or are “contrary to the public interest.”<sup>63</sup> In these circumstances, the Corps may require the landowner to pursue an individual permit under Section 404. Additionally, various Corps regional offices can restrict or prohibit the use of certain NWPs in their region. Aside from these exceptions, fill projects regulated by NWPs receive limited oversight.

Some nationwide permits allow significant wetland modification that could adversely affect local wetland values. In contrast to other 404 permits, NWPs are issued without regard to whether a practicable alternative exists or whether the proposed activity is water-dependent. Mitigation is not required for certain NWPs deemed to have “minimal” effect on wetlands, a loophole in the federal govern-

ment’s goal of “no net loss” of wetlands. Moreover, the EPA estimates that approximately 40,000 activities are authorized under nationwide permits every year.<sup>64</sup> In comparison, the Corps considers approximately 5,000 individual permit applications annually.<sup>65</sup> Finally, most NWPs do not require the landowner to notify the Corps (and therefore the public) of proposed or ongoing fill activities. This deprives local governments and citizens of important information about wetland loss in their communities.

### **3.2.2 Recent Changes in the Nationwide Permit System**

The Corps recently made significant modifications to the NWP program, including five new NWPs, six revised NWPs, and numerous changes to the NWP conditions. The revisions, effective June 7, 2000, were repeatedly delayed and resulted in litigation almost as soon as they were published.<sup>66</sup> For the next several years, both old and new NWPs will be in effect while projects previously authorized under the old NWP system are carried out. This is called the “transition period.”

The following examples discuss the most important of the original NWPs still in effect and, where applicable, the new or revised permits which replace them. Keep in mind that the outcome of the pending litigation could affect the NWP program in the future.

**Discharges into Headwaters or Isolated Wetlands.** The broadest and most controversial nationwide permit (now replaced by five separate NWPs), NWP 26 authorized fill of up to three acres of wetlands located in headwaters and isolated areas.<sup>67</sup> Projects affecting less than one-third of an acre of wetlands were not required to provide any notice of the proposed fill except for a brief, post-construction report to the Corps.

Nationwide Permit 26 was the only NWP not tied to a particular activity, and its broad use attracted heavy opposition by environmentalists. New authorizations under NWP 26 are not available after June 2000, although the actual fill authorized under NWP 26 prior to that date can occur until February 2003 (in certain cases). Five new activity-specific nationwide permits – NWPs 39, 41, 42, 43, and 44 – have replaced the original NWP 26. These

*The Corps issues nationwide permits for over forty different categories of fill activities.*

*The standards for issuing permits under Section 404 are often summarized as avoid, minimize, and mitigate.*

new permits (except NWP 41) are limited to fills of one-half acre or less, and will require notification of the Corps if the fill exceeds 1/10th of an acre. In contrast to NWP 26, the new permits are not limited to headwaters and isolated areas. They can be used anywhere except in tidal wetlands and wetlands adjacent to tidal wetlands.

The most important of these replacement permits are likely to be NWPs 39, 42, and 44. Nationwide Permit 39 authorizes fill for the construction of residential, commercial, and industrial buildings as well as “attendant features” to such buildings. These include roads, parking lots, stormwater facilities, playgrounds, and golf courses. Nationwide Permit 42 authorizes fill for recreational facilities that do not substantially change natural landscape contours. Potential examples include hiking trails, campgrounds, golf courses, and ski areas. The primary use of the recreational facilities, however, cannot involve motor vehicles, buildings, or impervious surfaces. Nationwide Permit 44 authorizes, under certain conditions, the placement of fill for mining activities, including streambed mining for aggregate rock. Generally all fill that occurs under the three new NWPs will require compensatory mitigation, but with limited safeguards to ensure such mitigation takes place.<sup>68</sup>

**Outfall Structures.** Nationwide Permit 7 authorizes the construction, operation, and maintenance of outfall structures and associated intake structures if the effluent from the outfall is regulated pursuant to an existing NPDES permit. Nationwide Permit 7 was slightly revised to additionally permit the removal of accumulated sediments near outfall and intake structures. To ensure placement of outfall and intake structures in a manner that protects wetland values and is consistent with other local plans and policies, local governments may wish to consider including such structures in the local wetland protection program.

**Roads, Rail, and Airports.** Nationwide Permit 14 authorized activities related to “linear transportation crossings” that involved fill of less than one-third of an acre and that met certain other criteria. It was revised to increase the amount of fill allowed for public

transportation to one-half acre or less. Fill of less than 1/10th of an acre in jurisdictional waters does not require notification or compensatory mitigation if no wetlands or other special aquatic sites are filled.

**Utility Line Backfill and Bedding.** Discharges for utility line backfill, bedding, and foundations were permitted under NWP 12 for projects with no change in pre-construction contours. Utility line was broadly defined to include virtually any pipe, pipeline, cable, line, or wire, so NWP 12 covered a wide range of activities. This NWP had no acreage limit.

As revised, NWP 12 authorizes fill for creating utility line substations and access roads. The total loss of jurisdictional wetlands may not exceed one-half acre, excluding temporary losses. Compensatory mitigation and notification are generally required for fills greater than 500 linear feet (and under certain other conditions).

**Bank Stabilization Programs.** Nationwide Permit 13 authorizes bank stabilization erosion control discharges of up to 500 feet in length. This permit was not revised.

**Boat Ramps.** Nationwide Permit 36 authorizes fill for boat ramps of up to 50 cubic yards and less than 20 feet in width. The boat ramps must not fill special aquatic sites such as wetlands. This permit was not revised.

**Cleanup of Hazardous and Toxic Waste.** Nationwide Permit 38 authorizes activities necessary for the containment, stabilization, or removal of hazardous and toxic wastes pursuant to a government-approved cleanup program. This permit was not revised. Local governments wishing to ensure that such programs are conducted with adequate measures to protect wetland values may wish to include such activities within their wetland protection programs.

**Agricultural Activities.** Nationwide Permit 40 originally allowed wetland fill when constructing farm buildings. It now additionally permits fill for the purpose of “improving agricultural production.” The permit has a one-half acre limit, and in many

cases these fills do not require notification or compensatory mitigation.

Nationwide Permit 40 has fewer restrictions than NWP 39, which allows limited fill for residential, commercial, and industrial development. This creates a potential loophole. An agricultural operator anticipating residential development could fill his or her wetlands under NWP 40, continue operations for a few years, and then subdivide the property for urban development. Many aspects of farming are already exempt from the Section 404 program, and NWP 40 further expands this farming exemption, resulting in further loss of existing wetlands to farming operations.

**Maintenance.** Nationwide Permit 3 allowed fill associated with the repair or replacement of previously permitted structures or fill. As revised, NWP 3 was expanded to include removal of accumulated sediments around existing structures (such as bridge supports), placement of rip rap to protect structures, and discharges for activities associated with restoration of upland areas damaged by storms or floods. While the earlier NWP was not controversial, there is no experience with the new activities authorized by the NWP. The concern with this change is that it will have unintended environmental consequences.<sup>69</sup>

**Stream and Wetland Restoration.** Nationwide Permit 27 allowed the restoration and creation of non-tidal wetlands. It was revised to include restoration of tidal waters and restoration or enhancement of non-tidal streams and open waters. This permit has no acreage limit. While the NWP was intended to reduce the administrative burden for environmentally beneficial projects, concern exists over the lack of controls to ensure that restoration projects do not harm the environment. Nationwide Permit 27 also eliminates the opportunity for public notice and comment when mitigation banks are created or expanded. (For more information on mitigation banks, see Section 5.5.2 of this handbook.)

### 3.3 EVALUATING PROJECT PROPOSALS

The standards for issuing permits under Section 404 are often summarized as *avoid*,

*minimize*, and *mitigate*. In general, the Corps will grant a Section 404 permit only if: (1) no practicable alternative exists that would avoid wetland impacts, (2) the project design minimizes wetland impacts to the extent possible, and (3) the project requires mitigation for any unavoidable wetland impacts.<sup>70</sup> To ensure avoidance and minimization of wetland impacts whenever possible, Section 404 applicants must demonstrate that no practicable alternative to the proposed project exists. Section 404 requires the applicant to adopt the most environmentally superior practicable alternative.

The critical factor in the alternative analysis is whether a project is “water-dependent.” If, like a dock, pier, or marina, the project requires an aquatic site to fulfill its basic purpose, the Corps will likely approve the permit if it satisfies certain other criteria. If the project is not water-dependent, the Corps will presume that a practicable alternative exists that will have a less adverse effect on the environment. Project applicants wishing to overcome this presumption must clearly demonstrate the absence of a less environmentally damaging alternative.

When evaluating practicable alternatives, the Corps considers the project’s basic purpose rather than the specific components proposed by the applicant.<sup>71</sup> For example, the Corps has rejected an applicant’s stated purpose of “houses on the water,” and concluded instead that the project’s purpose was “a very simple land use, six residential units.”<sup>72</sup> If only a minor component of a much larger project affects wetlands, the Corps will require an alternative analysis for the wetland component alone, rather than the entire project.<sup>73</sup>

To determine whether an alternative is practicable, the Corps considers “cost, existing technology, and logistics in light of overall project purposes.”<sup>74</sup> Because of the overriding importance of protecting wetlands, the Corps evaluates only the practicability of project alternatives. It does not balance the project’s environmental costs against potential economic benefits. If a non-wetland alternative proves practicable – even if less desirable from the applicant’s perspective – the Corps will not issue the Section 404 permit. Thus, a court upheld the Corps’ denial of a permit for a shopping mall due to the availability of an alternative location, even though the alterna-

*The Corps has broad discretion in making its final decision on whether to issue a permit. In practice, this discretion tends to favor the project applicant. Therefore, local governments can – and should – impose a higher standard of wetland protection.*

*The fundamental goal of mitigation under Section 404 is to ensure no net loss of wetland functional values.*

tive site had significantly poorer access, location, and visibility.<sup>75</sup>

If avoidance is not possible, the alternative analysis helps ascertain how to minimize wetland impacts. Impacts that cannot be avoided or minimized must be mitigated. Mitigation requirements are discussed in Section 3.4 of this handbook.

If the Corps concludes that no less environmentally damaging practicable alternative exists, that the project design minimizes wetland impacts, and that all remaining impacts are adequately mitigated, it will generally issue a Section 404 permit. A permit will not be issued if the Corps concludes that the project is not in the public interest or “will cause or contribute to significant degradation of the waters of the United States.”<sup>76</sup> The Corps’ public interest review considers an extremely wide variety of factors, including:

...conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.<sup>77</sup>

Obviously, with so many factors to consider, the Corps has broad discretion in making its final decision on whether to issue a permit. In practice, this discretion tends to favor the project applicant. For example, in 1999, the Corps issued over 2,200 individual permits and denied only 78.<sup>78</sup> This ratio suggests that the Corps rejects only the most harmful proposals. Therefore, local governments can – and should – impose a higher standard of protection for wetlands.

### 3.4 MITIGATION POLICIES

As described in Section 3.3 of this handbook, compensatory mitigation is an action of last resort. It is used only after all efforts to avoid

or minimize the proposed project’s impacts have been exhausted.

The fundamental goal of mitigation under Section 404 is to ensure no net loss of wetland functional values.<sup>79</sup> To satisfy the “no net loss” requirement, Section 404 requires creation of new wetlands or restoration of seriously degraded wetlands (i.e., those with few existing wetland values) to offset the loss of wetlands associated with the proposed project. Unfortunately, wetland re-creation is no easy task. Many scientists doubt that any wetland system can be completely “replaced” with a man-made system. Therefore, Section 404 emphasizes avoidance and minimization as the preferred methods to protect wetlands. The Memorandum of Agreement between the Corps and EPA states that “[c]ompensatory mitigation may not be used as a method to reduce environmental impacts in the evaluation of the least environmentally damaging practical alternatives.”<sup>80</sup>

Because wetland creation and restoration projects may not succeed, Section 404 generally requires creation or restoration of more wetland acreage than will be affected by the project. The Corps and EPA generally require mitigation at a 2:1 ratio (i.e., two acres created or restored for every one acre destroyed) and may require higher ratios (sometimes as high as 8:1) where the mitigation program’s success is highly uncertain.

Section 404 mitigation policies also include measures to maintain wetland “functional values.” The policies indicate a preference for in-kind mitigation that replaces the wetlands destroyed with wetlands of the same type and value (e.g., replacing tidal salt marsh with restored tidal salt marsh). In addition, the policies require that mitigation occur on the project site or on adjoining property to maintain the geographic distribution of wetland resources. These elements are flexible, however. Under some circumstances, it is possible to create or restore wetlands on non-adjacent sites, if necessary, to effectively maintain wetland functional values.<sup>81</sup> Additionally, if mitigation ensuring no net loss of functional values proves infeasible, impracticable, or of questionable environmental benefit, the Corps may authorize a less comprehensive mitigation program – but only if the project as a whole

will not cause a significant degradation of wetlands.

*“Life in the ocean and in the unspoiled bays of San Francisco and Monterey was ... plentiful beyond modern conception. There were mussels, clams, oysters, abalones, seabirds, and sea otters in profusion. Sea lions blackened the rocks at the entrance to San Francisco Bay and in Monterey Bay, and they were so abundant that to one missionary they seemed to cover the entire surface of the water ‘like a pavement.’”*

—*The Ohlone Way*, Malcolm Margolin



# Chapter Four

## Approaches to Local Wetland Regulation

*Local wetland regulatory programs should complement, supplement, or streamline the Section 404 program. Due to the narrow focus of Section 404, local governments should consider protecting additional wetland resources and tailoring protection to local conditions.*

Local governments have numerous procedural options for regulating wetland resources in their communities. While some local governments may simply supplement their existing plans and ordinances with wetland protection measures, others may prefer to create a stand-alone ordinance that provides a separate permitting process. Many factors determine the appropriate approach for a given community. These factors include the resources' character and size and the community's existing land use regulations, as well as budgetary constraints, staff expertise, and environmental, health, and safety concerns. For example, Solano County, to meet its responsibilities under the Suisun Marsh Preservation Act, did not adopt a single, stand-alone wetland ordinance, but instead adopted a comprehensive program of policies and regulations designed to protect the Suisun Marsh. These policies include amendments to the General Plan and the relevant Area Plan, creation of new zoning designations, and substantial revisions to the flood control and grading and erosion ordinances.

This chapter begins with a discussion of the general goals to consider when shaping a local wetland protection program. The remainder of the chapter describes alternatives to a stand-alone local wetland regulation. The substantive policies and standards that must be included in any local wetland regulation are discussed in Chapter Five of this handbook.

### 4.1 THE ROLE OF A LOCAL WETLAND REGULATORY PROGRAM

Because the Clean Water Act, Section 404 looms so large in the wetland regulatory landscape, a local regulatory program cannot be developed in isolation from it. In general, local regulatory programs should complement, supplement, or streamline the Section 404

program. Even regulatory programs developed to fill gaps in Section 404's *substantive* requirements should be compatible with the Section's overall process.

When devising a wetland protection program, local governments should keep three general goals in mind:

- Promote consistency between Section 404 and the local permitting process.
- Provide added protection for important wetland resources not protected by Section 404.
- Ensure that federal, state, and private wetland protection plans are tailored to meet unique local conditions and circumstances.

These goals are discussed in greater detail in the following subsections.

#### 4.1.1 Promote Consistency

A major goal of any local wetland protection program should be to promote consistency between local planning and permitting decisions and state and federal wetland programs. Consistency will streamline the permitting process and reduce delays and costs for landowners. Although numerous state programs impact wetlands and riparian areas – including BCDC permits and DFG streambed alteration agreements – any local coordination effort (outside coastal areas) should focus on the Section 404 program. Section 404 is the most comprehensive regulatory program governing wetlands and generally sets the baseline standard for evaluating wetland impacts. Therefore, if the local wetlands program complies with Section 404 and meets all those requirements, then the state and local requirements will most likely be met.

In some circumstances a local program consistent with Section 404 standards would be insufficient. The most important instance

*“I have just about reached the conclusion that, while large industry is important, fresh air and clean water are more important, and the day may well come when we have to lay that kind of hand on the table and see who is bluffing.”*

—Barry Goldwater

*At a minimum, local regulations should ensure that consultation with the Corps, Coastal Commission, BCDC, and other affected agencies occurs concurrently with the local review process ... The benefits of coordination with the Section 404 program are enormous.*

involves coastal areas, where local coordination efforts should focus on compliance with either the California Coastal Commission or BCDC requirements. These requirements can be more stringent than Section 404 standards.<sup>82</sup> Regional HCPs under the ESA could mean another layer of restrictions, both on the coast and elsewhere in California.<sup>83</sup>

#### **4.1.2 Protect Additional Wetland Resources**

Another goal of local wetland regulation involves protecting wetland resources not covered by Section 404. The CWA is not a comprehensive wetland protection law. Rather, it is a water quality statute that has been used – with some success – to further a purpose for which it was not designed. While the Corps and EPA have interpreted the Act broadly, it is less than comprehensive in two respects. First, it does not cover all wetlands. Second, it authorizes the Corps to regulate only one type of activity – *discharges* of pollutants, including dredged and fill material, into jurisdictional wetlands. This means that Section 404 has a somewhat narrow focus.

Local governments have sophisticated land use planning tools that can effectively regulate wetlands not included in Section 404. For example, a local regulatory program might fill in the following gaps. First, the Corps' jurisdiction only extends to “waters of the United States” that are related to interstate commerce. Therefore, isolated wetlands that do not fall within the Corps' jurisdiction could be regulated locally. Second, the Corps' narrow wetland definition excludes wetlands that do not possess all three physical characteristics. A local wetland program could utilize the broader wetland definition used by the FWS to protect more wetland resources. (These definitions are discussed in Section 2.4 of this handbook.) Similarly, Section 404 ignores upland areas where unregulated activities may adversely impact nearby wetlands or regional water quality. Third, Section 404 does not regulate activities that are exempt or granted summary approval through the NWP system. Regulation of these uses may be more appropriate on a local level.

#### **4.1.3 Tailor Wetland Protection to Local Conditions**

Local wetland protection programs can provide valuable direction to project proponents and regulatory officials by identifying the wetlands of greatest local importance. For example, local programs can provide:

- Information on existing wetland types in the local area.
- Guidance on how to avoid, minimize, and mitigate impacts to specific types of local wetlands.
- A framework for local wetland mitigation that coordinates mitigation efforts for projects throughout the community.

Such programs could also reduce the possibility of local government violation of federal and state endangered species laws. These violations could arise from several types of activities. Examples include: someone disturbing endangered species in wetlands owned by the local government; local governments carrying out activities in wetlands owned by others (e.g., maintaining a road easement); or local governments regulating wetlands in a way that permits activity harmful to endangered species. Government regulations that allow third parties to take actions that affect endangered species have been prohibited in several cases.<sup>84</sup> Therefore, local governments that permit wetland filling without regard to endangered species could expose themselves to liability.

## **4.2 COORDINATION WITH FEDERAL AND STATE PROGRAMS**

Instead of developing its own wetland regulatory program, a local government could coordinate its existing project approval process with the federal and state permitting processes, particularly the Section 404 and state coastal permitting programs. At a minimum, local regulations should ensure that consultation with the Corps, Coastal Commission, BCDC, and other affected agencies occurs concurrently with the local review process in order to identify wetland resources as early as possible. Ideally, the local review process would incorporate the environmental standards for all state and federal wetland protection laws. The basic

components of such a local wetland program are discussed in the following three subsections.

#### **4.2.1 Coordination with Section 404**

The basic components of a local program coordinated with Section 404 should include the following items.

1. Consultation with the Corps (and the Coastal Commission or BCDC if the community lies within their jurisdiction) must occur before the project proponent can file a development application with the local government. This ensures that wetland issues are identified early. (Note: if the application is not accepted as complete prior to this consultation, the local government will not run into Permit Streamlining Act deadlines.)
2. Both the Corps and the local government must approve the wetland delineation (as identified in Section 404) before the project proponent can file a development application with the local government.
3. The applicant must arrange and participate in joint pre-application meetings with both the Corps and the local government.
4. The local government must work with the Corps to prepare joint environmental review documents (e.g., an EIR) for all major projects.

For example, Union City in Alameda County requires all proponents of projects with potential wetland impacts to develop a “wetland preservation plan” that identifies specific wetland mitigation and preservation techniques for each project. As a component of this program, the City devised a permit review process that integrates the local and federal wetland programs to avoid inconsistent land use decisions and to ensure that wetland values are considered early in the planning process. Union City’s review process provides for a preliminary meeting between representatives of the developer, the Corps, and the City; pre-

application review of the project proposal by city staff; and submission of a wetland preservation plan (if needed) along with the development application. See **Figure 1** for a flowchart of the Union City permit review process.

The benefits of such coordination are enormous. First, coordination reduces delay and uncertainty for landowners attempting to satisfy multiple regulatory requirements. Coordination allows for concurrent permit review rather than individual review on an agency-by-agency basis. In short, coordination streamlines the process. Second, early identification of wetlands leads to greater and more cost-effective resource protection. Too often local governments (and landowners) are not fully apprised of the extent and character of wetlands located on the project site until they are well into the approval process. Coordination allows wetland protection to become an integral part of the proposed project. Additionally, early wetland identification allows landowners to discover whether the proposed project is feasible – *before* substantial sums are invested in project design and infrastructure construction.

Finally, local governments can significantly reduce their costs by utilizing work (such as wetland delineations) already conducted by federal resource agencies. Local governments also save time and money by avoiding the need to reconsider projects that must be redesigned to meet federal or state requirements. Coordination reduces the likelihood that staff and elected officials must revisit the contentious issues often raised by local projects.

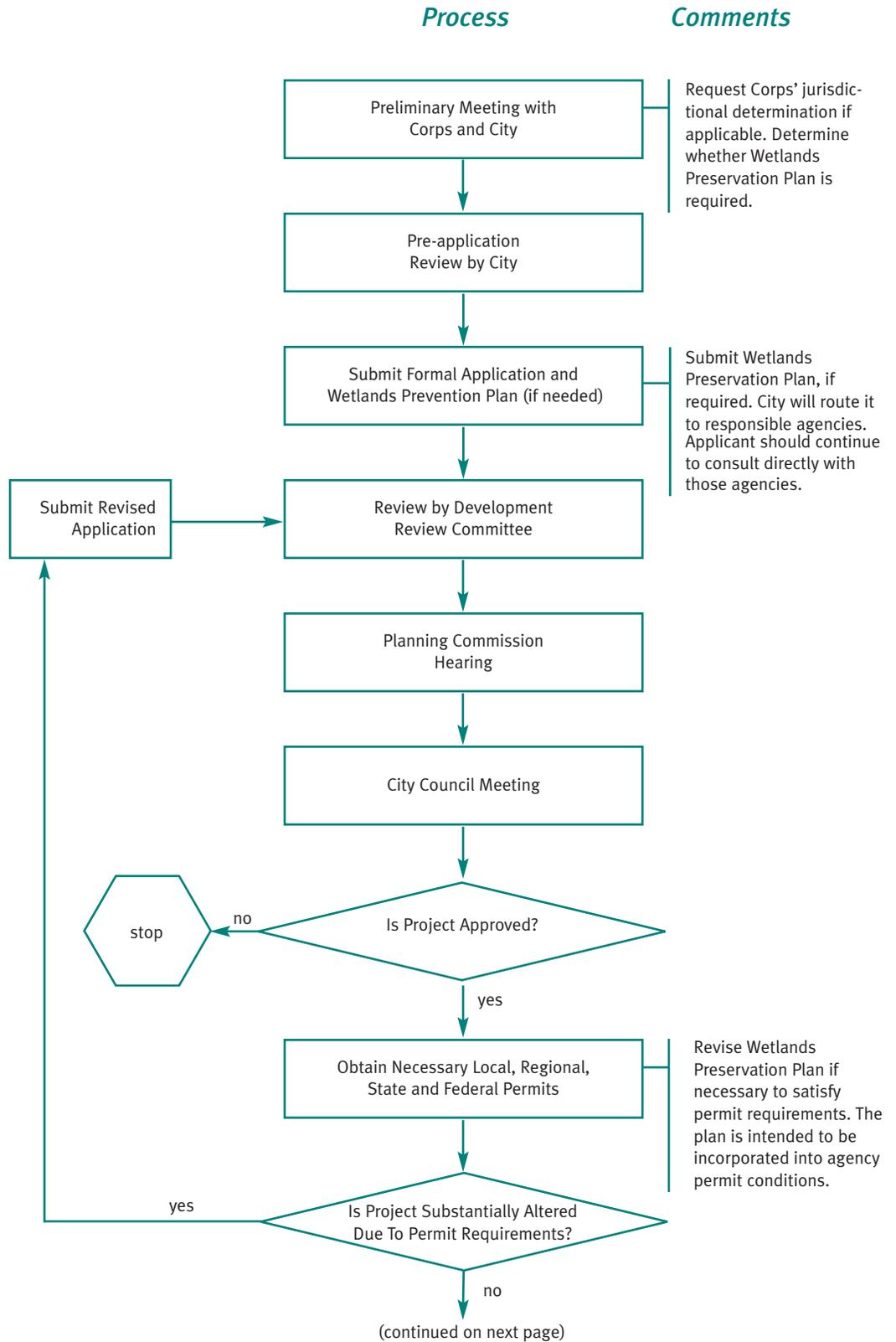
#### **4.2.2 Coordination with the California Coastal Act**

As discussed in Chapter Two, the Corps cannot issue a Section 404 permit for a project in coastal wetlands unless the project is consistent with the California Coastal Commission’s coastal zone management program. A recent court decision established stringent limits on the type of development permissible under the California Coastal Act.<sup>85</sup> The permitted activities primarily involve water-dependent uses and incidental public services.<sup>86</sup> Additionally, development in environmentally sensitive habitat areas, such as wetlands, cannot significantly disrupt habitat values. Similarly, coastal wetlands in the San Francisco Bay Area face restrictions more stringent than those found in

*“The [San Francisco] Baylands provide some form of food, shelter or other benefits to over 500 species of fish, amphibians, reptiles birds and mammals. In addition, there are almost as many species of invertebrates in the ecosystem as all the other animals combined. This brings to over one thousand the total number of animal species that use or call the Baylands ecosystem home.”*

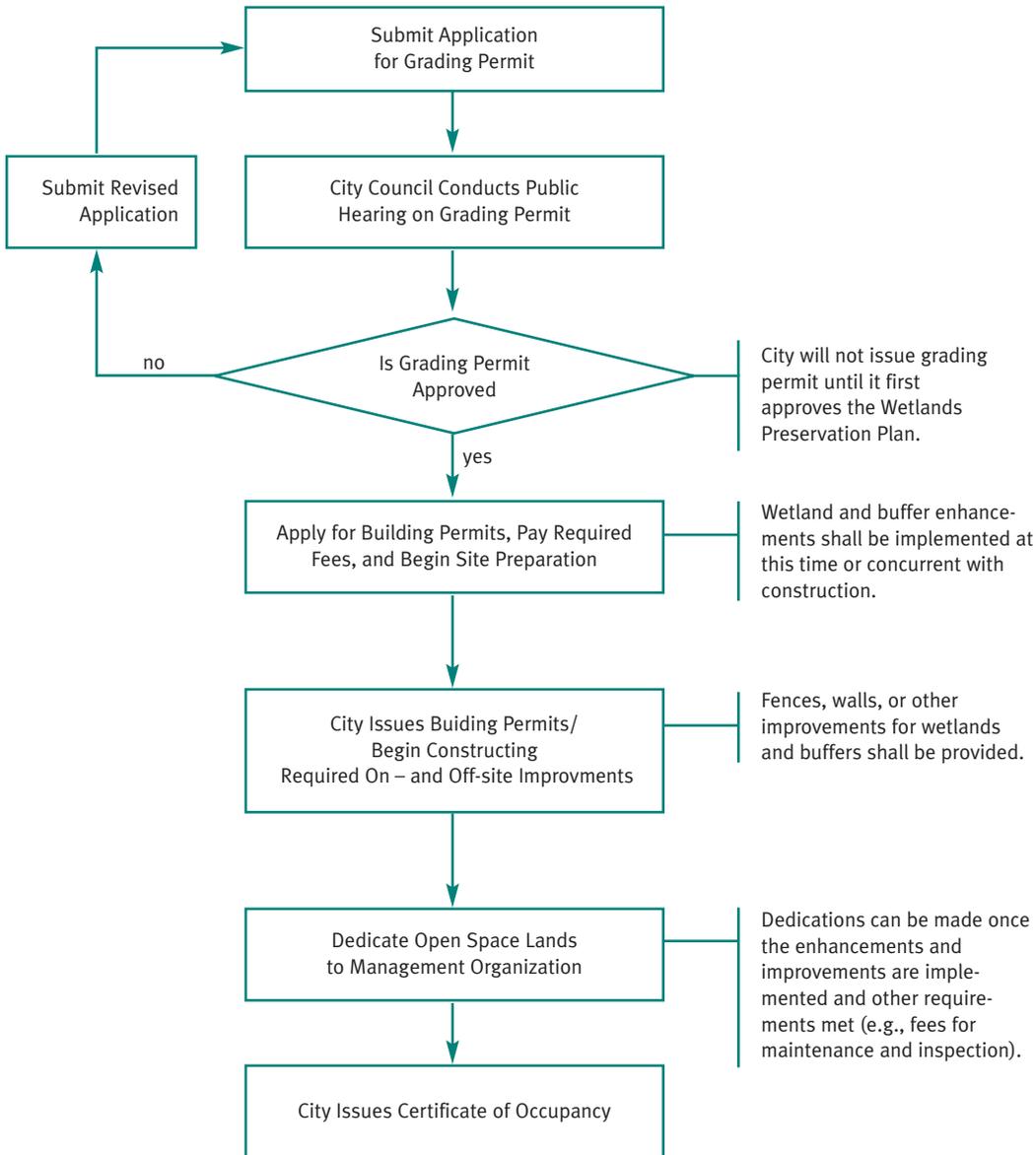
—Baylands Ecosystem Habitat Goals

**FIGURE 1**  
**CITY OF UNION CITY PERMIT REVIEW PROCESS\***



*Process*

*Comments*



\*This figure depicts the ideal permit review process, which may be altered in individual cases, at the City's discretion.

*“Do not pray for easy times; pray to be stronger. Do not pray for tasks equal to your powers; pray for powers equal to your tasks.”*

—John F. Kennedy

Section 404, although the definition of water-dependent activities may be somewhat looser (i.e., inclusion of airports and bridges) under the McAteer-Petris Act.<sup>87</sup>

A local government in a coastal area may want to coordinate the standards used in its local wetland protection program with the more stringent standards used in the state coastal zone management program, rather than the more lax Section 404 standards. Failure to match or exceed the more stringent coastal standards could mean a project proponent would receive a local permit and then be denied permission to develop by the Coastal Commission or BCDC. This would defeat the goal of coordinating the permit processes. Local governments should structure their wetland protection programs so that a local permit demonstrates compliance with the environmental standards for *all* state and federal wetland protection laws.

#### **4.2.3 Coordination with the Endangered Species Act**

Local governments are making increasing use of the ESA’s habitat conservation provisions to better manage land use and threatened and endangered species preservation. Until recently, little effort went into integrating the Section 404 requirements with the HCP planning process. This led to instances in which landowners and local governments mistakenly believed that signing onto an HCP also brought proposed projects into compliance with Section 404. The EPA and other resource agencies now recognize the importance of incorporating wetland protection into the HCP planning process, and they are working with landowners and local governments toward this end. For example, in East Contra Costa County, the HCP process will attempt to address both ESA and Section 404 issues.<sup>88</sup> The Draft San Joaquin County Multi-Species Habitat Conservation and Open Space Plan sets management standards for vernal pools and other wetlands. It also sets incidental take levels for numerous wetland-related species.<sup>89</sup> Wherever possible, local governments should encourage the integration of HCP and wetland planning.

## **4.3 ALTERNATIVES TO A STAND-ALONE LOCAL WETLAND REGULATION**

This section describes the alternatives to a local wetland protection regulation. The four major alternatives are: general plan provisions; local zoning ordinances; regulations arising from the California Environmental Quality Act; and other local measures such as floodplain ordinances, agricultural restrictions, and safety regulations.

### **4.3.1 General Plan Provisions**

Many local governments include wetland protection policies in their general plans, which serve as each community’s basic planning document or “land use constitution.” Any local decision affecting land use must comply with the applicable general plan and its elements. For example, Solano County has included wetland protection measures in the following elements of its general plan: land use, circulation, open space, resource conservation, scenic roadways, and health and safety.

At a minimum, both the land use and the open space/resource conservation elements of the local government’s general plan should acknowledge wetland protection issues. Wetland policies can be linked to policies for other sensitive resources such as riparian corridors, prime farmland, and endangered species. Wetland protection policies also can appear in the public safety element since wetlands are affected by fire safety, water quality, and flood control measures.

To be most effective, wetland protection policies included in general plans should be accompanied by specific implementation measures. For example, the Resource Conservation Element of the Santa Clara County General Plan provides specific implementation measures for its goal to create a comprehensive inventory of the county’s habitats, natural areas, and species biodiversity. In other words, it does more than simply suggest a policy to preserve natural resources. It provides specific mechanisms to address the policy and fulfill the goal. Those implementation measures include:

1. A provision that requires County staff to develop and maintain a regional database or inventory and mapping program

of habitat types and species biodiversity. This database can be shared among local, regional, state, and federal agencies, as well as community organizations.

2. A provision that requires the County to delineate and adopt long-term urban growth boundaries to differentiate resource conservation areas from lands intended for urbanization.
3. A provision that requires the County to study resource conservation areas, such as areas designated by the state as “significant natural areas” and “critical habitat areas” for endangered species. For such areas, the implementation policy requires that county staff identify the areas and determine the need for an HCP.<sup>90</sup>

General plans can also use maps prepared by the FWS National Wetlands Inventory. These maps are readily available and illustrate the general location and extent of wetland resources in any given area. Although these maps are not sufficiently detailed to serve as a basis for case-by-case local regulation, they do provide a helpful starting point for local governments seeking to protect wetland resources.

#### **4.3.2 Local Zoning Ordinances**

Local governments can also include wetland protection standards in their zoning ordinances. These regulations implement the policies and standards described in the general plan (or specific plan). A zoning ordinance designed to protect wetlands could take three forms, as described below.

First, wetland protection regulations can be incorporated into the existing review process for use permits, subdivisions, planned unit developments, grading permits, building permits, or project design. In many cases, the review procedures and requirements will already include policies intended to protect sensitive areas related to wetlands.

Second, local governments can adopt an overlay zone applicable to all wetlands in the community, adding new regulations to those of the underlying zone. This overlay zone can

apply solely to wetlands or it can be combined with related sensitive habitats such as floodplains, riparian areas, or sensitive habitats.

Finally, local governments can adopt a separate wetland protection ordinance that establishes a new permit process. Ideally this permit process would operate concurrently with the existing local processes. The California Coastal Conservancy has drafted a model wetland protection ordinance.<sup>91</sup> Although the California Coastal Conservancy prepared the Draft Model Wetland Protection Ordinance in 1990, it never finalized the document or adopted it as an official project or publication. Nevertheless, the draft contains many useful ideas that local governments can use. This handbook includes several excerpts from the Draft Model Wetland Protection Ordinance. Use of this text does not imply that this constitutes the official policy of the California Coastal Conservancy.

Possibly the most important step a local government can take to simplify the regulatory process and improve the quality of wetland information is to require completion of a wetland delineation prior to acceptance of any development application. Such an assessment would describe the extent of wetlands currently found on the project site and would present baseline scientific information on the specific wetland values associated with the site (e.g., types of vegetation and wildlife and degrees of disturbance). The assessment should provide, from the outset, the information needed to evaluate compliance with all federal, state, and local regulations. This means that project applicants must conduct multiple wetland delineations if various levels of government define wetlands differently. The requirement does not increase the regulatory burden on project applicants, however, as they must develop this information at other points in the process.

The wetland delineation requirement has several key benefits. First, the delineation requirement improves the quality of wetland information, ensures that the local government has direct and easy access to that information, and generates the information earlier in the process. Additionally, the delineation information could help with decision making on related or nearby project sites.

*Possibly the most important step a local government can take to simplify the regulatory process and improve the quality of wetland information is to require a wetland delineation prior to acceptance of any development application.*

*Local ordinances should operate in harmony with a local wetland protection program. As an alternative to direct regulation of wetlands, local governments can integrate wetland protection policies into their existing CEQA regulations.*

Second, project planning occurs based on current wetland information. Piecemeal changes made to an existing project plan on the basis of wetland information gathered late in the process may not sufficiently protect wetlands, even if they satisfy statutory requirements. By contrast, more design solutions will be visible to the project applicant if the wetland information is available before the applicant has settled on a preferred plan. The applicant's fiscal incentive also changes because, in the absence of early wetland information, the applicant will likely find it cheaper to make minimal design changes rather than large changes that better protect wetlands. Delineating wetlands right at the outset helps to avoid fiscal and mental investment in development proposals that destroy or degrade wetland resources.

Last, the delineation requirement is a standard that project applicants should clearly understand. Applicants not only understand what is required of them, but they can clearly demonstrate compliance with the standard.

Marin County has adopted a wetland assessment requirement for its bayfront lands. Sacramento County's Department of Environmental Review and Assessment requires project applicants to provide a Corps-verified wetland delineation if wetlands are present on their project site. The County does not require, however, that an applicant complete the entire Section 404 process before applying for local permits.<sup>92</sup> Local governments can also coordinate the wetland delineation requirement with the documentation required under CEQA. (see Section 4.3.3 of this handbook for more information).

No matter how local governments structure a wetland delineation requirement, local regulations should prescribe when to submit such an assessment and also indicate the level of specificity required. The cost of the program, as well as the wetland delineations, should be borne by the project applicants who utilize the process. These costs could be allocated through a comprehensive local fee structure.

#### **4.3.3 Local Regulations Arising from the California Environmental Quality Act**

As discussed in Chapter Two, CEQA provides a mechanism that identifies and analyzes impacts to wetlands. The Act also provides a means to

evaluate (and possibly adopt) project alternatives or mitigation measures that would reduce or eliminate those impacts. As an alternative to direct regulation of wetlands, local governments can integrate wetland protection policies into their existing CEQA regulations. These regulations could specify, among other things:

- Guidelines for delineating wetlands and documenting their type, function, and value.
- Requirements for analyzing all impacts, including cumulative impacts, to wetlands and for determining their significance. (Wherever possible, wetland impacts should be avoided. If avoidance is not feasible, then impacts should be minimized.)
- Criteria for determining when to prepare environmental documentation and adopt mitigation measures. (Mitigation should be used as a last resort.)
- Analysis of feasible alternatives and mitigation measures, including identification of applicable land use tools. (These tools might include cluster development, transferable development rights, and approved mitigation banks.)

Local CEQA regulations, coupled with early consultation with both the Corps and DFG, would ensure that an adequate assessment of wetland values and impacts occurs during the local regulatory process – and is not deferred to other agencies at a later stage in the project approval process.

#### **4.3.4 Floodplain Ordinances, Agricultural Restrictions, Safety Regulations, and Other Local Measures Affecting Wetlands**

Several types of local land use measures can conflict with the community's goal to preserve wetlands. For example, flood protection ordinances may allow the channeling of streams, and fire protection ordinances may provide for the removal of riparian vegetation. Similarly, agricultural regulations may allow pesticide spraying which can damage wetlands in two ways: through direct application or through drainage from uplands located in the same watershed.

Ordinances such as these should operate in harmony with the local government's wetland program. Local governments should review and amend these regulations to ensure that, to the maximum extent possible, the regulations preserve the integrity of local wetlands and riparian areas. Additionally, jurisdictions should ensure that their permit processing is coordinated, so that environmental issues such as wetland preservation are raised early in the approval process. With careful and comprehensive planning, local governments can ensure that public safety projects, such as flood control devices, achieve their public safety goal without degrading important wetland values.

*“A thing is right when it tends to preserve the integrity, stability, and beauty of the biotic community. It is wrong when it tends otherwise.”*

—Aldo Leopold



# Chapter Five

## Elements of a Local Wetland Protection Regulation

*Local governments can enhance local wetland regulation by adopting a broader wetland definition than the one defined in Section 404. Expanding the protected areas to include non-wetlands recognizes the ecological relationship between wetlands and their adjacent uplands.*

This chapter describes the major components of a local wetland protection regulation and the factors to consider when drafting such a regulation. For each component, the chapter sets forth a number of possible alternatives. These alternatives range from standards that achieve a level of protection equal to Section 404, to standards broader in scope or more protective in effect than Section 404. The chapter specifically addresses opportunities for local wetland programs to provide protection where gaps exist in the federal and state regulatory schemes, focusing particularly on gaps in the Section 404 program.

The following subsections will serve as a checklist of issues to address when preparing a local wetland regulation. The major topics include: statements of purpose and findings of fact; wetland definitions; regulated activities; wetland impact evaluation; compensatory mitigation; enforcement; and takings issues. Local conditions best determine the specific format for these issues.

### 5.1 STATEMENT OF PURPOSE AND FINDINGS OF FACT

A local wetland protection regulation should include a general statement of purpose and legislative findings of fact to explain the regulation's rationale and benefits. A clear articulation of these elements will do several things. It will educate the community about the regulation; alert landowners to the benefits they will derive from the regulation; and aid decision-makers, staff, and others in the construction of the regulation. It also will assist the local government in the event of a court challenge to the regulation.

The specific content of the statement of purpose and legislative findings will vary from community to community, depending upon the particular circumstances giving rise to the regulation. Local governments should stress the wetland values and specify any particular wetland areas that are important to the community. However, certain general themes tend to recur in most local wetland protection regulations. The subsections below describe a sampling of goals and findings that could be used to justify a local regulation protecting wetlands and riparian areas. These models should be refined to meet local conditions.

#### 5.1.1 Statement of Purpose and Goals

The following are examples of possible statements of purpose and goals to include in a local wetland protection regulation:

1. To preserve, protect, and restore wetlands and riparian areas; to promote the community's ecological integrity; and to enhance land values by improving water quality, wildlife habitat, recreational and open space resources, erosion control, and flood protection.
2. To ensure no net loss of wetlands and eventually achieve a net gain in wetland acreage; to establish priorities for avoiding and mitigating adverse impacts on wetlands; to set specific goals and priorities for public acquisition of wetlands; and to create standards for the creation of wetland buffer zones.
3. To prevent piecemeal decision making by establishing clear criteria for evaluating development projects that may impact wetlands.

*“At some point, the will to conserve our natural resources has to rise up from the heart and soul of the people – citizens themselves taking conservation into their own hands and, along with the support of their government, making it happen.”*

— Mollie Beattie, Former Director, U.S. Fish and Wildlife Service (Working Together for Wetlands)

*When crafting a definition for protected resources, two factors should be considered:*

- *Clarity*
- *Breadth of Definition*

4. To streamline the wetland regulatory process, reduce delays and costs to landowners, ensure early identification of wetland and riparian resources, and promote early consultation and coordination with the relevant state and federal agencies.
5. To protect landowners and the public from economic losses caused by unnecessary development in wetland and riparian areas.
6. To compile a comprehensive inventory of the wetland and riparian resources found in the community. (Alternatively, to assist or coordinate with federal, state, and regional wetland inventories.)

#### **5.1.2 Findings of Fact**

The following are examples of possible findings of fact to include in a local wetland protection regulation:

1. Describe as specifically as possible the location of the community's wetland and riparian resources, utilizing maps if practicable. For many areas the FWS, through its National Wetlands Inventory, can provide wetland maps for areas meeting the FWS wetland definition. These may prove helpful. If relevant, describe how these resources relate geographically or ecologically to other wetland and riparian areas or waterways in the region.
2. Describe as specifically as possible the values associated with the community's wetland and riparian areas. Identify any particular health, safety, environmental, and economic concerns. For example, a local wetland regulation may be necessary to improve water quality, to preserve sensitive or endangered habitats, to promote aesthetic values, to assist in flood and erosion control, to save open space, to promote recreation and tourism, or to further other local concerns.
3. Describe the threat currently posed to local wetland and riparian resources by

activities such as dredging, filling, draining, and discharging pollutants. Quantify the extent to which those resources have been eliminated or impaired in the region, and describe the associated economic and environmental losses. The FWS can help determine the amount of lost wetland acreage. In the San Francisco Bay Area, refer to the *Baylands Ecosystem Habitat Goals* for information on historical wetland issues.<sup>93</sup> Discuss if relevant, the cumulative adverse impacts posed to wetland and riparian resources in the region. Also describe the benefits derived from a comprehensive (rather than a piecemeal) planning effort.

4. Describe the need to streamline and coordinate the federal, state, and local wetland regulatory schemes. Point out the costs associated with delays resulting from lack of coordination.

## **5.2 DEFINITION OF THE PROTECTED RESOURCES**

After providing a general statement of purpose and legislative findings of fact, a local wetland protection regulation must specify the types of natural resources to which it applies. The definition of the protected resource will determine which lands within the local government's jurisdiction must comply with the regulation.

The definition selected will depend to a large extent on concerns specific to each community. As discussed in Chapter One, wetlands encompass a wide range of physical environments, and the community must determine which of these it wants to protect. When crafting a definition for protected resources, two factors should be considered.

**Clarity.** The definition should be as precise as possible so that landowners, decisionmakers, and the public will understand the nature of the resource being protected. This need for clarity could cause the local government to simply adopt the Section 404 wetland definition. The Corps and EPA have developed elaborate procedures for identifying wetlands that the local government could rely upon.

However, this approach may not achieve the local government's stated goals. Wetland preservation often depends on protecting upland buffer zones that do not fall under any of the prevailing wetland definitions.

**Breadth of Definition.** To avoid inconsistencies with Section 404, the definition should be sufficiently broad to include those lands already subject to Section 404. In most cases, adopting a narrower definition provides little benefit and might prove a major detriment if locally approved projects were substantially modified during the subsequent Section 404 process.

Local governments should seriously consider providing protection to a broader area than that currently protected by Section 404. This can be done in two ways: (1) by adopting a broader wetland definition or (2) by recognizing the ecological relationship between wetlands and their adjacent uplands, thereby broadening the protected resource to include non-wetlands. If a local government decides to do this, it should consider using two separate definitions, such as "Section 404-Defined Wetlands" and "Additional Wetlands," and track them separately. This avoids the possibility that a local permitting system mitigates the loss of Section 404 wetlands by creating non-404 wetlands. While such mitigation may make sense in some circumstances, it would violate the Corps' "no net loss" requirement for jurisdictional wetlands.

A local wetland definition that is both clear and broad would help reverse the staggering loss of wetlands and related habitats in California. The following subsections discuss alternative approaches to defining wetlands and provide sample definitions for sensitive resource areas related to local wetland protection.

### **5.2.1 Approach 1: Defining Local Wetlands**

As discussed in Chapter Two, three physical features characterize wetlands: standing water, hydric soils, and hydrophytic plants. These features constitute the building blocks of most federal and state agency wetland definitions and therefore should act as the starting point for any local regulation.

The primary advantage of adopting the Section 404 definition for a local wetland regulation is the scientific community's broad

familiarity with the Corps' identification standards. Also, adoption of this definition streamlines the permit process and provides applicants with a degree of predictability because a single definition prevails. A local wetland protection regulation based on this definition could be administered in large part based on wetland delineations approved by the Corps in connection with the Section 404 program.

A drawback to reliance on the Section 404 definition is its relatively limited scope. As noted in Chapter One, many lands possess important wetland values. In some cases these lands do not possess all three of the physical characteristics required to be classified as a wetland under Section 404. For example, the Corps' definition does not include wetland areas from which the vegetation has been altered or removed or wetland areas that naturally have no vegetation, such as mudflats. Nor does it include some artificially created wetlands.<sup>94</sup> The impact of this limitation will depend on the types of wetlands prevalent in the local area.

The FWS definition includes all lands subject to Section 404 plus additional wetland areas that lack one or more of the characteristics. This approach remains compatible with Section 404 while providing an opportunity to protect a wider range of wetland resources. Although use of the FWS National Wetlands Inventory maps cannot serve as the basis for determining if a specific property contains jurisdictional wetlands, they can provide guidance to both local governments and landowners during initial site planning and design.

The California Coastal Commission has essentially adopted the FWS definition of wetlands. The California Coastal Act defines wetlands as lands within the coastal zone that may be "covered periodically or permanently with shallow water, and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats and fens."<sup>95</sup> Coastal Commission guidelines state that the Commission will use the FWS definition as a guide. They also provide that the Commission may use indicators such as the presence of hydrophytic plants or hydric soils to determine whether an area is covered periodically or permanently with shallow water.<sup>96</sup>

*Local governments should seriously consider providing protection to a broader area than that currently protected by Section 404.*

*“When two environments meet, by the way, the wildlife possibilities are multiplied many times over. This is known as the edge effect. The edge of a forest is far more fruitful than the center. Other exciting places are the shores of lakes and ponds, the borders of meadow land and brush and (for birds) the billowy area where the tree canopy meets the sky.”*

— *The Earth Manual*,  
Malcolm Margolin

The San Mateo County Local Coastal Program, as certified by the Coastal Commission, provides a good example of a user-friendly wetland definition based on the FWS model. The program states the required wetland features, gives examples of types and locations, and provides a list of plants typically found in San Mateo County wetlands. It defines wetlands as

[A]n area where the water table is at, near, or above the land surface long enough to bring about the formation of hydric soils or to support the growth of plants which normally are found to grow in water or wet ground. Such wetlands can include mudflats (barren of vegetation), marshes and swamps. Such wetlands can be either fresh or salt-water, along streams (riparian), in tidally influenced areas (near the ocean and usually below extreme high water of spring tides), marginal to lakes, ponds and man-made impoundments. Wetlands do not include areas which in normal rainfall years are permanently submerged (streams, lakes, ponds, and impoundments), nor marine or estuarine areas below extreme low water of spring tides, nor vernal wet areas where the soils are not hydric.

In San Mateo County, wetlands typically contain the following plants: cordgrass, pickleweed, jaumea, frankenia, marsh mint, tule, bulrush, narrow-leaf cattail, broadleaf cattail, pacific silverweed, salt rush, and bog rush. To qualify, a wetland must contain at least 50% cover of some combination of these plants, unless it is a mudflat.<sup>97</sup>

The California Coastal Conservancy’s Draft Model Wetland Protection Ordinance (Draft Model Ordinance) provides another example of a definition based on the FWS approach.

“Wetland” or “wetlands” mean those areas of the [local jurisdiction] that have hydric soils, are normally covered with water, and/or are inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and that under normal circum-

stances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation.<sup>98</sup>

The Draft Model Ordinance provides three additional clarifications that a local government may wish to consider. It prohibits the piecemeal extraction of uplands from a surrounding wetland area by stating that wetlands include all lands located inside the outer-most wetland edge. It provides that if the natural vegetation has been removed, wetlands are determined by the presence of hydric soil. Finally, it includes in the wetland definition all man-made wetlands created as compensatory mitigation.

No matter what definition is ultimately selected, determining if wetland characteristics are present on a particular parcel is difficult. When a local government ventures into wetland regulation for the first time, it should utilize all available resources. The Corps and EPA have developed a detailed manual for determining whether a particular area meets the Section 404 definition – the *Field Guide for Wetland Delineation: 1987 Corps of Engineers Manual*. Even if a local government does not fully adopt the Section 404 definition, the Delineation Manual can still be helpful in determining whether basic wetland features are present. In addition, the FWS has developed a list of approximately 7,000 plants that occur in the nation’s wetlands, entitled *National List of Plant Species That Occur on Wetlands*, and the USDA Soil and Conservation Service has prepared a list of hydric soils with corresponding maps. Numerous state agencies also have expertise in wetland identification and can provide assistance. Moreover, a local government should cite some of these references in its regulation or in a handbook that accompanies the regulation. These references would assist landowners in determining whether wetlands are present on their property.

### **5.2.2 Approach 2: Defining Related Areas with Wetland Protection Values**

Some local governments have recognized the link between wetland preservation and protection of related habitats by adopting regulations that extend protection beyond the wetland edge.<sup>99</sup> Jurisdictions adopting this approach

have found that no strong wetland protection ordinance is complete without corresponding regulation of riparian areas, sensitive habitats, and appropriate buffer zones. Four examples of such local regulation are provided.

**Santa Cruz County Ordinances.** Santa Cruz County has two ordinances that protect a wide range of habitats related to wetland values: the Riparian Corridor and Wetland Protection Ordinance and the Sensitive Habitat Protection Ordinance. The Riparian Corridor and Wetland Protection Ordinance defines the protected “riparian corridor” as any one of the following items:

- The area within a stream channel, including the stream itself and the area between the mean rainy season (bank-full) flowlines.
- The area extending 50 feet (measured horizontally from the mean rainy season flowlines) out from each side of a perennial stream.
- The area extending 30 feet (measured horizontally from the mean rainy season flowlines) out from each side of an intermittent stream.
- The area extending 100 feet (measured horizontally) from the high watermark of a natural body of standing water.
- An area of riparian woodland, defined as a community including woody plants, that typically occurs in wet areas along marshes or streams.
- An area within an arroyo (defined as a gully, ravine or canyon created by a perennial, intermittent, or ephemeral stream, with characteristic steep slopes frequently covered with vegetation) located within the County’s Urban Services Line or its Stable Urban Rural Boundary.

The Sensitive Habitat Protection Ordinance protects biotic communities that are rare or especially valuable because of their special nature or role in the ecosystem. These areas could easily be disturbed or degraded by human activities and development projects. The Ordinance provides numerous examples in its definition, including wetlands and wetland-related areas such as habitats of rare, endan-

gered, or threatened species; marine and wildlife reserves; riparian corridors; and habitats for locally unique species. Additionally, the Ordinance provides protection for “area[s] adjacent to essential habitats of rare, endangered, or threatened species...” The complete text of both ordinances is provided in Appendices C and D, respectively.

**California Coastal Conservancy Draft Model Wetland Protection Ordinance.** In addition to defining wetlands broadly, as described in Section 5.2.1 of this handbook, the Draft Model Ordinance also protects wetland buffers. Wetland buffers are defined as “naturally vegetated and undisturbed, enhanced, or revegetated zone[s] surrounding a natural, restored, or newly created wetland, which protects the wetland from adverse impacts to the integrity of the wetland or its ability to provide biological or non-biological functions.”<sup>100</sup>

**Resource Conservation Element of the Santa Clara County General Plan.** The Resource Conservation Element of the Santa Clara County General Plan provides policies protecting bayland habitats, which include “the waters of the [San Francisco] Bay itself, estuaries, mud flats, salt marsh, and salt evaporation ponds.” Secondly, the General Plan protects streams, riparian areas, freshwater marshes, and lentic zones (agricultural ponds, percolation ponds, and reservoirs). A copy of this general plan element is provided in Appendix E.

### **5.2.3 Approach 3: Creating Wetland and Other Resource Area “Overlay Zones”**

Some local wetland protection regulations seek to reduce uncertainty by mapping wetlands and other sensitive areas subject to the regulation. While these so-called “overlays” provide a useful guide to the overall extent and distribution of protected areas, such planning maps are generally insufficient to precisely determine the boundaries of sensitive areas. These maps may exclude lands with important resource values that have not yet been mapped. Accordingly, overlay districts should be defined to include all areas indicated on the applicable map *as well as those lands not on the map but possessing the characteristics identified in the resource area*

*“Nothing springs from the ground full-blown. The experience of others prepares that ground.”*

—Sarah Christie

*Protecting resources that remain vulnerable under Section 404 should be a primary impetus for developing a local wetland regulatory program.*

*definition.* For example, the City of San Rafael Wetland Overlay District Ordinance includes the following statement:

Small wetlands not shown in the Wetland Overlay District are presumed to exist in the city, are protected under all of the terms and provisions of this Chapter, and shall be rezoned when they are identified.<sup>101</sup>

Local governments may wish to include a provision allowing land to be withdrawn from the overlay district if it can be demonstrated that the land lacks the characteristics that the overlay district seeks to protect. A copy of the San Rafael ordinance is provided in Appendix F.

### 5.3 REGULATED ACTIVITIES

After defining the protected resources, the local wetland protection regulation should clearly indicate the land uses and activities that are subject to regulation. Just as important, the regulation should specify the uses that are exempt. The scope of activities regulated is a policy decision that will depend on each community's particular circumstances.

The following subsections discuss three different approaches for regulating activities in local wetlands and related habitats: (1) tailoring Section 404 to meet local needs; (2) prohibiting all activities inconsistent with wetland preservation; and (3) regulating activities already covered by existing local ordinances. The third approach works best in conjunction with overlay zoning.

#### 5.3.1 Approach 1: Using Section 404 As a Baseline

Local governments wishing to ensure that local permit decisions are consistent with subsequent Corps determinations should, at a minimum, structure their wetland protection programs to apply to all activities subject to Section 404. As with other elements of a local wetland program, there are significant advantages to using Section 404 as a baseline and then identifying additional activities or uses that should be included or exempted from the program based on local conditions. This approach fosters cooperation with the Corps,

streamlines the permitting process, and lessens confusion.

However, a local government that adopts this approach should not adopt it wholesale. Instead, each activity covered or exempted under Section 404 should be carefully scrutinized. The federal government's interests, resources, and capabilities are vastly different from those of a local government. For example, many of the NWP's cover what the Corps considers "minor" alterations that are impracticable to regulate on a nationwide basis. Taken together, these lightly regulated activities can have a range of deleterious impacts, as well as cumulative impacts, on wetland values. The regulation of such "minor" activities may be more suited to local agencies. Therefore, local governments should seriously consider regulating some of these activities.

Additionally, as mentioned in Chapter Two, Section 404 does not regulate draining, flooding, burning, land clearing, or other activities that do not result in fill or conversion of a wetland to a non-wetland. Nor does it regulate "non-invasive" activities such as grazing and pesticide application. Moreover, if these activities result in physical changes that remove one or more of the wetland characteristics (such as hydrophytic plants), the landowner may argue that future fill activities are not subject to Section 404 because the land no longer meets the wetland definition. Therefore, local governments wishing to regulate these uses should specify the additional activities to be regulated (e.g., draining, flooding, or burning). Or, if the local government wishes to regulate all or most uses affecting wetland values, it should specify that the local ordinance applies to any alteration of wetlands (e.g., any human-induced action which changes the existing condition of a wetland), as described in more detail in the next subsection.

#### 5.3.2 Approach 2: Prohibiting Activities Inconsistent with Wetland Preservation

Protecting resources that remain vulnerable under Section 404 should be a primary impetus for developing a local wetland regulatory program. Because the CWA's primary purpose is to prohibit discharges of pollution into waterways, the Corps' regulatory authority under Section 404 is limited to *discharges*. Local governments have far more flexibility to

regulate land uses due to their broad police power. This gives them the opportunity to narrowly tailor local wetland protection programs to meet the community's unique needs. Local governments can regulate activities that are excluded, exempted, or lightly regulated under Section 404.

Local governments should be as specific as possible about the activities and uses regulated. To avoid ambiguity, local governments wishing to regulate uses excluded, exempted, or lightly regulated under Section 404 should clearly state the specific activities included in the local wetland protection regulation. To ensure oversight of activities whose status under Section 404 is uncertain, jurisdictions should specify that such activities fall under its regulatory program.<sup>102</sup> Further clarification can be provided by designating in the local regulation those activities and uses that are *not* regulated.

Local governments seeking a high level of protection for wetland resources may seek to regulate *all* activities and uses that alter wetlands or that are potentially inconsistent with the preservation of wetlands. Such regulation should include a general statement prohibiting all inconsistent uses. It also should identify examples of inconsistent activities and uses. By providing specific examples, a local government can clarify the fact that the broad prohibition on inconsistent uses applies to uses that are allowed under Section 404 or other state or federal regulatory programs. Two examples of this comprehensive approach are provided below.

**California Coastal Conservancy Draft Model Wetland Protection Ordinance.** The Draft Model Ordinance regulates any alteration of wetlands or wetland buffers. It defines alteration as “any human-induced action which changes the existing condition of a wetland or buffer.” The Draft Model Ordinance then provides numerous examples of alterations.

Alterations include but are not limited to grading; filling; dredging; channelization; excavating; bulkheading; the driving of piles; removing vegetation; applying pesticides or herbicides; discharging waste; polluting; mining; grazing domestic animals; modifying for storm water management; changing existing drainage characteristics, surface or subsurface water levels, sedimentation patterns, water

flow patterns or flood retention characteristics; relocating existing activities; engaging in construction of any kind; or other activities that change existing vegetation, hydrology, or habitat.<sup>103</sup>

**Santa Cruz County Riparian Corridor and Wetland Protection Ordinance.** Santa Cruz County's Riparian Corridor and Wetland Protection Ordinance regulates all development activities that impact wetlands. The ordinance specifies that development activities include:

- Grading; excavating; filling; dredging or disposal of dredge material; mining; and installation of rip rap.
- Land clearing (i.e., the removal of vegetation down to bare soil).
- Constructing or altering any structure, including construction of parking areas.
- Topping or felling any trees or shrubs taller than eight feet.
- Depositing refuse or debris.
- Using herbicides, pesticides, or any toxic chemical substances.
- Any other activities determined by the Planning Director to have significant impacts on the riparian corridor.<sup>104</sup>

### **5.3.3 Approach 3: Regulating Activities with Existing Local Ordinances**

Local governments adopting an overlay zone for wetland and riparian areas could simply apply more restrictive standards (see Section 5.4 of this handbook) to all activities regulated by existing local ordinances. However, the local government may want to add additional use restrictions to further limit the allowable uses in the underlying zoning. For example, the City of San Rafael has adopted a Wetland Overlay District that adds four use restrictions to the restrictions already imposed by the underlying zoning. These restrictions are summarized below.

1. The only uses allowed are the construction and maintenance of water-related structures such as piers, docks, walkways, observation decks and shelters, fences, wildlife management shelters, stormwater pumps, and bridges.

*“Where possible natural transitions from tidal flat through tidal marsh to upland should be reestablished. There also should be natural transitions between diked wetlands and adjacent uplands. Restoring these natural transitions is critical for reestablishing bayland-edge plant communities. In all cases, buffers should be provided on undeveloped adjacent lands to protect habitats from disturbance.”*

—Baylands Ecosystem Habitat Goals

*“Water flows over these hands.  
May I use them skillfully  
To preserve our precious planet.”*

—Thich Nhat-Hanh

2. Any permits or approvals required by federal, state, or local regulations must be obtained.
3. Uses in, or near, wetland areas, must be controlled or designed to have minimal adverse impact on wetland habitat.
4. Activities located in or near wetlands should be low intensity uses such as bird watching, fishing, nature photography, wildlife observation, scientific research, and education.

#### **5.3.4 Special Issues Related to Nationwide Permits**

As discussed in Section 3.2 of this handbook, the Corps issues nationwide permits for over forty different categories of activities. Many NWP do not require notification of fill activities. This deprives local governments and individuals of important information about wetland loss in their communities.

Given the limited wetland protection afforded by the NWPs, local governments may decide that their wetland protection program should protect against the myriad of smaller impacts that NWPs do not address. Local governments may be more familiar with and more concerned about small wetlands located in their communities than the Corps. For example, NWP 14 deals with “linear transportation crossings.” Fill of less than 1/10th of an acre in jurisdictional waters does not require notification or compensatory mitigation. Since local governments regulate the siting and construction of roads, they may wish to include road crossings within the scope of their wetland protection program.

One possibility local governments should consider involves requiring a Section 404 individual permit for all proposed fill activities, no matter how minor. This would quickly resolve the problems unique to the NWP system. While this approach would have an administrative cost for the local government, the effort needed to manage relatively small fill proposals would still be less than that for large proposed fills. Alternatively, local governments could create a local-level NWP system that parallels the Section 404 NWP system. The local government could then alter its NWP system as necessary to further protect local wetlands.

Local governments also should consider taking one or more of the following approaches to protect local wetlands. These additional protections could modify all NWPs, or only those that most concern the community.

1. Apply the same (or stronger) “general conditions” as those found in the Section 404 NWP program. The Corps placed numerous generic conditions on many of its original NWPs, and then strengthened those conditions as part of the recent revision process.<sup>105</sup> Some of the conditions require prior notification, protection of endangered species, and protection of critical resource areas. For example, NWP General Condition 25 allows only federal officials to designate critical resource areas. A local counterpart to this condition could give the local government an opportunity to use the NWP program to better protect critical local resources.<sup>106</sup>
2. If the local government creates its own local-level NWP system, allow it the discretion to revoke local NWP eligibility when circumstances warrant doing so. This mirrors the Corps’ authority to deny NWPs when circumstances indicate that an activity will have more than minimal environmental impacts.<sup>107</sup>
3. Require pre-discharge or pre-construction notification to the local government for all activities that *might* fall under a NWP. Pre-discharge notification ensures that the community remains aware of all fill activities occurring within its borders.
4. Allow proposed NWP activities *only* if the activity is water-dependent. The California Coastal Commission generally prohibits filling coastal wetlands for non-water-dependent activities, while the Corps’ individual permit process presumes a practicable alternative exists elsewhere. The Corps’ NWP system does not make the same presumption, but a local NWP system can – and should – do so.

5. Require project applicants to demonstrate that no practicable alternative exists. Even water-dependent activities may have practicable alternatives with fewer or no wetland impacts.
6. Always require mitigation. This provision fills the hole in the Corps' "no net loss" policy. If an activity must fill any portion of a wetland, requiring a commensurate level of onsite or offsite mitigation will help slow the overall rate of wetland loss.

Sacramento County has formally adopted a policy of no net loss of wetlands and created the Wetlands Restoration Trust Fund. The policy requires mitigation in situations where the NWP program does not require mitigation.<sup>108</sup> For certain areas, the County requires mitigation whenever a project impacts one acre or less of wetlands and qualifies for a NWP without mitigation. The County also requires mitigation whenever mitigation is required by a NWP but a net loss of wetlands would nevertheless occur. The project applicant must either perform the mitigation according to an approved plan, or else pay money into the Trust Fund. The Trust Fund monies are dedicated exclusively to acquisition, creation, and maintenance of wetland habitat. A memorandum from Sacramento County describing the rules and process for paying into the Wetlands Restoration Trust Fund is located in Appendix G.

### 5.3.5 Exemptions

To provide certainty to landowners and others subject to the regulation, a local wetland protection program should clearly state the types of activities and uses that are not subject to regulation. These exempted uses could include the Section 404 exemptions described in Section 3.2.1 of this handbook, some or all activities authorized by the Corps' NWP system, or other activities that the local government determines present little basis for concern in light of local conditions. Many local ordinances exempt activities such as:

- Conservation of soil, water, vegetation, fish, shellfish, and other wildlife.

- Recreational activities such as bird watching, fishing, hiking, boating, swimming, horseback riding, canoeing, and bicycling.
- Harvesting of wild crops (e.g., marsh hay, berries, ferns, moss) in a manner not injurious to the natural reproduction of those crops and that does not require alteration of the wetlands by changing existing topography, water conditions, or water sources.
- Education and scientific research.
- Nature trails.
- Continued operation (but not expansion) of pre-existing agricultural uses provided that such operations were occurring before a certain date. (The date is generally set at a time before public discussion of the wetland regulation began.)
- Continued operation (but not expansion) of pre-existing non-agricultural uses under conditions similar to those applied to agricultural uses.
- Wetland and habitat restoration projects approved by the FWS, DFG, or other appropriate agency.
- Maintenance of existing public facilities and existing drainage, irrigation, and flood control facilities.

The local government can condition these exemptions to minimize impacts on wetlands. For example, the continued operation of flood control facilities may be permitted within wetlands on the condition that those facilities are not materially changed or expanded. Similarly, the jurisdiction can allow continued agricultural uses in wetland areas on the condition that no unnecessary removal of natural vegetation occurs.

Several of these commonly exempted activities destroy or degrade wetland resources. Therefore, local governments should assess these impacts based on local conditions and consider regulating some (or all) of the activities rather than exempting them from the local wetland regulation.

*To provide certainty to landowners and others subject to the regulation, a local wetland protection program should clearly state the types of activities and uses that are not subject to regulation.*

*Because Section 404 requires the project applicant to account for all practicable alternatives, the alternative analysis will generally present the “range of reasonable alternatives” required by CEQA. This offers an opportunity to streamline the permit review process.*

## 5.4 EVALUATION OF WETLAND IMPACTS

In addition to a statement of purpose, findings of fact, wetland definition, and list of regulated activities, a local wetland protection regulation also must include standards to evaluate the impacts of specific projects or proposed activities. These standards also will determine the conditions, if any, that should be imposed on those projects or activities. For local governments choosing to regulate projects affecting wetlands, the regulation’s standards will determine when wetland impacts are permissible. For communities with policies primarily promoting coordination among federal, state, and local regulatory procedures or simply seeking greater information regarding a proposed project’s wetland impacts, the standards can provide a benchmark for analysis consistent with federal and state regulations. This approach also ensures a complete analysis of potential impacts. The Corps and EPA have developed detailed standards that provide a useful baseline for local governments developing their own standards. These standards – and potential variations on these standards – are discussed below.

Local governments that do not specifically regulate projects affecting wetlands nonetheless may wish to consider wetland impacts during the environmental review process. This approach ensures that local decisionmakers are informed of the project’s wetland impacts and can coordinate federal, state, and local permit reviews. Local governments can require that EIRs include an alternative analysis that complies not only with CEQA, but also Section 404 requirements. In addition, local governments can establish thresholds for determining when wetland impacts must be considered significant.

### 5.4.1 Section 404 Standards

Section 404 establishes threshold standards for local governments wishing to ensure that their approach to evaluating wetland impacts is commensurate with the federal wetland program. Application of Section 404-equivalent (or more restrictive) standards will provide permit applicants greater assurance that the Corps will not require substantially different project designs from those approved by the local government. Since permit applicants must meet federal standards in most cases, the

adoption of less restrictive standards serves little purpose.

Therefore, Section 404 provides a useful baseline for development of local wetland standards. The local wetland regulation could incorporate the basic approach (or prioritization) of the federal standards, then specify local regulatory tools to implement that approach. Local policies modeled after Section 404 should reflect the three essential standards: *avoidance*, *minimization*, and *mitigation*.

**Avoidance.** A local ordinance following the Section 404 model should permit fill in wetlands only if no practicable alternatives exist that would avoid wetland impacts. The ordinance should specify the factors to consider when making the “practicable alternative” determination. The ordinance also might specify that alternatives to project components must be analyzed as well as alternatives to the entire project. For example, a local regulation could require consideration of the following factors:

- Whether the proposed use is water-dependent.
- Whether an alternative site would satisfy the project’s basic purpose.
- Whether an alternative is practicable based on cost, existing technology, and logistics.

Local governments adopting the avoidance standard can specify zoning policies to implement the standard, such as clustering development to avoid impacts or allowing a transfer of development rights to another parcel.

In many cases the Section 404 alternative analysis presents an opportunity to streamline the permit review process by using it as the basis for the alternative analysis required by CEQA in the EIR. Because Section 404 requires the project applicant to account for all practicable alternatives, the alternative analysis will generally present the “range of reasonable alternatives” required by CEQA.<sup>109</sup> Similarly, because Section 404 requires the Corps to issue a permit for the least environmentally damaging practicable alternative, the alternative analysis will have the same focus as CEQA on alternatives that reduce or avoid environmental impacts.<sup>110</sup>

As with other aspects of Section 404, the concept of avoidance is the subject of many disagreements between project proponents and the Corps or EPA. Local ordinances can minimize, or at least focus, such disputes by providing clear guidance on the proper analytical approach to use.

**Minimization.** When wetland impacts are unavoidable, proposed projects should minimize the extent of those impacts. Here too, zoning policies can be effective tools to facilitate alternative designs. Measures intended to minimize impacts include the following:

- Cluster development on upland sites or the least valuable wetland areas.
- Elevate structures.
- Locate access roads, sewers, utilities, and water supply systems to avoid sensitive habitat areas.
- Use silt fences and other measures to reduce erosion and control runoff from construction sites.
- Trap sediments in detention ponds.
- Fence wetlands and floodplains to reduce human intrusion.<sup>111</sup>

**Compensatory Mitigation.** Mitigation should be required for all unavoidable wetland impacts. Consistent with Section 404, mitigation should not be used as an alternative to avoidance or minimization, but only as a last resort. Specific approaches to mitigation policy are discussed in Section 5.5 of this handbook.

**Public Interest Review.** Section 404 also includes the more general “public interest” standard. A local government adopting this approach should require permit decisions to rest on a balancing of the proposed project’s likely benefits against its foreseeable detriments.

Some have criticized the Corps’ public interest review process as lacking in precision and clarity and providing too much discretion to the decisionmaker. A local government can address this issue by departing from the Section 404 grab bag approach. It can either omit public interest review completely or else limit the factors to be considered. For example, the State of Michigan’s wetland program includes a public interest determination.

However, it includes a precise articulation of factors to consider when making this determination. Those factors include:

- The project’s expected benefits.
- The extent of public and private need for the proposed project.
- The project’s impacts in relation to the cumulative effect created by other existing and anticipated activities in the watershed.
- The project’s impacts on recognized historic, cultural, scenic, ecological, and recreational values, including wetlands, as well as its impacts on public health, fish, and wildlife.
- The amount of wetlands remaining in the area.
- The proximity to any waterbody.
- The project’s economic value, both public and private, to the general area.<sup>112</sup>

This list could be expanded or contracted depending on the community’s particular conditions or concerns.

#### **5.4.2 More Restrictive Standards**

Local wetland protection regulations also can establish standards more restrictive than those found in Section 404. Two examples of this approach are provided below.

**California Coastal Conservancy Draft Model Wetland Protection Ordinance.** The Draft Model Ordinance sets a clear standard of no alteration of wetlands or wetland buffers, unless the landowner can demonstrate that application of the ordinance will deny all reasonable use of the property.<sup>113</sup> In that event, other standards ensure that the development allowed is the minimum necessary to provide economic use. For example, the landowner must demonstrate that no feasible alternative exists, that disturbance of wetlands and wetland buffers has been minimized, and that any alterations to wetlands and wetland buffers will be mitigated. Significantly, public interest considerations have no place in this ordinance.

The Draft Model Ordinance’s thrust is to restrict alteration of wetlands and wetland buffers while at the same time avoiding a “taking” of property without just compensation. A taking violates both the federal and state

*“There must be the ...  
generating force of love  
behind every effort destined  
to be successful.”*

—Henry David Thoreau

*Compensatory mitigation is an action of last resort-to be used only after all efforts to avoid or minimize the proposed project's impacts have been exhausted.*

constitutions. The takings issue, often raised in the analysis of local land use ordinances, is discussed in greater detail in Section 5.7 of this handbook.

**Santa Cruz County Riparian Corridor and Wetland Protection Ordinance.** When compared to the Draft Model Ordinance, Santa Cruz County's Riparian Corridor and Wetland Protection Ordinance is not only broader in application, but also broader in the discretion granted to local decisionmakers. The Santa Cruz ordinance provides, with limited exemptions, that no development will occur in riparian corridors or within an arroyo's buffer area. These requirements can be waived if the local agency makes the following findings:

- That no feasible less environmentally damaging alternative exists.
- That the riparian corridor will not be reduced or adversely impacted.
- That the exception is necessary for the proper design and function of a permitted use on the property.
- That the exception will not harm the public welfare or injure neighboring or downstream property.
- That the exception is in keeping with the ordinance's purpose and with the objectives of the General Plan and the Local Coastal Program Land Use Plan.

Both ordinances provide good examples of how a local government can establish standards more restrictive than those found in the Section 404 program.

## **5.5 COMPENSATORY MITIGATION: RE-CREATING DISPLACED WETLANDS**

In some instances, avoiding all wetland impacts proves impossible. To deal with such situations, local wetland protection regulations usually include mitigation policies. In land use terminology (and in the CEQA environmental review process), the term mitigation refers to all affirmative actions taken to lessen a proposed project's impacts on the local community and environment. However, in Section 404, and throughout the wetland regulatory field, mitigation usually has a narrower

meaning. In this setting, mitigation (also called compensatory mitigation) refers primarily to the creation of new wetlands or the restoration of degraded wetlands to compensate for wetlands destroyed by an approved project.

Compensatory mitigation is an action of last resort. It is used only after all efforts to avoid or minimize the proposed project's impacts have been exhausted. This is due in part to the controversial nature of wetland mitigation. Many scientists doubt that any wetlands system can be completely "replaced" with a man-made system. All agree that it is a daunting task.

As with the standards applied when evaluating Section 404 permit applications, the Corps' mitigation policies serve as an effective baseline that can be expanded or refined to address local circumstances. Therefore, this section discusses actions local governments can take to augment or complement Section 404. This is followed by a short overview of the growing field of mitigation banking. Finally, the importance of mitigation monitoring and the role that local governments can play in that endeavor are provided.

### **5.5.1 The Role of Local Governments**

Local governments can supplement the Section 404 mitigation policies with measures to strengthen and streamline those policies within their jurisdictions. For example, a local wetland protection regulation can identify the most common types of wetlands in the area and then establish minimum standards for in-kind mitigation. Local policies can then set the geographic boundaries within which mitigation for local wetlands can occur. They can recommend specific locations for mitigation banks, perhaps pinpointing local or regional areas where degraded wetlands can be combined with existing wetlands to form a wetland complex of high habitat value. Local governments also can play an important role by requiring improved mitigation monitoring and developing a reporting system to determine the success rate for different kinds of mitigation. Working within the Section 404 framework, these approaches will further define local goals and simplify the case-by-case review process.

Union City in Alameda County provides a good example of how local jurisdictions can

supplement Section 404 mitigation measures. Its 511 Area Wetland Preservation Plan (511 Plan) requires mitigation on a greater than 1:1 basis. The 511 Plan requires that mitigation provide in-kind habitat values sufficient to offset the proposed project's impacts. In other words, the habitat values of the mitigation wetlands must match or exceed those of the lost wetlands. To achieve this objective, it is recommended that the applicant utilize the FWS Habitat Evaluation Procedures (or a related method) to conduct habitat value analysis. The method utilized must be acceptable to the Corps, FWS, and DFG.

Additionally, if the wetlands were degraded by human disturbance such as mowing, live-stock grazing, or filling, the 511 Plan requires that mitigation match the altered wetland's pre-disturbance condition. The 511 Plan also requires preservation of adjacent or nearby uplands if these are necessary to maintain habitat diversity. Furthermore, mitigation cannot occur in sensitive wildlife habitat, including areas that are known or suspected to support endangered or threatened species.

The 511 Plan also provides extensive information on the different options for wetland restoration. This information includes advice on restoration approaches, a list of native plants suitable for local restoration projects, priorities for habitat types, and water supply issues.

### **5.5.2 Mitigation Banking**

In recent years, increased attention has been devoted to mitigation banking proposals. This approach links wetland regulation, restoration, and management. Once established, these "banks" facilitate wetland mitigation efforts for certain types of projects.

In general, mitigation banks allow project sponsors to mitigate their wetland impacts by buying "credits" at existing or planned bank sites rather than developing individual mitigation programs. Under the right circumstances, mitigation banking allows creation or restoration of large, high value wetlands backed by considerable scientific expertise, while streamlining the regulatory process. Additionally, by requiring wetland creation in the mitigation bank *before* a project is built, mitigation banking can avoid the temporary loss of wetlands that would otherwise occur between project

construction and completion of onsite mitigation. On the other hand, if the mitigation bank fails, then the wetland mitigation for a large number of projects fails as well.

Mitigation banking is often appropriate for projects with small, unavoidable impacts on wetlands, such as linear projects like transmission wires or pipelines. Mitigating impacts from NWP projects is another example. Banks also may be appropriate in situations where they are capable of replacing essential physical or biological functions of the aquatic resources. As with more traditional mitigation programs, the mitigation ratio required for projects relying on mitigation banking can vary greatly. A ratio of at least 1:1 (sometimes 8:1 or higher) is typically required, depending on the value of the wetlands destroyed, the value of the bank, and the degree of uncertainty regarding the bank's success.

Generally, mitigation projects should use reliable, well-understood restoration techniques that promote a self-sustaining system. Restoration of historic or substantially degraded wetlands is generally preferred. Such projects are the most likely to succeed without intensive maintenance, and they are the least likely to negatively impact other resources. On the other hand, projects that require complicated engineering feats or questionable water sources should be avoided where possible, as they are the most vulnerable to failure.

### **Federal Mitigation Banking Guidelines.**

A number of federal agencies, including the Corps, EPA, FWS, NMFS, and National Resources Conservation Service (NRCS) worked together to develop mitigation banking guidelines. The guidelines document is entitled *Federal Guidance for the Establishment, Use and Operation of Mitigation Banks*.<sup>114</sup> The guidelines provide help in determining those situations in which contributions to a mitigation bank may be an appropriate mitigation tool.

Before gaining authorization for mitigation banking, applicants must first avoid and then minimize impacts to onsite wetlands. Any unavoidable impacts must be compensated to the extent *appropriate and practicable*. While the guidelines express an explicit preference for onsite mitigation, compensation through a mitigation bank may be appropriate – depending on certain criteria – even when onsite

*Mitigation banking is often appropriate for projects with small, unavoidable impacts on wetlands, such as linear projects like transmission wires or pipelines.*

*Monitoring is a critical element of any mitigation program, whether onsite, offsite, or through a mitigation bank.*

compensation is possible. Possible criteria include the likelihood of successfully establishing the desired habitat and the compatibility of the mitigation project with adjacent land uses. Additional considerations are the relative cost of mitigation alternatives and the feasibility of long-term monitoring and maintenance (i.e., is the effort ecologically sustainable?).

Generally, the guidelines emphasize a need to balance the impacts versus the benefits to determine whether mitigation is best accomplished onsite or through a mitigation bank. The guidelines prefer in-kind wetland mitigation. They discourage, for instance, mitigating non-tidal wetlands with tidal wetlands. Similarly, a bank's geographical service area is considered to be the area wherein a bank can reasonably provide appropriate compensation for wetland impacts. These guidelines will generally prevent mitigation outside the project site's watershed or region. However, such decisions will be made on a case-by-case basis.

The guidelines allow mitigation banking credit for preservation of existing wetlands in conjunction with additional restoration projects if such preservation will augment the function of the restored wetlands. Preservation may be used as the sole basis of credit only in exceptional circumstances. Allowing credit for preservation alone will depend on whether the proposed site performs important biological functions and whether the resource is likely to be lost, or is seriously threatened, due to land use trends. To receive mitigation bank credit for preservation of existing wetlands will generally require greater acreage than a bank that restores or creates wetland resources.

**Sacramento-San Joaquin Valley Wetland Mitigation Bank Act.** In August 1993 the State committed itself to develop guidelines for wetland mitigation banks. The goal was to encourage creation of mitigation banks and to develop state guidelines consistent with the federal guidelines. The result was the Sacramento-San Joaquin Valley Wetlands Mitigation Bank Act.<sup>115</sup> It authorizes DFG to qualify mitigation bank sites in the Central Valley region.

The Act requires DFG to establish standards and criteria for prospective bank sites and operators, for the evaluation of wetlands created at bank sites, and for the operation of

those bank sites. Before wetlands are created at a bank site, DFG must sign a memorandum of understanding with the operator. After more than 20 acres of wetlands have been created, the operator may request DFG to classify the wetland type(s), determine the number of wetland acres, and categorize the habitat value of those acres. The bank will then be available for any Section 404 permittee to use within a forty-mile radius. Mitigation banks can be created in the Central Valley without following the Act. However, local governments can require that project proponents use DFG-qualified bank sites whenever possible.

### **5.5.3 Mitigation Monitoring**

Monitoring is a critical element of any mitigation program, whether onsite, offsite, or through a mitigation bank. Mitigation monitoring programs are generally specified in the mitigation plan. The mitigation plan should establish performance benchmarks that can be objectively verified and should include contingency plans in the event that the preferred plan is unsuccessful. Some jurisdictions require project proponents to complete wetland mitigation prior to issuance of the building permit. Others require project proponents to post a bond sufficient to finance the mitigation program. Projects relying on mitigation banking are generally required to provide financial assurances in the event that mitigation credits are not purchased up front. Similarly, mitigation bank operators must demonstrate the long-term availability of funds for mitigation bank operation and management.

A critical element in mitigation monitoring is the role of the local government or other regulatory agency in inspecting and monitoring the progress of mitigation programs. Local governments lacking staff with expertise to monitor mitigation programs often rely on federal or state agencies to perform the monitoring function. In such cases, the local government should ensure that it is kept informed of the program's progress and its compliance with those elements of particular concern. However, local agencies should be aware that the Corps' mitigation oversight program is currently under-funded and often ineffective. For projects with no state or federal agency involvement, local governments can impose monitoring fees.

The monitoring could be conducted either by local government staff or hired consultants.

## 5.6 ENFORCEMENT

A local wetland regulation must have teeth in order to be effective. In the case of a new stand-alone ordinance, the local government may adopt enforcement provisions similar to those in any existing zoning ordinance. It is best to start with ordinances governing related concerns – such as erosion, grading, riparian corridors, or sensitive habitats. If a local government chooses to incorporate wetland preservation standards into an existing ordinance or land use plan (e.g., general plan or specific plan), affirmative enforcement provisions may already be present. However, the existing ordinance or plan may need tinkering to accommodate the new wetland provisions. In any event, when enforcement provisions are devised, the following components should be considered.

### 5.6.1 Authority

The enforcement section should specify the local agency or agencies that have authority to enforce the regulation. It also should specify the agency(s) that will enforce any permits issued under the regulation. Additionally, this section should describe the scope of the agency's power, including the power to inspect premises, issue violation notices and administrative orders, levy fines, institute legal actions, and enlist the assistance of law enforcement officials.

### 5.6.2 Violations

The local wetland regulation should clearly state that compliance with its requirements will not ensure compliance with federal and state wetland regulations. The regulation also should specify activities that constitute a violation of its requirements. In general those violations will fall into three categories:

- Engaging in (or in any way assisting with) a prohibited use, action, or alteration without first obtaining a permit.
- Failing to comply with the permit requirements or regulatory conditions.

- Failing to comply with a stop work order.

The regulation also should authorize local agencies to issue stop work orders. Stop work orders empower local agencies to prevent further wetland destruction after initial discovery of the violation. The issuance of a stop work order can be combined with the levying of fines. For example, Section 404 states that each day unauthorized fill remains in place in violation of a Corps-issued cease-and-desist order constitutes a separate, fineable offense.

### 5.6.3 Penalties

The local wetland regulation should clearly outline the possible penalties that would result from a violation of the regulations' requirements. Four types of penalties should be considered.

**Fines.** Fines are commonly used as enforcement tools in local ordinances. Under most ordinances, fines are assessed for each individual offense (e.g., alteration or fill), as well as on a daily basis for continuing violations. Fines vary greatly. Section 404 provides for fines of up to \$125,000. Under the CWA, Section 309, the EPA can impose civil penalties of up to \$25,000 and criminal penalties of up to \$50,000 *per day* for each day of violation. In contrast, Santa Cruz County's Riparian Corridor and Wetland Protection Ordinance provides for a maximum fine of \$500 (with no aggregate maximum). Generally, maximum fines in state and federal regulations are in the range of \$20,000 for each offense, but local ordinances can rarely impose fines at that level.

**Restoration.** Requiring violators to restore illegally altered wetlands (or create new wetlands if restoration is not possible) is the best way to ensure protection of wetland resources. Fines alone may not act as sufficient deterrent since some violators view fines simply as a cost of doing business. Local governments should consider including a provision that allows their staff to step in and take over the restoration effort, at the violator's expense, if the restoration is not completed within a reasonable time. These types of restoration projects should fully comply with the local

*Requiring violators to restore illegally altered wetlands (or create new wetlands if restoration is not possible) is the best way to ensure protection of wetland resources.*

*A land use regulation is valid if it (1) substantially advances a legitimate government interest and (2) does not deprive a property owner of all reasonable, beneficial use of his or her property.*

regulation's mitigation provisions. This includes any approval procedures that precede project commencement.

**Criminal Penalties.** A local government may consider criminal penalties for egregious violations. For example, Section 404 provides for criminal penalties, including jail sentences of up to 15 years, for negligent or knowing violations of the CWA. This includes violations that cause a knowing endangerment of wetlands. The Coastal Conservancy's Draft Model Ordinance provides for misdemeanor penalties of up to six months imprisonment for certain willful or negligent violations.

While the threat of a jail sentence will increase the deterrence effect, criminal penalties for wetland violations may prove politically unpopular. Even the Corps seems reluctant to bring criminal enforcement actions. Additionally, judges and juries are often reluctant to hand down jail terms to violators of regulations.<sup>116</sup> For example, from the early 1970s to the early 1990s, the Corps brought less than twenty criminal enforcement actions, with less than ten actions culminating in jail sentences.<sup>117</sup>

**Cost of Enforcement Actions.** Some local wetland regulations provide for cost of enforcement actions. This allows the local government to recover from the violator all costs and expenses connected with its enforcement activities.<sup>118</sup>

## 5.7 THE TAKINGS ISSUE

Landowners affected by a local wetland protection regulation sometimes respond by filing a lawsuit against the local government. Typically these lawsuits involve what is known as a "takings" claim. Local governments should understand the takings issue so they can respond effectively.

Under the Fifth Amendment of the United States Constitution and Article 19 of the California Constitution, the government may not "take" private property for a public purpose without paying just compensation. Courts can find that property has been taken either by an actual physical invasion of the property or through regulatory activity that

restricts all reasonable, beneficial uses of the property. Although it is rare for courts to find that a taking has occurred, because wetland regulations do restrict property uses, they may be subject to taking challenges. As a result, care should be taken to ensure that local wetland regulations are constitutionally valid.

### 5.7.1 Legal Overview

A land use regulation is valid if it (1) substantially advances a legitimate government interest and (2) does not deprive a property owner of *all* reasonable, beneficial use of his or her property.<sup>119</sup>

**"Substantially Advances" Test.** In general, a land use regulation must attempt to alleviate the impacts caused by urban development.<sup>120</sup> In other words, a correlation between the regulation and the impacts it is trying to eliminate should exist. The U.S. Supreme Court clarified this issue by ruling that when a local government requires land dedication or fee payment as a condition of project approval, it also must show that the condition is *roughly proportional* to the project's impacts.<sup>121</sup> For example, if a local government requires the developer of a project that will adversely affect wetlands to contribute fees for wetland mitigation, it should show that the fee charged approximates the costs associated with replacing or restoring the wetlands damaged by the project.<sup>122</sup>

On the other hand, regulations that simply restrict the use of wetlands, such as setback requirements, should not be subject to the rough proportionality test. These types of regulations should only be evaluated to determine whether they alleviate the impacts caused to wetlands. Generally, a local wetland regulation will not have trouble meeting this burden as long as the local government identifies in the regulation's statement of purpose and findings of fact how urban development impacts wetlands. The local government also should demonstrate that the regulation's limits on development advance the goal of protecting wetlands.

**Reasonable Beneficial Use.** Local wetland regulations may prohibit development in setback zones around wetland resources or they may establish density restrictions that require

large lots per dwelling unit. Because these and similar regulations restrict development options, their economic impact is considered a key factor in determining their constitutionality. The U.S. Supreme Court has held that a government regulation must not render property valueless without the payment of compensation.<sup>123</sup> Although the court did not determine what renders property valueless, previous courts have looked at regulations to see whether they allow the landowner to retain some use of the property. As a general rule, an ordinance will be valid unless it eliminates *virtually all* use of the property.<sup>124</sup>

To help determine whether a wetland regulation's economic impact is so severe that it constitutes a taking, local governments should consider four issues. First, regulations may substantially reduce property values and still not constitute a taking. For example, regulations that reduce property values by as much as 90 percent have been upheld as legitimate exercises of local regulatory authority.<sup>125</sup>

Second, rather than focusing on decreased value, courts tend to focus on whether the regulation leaves some remaining uses of the property. Even if they prohibit particular types of development or all development in limited areas, wetland regulations will not be unconstitutional if they allow other uses of the property. For example, wetland regulations can allow agricultural uses that would constitute a remaining beneficial use.<sup>126</sup> Or, if the property retains some market value, the ability to sell it could constitute a beneficial use.

Occasionally, courts will look to see whether a regulation has unduly interfered with a property owner's reasonable investment-backed expectations. Because California property owners cannot rely on existing zoning, and it is difficult to obtain a vested right to develop property, landowners can rarely demonstrate a reasonable investment-backed expectation of development in this state.

Finally, courts generally evaluate a regulation's economic impact on the entire parcel of land. Even if a regulation prohibits all use of some portion of the affected property, it will be valid as long as it leaves other uses on parts of the property.<sup>127</sup> This is important for wetland regulations because they often prohibit development within a certain distance from the wetlands. Nevertheless, landowners have

argued that regulations that prohibit all use of a segment of their property equate to a taking of that segment. Until now, the courts have not accepted this argument, but the issue may reoccur.

### **5.7.2 Avoiding a Taking**

The following measures will help ensure that wetland regulations, if not bullet-proof, are well-insulated from a takings challenge.

**Provide a Strong Factual Record.** Local governments should document the need for the regulation and the reasons for selecting the methods used to protect wetland resources.

#### **Identify Remaining Permissible Uses.**

Identifying the potential remaining uses for regulated lands allows the courts to see that the regulation does not preclude all use of the property. Requiring a conditional use permit would ensure that local governments have an opportunity to review the impacts of particular projects prior to their approval.

**Provide a Variance Procedure.** A variance procedure protects the regulation from legal challenge, especially when it prohibits all use of the property. A variance procedure also allows local governments to balance the need for wetland protection against a particular project's impacts and the landowner's interests.

#### **Create a Transfer of Development Rights**

**Program.** Allowing landowners to sell their development rights from the regulated wetland property to other areas alleviates the regulation's economic impact. This also creates an additional land use that could constitute a remaining beneficial use of the property.

*Courts generally evaluate a regulation's economic impact on the entire parcel of land. Even if a regulation prohibits all use of some portion of the affected property, it will be valid as long as it leaves other uses on parts of the property.*



# Chapter Six

## Non-Regulatory Wetland Protection Measures

*Non-regulatory wetland protection typically involves working with local landowners to protect wetlands on their lands. There are numerous federal, state, and private programs that provide assistance in acquiring and restoring wetlands on private property. Outreach and education are critical components of wetland protection efforts.*

There are numerous opportunities for wetland protection outside the regulatory arena. Local governments can bolster their wetland protection regulations with affirmative policies designed to protect and promote wetland values. These may include providing landowners with financial incentives to protect their wetlands, developing wetland acquisition and restoration programs, and providing public outreach and education. Non-government organizations and individuals can utilize these options as well.

This chapter provides a wide range of non-regulatory tools for local wetland protection. Some tools may be undertaken in conjunction with federal or state assistance. Other tools do not require governmental involvement. Landowners, local governments, and nonprofit organizations should work together to explore these options. Good will and the freedom of choice are critical to generate the creative solutions necessary for the difficult task of wetland protection.

### 6.1 ECONOMIC INCENTIVES

Wetland protection is enhanced when landowners become part of the process. One way to involve landowners is to provide them with choices that are economically advantageous. The California Coastal Conservancy's *Options for Wetlands Conservation: A Guide for California Landowners* (1994)<sup>128</sup> is a wonderful resource. This document provides an in-depth discussion of the various incentive programs available to landowners. Land trusts can also help landowners by explaining the various options and tax benefits. (See Section 6.2.5 of

this handbook for more information on land trusts.)

Lasting wetland protection requires finding common ground between landowners and those interested in wetland preservation. Highlighting the incentives available to landowners is one way to initiate the conversation about protecting wetlands on private property. Tax savings and debt relief programs can help landowners ease their tax burden. Federal, state, and private easement programs provide strong incentives for landowners to leave their wetland property undisturbed. Landowners may choose to donate or sell their wetlands to public agencies or conservation partners.

#### 6.1.1 Tax Incentives

By providing landowners with information about tax incentives, local governments encourage community participation in wetland protection. Not only will these programs help protect wetland resources, they ease the landowner's tax burden as well.

Property and estate taxes can place enormous pressure on a landowner of large agricultural parcels. Often the landowner's only means to raise sufficient funds to pay the tax bill is to sell some or all of the land. Too often land speculators or developers step in and buy the parcel. Placing these parcels in public ownership through tax incentives is one option that protects California's rapidly shrinking agricultural lands and open space and could protect significant wetland resources.

While tax incentives for private property seem complex, they boil down to a relatively simple concept. The landowner either sells the parcel for less than it is worth and then donates

#### *How Does Wetland Protection Benefit Landowners?*

- Receive financial compensation.
- Enhance wetland values that benefit landowner and society.
- Reduce problems associated with farming potentially difficult areas.
- Practice conservation stewardship.
- Provide recreational opportunities.

*These transactions can be structured in many different ways, providing flexibility to meet a landowner's particular needs. Careful tax planning and negotiation can produce a transaction that satisfies both the landowner and the purchasing agency.*

the rest (this is known as a “bargain sale”) or else donates the parcel in its entirety. By bargain selling or donating the property to a public agency, land trust, or qualified nonprofit organization, the landowner can claim as a tax-deductible donation the difference between the appraised market value and the actual sale price (or zero if the parcel was donated). The landowner keeps the proceeds from the bargain sale.

These transactions can be structured in many different ways, providing flexibility to meet a landowner's particular needs. Careful tax planning and negotiation can produce a transaction that satisfies both the landowner and the purchasing agency. After the transaction, whether bargain selling or donating the parcel, the landowner no longer owns the property. All subsequent rights to the land transfer to the purchasing entity.

If the landowner wishes to retain ownership of the property, he or she could donate a conservation easement to receive a tax benefit. (See Section 6.1.3 of this handbook for more information about conservation easements.) Easements are recorded on the deed of title as permanent covenants and are usually enforceable by the donee organization. Internal Revenue Service (IRS) regulations detail the requirements for this deduction.<sup>129</sup>

Another option to decrease taxes involves California's Williamson Land Conservation Act.<sup>130</sup> The Williamson Act lowers property taxes for lands maintained in certain open space uses. Landowners enter into a contract with either the county or city to restrict land uses on the property to ones compatible with agriculture, wildlife habitat, scenic corridors, recreational use, or open space. Each year the contract is automatically renewed for a new ten-year period, unless the landowner notifies the county or city of a changed use or a non-renewal.

Local governments can protect wetland areas within their jurisdiction by taxing these lands at a minimal rate similar to the provisions of the Williamson Act. Preferential property tax assessments could be made for wetland areas located on private land if the landowner agrees to maintain these lands in their undeveloped condition.

### **6.1.2 Debt Reduction**

The Farmers Home Administration (FMHA) provides reduction of borrower debt in exchange for permanent conservation easements placed on valuable habitats, including wetlands. The program applies only to FMHA loans.

Borrowers of FMHA loans can access this program in two ways. The first applies when the farmer is delinquent on payments. In exchange for restructuring the debt, the farmer places his or her wetlands in a permanent conservation easement. The FMHA purchases the easement only if the action will pull the farmer out of default and result in positive cash flow for the farmer. If the farmer is not delinquent, he or she can still utilize the program under certain circumstances. In these situations, placing a conservation easement on the property's wetlands cannot result in more than a 33 percent reduction in debt.

The FMHA and FWS jointly administer the program. Wetlands placed in easements by farmers are managed by FWS. Interested farmers should contact the Farmer Program of the FMHA state office.

### **6.1.3 Ownership Transfers**

There are many options available to landowners, local governments, and nonprofit organizations interested in transferring property ownership to protect wetlands. This subsection provides an overview of how communities can work together to meet the needs of landowners while protecting valuable natural resources.

**Outright Purchase.** A fair market purchase can be expensive for the purchasing agency or organization because the landowner is paid the full market value for the land. Therefore the interested parties should explore alternatives such as donation or bargain sale, especially in situations where the landowner is committed to preserving the property or is looking for tax relief. There are also instances when a property is not available for purchase or when the purchasing party has not secured the necessary funds. In these instances, the purchasing party can employ several techniques, including options and rights of first refusal.

Options provide the purchasing party with a temporary interest in the property while funds are secured for permanent ownership. An

option is simply the right to purchase a property at a specified time and at a specified price. The purchasing party is not required to purchase the property even though an option was purchased. If the specified time is exceeded, the option interest expires and the option deposit is lost. The landowner may donate the option to a nonprofit organization.

Rights of first refusal are similar to options in that the landowner enters into an agreement with a potential purchaser. The right of first refusal means that the potential purchaser has the option to match any offer for purchase of the property before it will be sold to anyone else. The potential purchaser has a specified amount of time in which to match the offer. Both options and rights of first refusal allow the potential purchaser time to raise money and build community interest prior to actual purchase of the wetlands.

**Management agreements.** Management agreements are well suited for landowners who are not ready to relinquish any property rights but are still interested in enhancing their property's wetland values. Management agreements usually include an approved management plan that is developed by nonprofit or government field staff in cooperation with the landowner. The plan outlines the restoration and management practices the landowner will undertake to enhance wetland values. The landowner receives financial compensation and technical help from the partner organization.

**Conservation Easements.** At their core, conservation easements are agreements between landowners and qualified land trusts, conservation groups, or government agencies regarding the future uses of private property. If landowners are willing to limit their property rights, a conservation easement will pay them to protect their land from urban development. Landowners can either sell or donate the conservation easement, and they retain control over public access to their property.

Easements are based on the idea that every piece of property comes with a "bundle" of rights. The bundle typically includes the right to exclude others from the property, the right to develop the property, and the right to use the property's resources. Easements separate

this bundle into individual rights, allowing each of them to be sold separately. Several federal, state, and private programs provide funding for the purchase of conservation easements on wetland areas. Easement value is usually determined by professional appraisals.

Conservation easements have become widely used by ranchers and farmers in California. Through an agricultural conservation easement, landowners can protect their property to ensure that future generations have continued opportunities to ranch and farm. At the same time, agricultural conservation easements maintain the viability of a region's agriculture, sustain biological resources, and provide vistas of working landscapes for public enjoyment. The donation of a conservation easement may significantly decrease federal and state income, estate, and inheritance taxes. The sale of a conservation easement may provide a ranching operation with a much-needed influx of capital to pay down outstanding debt or to reinvest in the ranch.

Conservation easements create a financially competitive alternative to selling agricultural land for development purposes. Removing the development potential from farmland generally reduces its future market value. However, this may facilitate property transfer to the farmer's children and make the land more affordable to beginning farmers and others who want to buy it for agricultural purposes. Conservation easements provide landowners with liquid capital that can enhance the economic viability of individual farming operations and help perpetuate family tenure on the land.

The California Rangeland Trust (CRT) helps ranchers and farmers sort through the confusion surrounding conservation easements. It conducts baseline inventories to assess a property's agricultural, scenic, historical, and wildlife values, and helps landowners work through the numerous financial details. It also tailors the conservation easement to fit the landowner's individual situation. The CRT has prepared a Model Conservation Easement. The complete text is provided in Appendix H.

**Remainder Interests.** Remainder interests allow a landowner to dedicate full or partial interest in a personal residence or farm to a government agency or nonprofit organization, but provides the landowner with use of the

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**Are conservation easements right for you?**

- *Is some portion of your land classified as a wetland?*
- *Do you plan to keep your land in farming?*
- *Would increased cash flow assist your farm?*
- *Would you like to receive a reduction in income, estate, or inheritance taxes?*

*“Every acquisition project has its unique aspects, and you have to tailor your efforts accordingly. But networking and creating good working relationships is always critical.”*

—Sarah Christie

property throughout his or her lifetime. Upon the landowner’s death (and the death of any subsequent titleholders), the land is donated to the appropriate grantee, thereby providing permanent protection of the land. The landowner can use the property for the rest of his or her life while counting the property as a tax deduction. The tax deduction is the property’s fair market value, after factoring in depreciation during the life of the estate and the donor’s life expectancy. The IRS has regulations and a series of tables to assist taxpayers in computing the value of the life estate and remainder interests. Remainder interests are generally used by land trusts.

**Undivided Interests.** This approach allows co-ownership of a single piece of property with both owners able to exercise all property ownership rights. Each owner may donate his or her undivided interest. The donor receives tax benefits. A landowner may create several undivided interests in the property in order to donate the maximum allowed in successive years. This strategy allows the maximum amount of tax benefits over a period of time.

**Limited Development.** Allowing limited development on a property typically means that the development is clustered in certain areas to avoid damage to wetlands or other sensitive habitats. Controlled development may be used by landowners unable to utilize the tax benefits associated with the tools listed above. This approach tends to generate higher development profits because homes located adjacent to open space are more valuable than homes lacking adjacent open space. When used in tandem with a donation of the wetland resources, controlled development can provide the necessary incentive for landowners to protect their wetlands.

## 6.2 WETLAND ACQUISITION AND RESTORATION PROGRAMS

Acquiring wetlands for protection and restoration requires money and expertise. Once the wetlands are acquired, they require long-term management and planning to ensure protection and enhancement of wetland values. Communities should consider wetland acquisi-

tion and restoration as part of a long-term plan to reshape the landscape.

Nonprofit organizations often play a pivotal role in acquiring and restoring wetlands. Wetland restoration provides an excellent way to make a visible difference in the community and to work with others in a collaborative fashion. Restoration projects offer ample opportunity to create partnerships among landowners, government agencies, nonprofit organizations, and businesses. Organizations can participate in a restoration project without doing any of the actual funding or administration. There are many federal, state, and private programs that can help.

Land acquisition typically works in tandem with wetland restoration. Most land acquisition programs also provide money to restore wetlands. In addition, many programs offer cost-share agreements. Cost sharing means that the landowner provides the labor and in some cases the materials. At the project’s end, the landowner submits receipts and is reimbursed by the partner organization for the cost of materials and labor.

Local governments, nonprofit organizations, and landowners should work together to leverage financing for priority projects. Restoration projects can involve multiple agencies and multiple funding sources. Local governments also can explore the possibility of creating their own programs.<sup>131</sup> The following subsections describe some programs that may provide the necessary financial and technical expertise to get priority projects off the ground. Contact information for these programs is provided in Appendix I.

### 6.2.1 Federal Acquisition and Restoration Programs

The primary federal agency involved in wetland acquisition is the U.S. Fish and Wildlife Service. The Service works with willing sellers to acquire land that has significant wildlife value. Wetlands are a high priority. Landowners interested in working with FWS have two options. First, they can sell FWS a conservation easement. The Service will pay approximately 50 to 60 percent of the parcel’s fair market value for high quality wetlands. The Service acquires the farming and development rights and reserves the right to flood the landowner’s property to expand waterfowl

habitat. The land cannot be farmed, but it can be leased for hunting. The second option is outright sale of the land to FWS. The Service will pay fair market value for the property. Lands located near national wildlife refuges tend to be the most desirable.

Numerous other federal programs are available. A brief discussion of three is provided below.

**Conservation Reserve Program.** The Farm Service Agency of the U.S. Department of Agriculture (USDA) administers the Conservation Reserve Program (CRP) and provides technical expertise to participants. This voluntary program encourages farmers to plant long-term, resource-conserving covers to improve soil, water, and wildlife resources and to restore wetlands. Landowners are taught resource conservation practices, and they plant trees, shrubs, native grasses, and other vegetative cover. These plantings improve farmland and create wildlife habitats, filterstrips, or riparian buffers. Landowners participating in the CRP receive annual rental payments, additional incentive payments for certain activities, and cost-share assistance to establish approved cover on cropland.

Interested farmers can apply through their local Farm Service Agency. Only land that was in agricultural production for two of the past five years is eligible for this program. Eligible acreage must be enrolled during a designated CRP sign-up period.<sup>132</sup>

**Wetland Reserve Program.** The Wetland Reserve Program (WRP) is a voluntary program to restore and protect wetlands on private property. The USDA's Natural Resource Conservation Service (NRCS) administers the program. The WRP provides landowners with financial incentives to enhance wetlands in exchange for retiring marginal agricultural land. Landowners who choose to participate in the WRP may sell a conservation easement or enter into a cost-share restoration agreement with the USDA. The landowner voluntarily limits future use of the land, yet retains private ownership. The landowner and NRCS then develop a plan for wetland restoration and maintenance.

The program offers landowners three options: permanent easements, 30-year ease-

ments, and restoration cost-share agreements lasting a minimum of ten years. The landowner continues to control access to the land and may lease the land for recreational activities that do not require development, such as hunting, fishing, and hiking. At any time, the landowner may request that additional activities be evaluated to determine if they are compatible uses for the site. This request may include items such as livestock grazing, hay cutting, or harvesting wood products. Compatible uses are allowed if they are fully consistent with the protection and enhancement of wetlands.<sup>133</sup>

The WRP is attractive because the landowner maintains all ownership rights. Easement payment (based on agricultural value) is generally higher than payment from other federal and state easement programs.

**Partners for Fish and Wildlife.** The U.S. Fish and Wildlife Service provides financial and technical assistance to landowners through voluntary cooperative agreements. The FWS offers advice on the design and location of potential restoration projects. It can also fund restoration projects through a voluntary cooperative agreement with the landowner. While not a requirement, a dollar-for-dollar cost-share is often achieved by working with landowners and a host of national and local entities. Under these cooperative agreements, landowners agree to maintain the restoration projects for a minimum of ten years, but otherwise they retain full control of the land. Projects with the highest priority are those that re-establish historical natural communities and provide benefits to migratory birds, anadromous fish (fish that spawn up river), and threatened or endangered species.

### **6.2.2 State Acquisition and Restoration Programs**

The primary state agency involved in wetland acquisition is the California Department of Fish and Game's Wildlife Conservation Board (WCB). The WCB acquires interests in water and land to preserve wildlife and provide opportunities for public recreation. The WCB offers up to fair market value for a parcel. Through the Permanent Wetland Easement Program, the WCB purchases permanent conservation easements from landowners. The WCB works in partnership with landowners

*“In the Bay and Delta, more than 140,000 acres of wetlands are currently safeguarded by public and private entities. This represents about 22% of the Estuary’s remaining wetlands.”*

*—State of the Estuary Report 1992-1997, The San Francisco Estuary Project*

*“Almost all who have fought for the coast remember an experience that lifted them out of loneliness into a sense of belonging to a larger community within a natural place.”*

—Rasa Gustaitis

and federal and state agencies to leverage funds to purchase the easements. This program is voluntary, and negotiations with willing sellers begin with the preparation of an independent appraisal. The WCB works to find a permanent transfer solution that is beneficial to both the landowner and the wetlands.

Many other state programs are available. A brief discussion of four is provided below.

**California Coastal Conservancy Resource Enhancement Program.** The California Coastal Conservancy acquires conservation easements and other interests in land to enhance natural resources within the coastal zone. The Coastal Conservancy enters into agreements with local governments, nonprofit organizations, and landowners. These agreements provide funding for projects identified in Conservancy-sponsored enhancement plans, even without the sale or donation of a conservation easement.<sup>134</sup>

**California Farmland Conservancy Program.** The California Farmland Conservancy Program (CFCP) is a voluntary program to encourage the long-term, private stewardship of agricultural lands through the use of agricultural conservation easements. The CFCP, formerly known as the Agricultural Land Stewardship Program, provides grant funding for projects that use and support conservation easements for protection of agricultural lands. Easements funded by the CFCP must be of a size and nature suitable for commercial agriculture. In addition to funding agricultural easement acquisition, up to ten percent of the CFCP grant funds go to projects that develop agricultural policy or planning as well as improvements to land already under an agricultural conservation easement (e.g., erosion control and riparian area improvements).

The CFCP's grants compensate landowners who voluntarily choose to sell their development rights. An independent real estate appraisal determines the value of the easement. This represents the difference between the fair market value and the property's restricted value (the diminished value after an easement is attached to the deed). The CFCP awards grants to local agencies such as regional open

space and park districts, resource conservation districts, and nonprofit organizations.

**California Waterfowl Habitat Program.** Under this program, landowners receive \$20 per acre each year for entering into a wetland conservation agreement with DFG. These agreements must cover an initial period of ten years. Landowners must agree to protect and manage their wetland property for the benefit of waterfowl. Agreements include habitat management plans developed cooperatively by DFG, the landowner, and the California Waterfowl Association. Landowners must flood the land in the fall and maintain shallow water coverage until spring. The land is managed to enhance production of waterfowl food plants. Typically, landowners must also maintain upland nesting habitat and small brood ponds for local breeding waterfowl. Landowners may lease their land for waterfowl hunting or other compatible uses.

**California Forest Improvement Program.** The California Department of Forestry and Fire Protection offers technical and financial assistance for practices that will improve the long-term quality of forested lands in terms of timber productivity, retention of soil cover, and value for wildlife. While not specifically designed to protect wetlands, it does encourage restoration of riparian areas and other wildlife habitats.

### **6.2.3 Public-Private Partnerships**

A range of partnerships has formed throughout California to plan and coordinate wetland conservation and restoration projects. On a regional level, these partnerships can provide a framework for land use decisions and coordination of restoration efforts. On a local level, such partnerships can provide a forum in which landowners and government agencies work together to solve resource problems without resorting to regulation. For example, 63 landowners, two private organizations, and nine resource agencies collaborated to form the Huichica Creek Land Stewardship in Napa County to address agricultural and wildlife concerns associated with a local watershed. The partnership received financial and technical assistance from various federal, state, and local agencies to develop and implement a water-

shed restoration and management plan specifically suited to the needs of both the affected landowners and an endangered shrimp species that lives in the watershed.<sup>135</sup>

Two major partnerships exist in Northern California: the San Francisco Bay Joint Venture (SFBJV) and the Central Valley Habitat Joint Venture (CVHJV). In addition, the Pacific Coast Joint Venture and the Intermountain West Joint Venture cover the northern and eastern parts of the state.

**San Francisco Bay Joint Venture.** The SFBJV comprises a cross-section of public agencies allied with conservation organizations, development interests, and other stakeholders to restore wetlands and wildlife in the San Francisco Bay. This venture is one of 14 programs formed in the United States and Canada as part of the North America Waterfowl Management Plan. Using a non-regulatory approach, the SFBJV works to complete on-the-ground habitat projects that benefit wildlife populations by leveraging resources, developing new funding sources, and creating project-specific partnerships.

Working as a coalition, the SFBJV established regional habitat goals and acreage objectives to protect, restore, and enhance a variety of Bay habitats, including tidal wetlands, seasonal wetlands, and creeks. From 1996 to 1999, the SFBJV protected 3,299 acres, restored 4,444 acres, and enhanced 3,352 acres of wetlands.

**Central Valley Habitat Joint Venture.** The CVHJV functions similarly to the SFBJV except that it secures and restores habitat in the Central Valley. To date, the CVHJV has protected, restored, or enhanced over 230,000 acres of wetlands. To meet the goals of the CVHJV, the WCB administers the Inland Wetland Conservation Program. This state program works with landowners to provide technical and cost-share assistance for developing and implementing management plans and habitat restoration projects.

#### **6.2.4 Private and Nonprofit Organizations**

Because public funding for acquisition of wildlife refuges and parks has declined, private conservation organizations have assumed a prominent role in protecting wetlands.

Nonprofit organizations also provide technical expertise to landowners and community groups interested in restoring land or setting aside easements. Nonprofit groups can be instrumental in bringing together different sources of funding for a particular project.

The following nonprofit organizations are involved in wetland acquisition and restoration in California. In addition, local Sierra Club and National Audubon Society chapters may be involved in wetland protection efforts.

**American Farmland Trust.** The American Farmland Trust (AFT) is dedicated to protecting the nation's farmland resources. The Trust provides technical assistance on farmland protection programs, policies, and activities. It also accepts agricultural easements and other interests in land. In addition, the AFT web site provides comprehensive information about farmland protection tools.

**The California Waterfowl Association.** The California Waterfowl Association works to preserve and enhance California's waterfowl. The Association provides technical support and finds funding for landowners interested in restoring wetlands on their property. The Association also lobbies and works with government organizations to promote protection of waterfowl resources and hunting rights.

**The Conservation Fund.** The Conservation Fund seeks sustainable conservation solutions for the 21st century, emphasizing the integration of economic and environmental goals. Through real estate transactions, demonstration projects, education, and community-based activities, the Fund seeks innovative long-term measures to conserve land and water. The Fund uses its funding expertise to buy ecologically and aesthetically significant land and water, and it moves quickly on behalf of public agencies to secure prime acres in the face of imminent threats.

**Ducks Unlimited.** Ducks Unlimited is dedicated to conserving wetland habitat for waterfowl. This organization works with landowners and agencies to encourage habitat creation on public and private lands. It also secures funding for habitat creation projects

*“Wildlife projects will give you the chance to get reacquainted with animals, to deal with them as they really are, to consider their needs, to experience their vitality, and perhaps to rekindle in yourself a sheer childlike delight in their very existence.”*

—*The Earth Manual*,  
Malcolm Margolin

*Restoring local wetlands requires vision, patience, and hard work. Providing local experts from within the community can help establish the level of trust necessary to alter the existing landscape and return it to a more natural condition.*

and conducts biological research. Ducks Unlimited and the California Department of Water Resources are currently involved in cooperative projects that increase wetland acreage and wildlife habitat. The MARSH Program (Matching Aid to Restore States Habitat) actively acquires and restores habitat in California.

**The Nature Conservancy.** The Nature Conservancy's mission is to preserve the world's diverse plants, animals, and natural communities by protecting their habitats. The Conservancy achieves this by purchasing the threatened land and waters that support fragile ecosystems and endangered species.

**Save The Bay.** As the organization devoted to protecting and restoring the San Francisco Bay-Delta Estuary, Save The Bay is highly involved in wetland restoration. The organization campaigns for specific restoration projects, sponsors community-based restoration efforts, promotes policies that encourage restoration, and builds alliances and partnerships to advance restoration throughout the region.

**Trout Unlimited.** Trout Unlimited conserves, protects, and restores cold-water fisheries and their watersheds. Trout Unlimited assists landowners in planning and building stream improvement projects. This group also works with government agencies to secure fish-friendly legislation.

**Trust for Public Land.** Trust for Public Land (TPL) works exclusively to acquire land for human enjoyment and well being. This organization pioneers new ways to finance parks and open space, promotes the importance of public land, and helps communities establish land-protection goals. It also works to preserve wilderness in the west. In addition, TPL provides training and technical assistance to other land trusts and refers landowners to the nearest land trust.

**The Urban Creeks Council of California.** The Urban Creeks Council (UCC) is a nonprofit creek protection group. The UCC helps citizens organize creek clean-ups and restoration efforts, monitor water quality, obtain grants, work with government agencies, and increase

creek access. The Council also partners with local governments to develop strategies for low-cost, low-technology, bio-engineered restoration and flood control projects. The UCC advocates using school children, local conservation corps, and community volunteers for creek restoration work.

### **6.2.5 Local Programs**

Restoring local wetlands requires vision, patience, and hard work. Providing local experts from within the community can help establish the level of trust necessary to alter the existing landscape and return it to a more natural condition. Listed below are local agencies and programs that provide physical, technical, or financial assistance for wetland acquisition and restoration.

**Conservation Corps.** Local conservation crews, present throughout the state, are modeled after the California Conservation Corps. These crews can be contacted for help with wetland restoration projects. Restoration is labor-intensive work, and the availability of inexpensive but able conservation crews has made many restoration projects possible. Many corps specialize in restoration projects, and their experience dovetails with volunteer efforts. Funding for local conservation corps comes from a variety of sources, including state, county, and municipal appropriations; fee-for-service contracts; foundations and corporations; federal job training programs; and community development block grants.

**Flood Control Districts.** Local flood control districts are often combined with another local agency, such as a public works department or water district. Flood control districts are responsible for controlling and conserving flood and storm waters to reduce potential flood damage. These districts also preserve water supplies, monitor water quality, and import, purify and distribute water for municipal, industrial, and agricultural uses. Many flood control districts are beginning to participate in wetland restoration efforts. For example, the Santa Clara Valley Water District's stream stewardship program has included stream restoration projects, fish barrier removal, and efforts to reduce pollution in both the San Francisco and Monterey Bays. The

District strives to ensure that its projects enhance the natural qualities and recreational opportunities of local riparian corridors.

**Land Trusts.** Most Bay Area counties have local land trusts. These organizations protect land for many purposes, such as preservation of open space, wildlife habitats, agriculture, urban buffers, and historic resources. The trusts vary in the types of land conservation activities they employ. However, most land trusts work with landowners to negotiate conservation easements. Land trusts are known for crafting innovative solutions to local land use conflicts. The California Coastal Conservancy publishes *The Nonprofit Primer: A Guidebook for Land Trusts*.<sup>136</sup> This publication provides a thorough discussion of land trusts and the various methods available to them for preservation of land and water resources.

**Mosquito and Vector Control Districts.** Mosquito and vector control districts keep mosquito populations below threshold levels of disease transmission to humans and reduce nuisance problems that can impact recreational, economic, and agricultural activities. Mosquitoes occur in seasonally ponded wetlands with inadequate water control or poor water management, and in densely vegetated tidal areas that hold water between tides. The design of wetland restoration and enhancement projects should include input from the local mosquito abatement district to prevent the build-up of mosquito populations. Additionally, the Contra Costa Mosquito and Vector Control District and other districts have designed, created, and managed wetland projects in their districts to improve wildlife habitat and control mosquito populations.

**Open Space Districts.** Open space districts are local public agencies that protect open space by acquiring land (or interests in land) from willing sellers. The focus of the district may vary from recreational access to agriculture. The districts are governed by special district laws and receive their funding from a variety of sources. Also, the governing body of the open space district varies from county to county. In the Bay Area, the most well known open space district is the East Bay Regional Parks District.

The District is funded through property taxes and is overseen by an elected commission.

**Resource Conservation Districts.** A resource conservation district (RCD) provides technical support and expertise to foster sensitive use of local natural resources. Many RCDs have organized technical support from a variety of private and public sources, including the Soil Conservation Service. The RCDs assist landowners in several ways: provide advice on incentive programs; connect landowners with technical help; establish demonstration projects; and provide ongoing support to landowners by answering questions, fielding concerns, and listening to ideas.

**Wastewater Treatment Plants.** Use of wetlands for wastewater treatment is spreading throughout the United States and is even more popular in Europe, where the technique originated. For nearly twenty years, the City of Arcata in Humboldt County has used the Arcata Marsh wetland project to treat wastewater, rather than develop an expensive and risky system of pumping wastewater into the ocean. Arcata developed the wetlands treatment system using a combination of federal, state, and local funding. This wetlands treatment program won Arcata a prestigious award for Innovation in Government and attracted international attention. For similar reasons, the City of San Francisco has proposed creating wetlands on Treasure Island, located in the San Francisco Bay. The Treasure Island Redevelopment Plan proposes creating wetlands as part of its stormwater treatment process.<sup>137</sup>

**University of California Cooperative Extension Service.** The U.C. Cooperative Extension was developed to apply the resources of the University to the needs of local communities. It serves every county in the state and provides technical assistance on a variety of conservation-related topics, including wildlife enhancement on farms, design of range systems to minimize effects on watersheds, and development of soil and water conservation practices.

*Land trusts are known for crafting innovative solutions to local land use conflicts.*

*Organizations that don't ask for money will not receive it.*

## 6.3 FUNDING

Public and private funding sources are readily available for wetland acquisition and restoration, but care and time must be spent writing grants, cultivating donors, and asking for money. Individuals tend to give money to people rather than to faceless organizations. Therefore, anyone interested in securing funding for wetland acquisition and restoration must develop relationships with people and foundations that care about wetland protection.

To receive money from foundations, governmental sources, and most individuals, organizations need to acquire nonprofit Section 501(c)(3) status from the IRS. Most governmental agencies and established nonprofit organizations already have this status. Organizations must research the activities allowed under Section 501(c)(3) to ensure that their activities will not violate the requirements.

### 6.3.1 Fundraising Basics

Research is critical for individuals and organizations hoping to find funding for wetland acquisition and restoration. While numerous potential funding sources exist, not all of them focus on environmental issues. Therefore, one must cultivate potential donors by contacting, educating, and persuading them to support wetland preservation and restoration efforts. To succeed at fundraising, follow these steps:

1. Establish clear fundraising goals. How much money is needed for all aspects of the project? What elements need to be funded first?
2. Identify potential funding sources. Find funders whose goals match those of the organization.
3. Develop contacts and track the relevant information. Essential information includes *how much* the funders give, *what* organizations they give to, and *when* they give. Volunteers can help with this effort.
4. Follow through with the funding sources by writing proposals and request letters.  
*Organizations that don't ask for money*

*will not receive it.* Enlist the organization's most dynamic supporters to ask for money.

### 6.3.2 Identifying Funding Sources

The California Coastal Conservancy's *Options for Wetlands Conservation: A Guide for California Landowners* (1994)<sup>138</sup> discusses funding sources and provides contact information. Contact the Coastal Conservancy for more information on the availability of these funding sources. In addition, the Conservation Fund provides a list of government funding sources. This document is provided in Appendix J.

There are several other fundraising resources. The Foundation Center in San Francisco offers a library of funders and a large fundraising database. The Fundraising School, based at Indiana University, offers classes on the essentials of fundraising throughout the United States. The Management Center of San Francisco offers classes and workshops on fundraising, as well as extensive coursework in managing a nonprofit organization.

### 6.3.3 Preparing the Proposal

To solicit money from virtually any funding source, organizations must submit a proposal. Every proposal should follow these guidelines:

1. Always solicit funders whose goals match those of the organization. The best proposal in the world will not receive funding if the funder's focus is different from that of the proposed project.
2. Persuade the reader that the proposed project is important, timely, and likely to succeed. A logical proposal is evidence of a well-planned project.
3. Answer the funder's questions in a comprehensive yet succinct manner.
4. Proposals should be easy to read. Use bullet points and short paragraphs that describe the proposed project in clear, concise language.

By the end of the proposal the reader should be able to describe the project, the steps

involved in its accomplishment, and the time frame to completion.

#### 6.3.4 Working with Major Donors

Major donors are individuals who can donate large sums of money to an organization. In the United States, 90 percent of all charitable donations come from individuals. Therefore, organizations should first look within their own organization for major donors. Next, they should look at similar nonprofit organizations. A review of their annual report and fundraising literature should help identify potential supporters. Organizations should prepare a prospect list that provides the following information:

- The prospect's contact information.
- Reasons for choosing the prospect.
- The likelihood of success (i.e., rank the prospects).
- Other information about the prospect.

Once the prospect list is prepared, the organization must determine how to contact each prospect. A cold-call to a prospect is not the best strategy. Therefore, the organization should send a letter of introduction from a mutual friend or acquaintance. Next, it should send a preliminary proposal and arrange a meeting with the prospect. Finally, several members must meet with the prospective donor and make the funding request.

Donor meetings should use the donor's time efficiently. Organizations should include someone in the meeting who knows the project well and can sell the concept. One of the organization's current donors should also be present. As a general rule, not more than three people should meet with a prospective donor. In the meeting, one of the organization's representatives should explain the organization's background and the proposed program. He or she should emphasize the organization's track record and highlight its volunteers and other funders. The agenda should allow plenty of time to hear what the donor is interested in funding, and someone should take notes for future reference. Everyone should leave the meeting with a clear sense of the steps to proceed. No matter what the outcome of the meeting, the organization should send a note thanking the prospective donor.

## 6.4 PUBLIC OUTREACH

Public outreach is an essential part of any wetland protection program because it raises the overall awareness of wetland values and cultivates public support. Local governments, conservation groups, and other entities can conduct their own outreach campaigns and support related programs.

Before beginning a public outreach campaign, the organization must identify who the audience will be and what message will be most effective in reaching that particular audience. Messages tailored to different audiences can be used simultaneously. Likely target audiences include landowners, developers, hunters, school children, and the general public.

Public outreach programs begin by providing information about wetland functions and values, relevant wetland policies (including legislation and regulatory guidelines), and possible wetland incentive programs. The next step involves encouraging public involvement in the planning, regulation, and management of wetland resources. Outreach efforts should also provide examples of effective restoration, protection, and management techniques used within or near the community.

Through education and outreach, an organization can be pivotal in shaping the way people think and act towards wetlands. Starting volunteer weekends or getting press coverage of local restoration projects are powerful ways to increase the organization's visibility and expand the community's involvement in wetland issues. The tools and resources described below can aid wetland preservation and restoration efforts through public outreach and education.

### 6.4.1 Media

The media is a powerful tool for public education and outreach that can be used by any individual or organization. The trick is to grab the media's attention as often as possible. There are several ways of grabbing the media's attention. The following steps will help focus an organization's use of the media to its best advantage.

**Step 1: Develop a media contact book.** The organization should create a list of local media sources, including radio, print, television, and Internet sources. The list must include phone

*“Nothing is so contagious as enthusiasm ... it is the genius of sincerity, and truth accomplishes no victories without it.”*

—Edward George Earle Bulwer-Lytton

*“Come forth into the light of things. Let Nature be your teacher.”*

—William Wordsworth

numbers and addresses as well as the person’s name at each media outlet who should be contacted for conservation news. Be creative in finding media outlets, and be sure to list small newsletters published by other conservation groups and business or trade groups.

**Step 2: Develop personal relationships with the media.** At least one member of the organization should visit the key media outlets and meet the reporters who will cover stories of interest. The visitors should bring fact sheets to provide background information and contact information for key individuals within the organization. Invite the reporter(s) to meet at a local wetland area for a walk, and show them what the organization is fighting to protect.

**Step 3: Use news releases sparingly.** Issue a news release only when the organization has something newsworthy to say. Fewer, better news releases will garner more coverage than a weekly news release without much content. A news release is most useful when it covers the four Ws: Who, What, When, and Where. Include a good news lead that will catch the editor’s eye and conveys the essential message. Every news release should contain the name of the organization’s contact person, telephone number, and release date. Releases should be one page, single-sided, and double-spaced.

**Step 4: Prepare for the news.** Prepare the media contact list and mailing labels *before* the news breaks. Follow up news releases with telephone calls to answer questions and emphasize essential parts of the story. Make extra copies of speeches given by organization representatives and have them handy for news stories. Reporters may use quotes from these speeches if they have them verbatim from the source and in print.

**Step 5: Use free media.** The organization should take advantage of public access television and radio or television interviews. Community access cable stations often provide free training and use of their video production equipment to produce educational programming that can then be used in the community. A letter to the editor that follows up on a news article is an excellent way to frame community discussion in the best

possible light. Writing an op-ed piece for a local newspaper also allows the organization to voice its wetland protection goals. Other environmental organizations may publish periodic newsletters. Television and radio media can also be employed to make public service announcements.

#### **6.4.2 Environmental Education**

Environmental education programs based on local environmental issues have proven effective in increasing student test scores, lowering absenteeism, and increasing student enthusiasm for learning.<sup>139</sup> Local wetlands, no matter how small, provide an excellent opportunity to learn about the natural world and to connect both students and adults to their community. Connecting individuals with their watershed provides a forum in which to discuss local history, patterns of development, agriculture, literature, and art. The California Coastal Commission provides an excellent reference to environmental education entitled *Marine and Coastal Education Resources Directory, San Francisco and Monterey Bay Areas* (1996).<sup>140</sup> Below is a brief discussion of several education programs that focus on wetlands in the San Francisco Bay.

**Aquatic Outreach Institute.** This organization serves kindergarten through twelfth grade teachers, college professors, museum staff, docents, and other facilitators involved in environmental education by providing them with training and materials that can be used to increase their students’ understanding of the use, protection, and management of our aquatic resources. The Aquatic Outreach Institute offers a broad range of workshops and provides curriculum materials. Kids in Marshes, Kids in Creeks, and Kids in Gardens are just a few examples of the workshops provided.

**Marine Science Institute.** This organization provides interdisciplinary science programs to kindergarten through twelfth grade students on a 90-foot research vessel. Students capture and examine plankton, collect water samples, and identify fish. The Marine Science Institute offers dock and tide pool programs. Its mobile Bay program brings the Bay into the classroom.

**River of Words.** The River of Words Project is an international environmental poetry and art contest, now in its fifth year. It nurtures respect and understanding of the natural world by encouraging children to learn their “ecological address” and to describe through poetry and art their own “place in space.” Co-sponsored by the International Rivers Network, the Library of Congress Center for the Book, and United States Poet Laureate, Robert Haas, the project fosters responsibility, imagination, and action in young people, and publicly acknowledges their creativity and concerns. Children between the ages of five through nineteen may enter the contest.

**Save The Bay.** Save The Bay’s Canoes in Sloughs program takes upper elementary, middle, and high school students onto the Bay. The program uses canoes to access local wetlands where students study birds, test water quality, sample mud, and then describe these activities in poetry and art. Students learn about their local marsh and how they are connected to it through the watershed. Save The Bay also offers a kindergarten through twelfth grade classroom curriculum that meets California education standards. Save The Bay offers one-day and one-week teacher institutes focusing on the San Francisco Bay watershed.

**San Francisco National Wildlife Refuge.** The Refuge maintains three environmental education centers – one each in the towns of Alviso and Fremont, located in the South Bay, and one on Mare Island in the North Bay. Teachers are provided training and classroom materials so they can teach their students about wetlands and lead them on a field trip in the Refuge. Students learn about wetland mud dwellers, plankton, birds, and plants found in the Refuge. Programs offered by the Refuge are free.

**Shorebird Nature Center.** Shorebird Nature Center at the Berkeley Marina is used to teach estuary science to local school children. Located in the Nature Center is a 100-gallon salt-water aquarium that displays creatures found in San Francisco Bay. The Center also contains a touch table and a cormorant exhibit. The Center offers one-day field trips to the Bay shoreline and one-day research vessel trips on the Bay.

### **6.4.3 Workshops and Field Trips**

Numerous organizations conduct workshops to educate local officials, landowners, and activists about wetland protection programs. Workshops that are cooperatively sponsored by different entities can have wide appeal to different target groups and can help build wetland protection and restoration coalitions. Workshops can range from short breakfast discussions to multi-day comprehensive courses.

When planning workshops, provide compelling speakers and plenty of variety. Consider using discussion panels, brainstorming sessions, and other interactive formats to break up the lectures. Provide time in the agenda for small group discussion on relevant topics. Contacts made in these small groups can be the basis for future community involvement. Also schedule time for speakers who don’t stick to the agenda and for coffee breaks so people can talk with one another.

Incorporating field visits into a workshop can enhance attendance and lead to a greater understanding of wetland resources. Field visits should be accessible to people of all physical conditions. Field visits can range from a quick adventure at a single site to a series of trips to view a restoration project progress from beginning to end. Examples of potential field trips include visits to a landowner’s restored wetlands or to a recently acquired public parcel. Providing individuals with first-hand knowledge of local wetland restoration projects is an effective way to galvanize community support for wetland protection.

### **6.4.4 Community and Volunteer-Based Restoration**

Conservation groups are actively involved in recruiting volunteers to help preserve wetlands. The Sierra Club and the National Audubon Society conduct educational outings and programs that increase the appreciation and understanding of wetlands. In addition, many local groups actively seek volunteers for their ongoing restoration projects. Volunteers propagate and plant native species, remove non-native and invasive species, and conduct bird counts and other monitoring activities. Participation in local creek groups is an excellent way to get involved in community-based restoration. A sample of local groups doing

### **“Daylighting” Strawberry Creek**

Many Bay Area residents do not realize that creeks flow under their feet through culverts buried beneath parking lots, roads, and buildings. Creeks were originally directed into these culverts to transport water more quickly, but these cement channels often become clogged with trash and debris. Allowing water to flow through natural creek beds not only improves water flow and recreational opportunities, but it can improve water quality because the restored wetlands trap sediments and filter pollutants. Thus, a movement has begun to “daylight” urban creeks—exposing creeks once again to the light of day. For example, Berkeley’s Parks and Recreation Commission allowed a landscape architect to dig up approximately 200 feet of underground culverts beneath an abandoned rail yard to expose Strawberry Creek. Strawberry Creek now runs freely through Strawberry Creek Park. The park is so popular with Berkeley residents that the city is considering daylighting another three-block section in downtown Berkeley.

### **Restoring Paradise Creek and Sweetwater Marsh**

When fifth graders from Kimball Elementary School in National City in San Diego County went to visit the creek that flowed past their school, all they saw was trash. Paradise Creek, a part of the Sweetwater marsh complex that flows into San Diego Bay, was in need of help. Margaret Godshalk (the students' fifth-grade teacher), her husband Ted (a city planning commissioner), students from Kimball Elementary, teachers, and community members worked together for five years cleaning up the creek. They improved the quality and flow of water going into Sweetwater Marsh, a wildlife refuge. Initial grants and support were received from the city redevelopment agency and the local school district. Larger grants were secured from the Coastal Conservancy and the National Park Service's Rivers, Trails, and Conservation Assistance Program. In 1999, they received sufficient funding to create an educational park focused on tidal creek habitat, complete with observation stations and shade structures for picnic areas. The Paradise Creek restoration is an outstanding example of what dedicated community members can do to beautify schools and recreation areas in their neighborhoods.

community-based restoration is described below. These may serve as models for other communities, and they provide experts to new community-based restoration projects.

#### **Alameda County Clean Water Program.**

Under the Public Works Agency, the Clean Water Program is a consortium of local groups throughout the county doing creek and other restoration work. The program provides information about local groups and how to contact them.

**Campaign to Restore Crissy Field.** The Golden Gate National Parks Association (GGNPA) sponsors the Crissy Field Restoration Project. The GGNPA is the nonprofit partner of the Golden Gate National Recreation Area. Major site restoration work began at Crissy Field in September 1998, and has involved hundreds of volunteers in planting and restoring the area to native vegetation.

**Friends of Sausal Creek.** The Friends of Sausal Creek maintain a native plant demonstration garden in Oakland's Dimond Park and conduct monthly water quality and wildlife surveys of the creek and surrounding watershed. The Friends of Sausal Creek participate in many community events to promote watershed awareness.

**Izaak Walton League of America.** The Izaak Walton League is dedicated to conservation of America's soil, air, woods, water, and wildlife. As part of its Wetlands Conservation and Sustainability Initiative, the League has published the *Handbook for Wetlands Conservation and Sustainability*. This handbook provides useful information to help citizens become wetland stewards.

**National Audubon Society.** The Audubon Society sponsors a national campaign to restore wetlands, and it provides opportunities for community-based restoration. Bay Area chapters, particularly the Marin Chapter, have been very effective in acquiring and restoring wetlands. Local chapters also provide bird walks, workdays, and other opportunities to get involved in wetland restoration.

**Save The Bay.** Save The Bay protects and restores wetlands throughout the Bay Area. Community-based restoration is part of an overall campaign to return diked baylands to tidal wetlands. Save The Bay's restoration work includes propagating and planting native species, removing non-native and invasive species, enhancing upland buffers, and monitoring sediment and water quality changes at restoration sites.

### ***Steps for Success***

*What does a community group need to save a threatened landscape? A recipe for success includes:*

- A core group of volunteers willing to step in and work.
- A committed, organized leader.
- A clearly articulated vision.
- A willingness to work with landowners to address their concerns.
- Solid relationships with local government officials.
- Access to studies and documents that detail the area's natural resources and species biodiversity.
- Access to real estate expertise from groups such as Trust for Public Land and the Coastal Conservancy.
- The presence of mind to always say "thank you," no matter what the outcome.
- Integrity and commitment.



# Chapter Seven

## Conclusion

For centuries wetlands were considered insect-ridden, unattractive, and dangerous areas waiting to be drained and filled. Now, as we enter a new millennium, we recognize wetlands as beautiful and valuable places that serve a vital ecological role. This new understanding has taught us the urgency of protecting those wetlands we still have, as well as the benefits of restoring degraded wetlands where we can. Throughout California, enormous opportunities for reclaiming and restoring wetlands await those with the necessary skills.

But skills alone are not enough. Wetland preservation also requires energy and determination. It requires ordinary people who are willing to extend themselves beyond ordinary limits. It requires people who are willing to dream, and then pursue their dreams until they become a reality.

Wetland protection and restoration success stories are full of individuals who fought for a particular site, usually close to home. With amazing energy, ingenuity, and patience, they defended places they loved against destruction and gathered the support required to save them, for everyone's benefit and enjoyment. Anyone can do this, but few actually do. The wetlands of California desperately need more people willing to take the plunge. This handbook provides the methods and the means for newcomers to wade into wetlands and save them for future generations.

### SAVE THE BAY'S CENTURY OF RENEWAL

The San Francisco Bay-Delta Estuary has suffered 150 years of degradation and destruction. As the organization devoted to protecting and restoring the Estuary, Save The Bay has assumed a leadership role in the Bay Area's wetland preservation and restoration efforts. Our vision for the Bay includes:

- Up to 200,000 acres of protected, enhanced, and restored wetlands and

creeks. This will enlarge the Estuary so that it is healthier and can support more birds, fish, and wildlife.

- The elimination of pollutants and toxic "hot spots." The Bay should once again be safe for fishing and swimming.
- Increased fresh water flows through the Delta into the Bay. This will reduce salinity and restore our formerly abundant fisheries.
- The return of sea otters, oysters, and other native species to the Bay. These and numerous threatened and endangered species should thrive in the Bay's rich ecosystem.
- A completed Bay Trail. A trail system encircling the Bay would improve public access to the shoreline and increase recreational opportunities for everyone.

This shared vision for the Estuary has enormous power. Together we can renew this national treasure – the symbol of our region – and keep it healthy and beautiful for future generations. We hope this handbook provides the encouragement and the essential tools for that undertaking.

*“Never doubt that a small group of dedicated individuals can change the world. Indeed, it's the only thing that ever has.”*

—Margaret Mead

# Endnotes

“The real voyage of discovery consists not in seeking new landscapes, but in having new eyes.”

—Marcel Proust

## Chapter 1

- 1 Baylands Ecosystem Habitat Goals: A Report of Habitat Recommendations Prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project, US Environmental Protection Agency and San Francisco Bay Regional Water Quality Control Board (1999). To obtain a copy of this report, contact the San Francisco Estuary Project c/o the San Francisco Bay Regional Water Quality Control Board, 1515 Clay Street, Suite 1400, Oakland, CA 94612. Or call (510) 622-2465.
- 2 *Id.* at S-1.
- 3 See J. Allen, M. Cunningham, A. Greenwood, and L. Rosenthal, *The Value of California Wetlands: An Analysis of their Economic Benefits* (The Campaign to Save California Wetlands, August 1992).

## Chapter 2

- 4 33 USC 1251, *et seq.* Section 404 is found at 33 USC 1344.
- 5 33 USC 1311, 1344, 1362(6), and 1362(7).
- 6 33 CFR 328.3 and 40 CFR 230.3.
- 7 33 USC 1344(a).
- 8 *United States v. Riverside Bayview Homes*, 471 U.S. 121 (1985).
- 9 The Corps’ power to regulate wetlands stems from the U.S. Constitution’s grant of power to the federal government to regulate interstate commerce. This provision has been interpreted broadly. For example, potential use of wetlands by migratory birds or endangered species has been considered sufficient to show an effect on interstate commerce, justifying federal jurisdiction. For more information, see W. Want, *Law of Wetland Regulation*, Section 4.05 (1999).
- 10 For a full definition of “waters of the United States,” see 33 CFR 328.3(a) and 40 CFR 230.3(s).
- 11 33 USC 1344 and 33 CFR 330. For more information, see Section 3.2.1 of this handbook.
- 12 33 CFR 325.2(d).
- 13 40 CFR 230.10(a).
- 14 40 CFR 230.10(d).
- 15 33 CFR 320.4(a).
- 16 40 CFR 230.75(d).
- 17 33 USC 1344(c).
- 18 EPA Wetlands Fact Sheet #12.
- 19 33 USC 1344(m).
- 20 33 USC 401, *et seq.*
- 21 42 Fed. Reg. 37, at 122 (July 19, 1977).
- 22 Under federal law, navigable waters are those waters that have a past use, present use, or potential use for interstate or foreign commerce. See 33 CFR 329.4. This contrasts with the Clean Water Act’s regulation of “all waters of the United States,” which generally includes wetlands.
- 23 16 USC 1531, *et seq.*
- 24 For more information on the ESA, see D. Rohlf, *The Endangered Species Act: A Guide to Its Protections and Implementation* (Stanford Environmental Law Society, 2000).
- 25 16 USC 1536.
- 26 16 USC 1538.
- 27 See *Loggerhead Turtle v. City Council of Volusia City*, 148 F.3d 1231, at 1251-53 (11th Cir. 1998); *Defenders of Wildlife v. Administrator, Environmental Protection Agency*, 882 F.2d 1294 (8th Cir. 1989).
- 28 Cal. Fish & Game Code 2050, *et seq.*
- 29 For information specific to the CESA, see T. Mueller, *Guide to the Federal and California Endangered Species Laws* (Planning and Conservation League Foundation and Natural

Heritage Institute, 1994). Copies of this publication can be ordered online at [http://www.n-h-i.org/Publications/pubs\\_list.html](http://www.n-h-i.org/Publications/pubs_list.html).

- 30 Cal. Pub. Res. Code 21000, *et seq.*
- 31 Cal. Pub. Res. Code 21002.1.
- 32 Guidelines for the California Environmental Quality Act, 14 CCR 15064.7(a).
- 33 Guidelines for the California Environmental Quality Act, 14 CCR 15000, *et seq.*, Appendix G.
- 34 *Mountain Lion Foundation v. Fish & Game Com.*, 16 Cal. 4th 105 (1997). See also, Guidelines for the California Environmental Quality Act, 14 CCR 15065.
- 35 *Mira Monte Homeowners Association v. County of Ventura*, 165 Cal. App. 3rd 357 (1985).
- 36 Cal. Pub. Res. Code 30000, *et seq.*
- 37 Cal. Pub. Res. Code 30103.
- 38 16 USC 1451, *et seq.*
- 39 33 CFR 325.2(b)(2)(ii).
- 40 Cal. Pub. Res. Code 30600 - 30600.5.
- 41 For more information on the California Coastal Commission and its permitting program, see K. Manaster and D. Selmi, *California Environmental Law and Land Use Practice*, Sections 66.10 - 66.12 and 66.40 - 66.58.
- 42 Cal. Gov. Code 66632(a).
- 43 The McAteer-Petris Act of 1965, Cal. Gov't. Code 66600, *et seq.* Obtain a copy of the Act online at <http://ceres.ca.gov/bcdc/faq/faq.htm#5>. For more information on BCDC's jurisdiction, see Cal. Gov't. Code 66610.
- 44 For more information on BCDC, see K. Manaster and D. Selmi, *California Environmental Law and Land Use Practice*, Section 67.01, *et seq.*
- 45 Cal. Fish & Game Code 1601 and 1603.
- 46 See *Mendocino Environmental Ctr. v. Cal. Dept. of Fish and Game*, No. CV 76761, (filed Feb. 3, 1999). See also, proposed amendments to 14 CCR 757(b).
- 47 33 USC 1342.
- 48 Clean Water Act, Section 401, 33 USC 1341.
- 49 For more information on the state and regional boards, see K. Manaster and D. Selmi, *California Environmental Law and Land Use Practice*, Section 30.01, *et seq.* See also, P. Cylinder, *et al.*, *Wetlands Regulation*, at 74-75 (1995).
- 50 For more information about the TRPA and land use issues within the Tahoe Basin, see K. Manaster and D. Selmi, *California Environmental Law and Land Use Practice*, Section 69.01, *et seq.*
- 51 Cal. Pub. Res. Code 29000.
- 52 Cal. Pub. Res. Code 29005.
- 53 More information on the various wetland definitions is available online at [http://ceres.ca.gov/wetlands/introduction/defining\\_wetlands.html](http://ceres.ca.gov/wetlands/introduction/defining_wetlands.html).
- 54 U.S. Army Corps of Engineers, *Field Guide for Wetland Delineation: 1987 Corps of Engineers Manual* (Wetland Training Institute, Inc., 1995).

### Chapter 3

- 55 The procedures for determining whether an area possesses these characteristics are described in the *Field Guide for Wetland Delineation: 1987 Corps of Engineers Manual*. See *id.*
- 56 See W. Want, *Law of Wetland Regulation*, Section 4.02 - 4.05 (1999).
- 57 See W. Want, *Law of Wetland Regulation*, Section 4.06(5) - 4.06(6) (1999).
- 58 See *National Mining Association v. US Army Corps of Engineers*, 145 F.3d 1399 (D.C. Cir. 1998).
- 59 U.S. Congress, Office of Technology Assessment, *Wetlands: Their Use and Regulation*, at 7 (1984).

- 60 See *Save Our Community v. US EPA*, 971 F.2d 1155, 1165 (5th Cir. 1992). See also, *Orleans Audubon Society v. Lee*, 742 F.2d 901 (5th Cir. 1984) and W. Want, Law of Wetland Regulation, Section 4.06(4) (1999).
- 61 33 CFR 323.4.
- 62 33 CFR 330.
- 63 This language is from General Condition 13(d) in the newly modified NWP conditions. See Endnote 66 for more information on the new NWPs.
- 64 Press Release: *U.S. Army Corps of Engineers Announces Replacement Nationwide Permits*, U.S. Army Corps of Engineers, Washington, D.C. (Mar. 6, 2000). Another 40,000 fill activities are permitted through regional-level general permits.
- 65 *Id.*
- 66 For the new nationwide permit text as well as an extensive discussion by the US Army Corps of Engineers on the changes, see Final Notice of Issuance and Modification of Nationwide Permits, 65 Fed. Reg. 12,818 (2000). For information regarding the National Association of Homebuilders lawsuit against the new NWPs, see <http://www.nahb.com/news/wetsuit.htm>.
- 67 “Headwaters” are the upper parts of watercourse systems of non-tidal rivers and streams, and their associated wetlands, where the watercourse has an average annual flow of less than five cubic feet per second. “Isolated waters” are waters and wetlands that are not part of, or adjacent to, a tributary of interstate or navigable waters of the United States. See 33 CFR 330.2.
- 68 The other NWP 26 replacements are NWP 41, allowing the reshaping of existing drainage ditches, and NWP 43, authorizing construction of stormwater management facilities.
- 69 See <http://www.audubon.org/campaign/wetland/nwpccomments.html>.
- 70 40 CFR 230.10(a). See also, Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines (February 7, 1990). Available online at <http://www.epa.gov/OWOW/wetlands/regs/mitigate.html>.
- 71 The regulations state, “[W]hile generally focusing on the applicant’s statement, the Corps will, in all cases, exercise independent judgment in defining the purpose and need for the project from both the applicant’s and the public’s perspective,” 33 CFR 325, App. B(9)(c)(4).
- 72 *Korteweg v. United States Army Corps of Engineers*, 650 F. Supp 603, at 604 (D. Conn. 1986).
- 73 See W. Want, Law of Wetland Regulation, Section 6.05(2)(d) (1999).
- 74 40 CFR 230.10(a)(2). Similarly, CEQA defines feasible in terms of “economic, environmental, legal, social and technological factors.” 14 CCR 15364.
- 75 *Bersani v. United States Environmental Protection Agency*, 674 F. Supp 405, 417 (N.D.N.Y. 1987).
- 76 40 CFR 230.10(c).
- 77 33 CFR 320.4(a)(1).
- 78 Telephone interview with Corps’ Regulatory Branch Office, Washington, D.C. (February 15, 2000).
- 79 See Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines (February 7, 1990). Available online at <http://www.epa.gov/OWOW/wetlands/regs/mitigate.html>.
- 80 *Id.* at Part II-C.
- 81 The outside limit for offsite mitigation projects is generally recognized to be 40 miles. See S. Hori, *Protecting Wetlands: Agency Approaches to Mitigation*, 1 Land Use Forum 243, at 244 (1992).

#### Chapter 4

- 82 See Section 4.2.2 of this handbook for more details.

- 83 See Section 4.2.3 of this handbook for more details.
- 84 In *Defenders of Wildlife v. Administrator, Environmental Protection Agency* (882 F.2d 1294 (8th Cir. 1989)), the EPA violated the law by listing the pesticide strychnine as legal for use by third parties, when it had the incidental effect of poisoning the endangered black-footed ferret. In *Strahan v. Coxe* (127 F.3d 155, (1st Cir. Mass. 1997)), Massachusetts violated the ESA by allowing the use of certain fishing equipment that drowned the endangered right whale. And in *Loggerhead Turtle v. City Council of Volusia County* (148 F.3d 1231 (11th Cir. 1998)), Volusia County was found potentially liable for violating the ESA if its beachfront lighting and beach driving regulations permitted third-party actions that killed endangered sea turtles. The case also found potential liability because the county chose to regulate some beaches in its jurisdiction, but expressly exempted others from regulation.
- 85 *Bolsa Chica Land Trust v. Superior Court*, 71 Cal. App. 4th 493 (1999).
- 86 See Cal. Pub. Res. Code 30233(a) for a complete list of the permitted activities.
- 87 See Cal. Gov't Code 66605(a).
- 88 For more information, contact John Kopchik in the Contra Costa County Planning Department at (925) 335-1227 or contact Rebecca Tuden in the U.S. Environmental Protection Agency at (415) 744-1987.
- 89 For more information, visit the San Joaquin Council of Government's web site at <http://www.sjcog.org/>.
- 90 See Santa Clara County General Plan, Resource Conservation Element, pp. H-23 to H-26. Text is provided in Appendix E.
- 91 The complete text of this draft ordinance can be found on Save The Bay's web site at [www.savesfbay.org](http://www.savesfbay.org).
- 92 See Sacramento County Planning and Community Development Department, Letter to Interested County Resident Regarding Rules and Process for Paying into the Wetland Restoration Trust Fund (February 2, 2000). Or call the Department at (916) 874-6141. Document is provided in Appendix G.

## Chapter 5

- 93 Baylands Ecosystem Habitat Goals: A Report of Habitat Recommendations Prepared by the San Francisco Bay Area Wetlands Ecosystem Goals Project, US Environmental Protection Agency and San Francisco Bay Regional Water Quality Control Board (1999). See Endnote 1 for contact information.
- 94 See *Friends of Payette v. Horseshoe Bend Hydroelectric Co.*, 988 F.2d 989 (9th Cir. 1993). In this case the court upheld the Corps' determination that it did not have jurisdiction over wetlands in an irrigation ditch that would revert to uplands if the water diversion program were discontinued. This is a controversial area. For more information, see P. Cylinder, *et al.*, Wetlands Regulation, at 21 (1995).
- 95 Cal. Pub. Res. Code 30121.
- 96 California Coastal Commission Statewide Interpretive Guidelines, Appendix D, at 78-79.
- 97 San Mateo County, Local Coastal Program Policies, Section 7.14, at 7.5 (June 1998). Available online at <http://amaty.simplenet.com/gen/ca/sma/smagov2m.htm>.
- 98 H. Gieben, Model Wetland Protection Ordinance, California Coastal Conservancy, Section 2, at 10 (Draft, 1990). See Endnote 91 for web address.
- 99 State law also recognizes the value of protecting related habitats in the form of buffer zones. The BCDC jurisdiction includes all land within 100 feet of the San Francisco Bay shoreline, whether or not the land is a wetland. The DFG Streambed Alteration Agreement program considers the effect of alterations on riparian habitat and requires mitigation where appropriate. The California Coastal Commission also protects riparian habitats and a 100-foot wide buffer on the landward side of a riparian area. For more information, see P. Cylinder, *et al.*, Wetlands Regulation, at 29-33 (1995).
- 100 H. Gieben, Model Wetland Protection Ordinance, California Coastal Conservancy, Section 2, at 10 (Draft, 1990). See Endnote 91 for web address.

- 101 San Rafael Municipal Code 14.13.010, *et seq.*, at 13-2 (September 21, 1992).
- 102 For a discussion of uses that are vulnerable to legal challenge under Section 404, see W. Want, Law of Wetland Regulation, Section 4.06 (1999).
- 103 H. Gieben, Model Wetland Protection Ordinance, California Coastal Conservancy, Section 2, at 5 (Draft, 1990). See Endnote 91 for web address.
- 104 See Santa Cruz County Code 16.30.010, *et seq.* Text is provided in Appendix D.
- 105 These new general conditions were issued in the final rule approving the new NWP's. See Final Notice of Issuance and Modification of Nationwide Permits, 65 Fed. Reg. 12,818 (2000).
- 106 See <http://www.audubon.org/campaign/wetland/nwpcomments.html>.
- 107 See 33 CFR 330.1.
- 108 See Sacramento County General Plan, Conservation Element CO-62 and CO-83. See also Sacramento County Board of Supervisors Resolution No. 91-0858 (filed May 29, 1991) which establishes the Trust Fund. For more information, contact the Sacramento County Planning and Community Development Department at (916) 874-6400.
- 109 14 CCR 15126.6(d).
- 110 CEQA defines feasible in terms of "economic, environmental, legal, social and technological factors." 14 CCR 15364.
- 111 See D. Burke, *et al.*, Protecting Non-tidal Wetlands, at 39 (1988).
- 112 Natural Resources and Environmental Protection Act, Mich. Comp. Laws 324.30311.
- 113 An ordinance could go still further, banning any development that would constitute a public nuisance regardless of whether it eliminates all economic use of the property. Possible examples include projects that cause pollution or increase flooding risks. To avoid a constitutional takings claim, the project's effect as a nuisance must be clearly documented. For more information, see Section 5.7 of this handbook.
- 114 60 Fed. Reg. 58605 - 58614 (1995). The Federal Mitigation Bank Guidelines are available online at <http://www.epa.gov/OWOW/wetlands/mitbankn.html>.
- 115 Cal. Fish & Game Code 1775, *et seq.*
- 116 See D. Burke, *et al.*, Protecting Non-tidal Wetlands, at 47 (1988).
- 117 EPA Wetlands Fact Sheet #13.
- 118 For example, see Cal. Gov't Code 38773.5.
- 119 *Agins v. City of Tiburon*, 447 U.S. 255 (1980).
- 120 *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987).
- 121 *Dolan v. City of Tigard*, 512 U.S. 374 (1994).
- 122 For a detailed discussion of the Supreme Court's decision, see *Dolan v. City of Tigard: The Supreme Court's Rough Proportionality Standard Is Still Rough Around the Edges*, California Environmental Law Reporter, at 1 (August 1994).
- 123 *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).
- 124 *Keystone Bituminous Coal Association v. DeBenedictus*, 480 U.S. 470 (1987). For a detailed discussion of the *Lucas* decision, see *Lucas v. South Carolina Coastal Council*, California Environmental Law Reporter, at 1 (August 1992).
- 125 *Haas & Co. v. City and County of San Francisco*, 605 F.2d 1117 (9th Cir. 1979).
- 126 *Barancik v. County of Marin*, 872 F.2d 834 (9th Cir. 1988).
- 127 *Penn Central Transportation Corps v. New York City*, 438 U.S. 104 (1978).

## Chapter 6

- 128 For copies of this publication, contact the California Coastal Conservancy at 1330 Broadway, Suite 1100, Oakland, California, 94612. Or call (510) 286-0470.
- 129 26 CFR 1.170A-14.
- 130 Cal. Gov't. Code 51200, *et seq.*
- 131 For general information about such programs, contact the EPA Wetlands Hotline at (800) 832-7828.

- 132 For more information, see <http://www.fsa.usda.gov/dafp/cepd/crpinfo.htm>, or contact the Fish and Wildlife Service at (916) 978-4420.
- 133 For more information, see <http://www.wl.fb-net.org/ca.htm>.
- 134 For more information, see <http://www.coastalconservancy.ca.gov/index.htm>.
- 135 For information about the stewardship concept and how it worked in Napa and other communities that are developing this approach, contact the California Association of Resource Conservation Districts at (916) 447-7237 and the Napa County Resource Conservation District at (707) 252-4188.
- 136 To obtain a copy of this publication, contact the California Coastal Conservancy at 1330 Broadway, Suite 1100, Oakland, California, 94612. Or call (510) 286-0470.
- 137 For more information on wetlands as wastewater treatment systems, see [http://sorrel.humboldt.edu/~ere\\_dept/marsh/](http://sorrel.humboldt.edu/~ere_dept/marsh/) and <http://www.epa.gov/cookbook/page90.html> (both are specific to Arcata Marsh). For more general information, see <http://abcnews.go.com/sections/tech/DailyNews/arcata-marsh990702.html> and <http://www.acnatsci.org/erd/ea/wetland.html#5> (includes cautionary information on how treatment wetlands can be mismanaged).
- 138 For copies of this publication, contact the California Coastal Conservancy at 1330 Broadway, Suite 1100, Oakland, California, 94612. Or call (510) 286-0470.
- 139 G. Lieberman and L. Hoody, *Closing the Achievement Gap: Using the Environment as an Integrating Context for Learning*, State Education and Environmental Round Table.
- 140 To receive a copy of this publication, call the Coastal Commission's Public Outreach Department at (415) 904-5210.



# Appendix A

## Acronyms

<b>AFT</b>	American Farmland Trust
<b>BCDC</b>	(San Francisco) Bay Conservation and Development Commission
<b>CEQA</b>	California Environmental Quality Act
<b>CFCP</b>	California Farmland Conservancy Program (formerly the Agricultural Land Stewardship Program)
<b>CRP</b>	Conservation Reserve Program
<b>CVHJV</b>	Central Valley Habitat Joint Venture
<b>CWA</b>	Clean Water Act
<b>DFG</b>	(California) Department of Fish and Game
<b>EIR</b>	Environmental Impact Report
<b>EIS</b>	Environmental Impact Statement
<b>EPA</b>	(U.S.) Environmental Protection Agency
<b>ESA</b>	Endangered Species Act
<b>FMHA</b>	Farmers Home Administration
<b>FWS</b>	(U.S.) Fish and Wildlife Service
<b>HCP</b>	Habitat Conservation Plan
<b>IRS</b>	Internal Revenue Service
<b>MARSH</b>	Matching Aid to Restore States Habitat
<b>NMFS</b>	National Marine Fisheries Service
<b>NPDES</b>	National Pollutant Discharge Elimination System
<b>NRCS</b>	National Resources Conservation Service
<b>NWP</b>	Nationwide permits issued by the U.S. Army Corps of Engineers under Section 404 of the Clean Water Act
<b>PDN</b>	Pre-discharge notification
<b>RCD</b>	Resource Conservation District
<b>SFBJV</b>	San Francisco Bay Joint Venture
<b>SWRCB</b>	(California) State Water Resources Control Board
<b>TPL</b>	Trust for Public Land
<b>TRPA</b>	Tahoe Regional Planning Agency
<b>USDA</b>	U.S. Department of Agriculture
<b>WCB</b>	Wildlife Conservation Board, an agency of the California Department of Fish and Game
<b>WRP</b>	Wetland Reserve Program

# Appendix B

## Wetland-Related Internet Sites

*Please note that content often changes on web sites*

### GENERAL INFORMATION RELATED TO CALIFORNIA WETLANDS

**Save the Bay:**

<http://www.savesfbay.org/>

**Baykeeper and Deltakeeper:**

<http://www.baykeeper.org/>

**National Audubon Society:**

<http://www.audubon.org/campaign/wetland/>

**Society of Wetland Scientists:**

<http://www.sws.org/>

**Maps of California wetlands and GIS databases:**

<http://maphost.dfg.ca.gov/wetlands>

### GOVERNMENT AGENCIES AND REGULATORY GUIDANCE

**Clean Water Act, Section 404:**

<http://www.epa.gov/OWOW/wetlands/regs/sec404.html>

**U.S. Army Corps of Engineers (regulatory program):**

<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/>

**Environmental Protection Agency (wetland program):**

<http://www.epa.gov/owow>

**Processing Section 404 Permits:**

<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/33cfr325.htm>

**Differing Wetland Definitions:**

[http://ceres.ca.gov/wetlands/introduction/defining\\_wetlands.html](http://ceres.ca.gov/wetlands/introduction/defining_wetlands.html)

**Memorandum of Agreement Concerning Mitigation of Wetland Losses:**

<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/moafe90.htm>

**California Resources Agency/California Wetland Information System:**

<http://ceres.ca.gov/wetlands/>

**Bay Conservation Development Commission:**

<http://ceres.ca.gov/bcdc/>

**California Coastal Conservancy:**

<http://www.coastalconservancy.ca.gov/index.htm>

**San Joaquin Council of Governments (with links to San Joaquin Habitat Conservation Plan):**  
<http://www.sjcog.org/>

## **MITIGATION AND MITIGATION BANKING**

**Section 404(b)(1) Guidelines:**  
<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/moafe90.htm>

**Federal Mitigation Banking Guidance:**  
<http://www.epa.gov/OWOW/wetlands/mitbankn.html>

**Article on Wetland Mitigation Banks (from Comstock's Magazine, April 1996):**  
<http://ceres.ca.gov/topic/banking/comstocks.html>

**Catalogue of California Conservation Banks:**  
[http://ceres.ca.gov/topic/banking/catalogue\\_index.html](http://ceres.ca.gov/topic/banking/catalogue_index.html)

**How to Start a Marsh System:**  
[http://sorrel.humboldt.edu/~ere\\_dept/marsh/ownmarsh.html](http://sorrel.humboldt.edu/~ere_dept/marsh/ownmarsh.html)

## **FUNDING FOR WETLAND PRESERVATION AND RESTORATION**

**Environmental Protection Agency Grants:**  
[http://ceres.ca.gov/wetlands/epa\\_grant/epa\\_grant\\_summary.html](http://ceres.ca.gov/wetlands/epa_grant/epa_grant_summary.html)

**Department of Agriculture Conservation Programs:**  
<http://www.nrcs.usda.gov/NRCSProg.html#Anchor-CRPCConservation>

**California Wetland Reserve Program:**  
<http://www.wl.fb-net.org/ca.htm>

**California Williamson Act:**  
<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=51001-52000&file=51200-51207>

## **MISCELLANEOUS WETLAND-RELATED SITES**

**Model Wetland Ordinance for Indiana Communities:**  
<http://home.Switchboard.com/IndianaWetlands>

**The Arcata Marsh and Wildlife Sanctuary:**  
[http://sorrel.humboldt.edu/~ere\\_dept/marsh/](http://sorrel.humboldt.edu/~ere_dept/marsh/)

**Using Wetlands for Wastewater Treatment:**  
<http://www.acnatsci.org/erd/ea/wetland.html>

**For an interesting site with a number of good photos and wetland links, see:**  
<http://www.mindspring.com/%7Elshull/wetlands.html>

**For a wide variety of wetland web pages, including photos, see:**  
<http://dir.yahoo.com/science/ecology/ecosystems/wetlands/>

# Appendix C

## Santa Cruz County Code

*Chapter 16.30*

*Riparian Corridor and Wetlands Protection*

*The County of Santa Cruz*

*Planning Department*

### **Section:**

- 16.30.010 Purpose
- 16.30.020 Scope
- 16.30.025 Amendment
- 16.30.030 Definitions
- 16.30.040 Protection
- 16.30.050 Exemptions
- 16.30.060 Exceptions
- 16.30.070 Inspection and Compliance
- 16.30.080 Violations
- 16.30.110 Appeals

### **16.30.010 PURPOSE**

The purpose of this chapter is to eliminate or minimize any development activities in the riparian corridor in order to preserve, protect, and restore riparian corridors for: protection of wildlife habitat; protection of water quality; protection of aquatic habitat; protection of open space, cultural, historical, archeological and paleontological, and aesthetic values; transportation and storage of floodwaters; prevention of erosion; and to implement the policies of the General Plan and the Local Coastal Program Land Use Plan. (Ord. 2460, 7/19/77; 3335, 11/23/82)

### **16.30.020 SCOPE**

This chapter sets forth rules and regulations to limit development activities in riparian corridors; establishes the administrative procedure for the granting of exceptions from such limitations; and establishes a procedure for dealing with violations of this chapter. This chapter shall apply to both private and public activities including those of the County and other such government agencies as are not exempted therefrom by state or federal law. Any person doing work in nonconformance with this chapter must also abide by all other pertinent local, state and federal laws and regulations. (Ord. 2460, 7/19/77; 3335, 11/23/82; 4027, 11/7/89; 4166, 12/10/91)

### **16.30.025 AMENDMENT**

Any revision to this chapter which applies to the Coastal Zone shall be reviewed by the Executive Director of the California Coastal Commission to determine whether it constitutes an amendment to the Local Coastal Program. When an ordinance revision constitutes an amendment to the Local Coastal Program such revision shall be processed pursuant to the hearing and notification provisions of Chapter 13.03 of the County Code and shall be subject to approval by the California Coastal Commission.

## 16.30.030 DEFINITIONS

All definitions shall be as defined in the General Plan or Local Coastal Plan glossaries, except as noted below:

### ***Agricultural use***

Routine annual agricultural activities such as clearing, planting, harvesting, plowing, harrowing, disking, ridging, listing, land planning and similar operations to prepare a field for a crop.

### ***Arroyo***

A gully, ravine or canyon created by a perennial, intermittent or ephemeral stream, with characteristic steep slopes frequently covered with vegetation. An arroyo includes the area between the top of the arroyo banks defined by a discernible break in the slope rising from the arroyo bottom. Where there is no break in slope, the extent of the arroyo may be defined as the edge of the 100 year floodplain.

### ***Body of standing water***

Any area designated as standing water on the largest scale U.S. Geological Survey Topographic map most recently published, including, but not limited to, wetlands, estuaries, lakes, marshes, lagoons, and man-made ponds which now support riparian biota.

### ***Buffer***

The area abutting an arroyo where development is limited in order to protect riparian corridor or wetland. The width of the buffer is defined in Section 16.30.040 (b).

### ***Development activities***

Development activities shall include:

#### **1. Grading**

Excavating or filling or a combination thereof; dredging or disposal of dredge material; mining; installation of riprap.

#### **2. Land clearing**

The removal of vegetation down to bare soil.

#### **3. Building and paving**

The construction or alteration of any structure or part thereof, including access to and construction of parking areas, such as to require a building permit.

#### **4. Tree and shrub removal**

The topping or felling of any standing vegetation greater than 8 feet in height

#### **5. The deposition of refuse or debris**

#### **6. The use of herbicides, pesticides, or any toxic chemical substances.**

#### **7. Any other activities determined by the Planning Director to have significant impacts on the riparian corridor.**

### ***Disturbed area***

An area determined by the Planning Director to have experienced significant alteration from its natural condition. Such disturbance may typically consist of clearing, grading, paving, landscaping, construction, etc.

**Director**

The Planning Director or his or her designee.

**Emergency**

A sudden unexpected occurrence involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to life, health, property, or essential public services.

**Ephemeral stream**

A natural watercourse or portion thereof which flows only in direct response to precipitation, as identified through field investigations.

**Intermittent stream**

Any watercourse designated by a dash-and-dots symbol on the largest scale U.S. Geological Survey Topographic map most recently published, or when it has been field determined that a watercourse either:

1. Has a significant waterflow 30 days after the last significant storm; or
2. Has a well-defined-channel, free of soil and debris.

**Minor proposal**

Building remodels or additions less than 500 square feet or grading less than 100 cubic yards which takes place within a previously developed or disturbed area; tree removal or trimming for the purpose of mitigating hazardous conditions or allowing solar access; drainage structures (e.g. culverts, downdrains, etc.); erosion control structures (e.g. retaining walls, riprap, checkdams, etc.); emergency measures requiring prompt action; resource management programs carried out under the auspices of a government agency; development activities within buffer zones which do not require a discretionary permit; other projects of similar nature determined by the Planning Director to cause minimal land disturbance and/or benefit the riparian corridor.

**Perennial stream**

Any watercourse designated by a solid line symbol on the largest scale U.S. Geological Survey Topographic map most recently published or verified by field investigation as a stream that normally flows throughout the year.

**Riparian corridor**

Any of the following:

1. Lands within a stream channel, including the stream and the area between the mean rainy season (bankfull) flowlines;
2. Lands extending 50 feet (measured horizontally) out from each side of a perennial stream. Distance shall be measured from the mean rainy season (bankfull) flowline;
3. Lands extending 30 feet (measured horizontally) out from each side of an intermittent stream. Distance shall be measured from the mean rainy season (bankfull) flowline;
4. Lands extending 100 feet (measured horizontally) from the high watermark of a lake, wetland, estuary, lagoon or natural body of standing water;
5. Lands within an arroyo located within the Urban Services Line, or the Rural Services Line;
6. Lands containing a riparian woodland.

### **Riparian vegetation/woodland**

Those plant species that typically occur in wet areas along streams or marshes. A woodland is a plant community that includes these woody plant species that typically occur in wet areas along streams or marshes. Characteristic species are: Black Cottonwood (*Populus trichocarpa*), Red Alder (*Alnus oregona*), White Alder (*Alnus rhombifolia*), Sycamore (*Plantanus racemosa*), Box Elder (*Acer negundo*), Creek Dogwood (*Cornus Californica*), Willow (*Salix*).

### **Vegetation**

Any species of plant.

(Ord. 2535, 2/21/78; 2536, 2/21/78; 2800, 10/30/79; 3335, 11/23/82; 3441, 8/23/83; 3601, 11/6/84; 4346, 12/13/94)

## **16.30.040 PROTECTION**

No person shall undertake any development activities other than those allowed through exemptions and exceptions as defined below within the following areas:

- (a) Riparian corridors.
- (b) Areas within the Urban Services Line or Rural Services Line which are within a buffer zone as measured from the top of the arroyo. All projects located on properties abutting an arroyo shall be subject to review by the Planning Director. The width of the buffer shall be determined according to the following criteria.

### **CRITERIA FOR DETERMINING BUFFER FROM ARROYOS**

Character of Vegetation in Buffer

	<i>Riparian Vegetation</i>		<i>Live Oak or Other Woodland</i>			
	20-30%	10-20%	0-10%	20-30%	10-20%	0-10%
Average slope within 30 feet of edge	20-30%	10-20%	0-10%	20-30%	10-20%	0-10%
Buffer Distance (feet) from: Perennial Streams, Wetlands, Marshes, Bodies of Water	50	50	50	50	40	30
Buffer Distance (feet) from Intermittent Streams	50	40	30	30	30	20
Buffer Distance (feet) from Ephemeral Streams	30	30	20	20	20	20

The buffer shall always extend 50 feet from the edge of riparian woodland and 20 feet beyond the edge of other woody vegetation as determined by the dripline, except as provided for in Section 16.30.060. Once the buffer is determined, a 10-foot setback from the edge of buffer is required for all structures, to allow for construction equipment and use of yard area.

See allowable density credits within the General Plan.

## CRITERIA FOR DETERMINING BUFFER FROM ARROYOS

	Character of Vegetation in Buffer					
	Grassland or Other		Buffer area is developed or otherwise disturbed (does not include recent clearing)			
Average slope within 30 feet of edge	20-30%	10-20%	0-10%	20-30%	10-20%	0-10%
Buffer Distance (feet) from: Perennial Streams, Wetlands, Marshes, Bodies of Water	50	30	20	30	20	20
Buffer Distance (feet) from Intermittent Streams	30	20	10	20	10	10
Buffer Distance (feet) from Ephemeral Streams	20	10	10	20	10	10

The buffer shall always extend 50 feet from the edge of riparian woodland and 20 feet beyond the edge of other woody vegetation as determined by the dripline, except as provided for in Section 16.30.060. Once the buffer is determined, a 10-foot setback from the edge of buffer is required for all structures, to allow for construction equipment and use of yard area.

See allowable density credits within the General Plan.  
(Ord. 2460, 7/19/77; 3335, 11/23/82; 4346, 12/13/94)

### 16.30.050 EXEMPTIONS

The following activities shall be exempt from the provisions of this chapter.

- (a) The continuance of any preexisting nonagricultural use, provided such use has not lapsed for a period of one year or more. This shall include change of uses which do not significantly increase the degree of encroachment into or impact on the riparian corridor as determined by the Planning Director.
- (b) The continuance of any pre-existing agricultural use, but not establishment or expansion of any Biomedical Livestock Operation, provided such use has been exercised within the last five years. (Ord. 4474-C, 5/19/98)
- (c) All activities done pursuant to a valid County timber harvest permit.
- (d) All activities listed in the California Food and Agricultural Code pursuant to the control or eradication of a pest as defined in Section 5006, Food and Agriculture Code, as required or authorized by the County Agricultural Commissioner.
- (e) Drainage, erosion control, or habitat restoration measures required as a condition of County approval of a permitted project. Plans for such measures shall be reviewed and approved by the Planning Director. (Ord. 2460, 7/19/77; 2537, 2/21/78; 3335, 11/23/82)
- (f) The Pajaro River Sediment Removal Project, under the Army Corps of Engineers Permit No. 21212537, issued May, 1995, or as amended. (Ord. 4374, 6/6/95)

## 16.30.060 EXCEPTIONS

Exceptions and conditioned exceptions to the provisions of this Chapter may be authorized in accordance with the following procedures:

(a) **Application**

Application for an exception granted pursuant to this chapter shall be made in accordance with the requirements of Chapter 18.10, Level III or V, and shall include the following:

1. Applicant's name, address, and telephone number.
2. Property description: The assessor's parcel number, the location of the property and the street address if any.
3. Project description: A full statement of the activities to be undertaken, mitigation measures which shall be taken, the reasons for granting such an exception, and any other information pertinent to the findings prerequisite to the granting of an exception pursuant to this section.
4. Two sets of plans indicating the nature and extent of the work proposed. The plans shall depict property lines, landmarks and distance to existing watercourse; proposed development activities, alterations to topography and drainage channels; mitigation measures, including details of erosion control or drainage structures, and the extent of areas to be revegetated. Plans shall be a minimum size of 18" x 24", except that plans for minor proposals may be a minimum size of 8 1/2" x 11".
5. Applicant's property interest or written permission of the owner to make application.
6. Requested Information: Such further information as the Planning Director may require.
7. Fees: The required filing fee, set by resolution of the Board of Supervisors, shall accompany the application.

(b) **Notice**

Notices of all actions taken pursuant to this chapter shall be in accordance with the requirements of Chapter 18.10.

(c) **Action**

Proposals for minor riparian exceptions may be acted upon at Level III and proposals for major riparian exceptions may be acted upon at Level V pursuant to chapter 18.10.

(d) **Findings**

Prior to the approval of any exception, the Approving Body shall make the following findings:

1. That there are special circumstances or conditions affecting the property;
2. That the exception is necessary for the proper design and function of some permitted or existing activity on the property;
3. That the granting of the exception will not be detrimental to the public welfare or injurious to other property downstream or in the area in which the project is located;

4. That the granting of the exception, in the Coastal Zone, will not reduce or adversely impact the riparian corridor, and there is no feasible less environmentally damaging alternative; and
5. That the granting of the exception is in accordance with the purpose of this chapter, and with the objectives of the General Plan and elements thereof, and the Local Coastal Program Land Use Plan.

**(e) Conditions**

The granting of an exception may be conditioned by the requirement of certain measures to ensure compliance with the purpose of this chapter. Required measures may include, but are not limited to:

1. Maintenance of a protective strip of vegetation between the activity and a stream, or body of standing water. The strip should have sufficient filter capacity to prevent significant degradation of water quality, and sufficient width to provide value for wild life habitat, as determined by the Approving Body.
2. Installation and maintenance of water breaks.
3. Surface treatment to prevent erosion or slope instabilities.
4. Installation and maintenance of drainage facilities.
5. Seeding or planting of bare soil.
6. Installation and maintenance of a structure between toe of the fill and the high water mark.
7. Installation and maintenance of sediment catch basins.

**(f) Concurrent Processing of Related Permits**

An application for exception may be processed concurrently with applications for discretionary permits required for the activity in question. No ministerial permit(s) for the activities in question shall be issued until an exception has been authorized. All discretionary permits for the activity in question shall include all conditions included in the exception. Where associated discretionary permits are authorized by the Planning Commission or Board of Supervisors, that body shall be authorized to act in place of the Zoning Administrator in considering an application for an exception if the applications are considered concurrently.

**(g) Expiration**

Unless otherwise specified, exceptions issued pursuant to this chapter shall expire one year from the date of issuance if not exercised. Where an exception has been issued in conjunction with a development permit granted pursuant to Chapter 18.10, the exception shall expire in accordance with the provisions of Chapter 18.10. (Ord. 2460, 7/19/77; 2506, 11/22/77; 2800, 10/30/79; 3335, 11/23/82; 3441, 8/23/83)

## **16.30.070 INSPECTION AND COMPLIANCE**

The Planning Director may conduct inspections to ensure compliance with this chapter.

(a) **Inspection**

The following inspections may be performed by the Director:

1. A pre-site inspection to determine the suitability of the proposed activity and to develop necessary conditions for an exception.
2. A final inspection to determine compliance with conditions, plans and specifications.

These inspections may take place concurrent with inspection required by any permits necessary for the activities in question.

(b) **Notification**

The permittee shall notify the Director 24 hours prior to start of the authorized work and also 24 hours prior to the time he or she desires a required inspection.

(c) **Right of Entry**

The application for exception constitutes a grant of permission for the County to enter the permit area for the purpose of administering this chapter from the date of the application to the termination of any erosion control maintenance period. If necessary, the Director shall be supplied with a key or lock combination or be permitted to install a County lock. (Ord. 2460, 7/19/77; 2506, 11/22/77; 2800, 10/30/79; 3335, 11/23/82; 3441, 8/23/83)

## 16.30.080 VIOLATIONS

- (a) It shall be unlawful for any person to do cause, permit, aid, abet, suffer or furnish equipment or labor for any development activity within a riparian corridor as defined in Section 16.30.030 unless either (1) a development permit has been obtained and is in effect which authorizes the development activity as an exception; or (2) the activity is exempt from the requirement for a development permit by the provisions of Section 16.30.050 of this chapter.
- (b) It shall be unlawful for any person to do, cause, permit, aid, abet, suffer or furnish equipment or labor for any development activity within a buffer zone of an arroyo as defined in Section 16.30.030 and as prescribed by the provisions of subsection 16.30.040(b) unless either (1) a development permit has been obtained and is in effect which authorizes the development activity as an exception; or (2) the activity is exempt from the requirement for a development permit by the provisions of Section 16.30.050 of this chapter.
- (c) It shall be unlawful for any person to exercise a development permit authorizing development activity as an exception without complying with all of the conditions of such permit.
- (d) It shall be unlawful for any person to knowingly do, cause, permit, aid, abet or furnish equipment or labor for any work in violation of a stop work notice from and after the date it is posted on the site until the stop work notice is authorized to be removed by the Planning Director. (Ord. 2460, 7/19/77; 2506, 11/22/77; 2800, 10/30/79; 3335; 11/23/82; 3451-A, 8/23/83)

16.30.081 (Repealed 4/2/96, Ord. 4392A)

16.30.090 (Ord. 2460, 7/19/77; 2506, 11/22/77; 2800, 10/30/79; 3335, 11/23/82; 3451-A, 8/23/83; Repealed 4/2/96, Ord. 4392A)

16.30.100 (Ord. 2460, 7/19/77; 2506, 11/22/77; 2800, 10/30/79; 3335, 11/23/82; 3451-A, 8/23/82; Repealed 4/2/96, Ord. 4392A)

16.30.103 (Repealed 4/2/96, Ord. 4392A)

16:30.107 (Repealed 4/2/96; Ord. 4392A)

16.30.110 APPEALS. All appeals of actions taken pursuant to the provisions of this Chapter shall be made in conformance to the procedures of Chapter 18.10. (Ord. 2460, 7/19/77; 2506, 11/22/77; 2800, 10/30/79; 3335, 11/23/82; 3451-A, 8/23/83) (v001)

# Appendix D

## Santa Cruz County Code

Chapter 16.32

*Sensitive Habitat Protection*

*The County of Santa Cruz*

*Planning Department*

### Sections:

- 16.32.010 Purposes
- 16.32.020 Scope
- 16.32.030 Amendment
- 16.32.040 Definitions
- 16.32.050 General Provisions
- 16.32.060 Approval Required
- 16.32.070 Assessments and Reports Required
- 16.32.080 Report Preparation and Review
- 16.32.090 Approval Conditions
- 16.32.095 Project Density Limitations
- 16.32.100 Exceptions
- 16.32.105 Exemption
- 16.32.110 Inspection
- 16.32.120 Appeals
- 16.32.130 Violations
- 16.32.131 Notification of Violation
- 16.32.132 Stop Work Notice
- 16.32.134 Penalties
- 16.32.140 Fees

### 16.32.010 PURPOSES

The purposes of this chapter are to minimize the disturbance of biotic communities which are rare or especially valuable because of their special nature or role in an ecosystem, and which could be easily disturbed or degraded by human activity; to protect and preserve these biotic resources for their genetic, scientific, and educational values; and to implement policies of the General Plan and the Local Coastal Program Land Use Plan. (Ord. 3342, 11/23/82; 3442, 8/23/83)

### 16.32.020 SCOPE

This chapter sets forth rules and regulations for evaluating the impacts of development activities on sensitive habitats; establishes the administrative procedures for determining whether and what type of limitations to development activities are necessary to protect sensitive habitats; and establishes a procedure for dealing with violations of this chapter. This chapter shall apply to both private and public activities including those of the County and other such government agencies where not exempted therefrom by state or federal law. Any person doing work in conformance with this chapter must also abide by all other pertinent local, state and federal laws and regulations. (Ord. 3342, 11/23/82; 3442, 8/23/83; 4027, 11/7/89; 4166, 12/10/91)

### **16.32.030 AMENDMENT**

Any revision to this chapter which applies to the Coastal Zone shall be reviewed by the Executive Director of the California Coastal Commission to determine whether it constitutes an amendment to the Local Coastal Program. When an ordinance revision constitutes an amendment to the Local Coastal Program such revisions shall be processed pursuant to the hearing and notification provisions of Chapter 13.03 of the County Code and shall be subject to approval by the California Coastal Commission. (Ord. 3342, 11/23/82; 3342, 8/23/83)

### **16.32.040 DEFINITIONS**

All terms used in this chapter shall be as defined in the General Plan and Local Coastal Program Land Use Plan and as follows:

#### ***Area of Biotic Concern***

Any area in which development may affect sensitive habitat, as identified on the Local Coastal Program Sensitive Habitats maps, the General Plan Resources and Constraints maps and other biotic resources maps on file in the Planning Department, or as identified during inspection of a site by Planning Department staff.

#### ***Biotic Assessment***

A brief review of the biotic resources present at a project site prepared by the County Biologist.

#### ***Biotic Permit***

A permit for development in an area of biotic concern issued pursuant to the provisions of this chapter.

#### ***Biotic Report***

A complete biotic investigation conducted by an approved biologist from a list maintained by the county, including but not limited to the following:

1. Identification of the rare endangered, threatened and unique species on the site;
2. Identification of the essential habitats of such species;
3. Recommendations to protect species and sensitive habitats. When a project is found to have a significant effect on the environment under the provisions of the Environmental Review Guidelines, the biotic report shall be made a part of the Environmental Impact Report.

#### ***Building Envelope***

A designation on a site plan or parcel map indicating where structures and paving are to be located.

#### ***Decision-Making Body***

The Zoning Administrator, Planning Commission, or Board of Supervisors, whichever body is considering the development permit, when biotic review is concurrent with review of a development permit. When a biotic permit is required, the decision-making body shall be the Planning Director.

#### ***Disturbance***

Any activity which may adversely affect the long term viability of a rare, endangered, threatened, or locally unique species or any part of a sensitive habitat.

***Development/Development Activity***

On land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including but not limited to subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; reconstruction, demolition, alteration or improvement of any structure in excess of 50 percent of the existing structure's fair market value, including any facility of any private, public or municipal utility; the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973; the disturbance of any rare, endangered, or locally unique plant or animal or its habitat.

***Environmental Coordinator***

The Planning Department staff person assigned to review applications and make determinations based upon the County Environmental Review Guidelines adopted pursuant to Chapter 16.01 of the Santa Cruz County Code.

***Environmentally Sensitive Habitat Area***

See Sensitive Habitat.

***Essential Habitat***

See Sensitive Habitat.

***Feasible***

Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors, as determined by the County.

***Impervious Surface***

Any non-permeable surface, including roofs and non-porous paving materials such as asphalt or concrete, but not including directly permeable surfaces such as decks that allow the passage of water or gravel driveways less than five inches thick.

***Person***

Any individual, firm, association, corporation, partnership, business, trust company, a public agency as specified in Section 53090 of the California Government Code, or the state or a state agency.

***Rare and Endangered Species***

A plant or animal species designated as rare, endangered or threatened by the State Fish and Game Commission, the United States Department of Interior Fish and Wildlife Service, or the California Native Plant Society.

***Resource Dependent Use***

Any development or use which requires utilization of a natural resource and must be sited within a sensitive habitat in order to be able to function at all, such as a fish hatchery.

### ***Restoration***

Restoring native vegetation, natural drainage, and water quality, including but not limited to replanting native vegetation, removing garbage, and protecting the habitat from the inflow of polluted water or excessive sedimentation.

### ***Sensitive Habitat***

An area is defined as a sensitive habitat if it meets one or more of the following criteria:

- (a) Areas of special, biological significance as identified by the State Water Resources Control Board.
- (b) Areas which provide habitat for locally unique biotic species/communities including but not limited to: oak woodlands, coastal scrub, maritime chaparral, native rhododendrons and associated Elkgrass, indigenous Ponderosa Pine, indigenous Monterey Pine, mapped grassland in the Coastal Zone and sand parkland; and special forests including San Andreas Oak Woodlands, indigenous Ponderosa Pine, indigenous Monterey Pine and ancient forests.
- (c) Areas adjacent to essential habitats of rare, endangered or threatened species as defined in (e) and (f) below.
- (d) Areas which provide habitat for species of special concern as listed by the California Department of Fish and Game in the Special Animals list, Natural Diversity Database.
- (e) Areas which provide habitat for rare or endangered species which meet the definition of Section 15380 of the California Environmental Quality Act guidelines.
- (f) Areas which provide habitat for rare, endangered or threatened species as designated by the State Fish and Game Commission, United States Fish and Wildlife Service or California Native Plant Society.
- (g) Nearshore reefs, rocky intertidal areas, seacaves, islets, offshore rocks, kelp beds, marine mammal hauling grounds, sandy beaches, shorebird roosting, resting and nesting areas, cliff nesting areas and marine, wildlife or educational/research reserves.
- (h) Dune plant habitats.
- (i) All lakes, wetlands, estuaries, lagoons, streams and rivers.
- (j) Riparian corridors.

### ***Structure***

Anything constructed or erected which requires a location on the ground or in the water, including but not limited to any building, retaining wall, driveway, telephone line, electrical power transmission or distribution line, water line, road or wharf.

### ***Toxic Chemical Substance***

1. Any chemical used for killing insects, fungi, rodents, etc., including insecticides, acaricides, fungicides, herbicides, rodenticides, and nematocides.
2. Any chemical which would be deleterious to a sensitive habitat.

### **Water Purveyor**

Any agency or entity supplying water to five or more connections.  
(Ord. 3342, 11/23/82; 3442, 8/23/83; 4346, 12/13/94)

## **16.32.050 GENERAL PROVISIONS**

- (a) No toxic chemical substance shall be used in a sensitive habitat in such a way as to have deleterious effects on the habitat unless an emergency has been declared by a federal, state, or county agency, or such use has been deemed necessary by the California Department of Fish and Game to eliminate or reduce a threat to the habitat itself, or a substantial risk to public health will exist if the toxic chemical substance is not used.
- (b) Pursuant to California Administrative Code Section 2452, the Agricultural Commissioner, in reviewing an application to use a restricted material, shall consider the potential effects of the material on a sensitive habitat, and mitigation measures shall be required as necessary to protect the sensitive habitat. No approval shall be issued if adverse impacts cannot be mitigated. (Ord. 3342, 11/23/82; 3442, 8/23/83)

## **16.32.060 APPROVAL REQUIRED**

- (a) Except as provided in Subsection (b) below, no person shall commence any development activity within an area of biotic concern until a biotic approval has been issued unless such activity has been reviewed for biotic concerns concurrently with the review of a development or land-division application pursuant to Chapter 18.10, Level III. (Ord. 3342, 11/23/82; 3442, 8/23/83; 4030, 11/21/89)
- (b) A biotic assessment shall not be required for repair or reconstruction of a structure damaged or destroyed as a result of a natural disaster for which a local emergency has been declared by the Board of Supervisors, when:
  - 1. the structure, after repair or reconstruction, will not exceed the floor area, height or bulk of the damaged or destroyed structure by 10%; and
  - 2. the new structure will be located in substantially the same location. (Ord. 4030, 11/21/89; 4160, 12/10/91)

## **16.32.070 ASSESSMENTS AND REPORTS REQUIRED**

A biotic assessment shall be required for all development activities and applications in areas of biotic concern, as identified on maps on file in the Planning Department or as identified during inspection of the site by Planning Department staff. A biotic report shall be required if the Environmental Coordinator determines on the basis of the biotic assessment that further information is required to ensure protection of the sensitive habitat consistent with General Plan and Local Coastal Program Land Use Plan policies. If the Environmental Coordinator determines that the project will have a significant effect on the environment under the provisions of the Environmental Review Guidelines, the biotic report shall be part of the Environmental Impact Report. (Ord. 3342, 11/23; 3442; 8/23/83)

## 16.32.080 REPORT PREPARATION AND REVIEW

(a) **Submittals Required**

When a biotic assessment or biotic report is required, the applicant shall submit an accurate plot plan showing the property lines and the location and type of existing and proposed development and other features such as roads, gullies, and significant vegetation. Any other information deemed necessary by the Planning Director shall be submitted upon request.

(b) **Report Preparation**

The biotic assessment shall be conducted by the County Biologist. The biotic report shall be prepared by a biologist from a list maintained by the Planning Department, at applicant's expense, and shall be subject to acceptance as specified in this section. All biotic assessments and reports shall conform to county report guidelines established by the Planning Director.

(c) **Report Acceptance and Review**

All biotic assessments and reports shall be found to conform to county report guidelines by the Environmental Coordinator. When technical issues are complex, the report may be reviewed and found adequate by a biologist retained by the County. All biotic reports shall be referred to the California Department of Fish and Game for review and comment, and shall be available for review by other interested parties.

(d) **Report Expiration**

A biotic assessment shall be valid for one year and a biotic report shall be valid for five years following acceptance of the assessment or report, except where a change in site conditions, development proposal, technical information, or county policy significantly affects and thus may invalidate the technical data, analysis, conclusions, or recommendations of the report. (Ord. 3342, 11/23/82; 3442, 8/23/83)

## 16.32.090 APPROVAL CONDITIONS

(a) Conditions of approval shall be determined by the Environmental Coordinator through the environmental review process. These conditions may be based on the recommendations of the biotic assessment or biotic report and shall become conditions of any subsequent approval issued for the property. Such conditions shall also apply to all development activities engaged in on the property. Any additional measures deemed necessary by the decision-making body shall also become development permit conditions.

(b) The following conditions shall be applied to all development within any sensitive habitat area:

1. All development shall mitigate significant environmental impacts, as determined by the Environmental Coordinator.
2. Dedication of an open space or conservation easement or an equivalent measure shall be required as necessary to protect the portion of a sensitive habitat which is undisturbed by the proposed development activity or to protect a sensitive habitat on an adjacent parcel.

3. Restoration of any area which is a degraded sensitive habitat or has caused or is causing the degradation of a sensitive habitat shall be required, provided that any restoration required shall be commensurate with the scale of the proposed development.

(c) All development activities in or adjacent to a sensitive habitat area shall conform to the following types of permitted uses, and the following conditions for specific habitats shall become minimum permit conditions unless the approving body pursuant to Chapter 18.10 finds that the development will not affect the habitat based on a recommendation of the Environmental Coordinator following a biotic review pursuant to Section 16.32.070.

**A. ENVIRONMENTALLY SENSITIVE HABITAT AREAS**

Only resource-dependent-uses shall be allowed within any environmentally sensitive habitat area.

<i>Type of Sensitive Area</i>	<i>Permitted or Discretionary uses</i>	<i>Conditions</i>
1. All Essential Habitats	Nature study & research, hunting, fishing and equestrian trails that have no adverse impacts on the species or habitat; timber harvest as a conditional use.	Preservation of essential habitats shall be required.
2. Kelp Beds	Nature observation, mariculture, scuba diving.	No development shall be allowed which might result in a discharge to the marine environment, whether within or without the sensitive habitat, which might adversely affect this habitat type.
3. Rocky Intertidal Areas	Nature observation, Scientific research, educational instruction, take of marine organisms consistent with Department of Fish & Game regulations.	
4. Marine Mammal Hauling Grounds	Scientific research.	
5. Shorebird Nesting Areas	Scientific research.	
6. Davenport Pier Rock Cliffs and Rock Outcrops offshore which are Seabird/Shorebird Resting Areas and Roosting Sites	Scientific research.	
7. Sandy Beaches which are Seabird/Shorebird Resting Areas and Roosting Sites	Seasonal beach recreation.	
8. Dunes and Coastal Strand	Scientific research, educational instruction.	Wooden boardwalks for trails through dunes shall be required.

### A. ENVIRONMENTALLY SENSITIVE HABITAT AREAS (continued)

Only resource-dependent-uses shall be allowed within any environmentally sensitive habitat area.

<i>Type of Sensitive Area</i>	<i>Permitted or Discretionary uses</i>	<i>Conditions</i>
9. Cliff Nesting Areas	Scientific research.	Fifty-foot buffer from blufftop at or above nesting area shall be required.
10. Coastal Scrub	Blufftop viewing, hiking, nature observation.	Land clearing shall be minimized.
11. Wetlands, Estuaries, & Lagoons	Educational instruction, scientific research, managed nature observation, wetland restoration, maintenance to existing public utilities, aquaculture, recreational fishing subject to Department of Fish and Game regulations.	One hundred-foot buffer measured from the high water mark shall be required.  Distance between structures and wetland shall be maximized.
12. Rivers and Streams (includes Anadromous Fish Spawning Areas)	Scientific research, educational instruction, aquaculture.	
13. Intermittent Wetlands	Limited grazing, uses within wetlands (above), existing agriculture.	
14. Reservoirs & Ponds	Water storage and diversion, aquaculture.	

No new development shall be allowed adjacent to marshes, streams, and bodies of water if such development would cause adverse impacts on water quality which cannot be mitigated or will not be fully mitigated by the project proponent.

### B. AREAS ADJACENT TO THE ESSENTIAL HABITATS OF RARE AND ENDANGERED SPECIES

<i>Type of Habitat</i>	<i>Permitted or Discretionary Uses</i>	<i>Conditions</i>
Santa Cruz Long-Toed Salamander	nature study & research, residential - uses at urban low densities as conditioned, where designated on LCP Land Use Maps, existing agriculture.	Site disturbance before revegetation (i.e. total site coverage) shall not exceed 25% of lot.  Site disturbance after revegetation (i.e., total site coverage) shall not exceed 15% of lot.  Impervious surface shall not exceed 10% of lot. The objective of this requirement is to reduce the amount of erosion and siltation impacts; therefore, it does not apply to sites lying outside the drainage basin.  Conservation easement over undisturbed portion of site shall be dedicated to Department of Fish and Game.

**B. AREAS ADJACENT TO THE ESSENTIAL HABITATS OF RARE AND ENDANGERED SPECIES (continued)**

<i>Type of Habitat</i>	<i>Permitted or Discretionary Uses</i>	<i>Conditions</i>
2. Santa Cruz Cypress Groves	Scientific research, educational instruction.	<p>Step or pole foundations shall be required on slopes over 15%. Pole foundations shall be required on slopes over 30%.</p> <p>All curbs and gutters shall be rounded.</p> <p>Seepage pits shall be required where feasible.</p> <p>No grading shall be allowed between October 15 and April 15.</p> <p>Grading and removal of vegetation shall be minimal and shall be restricted to areas where it is necessary to maintain existing agricultural use and for the construction of buildings, driveways, and septic systems.</p> <p>Grading or filling within drip line of 24” or larger diameter trees shall be avoided.</p> <p>A landscape plan consisting of native shrubs and/or trees shall be submitted with building plans for areas of vegetation removal.</p> <p>Native trees shall be retained to the maximum extent possible.</p> <p>Disturbed areas shall be revegetated promptly with native or approved species.</p> <p>For the purposes of calculating site disturbance and impervious surface coverage, when the project is an addition to an existing development, the existing development and the addition shall be considered as a new development.</p> <p>Except for new foundations which may not feasibly be constructed according to the standards, additions to existing developments shall conform to other Local Coastal Plan performance standards.</p> <p>A minimum 50 foot buffer between cypress communities and location of development shall be required.</p>

### C. HABITATS OF LOCALLY UNIQUE SPECIES

<i>Type of Habitat</i>	<i>Permitted or Discretionary Uses</i>	<i>Conditions</i>
1. Special Forests (San Andreas, Live Oak, Wood land/Maritime Chaparral, Ponderosa Pine Forest, and Indigenous Monterey Pine Forest)	Forest preserve, nature observation, educational instruction residential uses, meeting performance criteria.	Structures shall be clustered, and/or located near to any existing structure.  Landscaping plans shall include characteristic native species.  Applicants shall enter into a “declaration of restriction” allowing the development and utilization of a prescribed burning program or other means to mimic the effects of natural fires.  For residential development, site disturbance shall not exceed 1/4 acre per unit or 25% of the parcel, whichever is less.
2. Grassland in the Coastal Zone	Nature observation, educational instruction, grazing, viticulture, consistent with Local Coastal Plan policies; residential uses meeting performance criteria.	Structures shall be clustered and located outside the grassland where feasible.

(Ord. 3342, 11/23/82;3442, 8/23/83)

### 16.32.095 PROJECT DENSITY LIMITATIONS

The following requirements shall apply to density calculations for new building sites created in habitats of locally unique species through minor land divisions, subdivisions, planned development, or planned unit development:

(a) **Special Forests**

Prohibit land divisions within designated Special Forests unless the area to be divided is removed from the mapped special forests habitat area by General Plan - Local Coastal Program amendment. On parcels with existing mapped special forest areas which contain developable land outside those areas, allow development at the lowest density of the land use designation and require that development be clustered and located outside the habitat areas. Allow one single family dwelling unit per existing parcel of record. Where property owners upgrade special forest areas on their parcels, outside of mapped areas, through resource management activities, the prevailing General Plan densities shall not be reduced.

(b) **Grasslands**

Prohibit land divisions of native and mixed native grassland habitat mapped in the Coastal Zone unless the area to be divided is removed from the mapped grassland habitat area by General Plan -Local Coastal Program amendment. On parcels with existing mapped native and mixed native grasslands and which contain developable land outside those habitats, allow development at the lowest density of the land use designation and require that

development be clustered and located outside the habitat areas. Allow one single family dwelling unit per existing parcel of record. Where property owners upgrade grasslands on their parcels, outside of mapped areas, through resource management activities, the prevailing General Plan densities shall not be reduced. (Ord. 4346, 12/13/94)

### 16.32.100 EXCEPTIONS

Exceptions to the provisions of Section 16.32.090 may be approved by the decision-making body.

(a) In granting an exception, the decision-making body shall make the following findings:

1. That adequate measures will be taken to ensure consistency with the purpose of this chapter to minimize the disturbance of sensitive habitats; and
2. One of the following situations exists:
  - (i) The exception is necessary for restoration of a sensitive habitat; or
  - (ii) It can be demonstrated by biotic assessment, biotic report, or other technical information that the exception is necessary to protect public health, safety, or welfare.

(b) Notwithstanding the above, the decision-making body may grant an exception for development within the essential habitat of the Santa Cruz Long-Toed Salamander as follows:

1. Upon receiving a development application for an undeveloped parcel within the essential habitat, the County shall notify the California Coastal Commission, the Coastal Conservancy, the California Department of Fish and Game, and the U.S. Fish and Wildlife Service. The County or other agency shall have one year to decide whether acquisition of the parcel is to proceed. If the County and other agencies decide not to acquire the parcel and development potential in the essential habitat has not been otherwise permanently eliminated by resubdivision, easement, or other recorded means, the decision-making body may grant an exception to allow the development to proceed provided that it finds that the proposed development cannot be accommodated on the parcel outside the essential habitat, and that it will be consistent with the standards for the area adjacent to the essential habitat and other LCP policies.
2. The permittee shall provide a cash deposit, Time Certificate of Deposit, or equivalent security, acceptable to the County. This security shall be payable to the County, in an amount not less than \$5000 or greater than \$10,000, to be determined by the County on a case-by-case basis, depending on site-specific circumstances. The purpose of this security shall be to ensure compliance with the development standards for the area adjacent to the essential habitat, and shall not be returned unless and until all required standards and improvements are met. All expenditures by the County for corrective work necessary because of the permittees failure to comply with the provisions of the permit and this Chapter shall be charged against the security deposit. (Ord. 3342, 11/23/82; 3442, 8/23/83)

### **16.32.105 EXEMPTION**

Existing commercial agricultural operations and related activities shall be exempted from the provisions of Section 16.32.060. Any development activity which has received a riparian exception approved according to the provisions of Chapter 16.30 (Riparian Corridors and Wetlands. Protection) may be exempted from the provisions of this chapter if the Planning Director determines that such development activity has received a review, in connection with the granting of the riparian exception, equivalent to the review that would be required by this chapter. (Ord. 3342, 11/23/82; 3442, 8/23/83)

### **16.32.110 INSPECTION**

The Planning Director may cause sufficient inspections to be made of the permit area to assure compliance with the provisions of this Chapter. Upon completion of any inspection, the property owner or lessee shall be given written notice of any violations observed at the time of inspection for correction thereof. (Ord. 3342, 11/23/82; 3442, 8/23/83)

### **16.32.120 APPEALS**

Any person whose interests are adversely affected by any act or determination of the decision-making body under the provisions of this chapter may appeal that act or determination to the Planning Commission and subsequently the Board of Supervisors in accordance with Chapter 18.10 of the Santa Cruz County Code. For this purpose, the procedure therein set forth is incorporated herein and made a part of this Chapter. (Ord. 3342, 11/23/82; 3442, 8/23/83)

### **16.32.130 VIOLATIONS**

- (a) It shall be unlawful for any person at any time to do, cause, permit, aid, abet, suffer or furnish equipment or labor for any development activity within an area of biotic concern as defined in Section 16.32.040 unless (1) a development permit has been obtained and is in effect which authorizes such development activity; or (2) the development activity has been reviewed for biotic concerns concurrently with the discretionary review of an approved permit required by Title 13 or Title 14 of the Santa Cruz County Code, within such area; or (3) the activity is exempt from the requirement for a development permit by the provisions of Section 16.32.105 of this Chapter and from the requirements for a coastal permit by the provisions of Chapter 13.20.
- (b) It shall be unlawful for any person to exercise a development permit which authorizes development activity within an area of biotic concern without complying with all of the conditions of such permit.
- (c) It shall be unlawful for any person to use, cause, permit, aid, abet, suffer or furnish equipment or labor to use any toxic chemical substance in a sensitive habitat in such a way as to have a deleterious effect on the habitat unless (1) an emergency has been declared by a federal, state, or county agency, or (2) such use has been deemed necessary by the California Department of Fish and Game to eliminate or reduce a threat to the habitat itself; or (3) a substantial risk to public health will exist if the toxic chemical substance is not used.

(d) It shall be unlawful for any person to refuse or fail to carry out measures as required by a notice of violation issued by the Planning Director under the provisions of Section 16.32.131 of this Chapter.

(e) It shall be unlawful for any person to knowingly do, cause, permit, aid, abet or furnish equipment or labor for any work in violation of a stop work notice from and after the date it is posted on the site until the stop work notice is authorized to be removed by the Planning Director. (Ord. 3451, 8/23/83)

### **16.32.131 NOTIFICATION OF VIOLATION**

In the event the Planning Director determines that a violation of this Chapter exists, the Planning Director may notify in writing the owner(s) of the property or other person in control of the property on which the violation exists. Such written notification may require restoration of the site as a means of correcting the violation or other measure to mitigate the violation, and specify a time period for completing such actions. (Ord. 3451, 8/23/83)

### **16.32.132 STOP WORK NOTICE**

If the Planning Director determines that activities are being carried out in violation of this Chapter or an approved development permit which authorizes development activity within an area of biotic concern, the Planning Director may stop all work until corrective measures have been completed. The site shall be posted with a “Stop Work” notice. (Ord. 3451, 8/23/83)

### **16.32.134 PENALTIES**

All violations of this Chapter shall be misdemeanors punishable as provided in Sections 1.08.010-1.08.050 of the Santa Cruz County Code. (Ord. 3451, 8/23/83)

### **16.32.140 FEES**

Fees for biotic assessments, biotic reports, and review of technical reports shall be set by resolution by the Board of Supervisors. (Ord. 3342, 11/23/82; 3442, 8/23/83)

# Appendix E

## Santa Clara County General Plan Part 2: Countywide Issues And Policies

*Resource Conservation Chapter*

*Santa Clara County Department of Planning and Development  
December 1994*

### Habitat & Biodiversity

#### BACKGROUND

##### *Habitat Types, Significance, and Trends*

##### **Major Types and Importance of Habitats**

Santa Clara County contains many distinct types of habitat, supporting a variety of plant and animal species, some of which are threatened or endangered by extinction. Predominant among the county's major habitat types are the following, and within each of these major classifications are many more sub-types, each supporting a particular mix of interdependent species:

- the various Bay wetland habitats;
- freshwater streams, or “riparian” areas;
- grassland/savanna habitats; and
- chaparral, mixed woodland, and evergreen forest areas.

Some habitat types are more rich in the diversity of species they support than others. In California and the western U.S. as a whole, riparian areas more so than perhaps any other type of habitat contain the greatest diversity of species, providing not only a critical water supply to many species, but greater density of vegetation for adequate cover, protection, and food sources. Riparian areas are indeed a “mother lode” of species diversity, to borrow a phrase.

Habitats such as riparian areas perform many other important functions, as well. Prominent among these other benefits is soil retention. Vegetation reduces soil erosion and minimizes the related adverse impacts of erosion. If soil erosion is excessive, the regenerative capability of a habitat is impaired. For an area such as Santa Clara County, where steep slopes, landslide potential, and other related geologic hazards are prevalent, erosion control is even more important.

Riparian systems also function to:

- preserve water quality by filtering pollutants from runoff before it enters surface waters;
- minimize sediment buildup in reservoirs;
- preserve stream banks from collapse;
- reduce flows and store flood waters; and
- provide aesthetic and recreational enjoyment.

Therefore, habitat conservation is of critical importance not only for ecological reasons, but also for the role it plays in such matters as protecting water supply resources and investments for urban populations.

### **The Emerging Emphasis on Biodiversity Preservation**

“Biodiversity” is a term used to describe the diversity of earth’s plant and animal species. It encompasses the diversity of regions and ecosystems, of individual species, and even of genetic diversity and potential. Preserving habitat and biodiversity is important for many reasons, some being of fundamental importance to our own survival:

- it is integral to maintenance of basic processes such as oxygen-carbon dioxide exchange, oceanic currents, and hydrologic cycles;
- all species are dependent upon genetic diversity in order to adapt to changing conditions and survive;
- science does not know enough about the tremendous variety of species that exist, which ones are being lost, or their significance, in order to understand and predict the cumulative impacts of increasing rates of extinction; as well as
- understanding of the medicinal values of many plant species is steadily increasing.

Adaptation, extinction, and emergence of new life forms are integral aspects of nature and evolution. However, over the last few decades, plant and animal extinctions have been increasing at an accelerating rate, due mostly to the cumulative impacts of human activities upon habitats. Attention has focused largely on such areas as equatorial rainforests, but habitat loss of varying scales is of concern everywhere there are human impacts on habitat (see endnotes).

Attempts to prevent extinction to date have primarily focused on saving individual species most imminently “threatened” or “endangered” with extinction (see Endangered Species Act and Local Implementation). However, in light of the rising rate of extinctions and the limitations of species-by-species approaches, what is needed is an approach that will not only improve the chances of survival for species already in trouble, but one which will also help prevent other species from becoming endangered.

The emerging emphasis on preserving biodiversity attempts to do just that, by focusing upon conservation of habitat areas and functioning ecosystems. Ultimately, this more encompassing strategy should prove more successful overall and more cost-effective than species-by-species rescue and recovery attempts.

In California, it is estimated there are over 270 distinct habitat types. However, some are more protected than others. 95% of all alpine habitats, for example, are deemed secure due to their remote locations; whereas, only 1% of most of the state’s richest habitat type, riparian areas, are adequately protected. A major implication for local governments and agencies is the need to develop more effective strategies, policies and protection measures for the resources within their jurisdictions.

### ***Meeting the Challenges to Preserving Habitat and Biodiversity***

#### **Major Threats and Challenges**

The major threats to habitat and biodiversity in Santa Clara County and the region are the result of both natural and human causes, including:

- degradation of habitat quality or “integrity,” from natural factors, such as drought, or from human activity;
- wholesale loss due to urbanization or development activities, and in some cases due to natural causes; and
- fragmentation of habitat areas.

### ***“Threatened and Endangered Species in Santa Clara County, 1992”***

<b>Animal Species</b>	<b>Status</b>
American Peregrine falcon	Endangered (US & CA)
Southern Bald Eagle	Endangered (US & CA)
Californian black rail (bird)	Threatened (CA)
California brown pelican	Endangered (US & CA)
California clapper rail (bird)	Endangered (US & CA)
Bank swallow	Threatened (CA)
California least tern	Endangered (US & CA)
Least Bell’s vireo (bird)	Endangered (US & CA)
Bay checkerspot butterfly	Threatened (US)
Salt marsh harvest mouse	Endangered (US & CA)
San Joaquin kit fox	Endangered (US) Threatened (CA)

<b>Plant Species</b>	<b>Status</b>
Coyote ceanothus	Proposed Endangered (US)
S.C. Valley dudleya	Proposed Endangered (US)
Hoover’s button celery	Proposed Endangered (US)
Mann dwarf flax	Proposed Threatened (US)
Metcalf Cyn. jewelflower	Proposed Endangered (US)

Other factors of lesser impact include:

- the particular vulnerability of some species to various impacts compared to the adaptability of others; and
- introduction of unnaturally occurring, or “exotic” species which upsets the balance of nature.

### **Strategies at the State and Regional Level**

On the national, state and regional level, the most pragmatic approach to protecting habitat and biodiversity involves preserving the largest possible areas of habitat and intact natural communities. Secondly, there is a need to provide increased protection to the types of habitat which are either under-represented or not currently found within parks and preserves. To this and related ends, various California agencies involved with habitat and endangered species have adopted “The Agreement on Biological Diversity,” an official memorandum of understanding (MOU) between these agencies and departments which establishes preservation of biodiversity as a “preeminent goal in their protection and management policies.”

One example of multi-jurisdictional efforts to achieve biodiversity preservation on a regional scale is the state’s Natural Communities Conservation Planning Program (NCCPP), which initially focused upon preserving natural areas of coastal sage scrub in portions of San Diego, Orange, Riverside, Los Angeles, and San Bernadino Counties. The planning area involved covers approximately 6,000 acres, and the goal of the program for this area is twofold, (1) to preserve native habitat for many threatened and endangered species indigenous to the region through the designation of multi-species reserves, and (2) not to preclude compatible and appropriate land use and development.

Although still under development, the program is gaining national recognition for involving numerous regulatory and land management jurisdictions (State, Federal, and local), as well as conservation groups and private landowners to develop a coherent program of conservation planning from what otherwise would have been a highly fragmented, divisive situation. A number of other similar regional endeavors are also under development around the state of California.

Finally, federal, state, and regional government agencies are requiring more than ever before that local governments and departments participate in rigorously enforcing laws and regulations

to preserve habitat. These requirements will likely increase over time rather than diminish, as efforts are increased at the state and federal level, also.

[See “Endangered Species Acts and Local Implementation”]

### **The Future of Habitat Management in Santa Clara County**

In Santa Clara County, habitat types and species which are most threatened include riparian areas, oak and grassland savannas, and baylands, to mention a few. Serpentine soils and associated habitat also figure prominently in local and regional preservation efforts. These habitats are the bases of survival for most of the species of plants and animals now listed or proposed for listing as threatened or endangered with extinction in Santa Clara County.

Many more species will be listed or proposed for listing during 1993 and 1994 as a result of judicial rulings. At least four more plant species are among those identified for listing in Santa Clara County. All four depend upon serpentine soils. [For more complete inventories, refer to the Rural Unincorporated Area Issues & Policies portion of the General Plan, or to the EIR].

Many of these species are found in locations designated by the state as “Significant Natural Areas,” (SNAs) areas characterized by the existence of extremely rare species, groups or ensembles of species, high diversity of species, or which represent the best known example of a type of natural community. Twenty-eight (28) SNAs are currently identified by the California Dept. of Fish and Game (CDFG) within Santa Clara County, but not all of the County, much less the state, has been studied.

As more information is compiled from sources such as the Native Plant Society, environmental assessments of proposed development, and other sources, the inventory of SNAs will be updated by the state. [Refer to the Rural Unincorporated Area Issues & Policies portion of the General Plan for the full list of SNAs].

Efforts to conserve habitat on a countywide (sub-regional) and regional basis cannot necessarily cope with all types of threats and challenges, much less address the entire scale of biodiversity, including ecologies, species and genetic diversity. Nonetheless, localities will benefit from a systematic, unified approach that consists of several key strategies, outlined below.

### **Endangered Species Act and Local Implementation**

The Federal Endangered Species Act was passed in 1973 and has since been amended and reauthorized at various times. Its primary purposes are to conserve ecosystems on which endangered species depend and to provide a program for the conservation of each such endangered or threatened species. The California Endangered Species Act (CESA) was passed in 1984 to provide the state Dept. of Fish and Game the authority to review projects for impacts upon species listed by the California law. It augments federal law with more stringent requirements and standards. Lists of threatened and endangered species are updated periodically.

Jurisdictions, agencies and individuals are affected by these Acts if listed species occur on a property proposed for a development project. Projects which could adversely impact such species must either (a) be modified to avoid any “taking” of a species by harming it or its habitat, or (b) obtain state and federal permits to allow the project and any “incidental take” deemed unavoidable. Violations of either law may result in fines and imprisonment.

The permits involved may be issued pursuant to the development of a “Habitat Conservation Plan” (HCP) for the project area. Such plans may be specific to an individual property or to a larger area. It should describe the area and the boundaries of the HCP, the species in question, mitigation and monitoring aspects, and funding necessary to implement the plan.

Both state and federal agencies involved with habitat preservation have made a more concerted effort in recent years to require local governments to more rigorously enforce the provisions of these laws. Local governments may do so in two basic ways: (1) ensuring governmental agencies and individuals do not violate the provisions of the Acts by providing adequate project review; and (2) developing Habitat Conservation Plans on a sub-regional and regional scale to address habitat preservation needs. These plans are developed with the involvement of lead federal and state agencies.

[For more information concerning implementation of the Endangered Species Acts as specifically related to rural areas, refer to the Rural Unincorporated Area Issues & Policies section of the General Plan].

## STRATEGIES, POLICIES, AND IMPLEMENTATION

Habitat and biodiversity for Santa Clara County can be maintained and enhanced through the following set of strategies:

- Strategy #1: Improve Current Knowledge and Awareness of Habitats and Natural Areas;
- Strategy #2: Protect the Biological Integrity of Critical Habitat Areas;
- Strategy #3: Encourage Habitat Restoration; and
- Strategy #4: Evaluate Effectiveness of Environmental Mitigations.

The emerging statewide consensus for growth management reflects among other things a balancing of two critical needs, the need to designate areas of sufficient development potential to accommodate urban population and areas of critical resource value which must be provided long term if not permanent protection. The current jointly adopted growth management strategy of the cities and County of Santa Clara is consistent with that emerging statewide consensus, and the strategies for preserving habitat and biodiversity further build upon that basis.

There is significant concern that the next 20-25 years will be crucial if California and the nation are to adequately preserve remaining habitat and biodiversity, rather than having to rely on restoration measures. If we are truly at such a turning point, implementing the strategies and policies most appropriate at the local and regional level will not only make a major contribution to efforts at the state and national level, but will be more cost-effective and enhance overall quality of life.

### Policies and Implementation

#### *C-RC 27*

Habitat types and biodiversity within Santa Clara County and the region should be maintained and enhanced for their ecological, functional, aesthetic, and recreational importance.

#### *C-RC 28*

The general approach to preserving and enhancing habitat and biodiversity countywide should include the following strategies:

- 1 Improve current knowledge and awareness of habitats and natural areas;
- 2 Protect the biological integrity of critical habitat areas;
- 3 Encourage habitat restoration; and
- 4 Evaluate the effectiveness of environmental mitigations.

#### *Strategy #1: Improve Current Knowledge and Awareness of Habitats and Natural Areas*

Strategy 1 recognizes the need for better general knowledge of habitat types and their distribution. Furthermore, even if perfect knowledge were available of the types and locations of habitats, there is much we don't know about the interactions and natural processes within habitats. Habitats and natural communities are more than the sum of their individual member species, nor are they static. Fuller understanding of key relationships is needed to ensure an adequate basis for planning.

## Policies and Implementation

### C-RC 29

Multi-jurisdictional coordination necessary to adequately identify, inventory, and map habitat types should be achieved at the local, regional, state, and federal levels.

## Implementation Recommendations

### RC(i)9

Develop and maintain a regional database/inventory and mapping program of habitat types and biodiversity which can be shared among local, regional, state and federal agencies, as well as local community organizations (e.g. Natural Diversity Data Base, Lands and Natural Areas Program, CDFG).

### *Strategy #2: Protect the Biological Integrity of Critical Habitat Areas*

On the countywide level, the growth management strategy of the cities and County figures prominently in preserving the integrity of habitats by differentiating lands intended for resource conservation from lands suitable and intended for urbanization. Current joint urban development policies mandate that critical resource areas should be excluded from cities' Urban Service Areas, helping to delineate urban from non-urban areas oriented to resources conservation.

The latter areas are often referred to generally as "resource conservation areas," and the rationale for excluding them from cities' Urban Service Areas also includes:

- avoidance of prevalent natural hazards,
- limited accessibility,
- steepness of terrain, and
- limited feasibility of providing adequate levels of urban services, among other factors.

If current Urban Service Area policies were augmented by development and adoption of long term urban growth boundaries (UGB), areas not included within the UGB would be provided an additional measure of protection. Therefore, at the countywide, or multi-jurisdictional level, preservation of habitat integrity could be furthered by adoption and implementation of the UGB concepts. However, there are additional aspects to habitat preservation which should be addressed, on both the countywide level and as related specifically to rural unincorporated land use policy.

Natural areas and communities of regional and state significance may be identified and designated for their uniqueness or the diversity of threatened or endangered species dependent upon these areas. The geographic extent of such areas may span more than one jurisdiction. An example is the serpentine soils habitat that is found through much of the eastern Diablo Range and foothills. For such areas, Regional Habitat Conservation Plans, or RHCPs, may help conserve habitats and ensure consistency between jurisdictions which have regulatory authority over these habitat areas. Types and intensities of various land uses within areas covered by habitat conservation plans should not be allowed to degrade the integrity of wildlife habitat and vegetation.

Recognizing that large scale preserves are not always possible, and that many areas of habitat may already be fragmented, another aspect of protecting the integrity of critical habitat involves preserving linkages between habitat areas. Such linkages, or "corridors" provide the effect of having larger intact preserves by permitting travel and interaction of species between non-contiguous areas. They also reduce the isolation of small populations of a species threatened with local extinction. Wildlife migration and movement patterns, the particular types of vegetation and habitat in a given area, and the type of land use and development that is permitted all factor in determining the location and type of linkages that are appropriate. In Santa Clara County, further

study of the usefulness of preserving wildlife factors, corridors or linkages between protected areas would be most useful.

[Note: Refer to the Rural Unincorporated Area Issues & Policies part of the General Plan for further elaboration and more detailed policies].

### **Policies and Implementation**

#### *C-RC 30*

Habitat and other resource areas not suitable or intended for urbanization should be excluded from urbanization, and non-urban development which occurs within resource conservation areas should minimize impacts upon habitat and biodiversity

#### *C-RC 31*

Areas of habitat richest in biodiversity and necessary for preserving threatened or endangered species should be formally designated to receive greatest priority for preservation, including baylands and riparian areas, serpentine areas, and other habitat types of major significance.

#### *C-RC 32*

Land uses permitted in resource conservation areas should not be allowed to degrade the integrity of natural habitat.

#### *C-RC 33*

Linkages and corridors between habitat areas should be provided to allow for migration and otherwise compensate for the effects of habitat fragmentation.

### **Implementation Recommendations**

#### *C-RC(i)10*

Augment existing countywide growth management (Urban Development Policy) by delineation and adoption of long term urban growth boundaries (UGBs) to more clearly differentiate resource conservation areas from lands intended for urbanization.

#### *C-RC(i)11*

Develop, as resources permit, “Regional Habitat Conservation Plans” (RHCPs) through joint effort of the County, cities, U.S. Dept. of Fish and Wildlife, and the state Dept. of Fish and Game.

#### *C-RC(i)12*

Develop in conjunction with “Regional Habitat Conservation Plans” educational programs and or materials for the public and landowners regarding sensitive resources within their area and available best management practices appropriate for preserving biotic resources.

#### *C-RC(i)13*

Acquisition of areas of significance through the County’s Open Space Authority, MROSD, County Parks, National Wildlife Refuge, and other agencies and non-profit organizations for permanent preservation

#### *C-RC(i)14*

Evaluate inventories of natural areas and habitat types to determine the need for linkages of various types, given the land use and development patterns, and other factors.

#### *Strategy #3: Encourage Habitat Restoration*

Strategy 3 promotes restoration of ecologies and habitats which have been degraded to the point that regeneration must be assisted. Although restoration efforts have much to recommend them,

such measures should be viewed as the option of last resort in comparison to the more cost effective, preventive strategies. Flood control projects that incorporate natural flood plain features, wetlands for augmenting waste water purification, and reforestation are three examples of restoration endeavors which have been found to be effective and cost-efficient, combining good resource and financial management objectives.

## **Policies and Implementation**

### *C-RC 34*

Restoration of habitats should be encouraged and utilized where feasible, especially in cases where habitat preservation and flood control, water quality, or other objectives can be successfully combined.

## **Implementation Recommendations**

### *C-RC(i)15*

Explore opportunities for restoration of habitat, particularly with respect to wetland, riparian, and other habitat types rich in diversity or needed to protect threatened and endangered species. {Implementors: Cities, County, RWQCB, state agencies}

### *Strategy #4: Evaluate Effectiveness of Environmental Mitigations*

Over the long term, many efforts to preserve habitat and biodiversity will prove successful, whereas others may not. Monitoring of changing conditions and the effectiveness of mitigations required of development projects will provide the information needed to improve upon existing strategies and programs. Although resources can be scarce for such needed follow-up studies, over time, evidence of the effectiveness of some mitigations and programs, such as riparian restoration will accumulate and instruct future habitat conservation efforts.

## **Policies and Implementation**

### *C-RC 35*

The status of various threatened and endangered species and the effectiveness of strategies and programs to preserve biodiversity should be monitored and evaluated on an ongoing basis.

### *C-RC 36*

Specific project mitigations for the purpose of preserving habitat should be monitored for a period of time to assure the likelihood of their effectiveness.

(Note: for more detailed policies and implementation recommendations regarding habitat and biodiversity preservation applicable specifically to rural areas, refer to the Rural Unincorporated Areas Issues & Policies part of the General Plan)

## **ENDNOTES: SOURCES USED**

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State of California, The Resources Agency. *Memorandum of Understanding: California's Coordinated Regional Strategy To Conserve Biological Diversity*. September 19, 1991.

Jones & Stokes Associates, Inc. *Sliding Towards Extinction: The State of California's Natural Heritage*. A report prepared at the request of the California Senate Committee on Natural Resources and Wildlife. 1987.

Jensen, Deborah; Tom, Margaret; and Harte, John. *In Our Own Hands: A Strategy for Conserving Biological Diversity in California*. California Policy Seminar (CPS) Brief, Vol. 2, No. 5, April, 1990.

# Appendix F

## San Rafael Municipal Code Title 14 Zoning

*Division III Overlay District Regulations  
Chapter 14.13 Wetland Overlay District (-WO)*

*City of San Rafael  
September 21, 1992*

*\*Used by permission from the City of San Rafael*

- 14.13.010 Specific Purposes
- 14.13.020 Criteria for Establishment of Wetland Overlay District for Identified and Unidentified Wetlands
- 14.13.030 Land Use Regulations (-WO)
- 14.13.040 Property Development Regulations (-WO)
- 14.13.050 Application for a Use Permit
- 14.13.060 Conditions of Approval
- 14.13.070 Findings
- 14.13.080 Wetland Restoration and Creation
- 14.13.090 Wetland Management Plan
- 14.13.100 Enforcement

### 14.13.010 SPECIFIC PURPOSES

Wetlands are indispensable and fragile natural resources subject to flooding, erosion, soil-bearing capacity limitations and other hazards. Destruction of or damage to wetlands threatens public safety and the general welfare. In addition to the general purposes listed in Section 14.01.030 and the purposes of the underlying zoning district, the purposes of the Wetland Overlay District include the following:

- A. To preserve and enhance the remaining wetlands in San Rafael by encouraging their use only for purposes compatible with their natural functions and environmental benefits;
- B. To prohibit in wetlands and discourage at adjacent upland sites those development activities that may adversely affect wetlands;
- C. To design development to avoid or minimize adverse impacts on wetland habitat;
- D. To encourage restoration of wetland sites;
- E. To prevent loss of life, property damage, and other losses and risks associated with flooding by providing floodwater passage for stormwater runoff and floodwaters that coincide with high tides;
- F. To protect property values by preventing damage from erosion from storms and high tides;
- G. To contribute to improved water quality by preventing or reducing increases in pollution caused by any means;
- H. To protect and enhance wildlife habitat, including that of rare, threatened and endangered plant and animal species;
- I. To provide sites for education and scientific research;
- J. To provide opportunities for recreational activities compatible with wetland habitat. (Ord. 1625 § 1 (part), 1992).

### 14.13.020 CRITERIA FOR ESTABLISHMENT OF WETLAND OVERLAY DISTRICT FOR IDENTIFIED AND UNIDENTIFIED WETLANDS

These regulations shall apply to all lots which have wetlands located within the City of San Rafael. The Wetland Overlay District on the Zoning Map is placed on those lots which have wetlands which have been identified. A list of lots with wetlands is available in the Planning Department.

Small wetlands not shown in the Wetland Overlay District are presumed to exist in the city, are protected under all of the terms and provisions of this Chapter, and shall be rezoned when they are identified. Submerged and tidelands lots are within the Water District, which requires compliance with the requirements of the Wetland Overlay District, except that such lots need not be rezoned to the Wetland Overlay District. (Ord. 1625 § 1 (part), 1992)

### 14.13.030 LAND USE REGULATIONS (-WO)

*P: Permitted by right; C: Conditional Use Permit; Blank: Not allowed.*

**TABLE 14.13.030**

<i>Type of Land Use</i>	<i>WO</i>	<i>Additional Use Regulations</i>
<b>Underlying Zoning District Uses</b>	C	(A), (B), (C), (D)
<b>Open Space/Parks/Recreation</b>		
Agriculture, cultivation of crops	C	
Open space, private		
Uses allowed in a public open space	C	(A), (B), (C), (D)
Uses allowed in a private covenant	C	(A), (B), (C), (D)
Open space, public		
Animal grazing	P*	*As permitted by the Open Space Management Plan and/or Park Plan conforming with the wetland use regulations. If a plan has not been adopted, then use regulations (A), (B), (C) and (D) apply with a use permit.
Animal husbandry	P*	
Horse keeping	P*	
Riding stables	P*	
Picnic areas	P*	
Trails	P*	
Public parks, playgrounds and recreation facilities	P*	
Private concessions in public parks	P*	
Recreation facilities, private (indoors and outdoors)	C	(A), (B), (C), (D)
Wildlife preserves or sanctuaries	C	(A), (B), (C), (D)
<b>Public/Quasi-Public Uses</b>		
Public facilities		
Public and utility facilities (pump stations, utility substations, storm drainage, ponds, water tanks, transmission facilities)	P*	
Public improvements (bridges, roads and levees)	P*	
Sewage or water treatment facilities, including wastewater ponds and irrigation areas	P*	
Schools		
Parochial, private	C	(A), (B), (C), (D)
Public	C	(A), (B), (C), (D)

- (A) In wetlands, the only uses allowed are the construction and maintenance of water-related structures such as piers, docks, walkways, observation decks and shelters, fences, wildlife management shelters, stormwater pumps and bridges.
- (B) Provided that any and all necessary permits or approvals required by local, State or Federal law shall be obtained.
- (C) Uses in, or near, wetland areas, shall be controlled or designed to have minimal adverse impact on wetland habitat.
- (D) Recreation/scientific activities in or near wetlands should be low intensity uses, such as bird watching, fishing, nature photography and study, wildlife observation, and scientific research and education. (Ord. 1625 § 1 (part), 1992)

#### 14.13.040 PROPERTY DEVELOPMENT REGULATIONS (-WO)

Development standards shall be those of the underlying zoning district with which a Wetland Overlay District is combined, provided that the following requirements shall be in addition and shall govern where conflicts arise.

- A. **Structures in Wetlands.** Any structures allowed in wetland areas (see Section 14.13.030(A)) must minimize adverse impacts on wetlands through construction on pilings to allow unobstructed flow of water, preserving the natural contour of the wetland and minimizing impairment, alteration, or loss of wetlands.
- B. **Wetland Setbacks.** The wetland setback shall be measured from the edge of a wetland, as determined consistent with the procedures in Section 14.13.05(A) (Determination of wetland boundaries) to any structure. The setback from a creek or drainageway wetland, or from the San Rafael Canal, shall be established consistent with the provisions of Section 14.16.080 (Creeks and other watercourses). For wetlands which are neither creeks nor drainageways, the wetland setback shall be a minimum of fifty feet (50'). A wetland setback up to one hundred feet (100') may be required on lots larger than two (2) acres in size, as determined through development review. **Exception:** An exception to the wetland setback may be granted if the Planning Commission makes the finding that:
  1. The proposed setback adequately protects the value of the wetland habitat to the satisfaction of the City after review by the appropriate public wildlife agencies and the public; or,
  2. The strict application of the setback requirement would substantially interfere with economically viable use of the property.
- C. **Buffer Areas.** Within wetland setback areas, appropriate measures, such as fencing, landscaping, setbacks for roads and parking lots, and natural habitat areas are required in the wetland setback to minimize adverse impacts on wetlands and wetland habitat.
- D. **Landscaping.** Landscaping which is non-invasive to wetland habitat shall be used in required wetland setbacks. Additionally, vegetation which enhances wetland habitat values and the use of native plants indigenous to the area is encouraged.
- E. **Erosion and Sedimentation Control.** During construction, every precaution shall be taken to prevent the disruption of adjacent wetlands. The Planning Department shall require

best-management practices to minimize siltation, sedimentation and erosion, subject to approval by the Department of Public Works. To ensure that sediment remains on the site and is not transported into wetlands, erosion and sediment controls shall be left in place until the site is stabilized with permanent vegetation.

**F. Stormwater Runoff.** Stormwater runoff systems shall be designed to minimize the increase in volume of stormwater runoff to a wetland from a development over the existing volume of runoff, as well as ensure that stormwater runoff is substantially free of debris, pollutants and silt. Stormwater runoff management proposals shall be submitted and are subject to approval by the Planning Department and the Department of Public Works.

**G. Fill.** Loss of wetlands due to filling shall be strictly avoided. Any request for a use permit for fill must demonstrate that the proposed fill cannot be avoided by a reduction in the size, scope, configuration or density of the development, or by changing the design of the development in a way that would avoid or result in fewer adverse effects on the wetland. If fill is unavoidable, the Planning Commission may approve a use permit for fill, provided that there shall be a minimum of two (2) acres of wetlands created or restored, on-site or off-site, for every acre of wetland lost, consistent with the provisions of Section 14.13.080(C) (Required wetland restoration or creation) and Section 14.13.070 (Findings.)  
**Exception:** An exception to the fill regulations may be granted if the Planning Commission makes the finding that:

1. The strict application of the regulations prohibiting fill would substantially interfere with economically viable use of the property; or,
2. The wetland is isolated and an acre or less in size, and there is no net loss in quantity or quality of wetlands.

**H. Incentives for Wetland Creation.** To encourage the creation of new wetland areas, an exception to the property development regulations of the underlying zoning district pertaining to setbacks, height, landscaping, and usable outdoor area may be granted, consistent with Section 14.13.080(A) (Incentives for wetland creation.)

**I. Wetland Vegetation.** Removal of wetland vegetation or changing of drainage characteristics by private parties which adversely affects wetlands shall be avoided and requires a Use Permit (see Section 14.13.070, Findings). (Ord. 1625 § 1 (part), 1992)

## 14.13.050 APPLICATION FOR A USE PERMIT

**A. Determination of Wetland Boundaries.** The specific boundaries of a wetland shall be determined by one (1) of the following methods:

1. The U.S. Army Corps of Engineers will, at the request of the applicant, make a jurisdictional determination delineating wetland boundaries; or,
2. A qualified wetland expert, at the request of the applicant, may identify the wetland boundary in accordance with the procedures specified in the *Federal Manual for Identifying and Delineating Jurisdictional Wetlands*, as most recently adopted. The Corps shall verify the accuracy of, and may render adjustments to, the boundary delineation. The wetland boundaries shall be those with which the Corps concurs. Corps concurrence shall occur prior to issuance of a building and/or grading permit. Should

there be an adjustment by the Corps to a wetland boundary which affects wetland setbacks or a use permit for fill, a use permit amendment shall be required, consistent with Chapter 22 (Use Permits.)

3. For development where no fill of wetlands is proposed, a qualified wetland expert, at the expense of the applicant, may identify the wetland boundary in accordance with the procedures specified in the *Federal Manual for Identifying and Delineating Jurisdictional Wetlands*, as most recently adopted. In lieu of Corps verification of the delineation, the applicant may pay the City for the hiring of an independent, qualified wetlands biologist to verify and, if necessary, modify the wetland boundaries.

**B. Agency/Organization Consultations.** The applicant for a use permit is strongly encouraged to consult with the U.S. Army Corps of Engineers, as well as the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, California Department of Fish and Game, California Coastal Conservancy, California State Lands Commission, San Francisco Bay Conservation and Development Commission, San Francisco Bay Regional Water Quality Control Board, Marin-Sonoma Mosquito Abatement District and any other appropriate agencies or organizations early in the planning process. The application for a use permit should include a record of the persons consulted in each of the appropriate agencies or organizations.

**C. Required Information.** In addition to the above requirements, the following information shall be submitted by an applicant for a use permit in the Wetland Overlay District.

1. **Project description** with an assessment of impacts of the proposed use and development on wetlands and associated wildlife, including adjacent wetlands and adjacent uplands. For development which proposes a wetland setback less than one hundred feet (100') on a lot larger than two (2) acres in size, and/or a setback from a drainageway, include a description of how the proposed setback adequately protects the value of the wetland habitat. For development which proposes fill in a wetland, include the following:
  - a. An explanation of why the proposed development cannot be accomplished by a reduction in the size, scope, configuration, or density of a development.
  - b. A biological assessment of the current habitat values of any wetlands proposed to be lost including local and regional habitat values.
  - c. Identify mitigation site(s) and how it would be permanently protected.
2. **Project purpose**, stating the general function and objectives of the development, and showing that, if achieved, the proposed avoidance or mitigation measures would result in no net loss of wetlands.
3. **Wetland map** drawn to scale, delineating the extent of the wetland(s) on the site; indicating the jurisdictional boundaries of the Corps and other public agencies; mapping soil and vegetation types according to the classification system outlined in the *Federal Manual for Identifying and Delineating Jurisdictional Wetlands* as most recently adopted; and, showing water sources with a general characterization of the wildlife habitat.
4. **Site plan** showing the location and dimensions of all existing and proposed structures, roads, and other installations within two hundred feet (200') of the wetland

boundaries, both on-site and off-site; and the relationship of the proposed activity and any potentially affected wetland to the entire site owned by the applicant.

5. **Grading and drainage plan** showing elevations of the site and adjacent lands within a minimum of two hundred feet (200') of the wetland boundaries, both on-site and off-site, at one (1) foot contour intervals; water sources; the location and specifications for all proposed filling, grading, and vegetation removal, including the amounts and methods; and drainage patterns. Demonstrate acceptable erosion and sedimentation control, appropriate stormwater runoff management and adequate wildlife habitat protection during the construction period.
6. **Construction schedule** of the proposed construction sequence, showing when each stage of the development will be completed, including the total area of soil surface to be disturbed during each stage and estimated starting and completion dates. In no case shall the existing natural vegetation be destroyed, removed or disturbed more than fifteen (15) days prior to initiation of the construction activities.

**D. Modifications to List of Required Information.** The Planning Director may, prior to determination of completeness date, waive the submission of listed information, or may require additional information when necessary to verify compliance with the provisions of this Chapter, or to evaluate the proposed use. (Ord. 1625 § 1 (part), 1992).

#### 14.13.060 CONDITIONS OF APPROVAL

In approving a use permit, the Planning Commission may impose reasonable conditions. If a use adversely affects existing wetlands, such as altering hydrological conditions, the use permit application may be denied, or mitigation measures may be required. Where fill is proposed, Wetland Restoration or Creation shall be required, accordant with Section 14.13.080(C) (Required wetland Restoration or Creation.) Where applicable, and as a condition of approval prior to issuance of a building permit, the following may be required by the planning department:

- A. Verification of Corps concurrence with the applicant's determination of wetland boundaries; and/or,
- B. A Section 404 or Section 10 permit (or its equivalent successor) from the U.S. Army Corps of Engineers; and/or,
- C. A letter from the California State Department of Fish and Game stating compliance with its Wetlands Policy; and/or,
- D. A Certificate of Conformance With Water Quality Standards issued by the State Water Resources Control Board; and/or,
- E. A permit from the Bay Conservation and Development Commission. (Ord. 1625 § 1 (part) 1992).

#### 14.13.070 FINDINGS

- A. **Uses Within a Wetland.** The Planning Commission may approve an application for a use permit for a proposed use within a wetland as allowed in Section 14.13.030 (Land Use

Regulations), if it is found that the proposed use is consistent with the purposes of Section 14.13.010 (Specific purposes) and that the proposed use:

1. Is a water-related structure as identified in Section 14.13.030 (Land Use Regulations); and,
2. Minimizes impairment to the wetland's functional characteristics, existing contour and wildlife habitat; and,
3. Complies with all wetland regulations contained herein; and,
4. Cannot be accomplished by a reduction in the size, scope, configuration or density of the development as proposed, or by changing the design of the development in a way that would avoid or result in fewer adverse effects on the wetland.

**B. Uses Outside of a Wetland.** The Planning Commission may approve an application for a use permit for a proposed use outside a wetland as allowed in Section 14.13.030 (Land Use Regulations), if it is found that the proposed use is consistent with the purposes of the base district, and:

1. Minimizes impairment to the adjacent wetland's functional characteristics and wildlife habitat; and,
2. Complies with all wetland regulations contained herein. (Ord. 1625 § 1 (part), 1992)

#### **14.13.080 WETLAND RESTORATION AND CREATION**

**A. Incentives for Wetland Creation.** Where a property owner proposes to expand an existing on-site wetland, and where no fill in an existing wetland is proposed, the Planning Commission may grant an exception to the property development standards of the underlying base district. An exception shall not be granted for wetlands created as a condition of approval for fill in a wetland, and is limited to the following site development regulations:

1. **Setbacks.** The minimum setbacks from the lot lines of the underlying zoning district may be decreased where the proposed setback is in character with the surrounding development, and where such decrease will not unreasonably affect abutting sites nor reduce wetland setbacks.
2. **Height.** The maximum allowed building height for a residential structure may be increased to no greater than thirty-six (36) feet where scenic views or solar access on surrounding properties are not affected, and where the proposed height is in character with the surrounding development.
3. **Landscaping.** Wetlands may be included as fulfilling part of the landscaping requirements, except that the requirement for parking lot landscaping shall be met.
4. **Usable Outdoor Area.** Wetlands may be included as fulfilling part of the usable outdoor area requirements of this Title where the building and landscape design is such that the residents of the building may participate in passive outdoor recreational activities such as bird watching, fishing, and nature photography.

B. The Planning Commission may approve an exception to the property development standards of the underlying base district, if it finds that:

1. The proposed development is consistent with the intent of the provisions of the underlying zoning district development regulations and with other applicable provisions of this Title;
2. The proposed development adequately protects the value of the wetland habitat; and,
3. There is a net gain in wetland quality and no fill in or damage to existing wetlands on the site.

C. **Required Wetland Restoration or Creation.** The purpose of this section is to prevent a loss of wetlands by ensuring new wetlands when fill is proposed. Wetland restoration or creation shall be required for fill in a wetland, per Section 14.13.040(G) (Fill). Wetland restoration or creation shall meet the following minimum standards and shall occur pursuant to an approved Wetland Management Plan (Section 14.13.090).

1. **On-site Wetland Restoration or Creation.** The restoration or creation of wetlands shall be of at least equal quality and of a similar type to that of the existing wetlands, and on or adjacent to the site, where possible.
2. **Off-Site Wetland Restoration or Creation.** Where the applicant has demonstrated to the Planning Commission that restoration or creation on-site or adjacent to the site is infeasible due to technical constraints, such as lot or wetland size or wetland type, or that a wetland of a different type or location is strongly justified based on regional needs or the functional value of the impacted wetland, the Planning Commission may accept or recommend an alternative proposal for restoration or creation of a wetland off-site.
3. **Timing of Wetland Restoration or Creation.** Restoration or creation of wetlands should be completed prior to construction of the development. Where implementation of a development would adversely affect mitigation efforts, construction activities may be started prior to restoration or creation of wetlands. (Ord. 1625 § 1 (part), 1992)

### 14.13.090 WETLAND MANAGEMENT PLAN

An applicant for a use permit for fill shall be required to submit a Wetland Management Plan prepared by a qualified wetlands expert. An applicant for a use permit for a conditional use in a wetland, or as part of environmental review under the California Environmental Quality Act may be required to prepare a Wetland Management Plan.

A. **Required Information.** A Wetland Management Plan shall include any or all of the following items as deemed necessary by the Planning Director:

1. **Goals and objectives**, including a description of the functional relationships sought in the new wetland, such as habitat areas, topography and soil characteristics, water flow patterns and water levels, and upland buffers;
2. **Wetland preservation, restoration, and creation techniques and standards**, identifying the location and size of wetland areas to be preserved, restored or created, and including:

- a. Water-quality parameters, water source, water depths, water-control structures, and water-level maintenance practices needed to achieve the necessary ambient water conditions and characteristics;
- b. Planting plans (identifying target wildlife species) specifying plant species, quantities, locations, size, spacing or density; source of plant materials or seeds; timing, season, water, and nutrient requirements for planting; and, plant protection measures;
- c. Site preparation specifications for, if needed, soil amendments, removal of unsuitable fill, and for weed control;
- d. Wetland protection measures for minimizing impacts during grading and construction, and for minimizing disturbances to wildlife habitat;
- e. Mosquito management, demonstrating ecological mosquito control developed in consultation with the Marin-Sonoma Mosquito Abatement District; and,
- f. For wetland creation, identification of disposal area for any dredged material.

3. **Implementation and monitoring plan**, providing:

- a. Specific criteria for evaluating whether or not the goals of the Wetland Management Plan are being achieved at various stages in the development.
- b. Specifications for irrigation as needed, removal of exotic and nuisance vegetation, and maintenance.
- c. Responsibility for monitoring the hydrology, vegetation and wildlife of the wetland with a specified monitoring time frame (five [5] years recommended for tidal marshes, and ten [10] years recommended for other wetlands).
- d. Provision for correction of design defects in the Plan and any needed plant replacement.
- e. Identification of method(s) used to ensure that the wetland will be protected in perpetuity.

4. **Management organization**, demonstrating fiscal, administrative and technical competence of sufficient standing to successfully execute the overall development.

5. **Cost estimate**, sufficient to cover the cost of implementing and maintaining the wetland. In addition, bonds ensuring fulfillment of the development may be required.

**B. Approval of a Wetland Management Plan.** A Wetland Management Plan may be approved, approved with conditions, or disapproved by the Planning Commission, with the Commission's decision appealable to the City Council, upon finding that it is consistent with the purposes of this Chapter. (Ord. 1625 § 1 (part), 1992)

### **14.13.100 ENFORCEMENT**

In the event of illegal fill or similar activity, such as grading, dredging, removal of wetland vegetation by private parties, or changing of drainage characteristics by private parties which adversely impacts a wetland, the City Council shall have the power to order wetland restoration and creation measures for the damaged or destroyed wetland area by the person or agent responsible for the violation, consistent with the fill regulations in Section 14.13.040(G) (Fill). If the responsible person or agent does not complete such measures within a reasonable time following the order, the City may undertake to restore the affected wetland to its prior condition and/or create or restore other wetlands for the purpose of offsetting losses sustained as a result of the violation at the expense of the property owner and/or the person or agent responsible for the violation. Covered expenses include all wetland restoration or creation costs as well as administration and enforcement costs. To guide restoration and creation actions, the Planning Department shall have the power to order the property owner and/or the person or agent responsible for the violation to develop a plan as described in Section 14.13.090 (Wetland Management Plan). (Ord. 1625 § 1 (part), 1992)

# Appendix G

## Rules and Process for Paying into the Wetland Restoration Trust Fund

*County of Sacramento*

*Planning and Community Development Department*

*August 17, 2000*

To: Interested County Resident

From: The Sacramento County Planning And Community Development Department

Subject: Rules and Process for paying into the Wetland Restoration Trust Fund

### BACKGROUND

In May of 1991 the Sacramento County Board of Supervisors adopted a No-Net-Loss of Wetlands Policy (Conservation Element CO-62 and CO-83). As a result the Wetland Restoration Trust Fund (Resolution 91-0858) was implemented to provide financial compensation as mitigation for the loss of wetlands, due to development, not covered under Section 404 of the Federal Clean Water Act. Such losses are typically less than 1/3 of an acre. Compensation for lost wetlands is calculated at \$35,000 per acre, or fraction thereof. Monies paid into the trust fund are used to manage, acquire and/or preserve wetlands elsewhere in Sacramento County.

### WHEN MUST I MITIGATE FOR THE LOSS OF WETLANDS UNDER THE COUNTY'S NO NET LOSS POLICY?

- If the project affects less than one acre of wetland, and therefore qualifies for a Nationwide General Permit with no federal mitigation or compensation required, or;
- If the project affects one to ten acres of wetland, and thus qualifies for a Nationwide General Permit, however; the mitigation required by the Army Corps of Engineers would allow a net loss in wetland acreage.

Then you must mitigate for the loss of wetlands by either paying into the fund or by conventional mitigation means.

### HOW MUCH DO I PAY?

You may pay to the County of Sacramento an amount based on a rate of \$35,000.00 per acre for the unmitigated/uncompensated wetlands.

### WETLANDS PERMITTING PROCESS

#### ***Project Application***

The applicant submits a project application to the Planning Department and pays initial fees for planning analysis and for the Department of Environmental Review and Assessment's (DERA) Initial Study. The Planning Department may request additional information on the application through the "884" process. The "884" process provides agencies 30 days in which to notify applicants of the need for more information necessary to complete their application.

The Planning Department prepares a staff report that evaluates the project with regard to the Zoning Code, County General Plan, and other relevant local regulations. The project is then forwarded to DERA for environmental analysis.

### ***Environmental Review***

When DERA receives the application they may request additional information from the applicant in a separate “884” process. The CEQA timelines start when DERA deems the application complete.

Wetland status is determined:

- By the applicant on the application;
- By the DERA analyst through field checking and reference to habitat maps, or;
- Through an approved Nationwide or 404 permit, received prior to DERA processing.

If wetlands are present on the project site, then DERA requires the applicant to provide a Corps verified wetlands delineation. The Army Corps of Engineers (Corps) will send a letter verifying the delineation. Note that the Corps also requires a rare endangered species inventory. When fairy Shrimp are involved, the FWS currently prescribes a two year sampling period. Practically speaking most applicants assume Fairy Shrimp are present.

### ***Relationship to the 404 process***

The County’s environmental analysis and the Corps’ 404 permit are independent analyses. Neither DERA nor the Planning Department requires a 404 permit to be in hand prior to CEQA analysis, or for County approval. The timelines are different and might slow the process too much since the 404 permit can take up to 2 years for approval. DERA however, strongly encourages applicants to initiate the 404 permitting process prior to CEQA analysis.

The benefits of having a 404 permit in hand before CEQA analysis are potentially great. First, if the environmental analysis for the 404 permit is available, DERA may use it as part of their analysis. This saves the applicant the cost of a separate wetland mitigation plan. Second, the Corps may require changes to the project during the 404 process. If DERA bases its analysis on an original project design, then parts of the CEQA analysis may be invalid.

### ***Mitigation***

If the plan mitigates significant impacts to the satisfaction of DERA, then the project may need only a negative declaration to comply with CEQA. Otherwise, the Board of Supervisors may require compensation as outlined in the mitigation measures proposed by the environmental document and the planning staff report.

Prior to adoption of the current General Plan DERA treated sites of less than one acre as insignificant. The General Plan includes the no-net-loss-policy for all wetlands. Most applicants prefer to mitigate for sites of less than one acre by paying into the County’s mitigation fund. Larger sites are usually mitigated both on and off-site through the mitigation plan prepared under CEQA or Federal permitting. Typical compensation required by the Corps is 1:1. The habitat quality is important so the ratio may be greater than 1:1. The presence of listed species complicates the process primarily because of complex interactions between the Corps and U.S. Fish and Wildlife Service.

# Appendix H

## California Rangeland Trust Standard Agricultural Easement

Draft: July 6, 2000

### DEED OF AGRICULTURAL CONSERVATION EASEMENT AND AGREEMENT CONCERNING EASEMENT RIGHTS

This Grant Deed of Agricultural Conservation Easement is granted on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_ (“Grantor”), to the California Rangeland Trust, a California nonprofit corporation (“Grantee”), for the purpose of forever conserving agricultural productivity, maintaining open space created by working landscapes and maintaining the natural balance of the ecosystem of the subject property.

#### **Recitals**

- A. Grantor is the sole owner in fee simple of certain real property consisting of approximately \_\_\_\_\_ acres, located in \_\_\_\_\_ County, California, and described in “Exhibit A” attached hereto (the “Property”). The Grantor intends to grant a conservation easement over the parcel(s), hereinafter referred to as the “Easement Area” or Easement (described and illustrated on map attached as “Exhibit B”). The Easement Area consists of approximately \_\_\_\_\_ acres of land, together with any improvements thereon.
- B. Grantee is a “qualified conservation organization” as defined by the Internal Revenue Code and is eligible to hold this Conservation Easement pursuant to Section 815.3 of the California Civil Code. As certified by resolution of its governing body, Grantee accepts the responsibility of monitoring and enforcing the terms of this Conservation Easement and upholding its conservation purposes forever.
- C. The property consists of [general description of property to follow].
- D. The Grantor intends to convey for valuable consideration [make a charitable gift of] the Easement Area interest conveyed by this Conservation Easement to the Grantee for the primary purpose of assuring that the agricultural productivity, open space created by working landscapes and the natural balance of the ecosystem (referred to herein as the “Conservation Values”, and more specifically described in Exhibit C attached hereto) will be conserved and maintained forever, and that uses of the land that are inconsistent with these Conservation Values will be prevented or corrected. The parties agree that the current agricultural use of, and improvements to, the Easement Area are consistent with the conservation purposes of this Conservation Easement.
- E. Grantor further intends, as owner of the Easement Area, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity.
- F. The conservation purposes of this Conservation Easement are recognized by, and the grant of this Conservation Easement will further the policy purposes of, the following clearly delineated governmental conservation policies:

The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. §§4201, et seq., whose purpose is “to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses and to

assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, County and private programs and policies to protect farmland”; and Section 815 of the Civil Code of California.

The federal Farmland Protection Program, authorized by P.L. 104-127, 16 U.S.C. 3830, Section 388, whose purpose is to authorize the Secretary of Agriculture to purchase conservation easements or other interests in land with prime, unique, or other productive soil for the purpose of protecting topsoil by limiting non-agricultural uses of the land.

Section 815 of the California Civil Code, which defines perpetual conservation easements.

Division 10.2 of the California Public Resources Code, which creates the California Farmland Conservancy Program.

Section 51220 of the California Government Code which declares a public interest in the preservation of agricultural lands.

The \_\_\_\_\_ County General Plan, as amended in \_\_\_\_\_, which includes as one of its goals to protect all viable farmlands designated as prime, of statewide importance, unique, or of local importance from conversion to and encroachment of non-agricultural uses.

Resolution No. \_\_\_\_\_, approved by the Board of Supervisors of \_\_\_\_\_ County on \_\_\_\_\_ which expresses support for the acquisition of an agricultural conservation easement on the Property, and finds that such protection is consistent with the County’s General Plan.

- G. All holders of liens or other encumbrances upon, and mineral rights on or beneath the Easement Area, have agreed to subordinate their interests in the Easement Area to this Conservation Easement and to refrain forever from any action that would be inconsistent with its conservation purposes [except any encumbrances specifically agreed to in advance and listed in “Exhibit D”].
- H. The Conservation Values of the Easement Area, its current uses and state of improvement, are described in a “Present Conditions Report” (attached as “Exhibit E”), prepared by the Grantee with the cooperation of the Grantor, consisting of maps, photographs, and other documents, and acknowledged by both to be complete and accurate as of the date of this Conservation Easement. Both Grantor and Grantee have copies of this report. It will be used by the Grantee to assure that any future changes in the use of the Easement Area will be consistent with the terms of this Conservation Easement. This report, however, is not intended to preclude the use of other evidence to establish the present condition of the Easement Area if there is a controversy over its use.
- I. Natural balance of the ecosystem means the balance between the agricultural uses of the Easement Area and the habitat that those uses have created and sustained. Grantee recognizes that this ecosystem exists because of the past stewardship of the landowner and depends on the future good stewardship decisions of the landowner and its successors. Grantor is entrusted with those future management decisions. Maintaining the natural balance of the ecosystem shall not prevent changes in the agricultural uses of the land, including intensification and vegetation management, provided that such changes do not

significantly impair the Conservation Values of this Conservation Easement. Grantee is entrusted with determining that the Conservation Values have been protected.

### ***Deed and Agreement***

For the reasons given, and in consideration of their mutual promises and covenants, the Grantor hereby grants and conveys to the Grantee, its successors and assigns, and Grantee hereby accepts, a perpetual “conservation easement” as defined by Section 815.1 of the Conservation Easement Act of 1979 (California Civil Code, Section 815 et seq.), and of the nature and character described in this Conservation Easement.

1. **Use of Property.** It is the purpose of this Conservation Easement to preserve the agricultural productivity, open space from working landscapes and the natural balance of the ecosystem of the Easement Area; to provide for continued farming and ranching activities; to engage in future ranching activities, and to preserve the open space character, wildlife habitat, and scenic qualities of the Easement Area (the Conservation Values, as further described in Exhibit C hereto).
2. **Prohibited Acts.** Grantor promises that it will not perform, or knowingly allow others to perform, any act or use on or affecting the Easement Area described above in conflict with the covenants set out in this Conservation Easement. Grantor authorizes Grantee to enforce these covenants. However, unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Easement Area after any Act of God or other event over which Grantor has no control. Grantor understands that nothing in this Conservation Easement relieves it of any obligation or restriction on the use of the Easement Area imposed by law.
3. **Construction of Buildings, Facilities and Other Structures.** The construction or reconstruction of any building, facility or structure of any type, except those existing on the date of this Conservation Easement is prohibited except in accordance with paragraphs 3 (a) through (e) and 11 below.
  - (a) *Fences.* Existing fences may be repaired and replaced, and new fences may be built anywhere on the Easement Area for purposes of reasonable and customary management of livestock and wildlife, without permission of the Grantee. All new fences shall be sited and designed to protect the Conservation Values of the Easement Area, including but not limited to wildlife corridors.
  - (b) *Agricultural Structures and Improvements.* New buildings or other structures and improvements to be used solely for agricultural purposes, including the processing or sale of farm products predominantly grown or raised on the Easement Area, but not including a dwelling, may be built on the Easement Area with the advance written permission of the Grantee. Existing structures on the Easement Area may be repaired, reasonably enlarged and replaced at their current location without further permission of the Grantee, provided that such repair, enlargement, or replacement does not impair the Conservation Values. The Grantor will locate structures so as to not interfere with, impair, or otherwise burden the agricultural productivity and other Conservation Values of the Easement Area.
  - (c) *Residential Dwellings.* All existing single family residential dwellings and appurtenant structures may be repaired, reasonably enlarged and replaced at their current location without further permission of the Grantee. No additional dwellings or appurtenances

may be constructed on the Easement Area except to the extent specifically permitted in this Conservation Easement.

- (d) *Billboards.* No billboards shall be erected on the Easement Area. Signs denoting the names and addresses of residents on the Easement Area, denoting allowable business uses, or describing other permitted activities on the Easement Area, or to post the property to control unauthorized entry or use, are permitted, insofar as such signs do not significantly impair the Conservation Values of the Easement Area.
  - (e) *Farm Labor and Tenant Housing.* All existing dwellings or structures used to house farm tenants and employees may be repaired, reasonably enlarged and replaced at their current location without further permission of the Grantee. New single or multifamily dwellings or structures to be used solely to house farm tenants, employees or others engaged in agricultural production of the Easement Area may be built on the Easement Area only with advance written permission by the Grantee. The Grantor shall locate and design such structures so as to not interfere with, impair or otherwise burden the agricultural productivity and other Conservation Values of the Easement Area.
4. **Subdivision.** The subdivision of the Easement Area, whether by physical, legal or any other process, is prohibited except with the advance written permission of the Grantee, and as permitted by law. Such permission shall be subject to the Grantee's determination that such subdivision does not interfere with, impair or otherwise burden the Conservation Values of the Easement Area.

Subdivisions of land are permitted under this Conservation Easement. However, any division of ownership will result in an additional burden on the monitoring and enforcement responsibilities of the Grantee. Therefore, the transfer of any parcel in less than its entirety (except for transfers solely to change the method of holding title by the same party or parties) shall require the payment of a transfer fee to the Grantee's monitoring fund. The fee shall be equal to \_\_\_\_\_ percent (\_\_\_%) of the fair market value of the property transferred; however, Grantee may reduce the fee at its discretion. Once a parcel has been transferred and a fee paid, no further fee will be required unless the parcel is further subdivided.

*[Optional: The Grantor represents and agrees that no additional, separate legal parcels currently exist within the Property that may be recognized by a certificate of compliance pursuant to California Government Code § 66499.35 based on previous patent or deed conveyances, subdivisions, or surveys. Grantor will not apply for or otherwise seek recognition of additional legal parcels with the Property based on certificates of compliance].*

5. **Development Rights.** Grantor hereby grants to Grantee all development rights, except as specifically reserved to Grantor herein, that are now or hereafter allocated to, implied, reserved or inherent in the Easement Area, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter may be bounded and described, or to any other property adjacent or otherwise. The Easement Area may not be used for the purpose of calculating permissible development or lot yield of any other property.
6. **Resource Stewardship.** In order to protect the Conservation Values, Grantor is encouraged to conduct all ranching and farming operations in accordance with good management practices that address soil and water conservation, erosion control, pest management, nutrient management, and habitat protection.

## 7. Mining.

- (a) *Surface Mining.* The mining, extraction, or removal of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance, using any surface mining method, is prohibited. Notwithstanding the foregoing, soil, sand, gravel or rock may be extracted without further permission from Grantee provided that such extraction is: of material solely for use on the Property, is in conjunction with and in furtherance of activities permitted herein, is accomplished in a manner which is consistent with, does not interfere with, impair or otherwise burden the Conservation Values, and does not disturb more than one acre of the Property. Notwithstanding any other provision here of, this section 7 shall be interpreted in a manner consistent with section 170(h) of the Internal Revenue Code, the Treasury regulations adopted pursuant thereto, and any other successor provisions addressing the same subject.

*[WARNING TO GRANTOR: It is unclear whether the extraction or removal of sand and gravel would jeopardize a charitable contribution deduction under Internal Revenue Code section 170. See, e.g., Great Northern Nekoosa Corporation vs. U.S., 1998 Stand. Fed. Tax Rep. (CCH) P 49,811, 97-2 USTC ¶50,591 (1997). Your tax counsel should review this and any other tax issues with you carefully.]*

- (b) *Other Mining Methods.* Mining using methods other than surface mining is allowed where consistent with the applicable provisions of paragraph 11 hereof, and where the mining and all activities therewith will not interfere with, impair or otherwise burden the Conservation Values and will at most have a limited localized impact on the Property.

8. **Timber Harvesting.** Trees on the Easement Area may only be cut to control insects and disease, to prevent personal injury and property damage, and for on-site firewood and other domestic uses, including construction and repair of permitted buildings and fences on the Easement Area. [Any timber harvesting or harvesting on the Easement Area for purposes other than those described above shall be conducted as allowed by law, on a Sustainable Yield Basis as that term is defined by the California Department of Forestry, and pursuant to a plan approved as required by law].

9. **Paving and Road Construction.** Existing paved roads may be maintained, repaved, and rebuilt on the original alignment at the Grantor's discretion without permission of the Grantee. No portion of the Easement Area presently unpaved shall be paved, nor shall any road for access or other purposes be constructed without the permission of the Grantee. The Grantee shall not give such permission unless the Grantor demonstrates to Grantee that the proposed paving, grading, or covering of the soil, or the location of any such road, will not substantially diminish or impair the Conservation Values. Unpaved roads that presently exist may be relocated as unpaved roads as required by agricultural operations, provided that abandoned roads will be returned to agriculture or a natural condition. For purposes of this paragraph, "pave", "paved", or "paving" shall include covering of the soil surface with concrete, asphalt, gravel, or other material other than soil.

10. **Agricultural Intensification.** Certain changes in agricultural operations, including intensification, within areas identified as open rangeland or farmland, are not considered to impair the Conservation Values. The present conditions report will identify areas of open rangeland (areas with less than ten percent tree canopy cover) and lands which have been farmed within the previous 50 years (farmland). Conversion of farmland to other agricultural uses (including intensification) is permitted. Conversion of ten percent (10%) of the open rangeland to other agricultural uses is permitted, provided that such

conversion does not occur within one hundred (100) feet of any blue line stream. Additional conversion of open rangeland shall require the prior approval of Grantee. Prior to applying for such approval, Grantor shall clearly identify the area proposed to be converted, the location of any blue line streams, vernal pools or other sensitive habitat, and show adequate natural areas for corridors. In the absence of unusual circumstances, no more than fifty percent (50%) of the open rangeland shall ever be converted to other uses.

11. **Trash.** The dumping or accumulation of any kind of trash, refuse or derelict equipment on the Easement Area is prohibited. However, this shall not be interpreted to prevent the storage or accumulation of agricultural products and byproducts on the Easement Area, provided that such storage or accumulation is done in accordance with all applicable laws and regulations and in a manner so as to avoid any impairment of the Conservation Values.

12. **Industrial, Recreational and Non Agricultural Commercial Uses.** Industrial, recreational, and non-agricultural commercial uses, including building and facilities associated therewith, are not permitted on the Easement Area without the advance written permission of the Grantee. Grantee shall not give such permission, unless the Grantor demonstrates to Grantee that the proposed use, buildings or facilities will not interfere with, impair or otherwise burden the Conservation Values. Notwithstanding the foregoing, passive recreational uses (such as wildlife viewing, hiking and photography), commercial hunting and fishing uses, as well as noncommercial uses and facilities for the personal use of residents on the Easement Area, are permitted, without advance permission, provided that they do not interfere with, impair or otherwise burden the Conservation Values and are undertaken in a manner consistent with all applicable laws.

13. **Water Rights.** Grantor shall retain, maintain and preserve the right to use all water rights associated with the Easement Area, which Grantor represents are sufficient to sustain present and future agricultural production and Conservation Values on the Easement Area. Grantor shall not transfer, encumber, lease, sell, or otherwise separate such water rights from the Easement Area.

Grantor may transfer, encumber, lease, sell or otherwise separate from the Easement Area those water rights identified in Exhibit F, which water rights Grantor has demonstrated to Grantee's satisfaction are not necessary to sustain present or future agricultural production or Conservation Values on the Easement Area.

14. **Feedlot.** The establishment or maintenance of a commercial feedlot is prohibited. For purposes of this Conservation Easement, "commercial feedlot" is defined as a permanently constructed confined area or facility within which the property is not grazed or cropped annually, and which is not used and maintained for purposes of engaging in the business of feeding livestock. For purposes of this Conservation Easement, a "commercial feedlot" shall not be defined to include the establishment, use or maintenance of corrals, holding pens or pastures. Nothing in this section shall prevent Grantor from confining livestock for discretionary seasonal feeding, or from leasing grazing rights to the easement area for livestock owned by others, and from feeding on a seasonal basis livestock owned by such a lessee.

15. **Rights Retained by Grantor.** The Grantor retains the right to perform any act not specifically prohibited or limited by this Conservation Easement. Grantor's present uses and compatible historic uses of the Easement Area for agriculture and ranching are deemed to be permitted activities consistent with the terms of this Conservation Easement. The Grantor retains all ownership rights consistent with the preservation of the Conservation

Values of the Easement Area, including, but not limited to, the right to exclude any member of the public from trespassing on the Easement Area (other than Grantee and its representatives) and the right to sell or otherwise transfer the Easement Area to anyone Grantor chooses. Without limiting the generality of the foregoing, and subject to the specified restrictions of this Conservation Easement, the Grantor expressly reserves the right to hunt on the Easement Area, as permitted by law. Grantor also retains the right to intensify the agricultural use of the Easement Area, provided that such intensification does not diminish or impair the other Conservation Values of the Easement Area.

16. **Responsibilities of Grantor and Grantee Not Affected.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantor as owner of the Easement Area. Among other things, this shall apply to:

- (a) *Taxes.* Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Easement Area or the property underlying the Easement Area by competent authority. If the Grantee is ever required to pay any taxes or assessments on the Easement Area or underlying property, Grantor will promptly reimburse Grantee for the same.
- (b) *Upkeep and Maintenance.* Grantor shall continue to be solely responsible for the upkeep and maintenance of the Easement Area. Grantee shall have no obligation for the upkeep or maintenance of the Easement Area.
- (c) *Liability and Indemnification.* In view of Grantee's negative rights, limited access to the land, and lack of active involvement in the day-to-day management activities on the Easement Area, Grantor shall and hereby agrees to indemnify, protect, defend and hold Grantee, its officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns (collectively "Grantee") harmless from and against all liabilities, costs, losses, orders, liens, penalties, damages, expenses, or causes of action, claims, demands, or judgments, including without limitation reasonable attorney's fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause, unless solely due to the gross negligence or willful misconduct of the Grantee. Grantee shall be named additional insured on all of Grantor's insurance policies related to the Property.

17. **Enforcement.** Grantee, its agents and representatives shall have the right to enter with reasonable advance notice onto the Easement Area for purposes of monitoring compliance with the terms of this Conservation Easement. If the Easement Area is not accessible by public roads, Grantor hereby grants Grantee adequate access to the Easement Area for the limited purposes of monitoring and enforcement of the terms of this Conservation Easement. Grantee's monitoring and access activities shall not interfere with normal agricultural operations on the Property.

If the Grantee finds what it believes is a violation, it may at its discretion take appropriate legal action. Except when an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Easement Area, the Grantee shall give the Grantor written notice of the violation and thirty days to correct it before filing any legal action. If Grantee determines that a violation may exist or has occurred, the Grantee may seek an injunction to stop it, temporarily or permanently. Grantee may also seek an injunction requiring the Grantor to restore, or pay for the restoration of, the Easement Area to its

condition prior to the violation, including but not limited to, reasonable attorney's fees. The failure of Grantee to discover a violation or to take immediate action shall not bar it from doing so at a later time. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Furthermore, the provisions of California Civil Code Section 815, et seq., are incorporated herein by this reference and this Conservation Easement is made subject to all of the rights and remedies set forth therein. Grantee shall be entitled to recover its costs incurred in any such enforcement effort, including reasonable attorneys' fees.

With respect to the management of the resources within the easement area, the following shall apply:

Grantee will obtain a present conditions report for each project. This report will correspond closely to the values to be protected by the easement and will contain written descriptions of the property and its resources, aerial and ground-level photos and maps. The report will locate all site improvements and any property features called out in the easement (e.g. riparian zones, viewsheds, forest resources, etc.). In addition to identifying the management measures that contribute to the existing condition of the property, the present conditions report will serve as the basis for all future monitoring and enforcement.

Stage 1: Except in rare circumstances where the proposed easement area needs immediate improvement, Grantee will encourage Grantor to develop a management plan specific to the property. This will not, however, be a requirement. Grantee believes that, in most cases, the existing stewardship on the ranches it selects for conservation easement projects has supported and enhanced the Conservation Values these ranches provide. The standard employed by Grantee to ensure resource conservation will be that of the "prudent person" rule, which is commonly applied to trustee relationships.

Stage 2: Where remedial action is needed from the outset, or if, as a result of joint monitoring by Grantee and Grantor, Grantee identifies a problem, Grantor will be required to develop a management plan that addresses soil and water conservation, erosion control, pest management, nutrient management, forage maintenance and habitat protection. The specific elements of the plan will require Grantee's approval and Grantee will make sure that a plan is in place and being utilized each year during its annual monitoring. Grantor and Grantee will conduct joint qualitative monitoring to ensure that the Conservation Values identified in the easement are being protected. This monitoring will be supported through the baseline conditions report and subsequent reviews, using photographs and narrative descriptions, among other evaluation tools. Monitoring will also consider issues like site potential, weather conditions, unusual economic circumstances, vegetative variety and quality and trends in resource conditions.

Stage 3: If an identified problem persists, or if Grantor and Grantee disagree regarding the problem or its remedy, a certified rangeland manager or other qualified professional will be brought in to develop a management plan at Grantor's expense. The specific elements of the plan will require Grantee's approval and Grantee will make sure that a plan is in place and being utilized each year during its annual monitoring. A violation of such a management plan will be considered a violation of the easement.

Stage 4: If problems continue to persist, Grantee will take legal action to protect the Conservation Values. If egregious resource damage is threatened or occurs, Grantee

has the right to bypass the preceding stages and pursue legal action to prevent further imminent damage to the Conservation Values.

If Grantee believes that immediate action must be taken to address immediate threats to the Conservation Values, a third party (as identified in Stage 3) may be brought in to evaluate resource conditions and suggest remedies.

**18. Forbearance No Waiver.** Forbearance by the Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement. No delay or omission in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

**19. Grantee Transfer of Easement.** Grantee may transfer the Easement created by this Conservation Easement to (1) any public agency authorized to hold interests in real property as provided in Section 815.3 of the Civil Code of California; or (2) any private nonprofit organization that, at the time of transfer, is a “qualified organization” under Section 170(h) of the U.S. Internal Revenue Code and under Section 815.3(a) of the Civil Code of California. In selecting an appropriate transferee entity, preference will be given to a qualified agency or organization with an agricultural conservation purpose, which has board, staff, or consultants with practical agricultural management experience, and which agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this Conservation Easement. If such agency or organization cannot be found, or is not suitable for any reason, then another qualified agency or organization which expressly agrees to assume the responsibility imposed on the Grantee by this Conservation Easement may be selected. Grantor shall be provided notice of any proposed transfer, information about proposed transferee(s), and opportunity for input. If more than one qualified agency or organization meets the foregoing criteria and are equally capable of effecting the conservation purposes of this Conservation Easement, Grantor may select the organization which shall be the transferee.

If Grantee ever ceases to exist or no longer qualifies under Section 170(h) of the U.S. Internal Revenue Code, or applicable state law, a court of competent jurisdiction shall transfer this Conservation Easement to another qualified organization having substantially similar purposes that agrees to assume the responsibilities imposed by Grantee by this Conservation Easement, provided that Grantor shall be provided notice of and an opportunity to participate in the court proceedings.

**20. Grantor Transfer of the Easement Area.** Any time the Easement Area itself or any interest in it is transferred by the Grantor to any third party, the Grantor shall notify the Grantee in writing prior to the transfer of the Easement Area, and the deed of conveyance shall expressly refer to this Conservation Easement. Failure to notify Grantee or include the required reference to this Conservation Easement in the deed shall not affect the continuing validity and enforceability of this Conservation Easement.

**21. Amendment of Easement.** This Conservation Easement may be amended only with the written consent of Grantee and Grantor. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Section 170(h) of the U.S. Internal Revenue Code, California Civil Code Section 815, et seq., or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with California law governing conservation easements.

22. **No Public Dedication or Public Access.** Nothing contained in this Conservation Easement shall be deemed to be a gift or dedication of any portion of the Easement Area for use by the general public. This instrument does not convey a general right of access to the public.

23. **Grantor's Title Warranty; No Prior Conservation Easements.** Grantor represents and warrants that Grantor has good fee simple title to the Easement Area, free from any and all liens or encumbrances (including without limitation, any deeds of trust or mortgage) [or that any lender has subordinated to this agreement] and hereby promises to defend the same against all claims that may be made against it. Grantor represents and warrants that the Easement Area is not subject to any other conservation easement. Grantor may grant any subsequent conservation easements on the Easement Area provided that such easements do not interfere with or reduce the Conservation Values of this easement. Grantee shall be notified at least ninety days in advance, in writing, of any proposed conservation or other easement for the Easement Area, which notice shall include the proposed easement.

24. **Environmental Provisions.**

(a) *Grantor's Environmental Warranty.* Grantor warrants that Grantor has no knowledge of a release or threatened release of hazardous substances or wastes on or that could affect the Easement Area and, as more generally set out in paragraph 15(c) above, agrees to indemnify, defend, protect and hold Grantee, its directors, officers, employees, agents, and contractors, and their heirs, successors, and assigns, harmless from and against all litigation costs, demands, penalties, damages, liabilities, claims or expenses (including reasonable attorney fees) arising from or connected with any release of hazardous waste or violation of federal, state, or local environmental laws as a result of or arising out of the activities of Grantor on the Property or any breach of this Conservation Easement.

(b) *Grantee Not An Owner, Operator, Or Responsible Party.* Notwithstanding any other provision herein to the contrary, the parties do not intend this Conservation Easement to be construed such that it creates in or gives the Grantee:

(1) the obligations or liability of an "owner" or "operator" as those words are defined and used in environmental laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC § 9601 et seq. and hereinafter "CERCLA");

(2) the obligations or liability of a person described in 42 USC § 9607(a)(3) or (4);

(3) the obligations of a responsible person under any applicable Environmental Laws, as defined below;

(4) the right to investigate and remediate any Hazardous Materials, as defined below, associated with the Property; or

(5) any control over Grantor's ability to investigate, remove, remediate, or otherwise clean up any Hazardous Materials associated with the Property.

(c) *Assumption of Environmental Liabilities and Indemnification.* From and after acquisition of the Easement by Grantee or any of Grantee's successors or assigns (whether by operation of law or otherwise) Grantor and Grantor's successors in interest shall be solely responsible for and agree, jointly and severally: (A) to assume all past, present and future liabilities, whether known and unknown and whether now existing or

hereafter discovered, arising out of and related to environmental conditions of whatsoever kind or nature on, under or affecting the Property, including, without limitation, with respect to the presence or release of Hazardous Substances; and (B) to indemnify, protect and defend with counsel acceptable to Grantee, and hold Grantee and its directors, officers, employees, agents, attorneys, representatives, successors and assigns (the “Indemnified Parties”) harmless from and against any claims (including, without limitation, third party claims for personal injury or death, damage to property, or diminution in the value of property), actions, administrative proceedings (including informal proceedings), judgments, damages, punitive damages, penalties, fines, costs, liabilities (including sums paid in settlements of claims), remedial action, compliance requirements, enforcement and clean-up actions of any kind, interest or losses, attorneys’ fees (including any fees and expenses incurred in enforcing this indemnity), consultant fees, and expert fees that arise directly or indirectly from or in connection with: (i) the presence, suspected presence or Release of any Hazardous Substance whether into the air, soil, surface water or groundwater of or at the Property; (ii) any violation or alleged violation of Environmental Law affecting the Property, whether occurring prior to or during Grantor’s ownership of the Property and whether caused or permitted by Grantor or any person other than Grantor; (iii) any claim or defense by Grantor or any third party that any Indemnified Party is liable as an “owner” or “operator” of the Property under any Environmental Law; or (iv) any breach of the representations and warranties set forth in sections \_\_\_\_\_ hereof.

(d) *Definitions.*

- (1) The term “Environmental Law” shall include, but shall not be limited to, each statute named or referred to below, and all rules and regulations there under, and any other local, state and/or federal laws, ordinances, rules, regulations, orders and decrees, whether currently in existence or hereafter enacted, which govern (i) the existence, cleanup and/or remedy of contamination or pollution on property; (ii) the protection of the environment from soil, air or water contamination or pollution, or from spilled, deposited or otherwise emplaced contamination or pollution; (iii) the emission or discharge of Hazardous Substances into the environment; (iv) the control of Hazardous Substances; or (v) the use, generation, transport, treatment, removal or recovery of Hazardous Substances.
- (2) The term “Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of any Hazardous Substance into the environment (including, without limitation, the continuing migration of Hazardous Substances into, onto or through the soil, surface water, or groundwater, and the abandonment or discarding of barrels, containers, and other receptacles containing any Hazardous Substance), whether caused by, contributed to, permitted by, acquiesced to or known to Grantor or Grantor’s predecessors or successors in interest.
- (3) The term “Hazardous Substance” shall mean (a) any oil, flammable substance, explosives, radioactive materials, hazardous wastes or substances, toxic wastes or substances or any other wastes, materials or pollutants which (i) pose a hazard to the Property or to persons on or about the Property or (ii) cause the Property to be in violation of any Environmental Law; (b) asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, or radon gas; (c) any chemical, material or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous

materials,” “extremely hazardous waste,” “restricted hazardous waste,” or “toxic substances” or words of similar import under any applicable local, state or federal law or under the regulations adopted or publications promulgated pursuant thereto, including the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 USC section 9601, et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 USC section 6901, et seq.; the Hazardous Materials Transportation Act, 49 USC section 1801, et seq.; the Federal Water Pollution Control Act, 33 USC section 1251, et seq.; the California Hazardous Waste Control Law (“HWCL”), Cal. Health & Safety section 25100, et seq., Hazardous Substance Account Act (“HSAA”), Cal. Health & Safety Code section 25300, et seq., the Porter-Cologne Water Quality Control Act (the “Porter-Cologne Act”), Cal. Water Code section 13000, et seq., the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65); Title 22 of the California Code of Regulations, Division 4, Chapter 30; (d) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Property or the owners and/or occupants of property adjacent to or surrounding the Property, or any other person coming upon the Property or adjacent property; and (e) any other chemical, materials or substance which may or could pose a hazard to the environment.

25. **Interpretation.** This instrument shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes. If any provision of this Conservation Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
26. **Captions.** The captions in this Conservation Easement have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.
27. **Perpetual Duration.** The easement created by this instrument shall be a servitude running with the land in perpetuity. Every provision of this Conservation Easement that applies to Grantor and Grantee shall also apply to and be binding upon their respective agents, heirs, executors, administrators, successors and assigns.
28. **Notices.** Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by United States certified mail, return receipt requested, addressed as follows or such other address as either party from time to time shall designate by written notice to the other.

To Grantor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Grantee: California Rangeland Trust  
1221 H Street  
Sacramento, CA 95814-1910  
Phone: 916/444-2096

29. **Condemnation.** If all or any part of the Easement Area is taken by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, so as to terminate this Easement in whole or in part, Grantors and Grantees shall act jointly to recover the full value of their respective interests in the Property so taken or purchased, and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantors and Grantees in connection with the taking or purchase shall be paid out of the amount recovered. If only a portion of the Easement Area is subject to such exercise of eminent domain, this Conservation Easement shall remain in effect as to all other portions of the Easement Area.

30. **Extinguishment.** If circumstances arise in the future that render the purpose of this easement impossible to accomplish, this easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, and the amount of the compensation to which Grantee shall be entitled from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by California law at the time, in accordance with Paragraph 31, Valuation. Grantee shall use any proceeds received under the circumstances described in this paragraph in a manner consistent with its conservation purposes, which are exemplified by this Conservation Easement.

31. **Valuation.** This easement constitutes a real property interest immediately vested in Grantee. For the purpose of paragraph 30, Extinguishment, the parties stipulate that this easement has a fair market value determined by multiplying (a) the fair market value of the Property unencumbered by the easement (minus any increase in value attributable to improvements made after the date of this Conservation Easement) by (b) the ratio of the value of the easement at the time of this Conservation Easement to the value of the Property, unencumbered by the easement, at the time of this Conservation Easement.

For purposes of this paragraph, Grantor and Grantee agree that the ratio of the value of the easement to the value of the Property unencumbered by the easement is \_\_\_\_\_. This ratio shall remain constant.

32. **Laws Currently in Effect.** All references in this Conservation Easement to statutes, regulations and other laws shall be deemed to refer to those statutes, regulations and laws currently in effect, or as amended (or any successor provision then applicable).

33. **Present Conditions/Use.** The terms “present conditions” or “present uses” mean the conditions or uses as they exist on the effective date of this Conservation Easement.

34. **Recordation.** Grantee shall promptly record this instrument in the official records of \_\_\_\_\_ County, California, and promptly notify the Grantor through the mailing of a conformed copy of the recorded easement.

35. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement Area and supersedes all prior discussions, negotiations, understandings or agreements relating to the Easement Area, all of which are merged herein.

36. **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it.

37. **Attorneys' Fees.** Should proceedings be brought to enforce or interpret any of the terms of this instrument, the prevailing party in any such proceedings shall be entitled to recover from the non-prevailing party its costs, including reasonable attorneys' fees.

38. **Permission.** Whenever permission, consent or approval ("permission") is required pursuant to this Conservation Easement, such permission shall be obtained in advance and in writing signed by the party from whom permission is to be obtained. Whether permission should be granted or denied shall be determined based upon the purposes of this Conservation Easement, and shall not be unreasonably withheld.

39. **Exhibits.** The exhibits attached hereto are incorporated herein by this reference:

- Exhibit A: Property Description
- Exhibit B: Description and Map of Easement Area
- Exhibit C: Conservation Values
- Exhibit D: Permitted Encumbrances
- Exhibit E: Present Conditions Report
- [Exhibit F:Alienable Water Rights] [Optional]

40. **Effective Date.** This Conservation Easement is effective as of the date of the last signature executed below, or upon recordation in the Official Records of \_\_\_\_\_ County, California, if any signature is inadvertently undated.

Agreed to and executed by:

## GRANTOR

\_\_\_\_\_  
Date

### *Grantor's Signature Witnessed by Notary Public:*

State of: \_\_\_\_\_ County of: \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ before me, \_\_\_\_\_, \_\_\_\_\_ personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon whose behalf the person(s) acted, executed the instrument. Witness my hand and official seal,

\_\_\_\_\_  
Notary's Signature

## GRANTEE

### *California Rangeland Trust*

By: \_\_\_\_\_  
Steve Sinton, Chairman  
Board of Directors  
Date

# Appendix I

## Contact Information

### FEDERAL PROGRAMS

**Conservation Reserve Program:** Contact the USDA-NRCS California State Office. 430 G Street #4164, Davis, CA 95616-4164. Phone: (530) 792-5600, Fax: (530) 792-5790.

**Wetlands Reserve Program:** Administered by the Farm Service Agency (FSA). FSA California Office, 430 G Street #4161, Davis CA 95616-4161. Phone: (530) 792-3520. On the web at [www.fsa.usda.gov/ca/ca.htm](http://www.fsa.usda.gov/ca/ca.htm).

**Partners for Fish and Wildlife:** On the web at [partners.fws.gov/index.htm](http://partners.fws.gov/index.htm). Phone: (916) 414-6446.

**Wildlife Conservation Board:** Administered by the California Department of Fish and Game, 1807 13th St., Suite 103, Sacramento, CA 95814-7117. Phone: (916) 445-8448.

### STATE PROGRAMS

**California Farmland Conservancy Program:** Contact the NRCS California State Headquarters. Phone: (530) 792-5600. On the web at: [www.consrv.ca.gov/dlrp/CFCP/faq.htm](http://www.consrv.ca.gov/dlrp/CFCP/faq.htm).

**California Coastal Conservancy:** 1330 Broadway, 11th Floor, Oakland, CA 94612. Phone: (510) 286-1015. On the web at: [ceres.ca.gov/coastalconservancy/index.htm](http://ceres.ca.gov/coastalconservancy/index.htm).

**California Waterfowl Habitat Program:** Administered by the California Department of Fish and Game, phone: (916) 653-5284, or the California Waterfowl Association, phone: (916) 648-1406.

**Inland Wetland Conservation Program:** Administered by the Wildlife Conservation Board, 1807 13th St., Suite 103, Sacramento, CA 95814-7117. Phone: (916) 445-1093.

**California Forest Improvement Program:** Administered by the California Department of Forestry and Fire Protection. Phone: (800) 738-8733.

**Resource Conservation Districts:** On the web at: [www.openspacecouncil.org](http://www.openspacecouncil.org).

**San Francisco Bay Joint Venture:** The SFBJV is housed at the Coastal Conservancy, 1330 Broadway, 11th Floor, Oakland, CA 94612. Phone: (510) 286-1015. On the web at: [ceres.ca.gov/coastalconservancy/index.htm](http://ceres.ca.gov/coastalconservancy/index.htm).

### PRIVATE PROGRAMS

**American Farmland Trust:** 260 Russell Boulevard, Suite D, Davis, CA 95616. Phone: (530) 753-1073, Fax: (530) 753-1120. On the web at: [www.farmland.org](http://www.farmland.org).

**California Nature Conservancy:** 201 Mission Street, 4th Floor, San Francisco, CA 94105. Phone: (415) 777-0487.

**California Rangeland Trust:** 1221 H St., Sacramento, CA 95814-1910. Phone: (916) 444-2096.

**California Waterfowl Association:** 4630 Northgate Blvd., Suite 150, Sacramento, CA 95834.  
Phone: (916) 648-1406, Fax: (916) 648-1665. On the web at: [www.calwaterfowl.org](http://www.calwaterfowl.org).

**The Conservation Fund:** 1823 Eleventh St., Suite 1-B, Sacramento, California 95814. Phone:  
(916) 498-1479, Fax: 916-498-1481. On the web at: [www.conservationfund.org](http://www.conservationfund.org).

**Ducks Unlimited:** Ducks Unlimited Western Regional Office, 3074 Gold Canal Dr., Rancho  
Cordova, CA 95670. Phone: (916) 363-8257. On the web at: [www.caldu.org](http://www.caldu.org).

**Trout Unlimited:** California State Office, 828 San Pablo Ave., Suite 244, Albany, CA 94706.  
Phone: (510) 528-5390, Fax: (510) 528-7880. On the web at: [www.tu.org](http://www.tu.org).

**Trust for Public Land:** 116 New Montgomery St., 3rd Floor, San Francisco, CA 94105. Phone:  
(415) 495-5660. On the web at: [www.tpl.org](http://www.tpl.org).

**Conservation Corps or the statewide California Conservation Corps:** Call the National  
Association of Service and Conservation Corps. Phone: (202) 737-6272. On the web at:  
[www.nascc.org](http://www.nascc.org).

**Resource Conservation Districts:** RCDs are located in the same office as the Soil Conservation  
Service. The regional office for California will direct callers to the local office. Phone: (916)  
447-7237.

**University of California Cooperative Extension Service:** U.C. Extensions are listed under  
county governments in the telephone directory. Statewide specialists are located at the  
Berkeley, Davis and Riverside campuses.

## FUNDRAISING

**The Foundation Center in San Francisco:** 312 Sutter St. #606, San Francisco, CA 94108-4313.  
Phone: (415)397-0902, Fax: (415) 397-7670.

**The Fundraising School:** Indiana University-Purdue University at Indianapolis, 550 West  
North St., Suite 301, Indianapolis, IN 46202-3162. Phone: (317) 274-7063.

**The Management Center of San Francisco:** 870 Market St. #360, San Francisco, CA 94102-  
3009. Phone: (800)344-6627 ext. 2635. On the web at: [www.opportunitynocs.org](http://www.opportunitynocs.org).

## ENVIRONMENTAL EDUCATION

**Aquatic Outreach Institute:** 1327 South 46th St. #155, Richmond, CA, 94804.  
Phone: (510) 231-5655, Fax: (510) 231-5703. On the web at: [www.oainstitute.org](http://www.oainstitute.org).

**Marine Science Insitute:** Phone: (650) 364-2760 ext. 10. On the web at: [www.sfbaymsi.org](http://www.sfbaymsi.org).

**River of Words:** Phone: (510) 848-1155, or on the web at: [row@irn.org](mailto:row@irn.org).

**Save The Bay's Canoes in Sloughs:** 1600 Broadway, Suite 300, Oakland, CA 94612.  
Phone: (510) 452-9261, Fax: (510) 452-9266. On the web at [www.savesfbay.org](http://www.savesfbay.org).

**San Francisco Bay National Wildlife Refuge:** PO Box 524, Newark, CA 94560.  
Phone: (408) 262-5513.

**Shorebird Nature Center:** 160 University Ave., Berkeley, CA 94710.  
Phone: (510) 644-8623.

## COMMUNITY BASED RESTORATION

**Alameda County Clean Water Program:** On the web at:  
[www.co.alameda.ca.us/pwa/watervolref.htm](http://www.co.alameda.ca.us/pwa/watervolref.htm).

**Audubon Society:** State Office, 555 Audubon Place, Sacramento, CA 95825. Phone: (916) 481-5332, Fax: (916) 481-6228.

**Golden Gate National Parks Association - Crissy Field Restoration:** Crissy Field Volunteer Hotline, Phone: (415) 561-3034 ext. 3445.

**Friends of Sausal Creek:** Stuart Richardson, Woodland Restoration Projects Leader, 1738 Excelsior Ave., Oakland, CA 94602. Phone: (510) 864-7175, Fax: (510) 864-7175.

**Izaak Walton League of America:** 707 Conservation Lane, Gaithersburg, MD. 20878.  
Phone: (800) BUG-IWLA. On the web at: [www.iwla.org](http://www.iwla.org).

**Save The Bay:** 1600 Broadway, Suite 300, Oakland, CA 94612.  
Phone: (510) 452-9261, Fax: (510) 452-9266. On the web at: [www.savesfbay.org](http://www.savesfbay.org).

# Appendix J

## A Sampler of Funding Sources for Land Conservation and Protection

### FEDERAL PROGRAMS

**North American Wetlands Conservation Act (NAWCA):** NAWCA provides federal funds specifically to “conserve North American wetland ecosystems and waterfowl and the other migratory birds and fish and wildlife that depend on such habitats.” (PL 101-233) Eligible projects include acquisition and restoration of wetlands, among other activities. Proposals are accepted twice a year in April and August and require a 50/50 nonfederal match. A small grants program is also available with a May deadline. Contact: US Fish & Wildlife Service, (703) 358-1711. Website: <http://northamerican.fws.gov/granpro.html>.

**National Coastal Wetlands Conservation Act:** Funds generated from excise taxes on sport fishing equipment and boat gasoline taxes are set aside in the Sport Fish and Restoration Account of the Aquatic Resources Fund for the acquisition, restoration, and enhancement of coastal wetlands systems. This program funds only state agencies, i.e. State Coastal Conservancy and Wildlife Conservation Board. Grants are available to coastal states and require either a 25% or 50% match. Contact: Verlyn Ebert, U.S. Fish and Wildlife Service; 911 NE 11th Avenue, Portland, OR 97232-4181, (503) 231-6128. Website: [www.fws.gov/cep/cwgccover.html](http://www.fws.gov/cep/cwgccover.html).

**Land and Water Conservation Fund (LWCF):** LWCF is composed primarily of revenue from outer-continental shelf leases and royalties. Although the authorized level of funding annually is \$900 million, Congress appropriates much less for the acquisition of land for conservation by the U.S. Forest Service, Bureau of Land Management, National Park Service, U.S. Fish and Wildlife Service, and the U.S. Forest Service. Contact your Congressional representative or regional office of any of the federal agencies for more specific information. Website: [www.ahrinfo.org/](http://www.ahrinfo.org/).

**Central Valley Project Improvement Act/Bureau of Reclamation:** A variety of funding programs are available for the acquisition, restoration, and study of wetlands and other water resources in the Central Valley. Contact Chuck Solomon at the Bureau of Reclamation at (916) 978-5052. The Bureau of Reclamation also has a wetlands program with grant funding. Contact Bob Shaffer at (916) 414-6459. Website: [www.mp.usbr.gov/](http://www.mp.usbr.gov/).

### U.S. Department of Agriculture, Natural Resource Conservation Service

**Wetlands Reserve Program (WRP):** Funds are available through the U.S. Department of Agriculture, Natural Resource Conservation Service for the acquisition of conservation easements on agricultural lands. Both permanent and 30-year easements can be purchased under the WRP, with priority given to projects that maximize wildlife values. Contact: Alan Forkey, Wetlands Biologist, (530) 792-5653 or Anita Brown, State Information Officer (530) 792-5644. Website: [www.wl.fb-net.org/ca.htm](http://www.wl.fb-net.org/ca.htm).

**Wildlife Habitat Incentive Program (WHIP):** WHIP is a voluntary program for private landowners who want to develop or improve fish and wildlife habitat on their property. The Natural Resources Conservation Service (NRCS) administers the program, providing technical assistance and up to 75% of the cost of the project. NRCS also

offers watershed planning services that may lead to the commitment of financial resources for project implementation. Contact your local NRCS for more information. Website: [www.nrcs.usda.gov/NRCSProg.html](http://www.nrcs.usda.gov/NRCSProg.html).

**Army Corps of Engineers - Sections 1135 & 206:** Section 1135 funds are available for the restoration and acquisition of wetlands previously affected by an Army Corps project. For more information, contact the Army Corps of Engineers at (415) 977-8702. Section 206 funds provide for the restoration of aquatic ecosystem structure and function. Projects usually include the manipulation of the hydrology in and along bodies of water, including wetlands and riparian areas. No relationship to an existing Corps project is required. Contact Guy Brown at (916) 557-5270.

**Environmental Protection Agency:** Various grants in the range of \$25,000-\$350,000 are available through the EPA for watershed planning, restoration and stewardship studies for state, tribal and local governments. Grants are also available for Environmental Justice Issues, Pollution Prevention, Brownfields Assessment, Community/Economic Development and Environmental Education. Their public information line is (415) 744-1500 and may be reached at Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105. Website: [www.epa.gov/epahome/grants.htm](http://www.epa.gov/epahome/grants.htm).

**Watershed Assistance Grants (WAG):** The River Network allocates funding to build capacity of existing or new watershed partnerships to protect and restore their watersheds. Website: [www.rivernet.org](http://www.rivernet.org).

**Partners for Fish & Wildlife Program:** The U.S. Fish and Wildlife Service offers cost-share programs to restore and enhance wildlife habitats on private land. For more information, call (916) 414-6446. Website: <http://partners.fws.gov/index.htm>.

**Land Exchange Program:** The Bureau of Land Management (BLM) seeks to preserve wildlife habitat and provide improved public access through this exchange program. The BLM exchanges public land for prime private wildlife habitat based on fair market value of lands. Private landholders and land trusts are eligible applicants. Contact: Dave McIlroy, 2800 Cottage Way, Suite West-1834, Sacramento, CA 95825-1886. Phone: (916) 978-4671. Website: <http://pub4.ca.blm.gov/caso/landsales.html>.

## STATE PROGRAMS

**California Coastal Conservancy:** The Conservancy has grant funding for the acquisition, restoration and enhancement of significant coastal and bay resource and habitat lands through the Bay Area Conservancy Program. Grants are also available for the preparation of plans for the enhancement and restoration of wetlands, dunes, rivers, streams, and watersheds. State and local agencies and non-profits may apply. Contact the State Coastal Conservancy at (510) 286-1015. Website: [www.coastalconservancy.ca.gov](http://www.coastalconservancy.ca.gov).

**CALFED Bay-Delta Program:** This program is comprised of both state and federal agencies that have been charged with finding a solution to the long-standing water wars in the Delta. Ecosystem restoration is a major component of the program and over \$100 million has been allocated to date. Projects and programs must be within the Bay-Delta and its tributary watersheds, and local, state and federal agencies, non-profits and individuals are eligible to apply. In the future, RFPs will be released in January. A wide range of grant amounts has been allocated, from a few thousand to millions. Call Rebecca Fauver at (916)

654-1334 for more information. CALFED Bay-Delta Program, 1416 Ninth Street, Suite 1155, Sacramento, CA 95814. Website: <http://calfed.ca.gov/programs.html>.

**Transportation Enhancement Activities Program:** The federal Transportation Equity Act for the 21st Century (TEA-21) extends the life and intent of ISTEA through 2003, including the requirement that states spend a minimum of 10% of their Surface Transportation Program funds on “transportation enhancements” or conservation-related projects such as the acquisition of scenic lands, easements, and historic sites, construction of bicycle trails, removal of outdoor advertising, and archeological/historic preservation. Eligible projects must relate to a transportation facility and be above and beyond normal transportation projects or mitigation. Non-federal matching funds are required. California’s TEA funds are separated into four portions, with the bulk of the funding available through regional transportation planning agencies. Local, state, and federal agencies are eligible to receive funding; non-profits are encouraged to submit joint applications. Application deadlines vary. Contact: Marsha Mason, Caltrans TEA Office, 1120 N Street, Sacramento, 95814. Phone: (916) 654-5275 or your local regional transportation planning agency. Website: [www.dot.ca.gov/hq/TransEnhAct](http://www.dot.ca.gov/hq/TransEnhAct).

**Wildlife Conservation Board (WCB) - Inland Wetlands Conservation Program and Riparian Habitat Conservation Program:** WCB acquires and restores wildlife habitat throughout California. WCB also manages the Inland Wetlands Program for the acquisition and restoration of wetlands in the Central Valley and the Riparian Habitat Conservation Program that focuses on protecting and restoring riparian systems throughout the state. For more information on available funding, contact Marilyn Cundiff-Gee (Inland Wetlands) or Scott Clemons (Riparian) at (916) 445-8448. Website about WCB: <http://ceres.ca.gov/wetlands/agencies/wcb.html>.

**California Farmlands Conservancy Program:** The CA Farmlands Conservancy Program (formerly the Agricultural Land Stewardship Program) within the State Department of Conservation provides long-term protection of farmland through grants for the purchase of agricultural conservation easements, fee title acquisition projects, policy/planning projects and land improvement projects. Local agencies and non-profits are eligible to apply. Contact: Charles Tyson, Program Coordinator, Office of Land Conservation, 801 K Street, MS 13-71, Sacramento CA 95814. Phone: (916) 324-0862. Website: [www.consrv.ca.gov/dlrp/CFCP](http://www.consrv.ca.gov/dlrp/CFCP).

**Environmental Enhancement and Mitigation Program (EEM):** Established in 1989, the EEM Program requires the state to spend an additional \$10 million a year over a 10-year period from FY 1991-92 to FY 2000-01 beyond what is legally required to mitigate the effects of transportation facility development. Grants are available for projects that mitigate, directly or indirectly, the environmental impacts of transportation facilities. This program awards funds in the following three categories: Highway Landscape and Urban Forestry, Resource Lands, and Roadside Recreation. Local, state, or federal agencies, non-profit organizations, or public/private partnerships, are eligible to apply. Requests are generally limited to \$250,000. No matching funds are required, although matching funds greatly strengthen your application. Contact: Bill Borden, California Resources Agency, 1416 Ninth Street, Room 1311, Sacramento, 95814. Phone: (916) 653-5656. Website: [http://ceres.ca.gov/cra/eemp\\_new.html](http://ceres.ca.gov/cra/eemp_new.html).

**Habitat Conservation Fund:** The California Department of Parks and Recreation administers this grant program for local public agencies for the acquisition and restoration of wildlife habitats and significant natural areas. Eligible projects include acquisition/restoration of deer/mountain lions, rare, threatened and endangered species, wetlands, riparian,

anadromous fish and trout habitat and urban trail/wildlife corridor projects. Contact Odel King at (916) 653-8758, California Department of Parks and Recreation, PO Box 942896, Sacramento, 94296-0007. Website: [www.cal-parks.ca.gov/grants/HCF.htm](http://www.cal-parks.ca.gov/grants/HCF.htm).

#### **State Water Resources Control Board (SWRCB) - Nonpoint Source & Water Quality**

**Planning Programs:** SWRCB offers funding (grants and loans) for projects that improve or protect water quality that is impaired or threatened by non-point source pollution through the NPS section of the SWRCB. State and local agencies and non-profits may apply. For more information, contact Paul Roggensack (loans to address water quality associated with discharges and estuary enhancement) at (916) 657-0673, Paul Lillebo [205(j) planning grants] at (916) 657-1031, or Lauma Jurkevics [319(h) implementation grants] at (916) 657-0518. Website: [www.swrcb.ca.gov/nps/grants.html](http://www.swrcb.ca.gov/nps/grants.html).

**Department of Fish and Game (DFG) Fines:** DFG collects fine monies for fish and game code violations. County fish and game committees typically administer these funds. Contact your local Fish and Game office for information.

**Caltrans Mitigation:** Caltrans frequently looks for wetland projects that can be used to mitigate approved highway projects. Contact your local Caltrans office.

**Urban Streams Restoration Program:** This program is offered by the Department of Water Resources Division of Planning and Local Assistance. The objective is to assist communities in reducing damages from stream bank and watershed instability and floods while restoring the environmental and aesthetic values of streams, and to encourage stewardship and maintenance of streams by the community. For more info, call Sara Denzler at (916) 327-1664. Website: <http://www.dpla.water.ca.gov/environment/habitat/stream/usrp.html>.

**Rivers and Trails Program:** This program is offered by the National Park Service. Rivers and Trails staff provide planning and technical assistance to rivers, trails, greenways, watershed, and open space efforts. Their role is to help achieve goals set collectively by the partners. Applications must be received before August 1st for the fiscal year beginning October 1st. Website: [www.nps.gov/pwro/rtca](http://www.nps.gov/pwro/rtca).

## **LOCAL SOURCES**

**General Obligation Bonds:** Cities, counties, and recreation and park districts have authority to issue bonds for park and open space purposes. If approved, bonds and the interest they incur are re-paid through an increase in property taxes. Current law requires passage by a 2/3 vote – bonds issued to fund-specific, popular projects are more likely to be approved.

**Assessments:** An assessment may also be referred to as a “special” or “benefit” assessment, and involves the levying of a charge on property owners to provide financing for public improvements. A Landscaping and Lighting Act Assessment District is specifically designed to fund landscaping, street lighting, and open space acquisition/improvement projects. For example, Proposition KK approved by voters in 1994, created a landscaping and lighting assessment district in Eastern Contra Costa County that is used by the East Bay Regional Park District and its municipal partners to fund open space and trail improvements in this portion of the Park District.

**Local Park Districts:** Many local or regional park districts are actively involved in acquiring and restoring wetland and riparian habitat. For more information, contact your local park district office.

**Flood Control Districts:** The acquisition and restoration of wetlands is increasingly recognized as providing both environmental and flood control benefits. Contact your local district to determine if funds are available.

**San Francisco Bay Regional Water Quality Control Board:** The Regional Board makes an effort to direct Administrative Civil Liability fines to local projects. For more information, contact Will Bruns at (510) 622-2327 or Carol Thornton at (510) 622-2419.

## PRIVATE ORGANIZATIONS

**National Fish and Wildlife Foundation (NFWF):** Funds are available for acquiring significant resource lands for the protection and restoration of sensitive fish, wildlife and plant species within NFWF's Wetlands and Private Lands and Wildlife and Habitat Initiatives. Other programs eligible for funding include Conservation Education, Fisheries Conservation and Management, and Neotropical Migratory Bird Conservation. Federal, state, and local agencies and non-profits may apply. Requested amounts and matching requirements vary. Contact: Eric Hammerling, NFWF, 116 New Montgomery Street, 2nd Floor, San Francisco, CA 94105. Phone: (415) 778-0999. Website: [www.nfwf.org](http://www.nfwf.org).

**San Francisco Foundation:** The SF Foundation has a newly established grants program to support wetland research and restoration projects in the SF Bay and its surrounding watersheds. The focus is on those projects that improve water quality or reduce pollution. For more information, call Jane Rogers at (415) 733-8517. Website: [www.sff.org](http://www.sff.org).

**Ducks Unlimited:** Ducks Unlimited (DU) provides technical assistance, matching funds and help in securing grants for the completion of wetland habitat restoration projects on both public and private land. Call the Western Regional Office of DU at (916) 852-2000. Website: [www.caldu.com](http://www.caldu.com).

**Packard Foundation:** The foundation's Conserving CA Landscapes Initiatives funds habitat protection and watershed projects in the Central Valley, Sierra, and Central Coast. For more information and grant guidelines, call (650) 948-7658. Website: [www.packard.org](http://www.packard.org).



## **SAVE SAN FRANCISCO BAY ASSOCIATION**

1600 Broadway, Suite 300 • Oakland, CA 94612 • Phone: 510.452.9261 • Fax: 510.452.9266

Email: [savebay@savesfbay.org](mailto:savebay@savesfbay.org) • Website: <http://www.savesfbay.org>

**Speech** In Re: Shoreline Park appeal PUD06010-PUDF02

**\*submit packet\***

On behalf of 448 thousand 460 future voters, who, by 2025 will be counting on **you** to not let Oakland be washed away, I bring you greetings.

I13.2-29 | Please note I'm joining this appeal to inform you that the CEQA 16-162 standards the commission used are factually incorrect, and therefore are legally invalid. Staff stated on record that "nothing of note has occurred since 2006 or 2009 that would alter the EIR or CEQA position that was approved at that time".

If you believe that, then you also believe that the Governor and Mayor just went to Paris France to get **Baguettes**, not to attend COP-21.

Much **has** changed, in fact, and so this project must be stopped. Submitted documents show that all of downtown Oakland is at immediate risk, (and faces even more risk in the coming decades), from flooding. This includes even City Hall in some scenarios, per *Climate Central*, a website and database compiled by Yale scientists and others.

To preserve the downtown core, Wetlands (and ONLY wetlands) must be created in the acreage between 4th and 9th Avenues. Only Wetlands can help reduce the flooding risk that the city faces, and so the park & condo projects should be relocated to higher ground. **Failing** to build wetlands here could expose the city to billions in expenses, wiping out any tax gains that one condo-complex would bring in. Note also that no bank will issue a mortgage on these albatrosses, nor will any insurer write a policy on them due to the obvious hazards. I live at 5th Ave. and can't get flood insurance, **at any price**, TODAY.

The *Sierra Club* has made statements pointing this risk out. "*Our Bay On The Brink*" has as well. The City is part of the *Coastal Hazards Adaptation & Resiliency Group Workshop*, which is in it's infancy but is working hard to address this exact issue as well. Your own official, City of Oakland Sustainability Manager Daniel Hamilton, can confirm that the CEQA is inaccurate (and that wetlands will help storm-surge drainage). All around the region, agencies and NGO's are desperate to rebuild wetlands as fast as they can. Yet **here comes Oakland**, spitting in the face of those efforts.

Staff and the Commission have been duly notified of the situation. They have chosen to utterly ignore this news in favor of enriching longtime political donor

Mike Ghielmetti and his foreign business partners. They also ignored the fact that the terms "flood", "flooding", "climate" and "storm surge" are absent from the entire EIR.

Nature bats last.

As Columbia SC and Los Angeles just learned, as the east coast cities learned when Hurricane Sandy lashed their shores, as Miami FL is learning right now, we no longer have the luxury to ignore Climate Change. We must act **NOW** to protect the city as a whole, and the first -best- action is to preserve our waterfront as wetlands.

Due to an arcane and Kafka-esque ruling by the commission, I am legally prohibited from introducing 'new' data to this session, so I can't for example show you this photo of a chunk of Pacifica falling into the ocean as it **has done** in the weeks since the appeal was filed.

*\*hold up Pacifica photo\**

I also can't notify you that this decision violates Coastal Commission Code Section 30253. But, using only previously submitted items, I can share with you this letter from 2008, that was part of the CEQA document in question. It was written by some guy, who I'm sure nobody has ever heard of, named Edmund G. Brown Jr. He must be some local crank.

*\*hold up letter\**

There were actually two letters from Atty. General Jerry Brown, (and deputies Laura Zuckerman and Sandra Goldberg) requesting that the CEQA consider global warming and carbon emissions. It pointedly DOES NOT DO this. Twice they wrote in, twice they were summarily ignored. Architect Vann also wrote in, for the same reason, and was also ignored. These are the **ONLY** times Climate Change was addressed, **in any form**, in 16 years of this entire process.

I13.2-30 | In fact several fatal errors exist in the EIR and CEQA documents. So even if staff was correct, we'll still be in a crisis! For instance they still are using a 100 year floodplain model, which calls for a 6'-0" rise over that time. We're already at that point now, 10 years later.

*\*hold up king tide pix\**

Columbia SC, by contrast, was using a 500 year model and still got wiped out. Even a 1000 year model would have been too conservative.

I13.2.-31

Here are more examples of errors in the CEQA:

page 13 ***Physical Division of an Existing Community***

*"The proposed project would not result in any physical division of an existing community in any of the areas surrounding the project site, because of the site's physical separation from other surrounding neighborhoods. ... the project would not physically divide these communities. Thus, there is no physical opportunity for the project itself, or in combination with any past, present, or reasonably foreseeable future projects, to physically divide an existing community."*

>>> Note that the 5th Ave community will be heavily impacted by this project, with no positive gains. We sit literally in the middle of the proposed complex.

I13.2-32 page 17 ***Consistency with Habitat Conservation Plan or Natural Community Conservation Plan***

*"There are no adopted habitat conservation plans or natural community conservation plans related to the project site or the surrounding geographic area. Consequently, the project would not itself, and would not combine with any other past, present, or reasonably foreseeable future project to, conflict with any such plan."*

>>> Note that the 1999 Estuary Policy Plan still exists, was in effect at the time in question, and called for wetlands here. The EPP was generated after years of public input. The above statement is flat wrong; though after it was adopted some underhanded horse-trading occurred... One of it's top priorities is Tidelands Enhancement. So much so; that Policy OAK 1 is "Encourage the preservation and enhancement of tideland areas". That's on page 87.

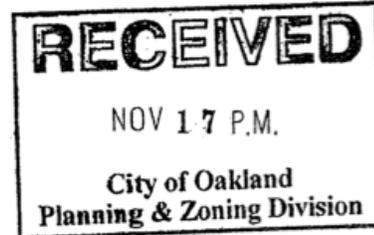
Here is an excerpt from a letter:

**LAW OFFICES OF BRIAN GAFFNEY**  
605 Market Street, Suite 505, San Francisco, CA 94105  
(415) 442- 0711 Phone (415) 442-0713 Fax

November 17, 2008

*Via Facsimile & Email*

Ms. Margaret Stanzione  
Project Planner  
City of Oakland  
Community & Economic Development Agency  
Planning Division  
250 Frank H. Ogawa Plaza, Suite 3315  
Oakland, CA 94612  
510 238 6538 fax  
[mstanzione@oaklandnet.com](mailto:mstanzione@oaklandnet.com)



**RE: PROPOSED REVISIONS TO THE OAK TO NINTH PROJECT EIR,  
Oakland #ER-04-0009**

Dear Ms. Stanzione,

This office submits the following comments on behalf of the Coalition of Advocates for Lake Merritt (CALM) and Joyce Roy regarding proposed revisions to the Oak to Ninth Project EIR dated September 30, 2008 ("Revisions to the EIR" or "REIR").

.... note text abridgment here ....

Comments Regarding Proposed Revisions to the Oak to Ninth EIR  
November 17, 2008  
Page 11 of 14

The Revisions to the EIR reasons that there would be no significant cumulative biological impacts because of regulatory requirements. Not only is it impermissible under CEQA to assume, without supporting data, that all other projects will be properly mitigated, but the 2005 EIR and the Revisions to the EIR contradict this assumption. The 2005 EIR stated that "some projects may be approved even though they would have significant, unavoidable impacts on biological resources." The Revisions to the EIR acknowledges that some past projects were not implemented in accordance with regulatory requirements.

F-40

F-41

The Revisions to the EIR concludes that the project when combined with other projects would not result in a significant cumulative biological impact, but does not explain how it reached this conclusion when the 2005 EIR concluded that the project and future projects "could result in impacts on wetlands, other waters of the U.S. and special status species." Nor does the Revisions to the EIR explain how it reached its cumulative impact conclusion when the 2005 EIR reasoned that project construction activities would result in potentially significant impacts to wetlands and waters, to fishery resources in the Oakland Inner Harbor, to nesting habitat for breeding raptors, and to nesting and roosting bats.

F-42

Further, Congresswoman Nancy Pelosi has a residence in Washington, DC. The complex is called Washington Harbor, and was built next to the Potomac. She

can affirm that it's flooded twice with devastating effects each time. Note also that warnings were given in advance, but it was built anyway.... and the DC government ended up on the hook for all the repairs and sea-wall construction. The developer managed to wriggle free of their obligations. Do you **really** wish to inflict such a fate on Oakland? We're still paying for the horrid Raider's Deal, among other missteps, and have all the warning we need already.

**\*show images of Washington Harbor\***

Next, let's note that Miami FL just got a long article in the New Yorker, about it's flooding problems; this was also submitted. They are dealing with **an inch per year** rise currently, which will wipe out their beaches in less than a decade. We are obviously not immune from this issue on the west coast.

Here are the websites we've submitted for review:

<http://baylandsgoals.org/science-update-2015/>

This site includes several documents created by local scientists and NGO's calling for wetlands restoration, among other remedies.

[OurBayOnTheBrink.org](http://OurBayOnTheBrink.org)

This group warns of how much flooding damage will harm local cities, and presents a plan to prevent that via a 9 county parcel tax which will create a funding base for protective actions such as wetlands restoration.

[ClimateCentral.org](http://ClimateCentral.org)

This series of scientific reports and **interactive** maps demonstrates multiple scenarios, many of which would be catastrophic to downtown Oakland if nothing is done.

[SaveTheBay.org](http://SaveTheBay.org)

Another source for up to the minute data and documents, such as the "Protecting Local Wetlands" one that was ignored by the planning commission.

<http://thrivingearthexchange.org/oakland-california/>

A brief summary of pending plans for improving Oakland's sewer runoff systems.

Please, for the long term health of the city as a whole, overturn this approval and stop ALL development here. We need to implement the 1998 Estuary Plan instead. Preservation **IS** Development, the right kind of development that allows for a future. Anything else done on this site will be a form of slow, expensive, financial suicide for the city.

The train may have left the station, policy-wise, but back here in reality, the bridge is out ahead! Please, hit the brakes. It's impossible to separate the park from the Condo complex - once construction on either has begun these wetlands will be lost forever. We can't simply send our mayor to Paris and give lip service to addressing the climate problem, we actually have to make the tough calls and

follow through. We have to actually put waterfowl, **and the planet**, first.

**NOTICE OF AVAILABILITY (NOA) OF A DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT (DSEIR) FOR THE BROOKLYN BASIN MARINA EXPANSION PROJECT AND NOTICE OF PUBLIC HEARING ON DSEIR**

**TO:** All Interested Parties

**SUBJECT:** Notice of Availability (NOA) of a Draft Supplemental Environmental Impact Report (DSEIR) for the Brooklyn Basin Marina Expansion Project and Notice of Public Hearing on the same.

**LEAD AGENCY/PROJECT SPONSOR:** The City of Oakland

**CASE NO:** PUD06010-R02-ER01

**CEQA STATE CLEARINGHOUSE NUMBER:** 2004062013

**PROJECT LOCATION:** The Project site is bounded by Fallon Street and Jack London Square to the west, Embarcadero and Interstate 880 (I-880) to the north, the Oakland Estuary to the south, and 10th Avenue (generally) to the east. Estuary Park, the southern portion of Lake Merritt Channel (the channel), Clinton Basin, and the Ninth Avenue Terminal are included in the Project site, but approximately 4.72 acres of privately-held parcels along 5th Avenue are not included. The Project site consists of Alameda County Assessor's Parcel Numbers (APNs) 018-0430-001-14, 018-0460-004-06, 08, and 11, and 018-0465-002-06, 12, 15, 27, 29, and 30.

**PROJECT DESCRIPTION:** Zarsion-OHP 1, LLC. (Project Applicant), proposes the Brooklyn Basin Marina Expansion Project (Project Modifications) as a modification of the previously approved 64.2-acre project (Approved Project) analyzed under the 2009 Oak-to-Ninth Avenue EIR (2009 EIR). The Project Modifications include a residential density increase of 600 units (for a Project site total of up to 3,700 units), an update to the parking ratios to current zoning code requirements in other zoning districts, and an expansion of the approved marina infrastructure and operation including increasing the number of slips by 158, and incorporating provisions with the marina improvements to accommodate an existing water taxi/shuttle service currently operating on San Francisco Bay. Compared with the Approved Project, which includes 64.2 acres of land area and 7.95 acres of water surface for marina facilities and 167 boat slips, the marina expansion component would add 158 boat slips and approximately 10 acres of water surface to the Project site.

**PUBLIC REVIEW AND COMMENT PERIOD:** The City invites comments on the Brooklyn Basin Marina Expansion Project DSEIR during a 45-day comment period that begins on June 11, 2021 and ends on July 26, 2021 at 5:00 PM. The City directs comments to be submitted via email to Catherine Payne, Acting Development Planning Manager, at [cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov). Please reference **Brooklyn Basin Marina Expansion Project DSEIR Comments** in all correspondence. Comments may also be submitted via mail to the following address:

Catherine Payne  
City of Oakland, PBD, Development Planning Division  
250 Frank Ogawa Plaza, Suite 2114  
Oakland, CA 94612  
Attn. Brooklyn Basin Marina Expansion Project DSEIR Comments

Comments will also be received at the public meetings to be held as noticed below. Written comments submitted via e-mail and mail shall be provided no later than **July 26, 2021 at 5:00 PM.**

**DOCUMENT AVAILABILITY:** The DSEIR is available for review online at:  
<https://www.oaklandca.gov/documents/ceqa-review>.

**PUBLIC HEARINGS:** In accordance with the revised Emergency Order No. 3 of the City of Oakland that was adopted due to the outbreak of COVID-19, meetings of the Oakland City Council and of the Planning Commission are being conducted online, rather than in person.

The City Planning Commission will conduct a public meeting to receive comments on the DSEIR for the project on **July 21, 3:00 PM.**

For more information about how to participate in this meeting, please visit:  
<https://www.oaklandca.gov/boards-commissions/planning-commission>

**ENVIRONMENTAL REVIEW:** A Draft Supplemental Environmental Impact Report (DSEIR) was prepared for the project per the requirements of the California Environmental Quality Act (CEQA), pursuant to the Public Resources Code Section 21000 *et. seq.* The DSEIR analyzes potentially significant environmental impacts in the following categories: Land Use Plans, and Policies; Transportation and Circulation; Air Quality; Hydrology and Water Quality; Cultural Resources and Tribal Cultural Resources; Geology and Soils; Noise; Hazards and Hazardous Materials; Biological Resources; and Population and Housing. The DSEIR did not identify and new or more severe potentially significant or significant and unavoidable impacts than analyzed in the previous EIR.

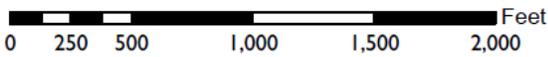
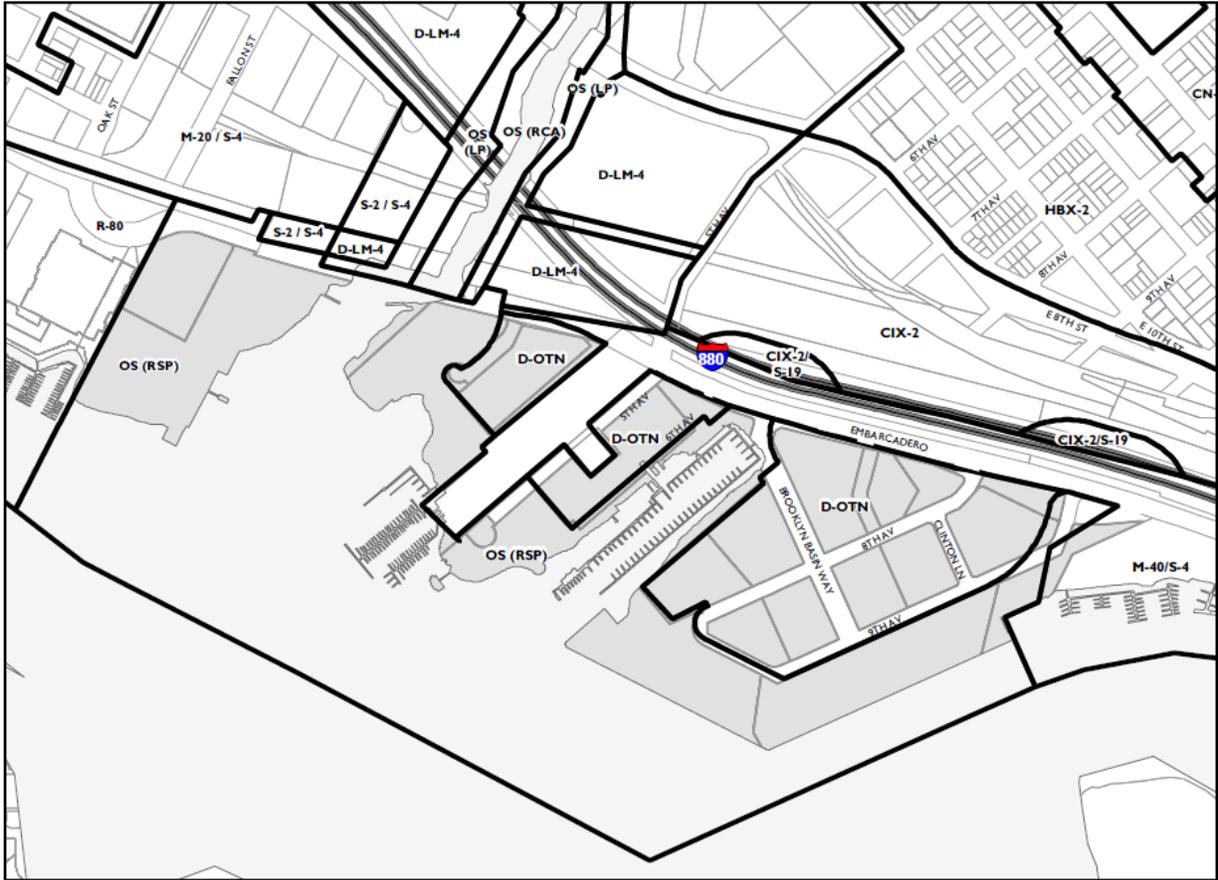
The City of Oakland is hereby releasing this DSEIR, finding it to be accurate and complete and ready for public review. Members of the public are invited to comment on the DSEIR. There is no fee for commenting, and all comments received will be considered by the City prior to finalizing the EIR and making a decision on the project. Comments on the DSEIR should focus on the sufficiency of the DSEIR in discussing possible impacts on the physical environment, ways in which potential adverse effects might be minimized, and alternatives to the project in light of the EIR's purpose to provide useful and accurate information about such factors.

If you challenge the environmental document or project in court, you may be limited to raising only those issues raised at the hearings described above, or in written correspondence received on or prior to July 26, 2021 at 5:00 PM. Following the close of the public review period for the DSEIR, the City will prepare a Final SEIR (FSEIR), incorporating and responding to all comments received during the public comment period, for consideration by the Planning Commission at a date for which notice shall be provided at a future date. As required by CEQA (Pub. Res. Code §21092.5), the FSEIR, including written responses to the comments submitted by public agencies, will be provided to commenting agencies at least ten (10) days prior to certification. For further information, please contact Catherine Payne, Acting Development Planning Manager, at (510) 915-0577 or [cpayne@oaklandca.gov](mailto:cpayne@oaklandca.gov)

June 11, 2021

  
EDWARD MANASSE  
City of Oakland  
Environmental Review Officer

# CITY OF OAKLAND PLANNING COMMISSION



Case File: PUD06010-R02-ER01  
Applicant: Zarsion OHP  
Address: Brooklyn Basin (formerly known as "Oak to 9th Avenue")  
Zone: (PWD-4)/D-OTN, OS(RSP)

# Brooklyn Basin DSEIR Notice of Availability

Final Audit Report

2021-06-04

Created:	2021-06-03
By:	Dara O'Byrne (DOByrne@oaklandca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA-TtSa_iP1Zh13IgYHj8M2spT5MAUPqAr

## "Brooklyn Basin DSEIR Notice of Availability" History

-  Document created by Dara O'Byrne (DOByrne@oaklandca.gov)  
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-  Document emailed to Edward Manasse (EManasse@oaklandca.gov) for signature  
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City of  
Oakland

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**From:** Aileen F. <msfrankel009@gmail.com>  
**Sent:** Saturday, July 31, 2021 3:09 PM  
**To:** Payne, Catherine  
**Cc:** tlimon.opc@gmail.com; cmanusopc@gmail.com; SShiraziOPC@gmail.com; amandamonchamp@gmail.com; jfearnopc@gmail.com; leo.raylynch@hmcarchitects.com; vsugrueopc@gmail.com  
**Subject:** Proposed Brooklyn Basin Marina Expansion Project and Draft Supplemental Environmental Impact Report (EIR) June 2021

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Ms. Payne and Members of the Planning Commission,

Thank you for the chance to review this proposed expansion and the corresponding Draft EIR.

I14-1 | The proposed project would be contrary to the mission to “Save the Bay” and would authorize more man-made intrusions into the wetlands and shallow areas. The additional docks and number of boat slips would impair the goals of protecting water and airways for birds; disrupt natural ebb and flow of waters of the Bay and Estuary; and obscure or fragment views by park visitors and pedestrians across the Estuary and Bay. Incremental development into the Estuary waters is avoidable.

It was very important to those of us who advocated for the establishment of the Estuary Plan, and later conditions of open space, public access, bicycle paths, and walkways along the Oak to Ninth project shoreline - that the ecology of the area, health of the wildlife corridors, and views be improved and protected. The Bay Trail where possible should allow for persons and critters to be able to see and feel a landscaped shoreline and open waters -- not more docks or private boat slips, that will bring noise, and add to debris and ounces of fuel and byproducts deposited in the water.

I am very concerned about going beyond the previously planned 60 boat slips to 218 boat slips. This marina would block a marsh restoration area established after the Moby Dick pollution incident, near Sixth Avenue. Clinton Basin and Shoreline Park would be diminished (indeed cluttered) by allowing these additional boat slips.

Please note the following:

a) The draft SEIR is inadequate in not studying the impacts on public recreation activities of an expanded private-boat marina along much of the parkland area intended for public use. Would a marina displace paddleboarders, rowers, kayakers, out into the channel? Would it introduce additional noise and block views? What about wakes?

I14-2 | b) Alternatives should be studied, protecting and expanding the present marsh and soft water edge and perhaps incorporating some or all of the western side of Clinton Basin.

114-3 | c) If any bit of enlarged marina is constructed, it should be for temporary, non-motorized (human-powered) craft (such as paddleboards, rowboats, and kayaks), safe for public use.

I look forward to the results of City of Oakland staff and Commission deliberation.

Aileen Frankel  
Resident of Council District One

15 Binnacle Hill  
Oakland, CA 94618

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**From:** Marcus Guillard <marcus@onehatonehand.com>  
**Sent:** Tuesday, August 10, 2021 5:05 PM  
**To:** cpayne@oaklandca.gov  
**Subject:** DSEIR Comments  
**Attachments:** Guillard DSEIR letter of comments 8 10 21.pdf

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

--  
Marcus Guillard  
Founding Partner | CCO  
**ONE HAT ONE HAND**  
San Francisco | Los Angeles  
917 549 0813 | [www.onehatonehand.com](http://www.onehatonehand.com)



Marcus Guillard  
48 5<sup>th</sup> Avenue  
Oakland, CA 94606  
Cell: 917 549 0813

Board Member, SHADE (Shadetree Historical Artisan Development Engine), a nonprofit

August 9, 2021

Catherine Payne  
City of Oakland, Bureau of Planning  
Re: Brooklyn Basin Draft SEIR PUD06010-R02-ER01  
CEQA State Clearinghouse Number: 2004062013

Dear Ms. Payne:

I am a resident of 5<sup>th</sup> Avenue Point and a member of the Shadetree Community. Shadetree is an historical artisan focused live work property. As recognized in the Estuary Plan, 5<sup>th</sup> Avenue Point is a historic community of mixed uses with artisan and cultural significance to Oakland. As the Estuary Plan states on page 93, Section OAK 4.1, Fifth Avenue Point regarding this unique community:

***“Policies that promote preservation and expansion of the 5<sup>th</sup> Avenue Point community should be carefully applied, so as to not adversely affect property values or inadvertently change the very essence of what makes it unique.”***

All of the projected and proposed development for the Brooklyn Basin parcels K,L, and M will have a dramatic impact on the 5<sup>th</sup> Avenue Point community. To date, community members have not only **not** been consulted about these impacts, but our concerns when expressed have been largely ignored.

Shadetree is a nonprofit resident owned property and is zoned as a legal Joint Live Work Quarter (JLWQ). Other properties at 5<sup>th</sup> Ave Point are also live/work, as recognized in the Estuary Plan, but have not been re-zoned for this use.

- I15-1 | In particular the Shadetree community is adversely and negatively impacted by many elements of the Brooklyn Basin project including losing its driveway access to the building courtyard when the historical driveway easement was “removed” in favor of the Brooklyn Basin developers. Proposed designs for 5<sup>th</sup> Avenue ignore our historical community and setbacks and parking are badly neglected nor assessed adequately for negative impacts on Shadetree. The proposed development revised plans as reviewed in the DSEIR have ignored the impacts on this vital part of the 5<sup>th</sup> Avenue Point community.

These are my comments:

Addition of 600 units to parcels K, L, and M:

- I15-3 | 1. Do not add 600 units to parcels K, L, and M. Increasing the number of units for parcels K, L, and M from the current proposal (after allowed unit “swaps” between parcels) from 607 to 1207 creates extreme density and will cause extensive adverse effects on streets, infrastructure, and the fragile 5<sup>th</sup> Ave Point community. If 600 additional project units are added, they should be scattered across all remaining development parcels.
- I15-4 | 2. Failure to add additional affordable units with the increased density request. If 600 additional units are approved, the 20% should be affordable.

I15-5 | 3. The requested amendment to the Estuary Plan to increase unit density from 50 to 58 is an illusion since the density is applied to the entire project. This is misleading because the density for parcels K, L, and M will be vastly higher if 60 units are added to just these parcels.

I15-6 | 4. Page IV.J-10 implies that there is no displacement effect on 5<sup>th</sup> Avenue Point. This is highly erroneous. Adding market rate units does not create a trickle-down effect of more affordable units emerging within the market generally, and adding more market rate units potentially increases nearby property values significantly. Because the vast majority of 5<sup>th</sup> Avenue Point and 5<sup>th</sup> Ave Marina are controlled by one property owner, there is no way to discern if and when property values rise enough that that owner decides to sell. If that should happen, there will be massive displacement of residents and business at the heart of what makes the 5<sup>th</sup> Ave. community unique and valuable for Oakland.

Tower Relocation:

I15-7 | 5. Relocation of a tower from either H or J to either L or M is unnecessary and creates significant infrastructure challenges and quality of life problems for current residents and businesses.

I15-8 | 6. A tower on either L or M adds an undefined number of units to the parcels. There is no information readily available in the DSEIR or Development Plan that clearly lays out how many units are in a tower compared to an 8 story building. Is it 400? This number is important because the swap to L or M of additional tower units is above the 600 increased density request. So instead of these parcels being 1207 units, could it be 1600? This issue is not addressed at all and impacts all categories of the report from flooding to traffic to infrastructure and more.

I15-9 | 7. The Shadowing and Viewpoint studies ignore Shadetree as a JLWQ property. A tower on L would place the Shadetree property in perpetual shade at all times and days of the year. Not only is this a high impact on the light for residents but precludes our current plans to use solar for most of our utility needs. The shadowing studies demonstrate the adverse effects on both Shadetree and all local residents and businesses. The Viewpoint studies completely and totally ignore the Shadetree community and all of 5<sup>th</sup> Avenue Point.

Roadways and Infrastructure:

I15-10 | 8. The design of the roadway, parking, landscaping, and infrastructure on 5<sup>th</sup> Avenue from Embarcadero to the water is poorly designed, ignores current uses by residents and businesses, and creates a density of traffic and “trips” that are not sustainable and have a highly negative impact on the existing community.

9. The lack of a new traffic study that analyzes both existing conditions compared to projected, but also makes it impossible to adequately comment on this area. The DSEIR approval process should be postponed until an adequate traffic study is completed.

I15-11 | 10. Already events at the Shoreline Park are causing massive traffic and parking problems. Whatever parking is being provided is clearly inadequate, and because there is virtually no public transportation on site, parking and roadways are overwhelmed, and local residents and businesses find that it is difficult to access their places, and already barely adequate parking is swamped. Attendees at these events have also been trespassing onto Shadetree’s property and courtyard.

Marina:

I15-12 | 11. Adding additional Marina slips is wrong on every level and well refuted and addressed by many organizations and knowledgeable individuals.

I15-13 | 12. Section V-13, VD-D Environmental Superior Alternative, clearly states “In summary, the No Marina Expansion Alternative is considered the environmentally superior alternative as it would avoid and/or substantially reduce new Biological Resources impact of the Project Modifications



I15-13  
cont.

to the greatest extent compared to each of the other alternatives, and still meet some of the basic objectives of the Project Modifications.”

13. The impact on the existing 5<sup>th</sup> Avenue Marina is not clearly addressed. Will those slips be eliminated? The 5<sup>th</sup> Ave Marina plays a vital role in the artisan and cultural life of 5<sup>th</sup> Ave Point and is one of the remaining affordable boat slip locations in the Bay Area.
14. Currently the project proposes that the 5<sup>th</sup> Avenue Marina be brought up to “world class” standards. Would existing slip renters be relocated during construction? Would the existing slip renters be allowed a right to return at affordable rates?
15. 5<sup>th</sup> Ave Marina plans must be made transparent, and the existing community should be involved in decision making. To quote again from the Estuary Plan regarding 5<sup>th</sup> Ave Point: ***“Policies..., should be carefully applied so as to not adversely affect property values or inadvertently change the very essence of what makes it unique.”***

I15-14

Infrastructure

16. Infrastructure impacts are vastly understated and completely dismiss the need for updated Sea Level Rise accommodations.
17. Shadetree sites surrounded on all 4 sides by the Brooklyn Basin project, but as Shadetree needs to make its own plans for infrastructure, it has had no access to the plans for Brooklyn Basin nor any information on how infrastructure design and planning will impact Shadetree both currently and in the future.

My Personal General Comments:

I15-15

While I support urban renewal, land reclamation and hazmat mitigation, I do not support the blatant disregard for existing community, existing affordable housing, artist housing and communities, and a flourishing hub for Oakland artist and makers. All we ask is that we be considered in this process and that we all end up with a better shared experience. What we have received thus far is far short of respect. There is very little indication that this project wants the best for Shadetree or all the other residents of 5th avenue.

All approvals for the proposed Project Modifications should be postponed until an adequate community engagement process has been initiated and completed with 5<sup>th</sup> Ave Point residents, businesses and boaters.

Thank you for your consideration of this letter.

Respectfully,

Marcus Guillard

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**From** Michael Henderson  
**Sent** Thursday, July 22, 2021 12:34  
**To** cpayne@oaklandca.g  
**Subject:** Brooklyn Basin Marina Expansion Project DSEIR Comments

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

- 
- I16-1 | Hello, I am writing to you regarding 2 serious concerns with the Brooklyn Basin Expansion. The first is the seismic issues that will most likely develop when a large building is built by on landfill. While I understand the buildings will be pile driven into bedrock, the surrounding buildings are not. As a result of this building process, the ground will be disturbed all around in the neighboring lots. There are issues as you may know between the Transbay Tower and the Millennium Tower in SF -and both of those buildings are anchored to bedrock, but the building of one may have led to the ground shifting and the sinking and tilting of the other. The City of SF is being sued. That case will be litigated for years. It seems this issue is one of liability that may come back to the City of Oakland. There should be extensive studies by non affiliated experts on the risk of the Brooklyn Basin (BB) Development on those who live here. There is real risk to our homes. I have lived here for over 16 years. I have seen development plans from BB and none of them even acknowledge our existence or mention any possible issues.
- I16-2 | Secondly is the (C)armageddon that gas already started. The are real safety issues that have never been addressed. As I understand it BB would like to expand to over 3500 units, which could mean an increase of 5000-7000 people living in a very tight/small area. Currently VB has completed 2 of the 12 buildings in their plan. Those 2 buildings are nowhere close to full vacancy, but the traffic and parking are already horrible. BB has no plans to address this: no parking structures and a small one way street feeding their lot. There is only limited street parking. At least the building projects at Jack London Square included parking garages.
- I16-3 | There only reliable public transportation is a 25-30 min walk from the BB location. The units at BB are expensive. The people who can afford to move in have cars and they are not going to give them up. There are no grocery stores nearby. I have a small child and need my car for work, but now BB residents, along with attendees of BB's ever constant events has made parking on my street nearly impossible, so i have to park in unsafe areas.
- I16-4 | I see BB associated people parking on sidewalks, taking other's private parking and blocking driveways.
- I16-5 | The most concerning part though is the traffic. I recently was unable to get across an intersection and the light changed 3 times. This was due to cars coming down 5th Avenue onto Embarcadero and blocking the intersection (which was already a very dangerous one before BB came along), because of the train tracks. A young boy was killed a few years ago because of way the intersection is laid out. Also it would be impossible foe emergency vehicles to get to the area when there are events or when BB is I hope you address these concerns as until BB is at full capacity.  
Thank you!

---

**From:** B <yebrent13@gmail.com>  
**Sent:** Saturday, July 24, 2021 7:49 PM  
**To:** cpayne@oaklandca.gov  
**Subject:** Say no to the Brooklyn Basin marina expansion!

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Catherine Payne,

117-1 | Please say no to the proposed marina expansion in Brooklyn Basin. There is so little remaining SF Bay wetlands why risk destroying what we have left? Every little piece we lose deteriorates the overall health of the bay. The land that is threatened is so close to downtown and Jack London square. It's been wonderful to be able to walk around Jack London square and see shorebirds flying by. The more habitat that is destroyed, the less wildlife we will get to see and experience. It's as simple as that.

I spent a couple of hours last week walking around the development currently under construction and viewed the proposed marina expansion area. When I learned that 325 slips are being proposed, I was shocked. Have you ever been to a Bay Area marina on the weekend? The lots are packed! Cars, trucks and trailers are strewn everywhere within a quarter-mile of the marina. Boat owner's guests park wherever they can find a spot, usually illegally. Parking isn't enforced because it is "bad for business". Meanwhile anyone

117-2 | living within a half mile of the marina are the ones that suffer. The proposed parking, public transit, and road infrastructure is  
117-3 | completely inadequate for such a significant project. It will be a nightmare for anyone living in Brooklyn Basin. The city has already approved so many new apartment complexes in Brooklyn Basic without adequate public transit infrastructure. Approving this marina would make it even a worse nightmare for all the new people that will now be living in Brooklyn Basin.

117-4 | Lastly, I've lived in Oakland for 21 years and I don't ever recall meeting a boat owner that actually lives in our city. Why accommodate rich out-of-town boat owners and even richer uncaring developers when so many Oaklanders are struggling through the pandemic? Do you think these people will actually spend money in our city? No, they will just bring everything they need on the boat from home, bypassing local business. Please vote no on the Brooklyn Basin marina expansion.

Kind Regards,

Brent Housteau  
40 Glen Ave.  
Oakland, CA  
(510) 301-4873

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**From:** Helen Hutchison <helen@helenhutch.com>  
**Sent:** Friday, August 6, 2021 2:07 PM  
**To:** cpayne@oaklandca.gov  
**Subject:** Brooklyn Basin Marina Expansion Project DSEIR Comments

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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Dear Ms. Payne,

Please send my comments about the Brooklyn Basin/Ninth Avenue Terminal project to the members of the Planning Commission.

I18-1 | I am very concerned about the proposed addition of 10 acres of marina facilities. The increased number of slips – from a 60 to 218 – needs further study. The marina would wrap around both the Tidelands Trust lands, and Brooklyn Basin public parks. This would block the marsh restoration area which, while not large, supports a variety of birds, fish, and plants.

How would this planned expansion affect the marsh and the public parks?

This plan needs additional study. In particular, the marsh needs protection – and potential expansion.

Sincerely,

Helen Hutchison

-----  
Helen Hutchison  
she|her|hers  
510 654 2216 - h | 510 332 6252 - c  
Skype: helen\_hutchison

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**From:** Larry S. KARP <karp@berkeley.edu>  
**Sent:** Saturday, July 10, 2021 2:54 PM  
**To:** cpayne@oaklandca.gov  
**Subject:** Brooklyn Basin Marina Expansion Project DSEIR

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I19-1 | I live in Jack London Square and I swim in the estuary. I hope that the proposed marina expansion is not allowed.  
thank you

Larry Karp

--

Larry Karp, Professor  
Department of Agricultural and Resource Economics  
(Current office: 273 University Hall)  
University of California  
Berkeley CA 94720  
email: [karp@berkeley.edu](mailto:karp@berkeley.edu)  
<https://are.berkeley.edu/~karp/>

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**From:** Oliver Kay <ollie\_kay@hotmail.com>  
**Sent:** Monday, July 19, 2021 11:04 AM  
**To:** cpayne@oaklandca.gov  
**Cc:** dkalb@oaklandca.gov  
**Subject:** Brooklyn Basin Marina Expansion Project DSEIR.

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Good day Ms. Payne,

I20-1 I'm writing to share my concern regarding the Brooklyn Basin Marina Expansion Project. Nestled amidst the 64.2 acre Brooklyn Basin development project is a rare and hidden remnant of natural wetland habitat on the Oakland waterfront. The 0.6 acre wetland restoration project site is thriving with mudflat, waterbirds and marsh plants.

I understand that you are currently reviewing a proposal by developer Signature Properties to build 10 acres of marina docks directly in front of the restoration project, blocking meaningful access to resting places and food sources for wildlife and obscuring the view of the open water from shoreline parks that Oaklanders have been working on and enjoying for many years.

This particular marshland's proximity to high-density urban areas presents a rare opportunity for the public to view wetlands and I believe that this threat to our hard won open space is both an environmental and social justice issue. Additionally, the proposed project would privatize a large portion of open water space for the benefit of a few privileged individuals. Right now, many people can paddle through there on a canoe or a kayak, waterbirds frequently fly and fish there, and everyone can enjoy the view of the open water.

I urge you to reject this project and protect the wildlife and open space that's been carefully carved out by Oaklanders who wanted to see a piece of their waterfront thrive.

Thank you for your time and consideration;

~ok~

-----  
Oliver Kay  
[ollie\\_kay@hotmail.com](mailto:ollie_kay@hotmail.com)

If you have a garden and a library, you have everything you need.  
--Cicero.

---

**From:** Susan Klee <skleeberk@icloud.com>  
**Sent:** Tuesday, July 20, 2021 8:33 PM  
**To:** cpayne@oaklandca.gov  
**Cc:** St.Louis \* Patty  
**Subject:** Please!

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|21-1 | Please! Stop the expansion at the Brooklyn Basin.

| The project is not good for the people who use the waterfront. It is not good for boaters. And it is BAD for the wildlife in the area.

Thank you,

Susan Klee  
100 Bay Place  
Oakland. 94610

---

**From:** John E Klein <mandala051@gmail.com>  
**Sent:** Tuesday, August 10, 2021 2:05 PM  
**To:** CPAYNE@oaklandca.gov  
**Cc:** district2@oaklandca.gov  
**Subject:** COMMENTS ON SEIR DRAFT BROOKLYN BASIN  
**Attachments:** Final Marina Comment-JKLEIN.pdf

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PLEASE SEE THE ATTACHED DOCUMENT ON THE ENTITLED MATTER.

JOHN KLEIN

August 10, 2021

To: cpayne@oaklandnet.gov

From: John Klein

Re: Comments on SEIR on Proposed Marina Expansion at Brooklyn Basin.

- I22-1 | I support retaining the open public space and the expansive and historic views as they currently exist from the pier aka Township Commons at Brooklyn Basin. The proposal to expand marinas to wrap around the pier will denigrate and permanently obstruct the open and expansive nature of that open space and those views. Following is a discussion, guided by images, of issues that need to be more fully addressed, including:
1. Public vs. private use of public amenities and waterways.
  2. Expansive and historic views vs. obstructed views.
  3. Use of the pier, crowd size relating to parking and public transportation.

**1. Public vs. private use of public amenities and waterways.**

- I22-2 | Below is an aerial photo of the Oakland estuary showing nine existing marinas and the proposed expansion marina at Brooklyn basin. The question arises when considering adding another marina:

1. Why should we prioritize a privately owned and operated marina over the public's right to publicly owned parks and waterways and to unobstructed views of public waterways?

Further, with regard to public access to the water, the photo clearly shows that shorelines on both sides of the estuary are saturated with marinas. Looking more closely and investigating on the ground, it becomes apparent that the pier is one of the largest improved public access spaces on the water's edge of the estuary. Looking at this situation, it could be concluded that the policy principle of retaining and expanding public access along the estuary has not been completely successful. To the contrary, public access is extremely limited and adding an additional marina will only decrease public access and the expansive, unobstructed views.



***Nine existing marinas (yellow) and proposed Brooklyn Basin expansion (red)***

122-2<sup>↑</sup>  
cont. ***Expansive and Historic Views vs. Obstructed Views***

The pier at Brooklyn Basin is one of the largest and last remaining publicly accessible spaces with unobstructed expansive and historic views on the estuary. The presence of numerous marinas in the area directly and negatively affect the expansive and historic views available at each of those other marinas and do not serve the policy goal of public access to the water.



***Expansive view from the pier***

I22-2  
cont.



*Expansive view from the pier*

I22-2  
cont.



*Obstructed View from Alameda (Mid-Penn housing to the right)*



*Obstructed view from Alameda (Mid-Penn housing in the center back)*



*Expansive and historic view*

I22-2  
cont.



*Obstructed view from Alameda (Mid-Penn housing to the right)*



*Expansive and historic view*

As shown in the contrasting views, expansive and historic views of the estuary are completely obstructed and denigrated by the presence of sailboats and sailboat masts. The pier at Brooklyn Basin is one of the largest and last remaining publicly accessible spaces with unobstructed expansive and historic views of the estuary.

122-3 **Use of the pier and crowd size relating to parking and public transportation**

The pier has become very popular especially on weekends often drawing large crowds of visitors skating, picnicing and joining improvised and free DJ dance sessions and lessons.



*Sunday Afternoon crowd on the pier*

With such crowds comes the need for parking. All available parking within Brooklyn Basin is full on these days. Parking overflows onto Embarcadero up to several blocks away. Additionally, there is a lot of circulating traffic looking for parking on the existing streets of Mid-Penn's occupied buildings.

Following is a series of photos of three sections of the same street contrasting parking on weekdays to that on weekends (the 'loop' created by this street encircles a yet-to-be-developed site for Mid-Penn housing.)





***WEEKDAY Parking 1***



***WEEKEND Parking 1***



***WEEKDAY Parking 2***



***WEEKEND Parking 2***



***WEEKDAY Parking 3***



***WEEKEND Parking 3***

Given the forgoing regarding parking, please address the following questions:

1. What is the recommended parking ratio for marinas?
2. What parking ratio was used in the original marina proposal as adopted?
3. What is the parking ratio for the current modification proposal?

122-3 cont. 4. Will there be designated parking for marina boat owners and users? If so, where?  
 5. Where and how will daily users or non-motorized boats, such as kayaks, paddleboats, etc., who do not rent slips, access the water and where will they park?

122-4 Finally, Brooklyn Basin exists in a public transportation 'desert'. There is no public transportation along Embarcadero, the only street leading to Brooklyn Basin. Even if inclined to use public transportation, boat owners and marina users will be forced to walk ¾ of a mile from the nearest public transportation at the Lake Merritt BART station and its adjoining AC Transit access points. Mid-Penn provides a shuttle service to several BART stations and to Jack London Square.

**BROOKLYN BASIN**

**Morning Shuttle Schedule (Route BklnBas1)**

Brooklyn Basin 255 9 <sup>th</sup> Ave.	Lake Merritt Bart	Broadway @ 20 <sup>th</sup> St. Bart	Broadway @ 12 <sup>th</sup> St. Bart	Jack London Square
9:00 AM	9:06 AM	9:11 AM	9:15 AM	9:20 AM
10:00 AM	10:06 AM	10:11 AM	10:15 AM	10:20 AM
10:30 AM	10:35 AM	10:41 AM	10:45 AM	10:49 AM
11:00 AM	11:05 AM	11:12 AM	11:16 AM	11:21 AM

**Afternoon Shuttle Schedule (Route BklnBas1)**

Brooklyn Basin 255 9 <sup>th</sup> Ave.	Lake Merritt Bart	Broadway @ 20 <sup>th</sup> St. Bart	Broadway @ 12 <sup>th</sup> St. Bart	Jack London Square
12:00 PM	12:05 PM	12:11 PM	12:15 PM	12:20 PM
12:30 PM	12:35 PM	12:41 PM	12:45 PM	12:50 PM
Lunch Break				
1:30 PM	1:35 PM	1:42 PM	1:45 PM	1:50 PM
2:00 PM	2:05 PM	2:11 PM	2:15 PM	2:20 PM
2:30 PM	2:35 PM	2:41 PM	2:45 PM	2:50 PM
3:00 PM	3:05 PM	3:11 PM	3:14 PM	3:20 PM
3:30 PM	3:35 PM	3:41 PM	3:45 PM	3:50 PM
4:00 PM	4:05 PM	4:13 PM	4:17 PM	4:21 PM
4:30 PM	4:36 PM	4:42 PM	4:46 PM	4:50 PM
5:00 PM	—	—	—	—

View and track your shuttle on [www.ridepal.com](http://www.ridepal.com) or download the RidePal application. RidePal

For any support contact us at [support@RidePal.com](mailto:support@RidePal.com)

Please respond to the following questions:  
 1. What is the level of utilization of the Brooklyn Basin shuttle?

I22-6 cont. | ↑ 2. Are there plans for future AC Transit access points along Embarcadero to serve Brooklyn Basin?

I22-7 | To close, I support retaining the current expansive and historic views and recommend that the requested modifications be denied.

Sincerely,

**John Klein**

Mandala051@gmail.com

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**From:** Russ Lebovitz <rlebovitz@suma.com>  
**Sent:** Sunday, July 11, 2021 3:02 PM  
**To:** cpayne@oaklandca.gov  
**Subject:** Brooklyn Basin Marina Expansion Project DSEIR

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Sir or Madame

I23-1 | I am writing to share my concern over the proposed expansion of the Brooklyn Basin Marina. This project encroaches on  
I23-2 | environmentally sensitive and much needed wetlands and can negatively impact our community's ability to effectively deal with  
impending climate change. |

I encourage you to look beyond the short term benefit of a few individuals and towards the longer term well-being of our entire community.

Kind regards

Russ Lebovitz  
Amprion/ Suma Ventures  
[rlebovitz@suma.com](mailto:rlebovitz@suma.com)  
+1 281 802 4776

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**From:** Max Matheson <matheson43@gmail.com>  
**Sent:** Monday, August 9, 2021 2:19 PM  
**To:** cpayne@oaklandca.gov  
**Cc:** cmanusopc@gmail.com; tlimon.opc@gmail.com; jfearnopc@gmail.com; SShiraziOPC@gmail.com; amandamonchamp@gmail.com; leo.raylynch@hmcarchitects.com; vsugrueopc@gmail.com  
**Subject:** Comments on Brooklyn Basin SEID  
**Attachments:** Planning Commision Letter.rtf

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

To whom it may concern,

I am writing to you today in order to express my concern over the proposed changes to the Brooklyn Basin development plan. As a Bay Area native and current 5th Avenue Point resident I am scared that we are allowing a wealthy development company to come in and exploit public space for their monetary gain. The addition of a 200+ slip marina would have negative ramifications affecting the local ecology, the local community, and the greater Oakland public. The proposed building of condo towers on parcel G has seismic, environmental and cultural concerns.

- 124-1 | Currently the site of the proposed marina addition is a protected wildlife sanctuary and, despite what some of the  
124-2 | commissioners said at the last meeting regarding these changes, there absolutely IS a vast amount of terrestrial, avian and  
nautical creatures relying on this area for the basic necessities of life. On a summer day you will find snowy white egrets and  
great blue herons flying and fishing and bat rays, leopard sharks, jellyfish and sea lions swimming. Humans use this area as an  
entry point for small craft to recreate in the estuary and once upon a time the shoreline was accessible to everyday people  
including artists and creators to gain inspiration, share works and commune with a natural environment just removed from the  
urban hustle and bustle. A marina of the size proposed would steal all of this from everyday Oakland residents and reserve it  
for the privileged individuals who can afford a boat and a slip. The developers say they want a bigger Marina because a smaller  
one is not economically viable, if they are to be granted this concession they - and you - will literally be stealing from Oakland  
residents in order to line developers pockets. Within the new proposal for this larger marina, the only public access that is given  
124-3 | is in a dangerous area for small, unpowered craft to put in. There has been no discussion around parking, sanitary necessities  
(bathrooms, etc.) or security. Marinas are much, much more than just docks in the water. It is imperative that you understand  
the negative impacts of this marina in regard to native flora, fauna, local residents and the great Oakland population far  
outweigh any benefit besides more money for already rich developers.
- 124-4 | The proposal to move a condo tower onto Parcel G, directly next to the Shadetree artist community is a concern for a  
multitude of reasons. Historically, parcel G has been a dumpsite for numerous dangerous materials such as tires, industrial  
waste, power supplies, etc. It was originally built up from sand dredged out of the bay and has subsequently been covered with  
124-5 | all manner of other detritus none of which is stable, seismically or otherwise. There have been numerous fires on the site as a  
124-6 | result of unstable chemicals and materials buried underground igniting once the right conditions are met. Any study that is done  
to ascertain the seismic and environmental viability of that parcel for a giant condo tower should be conducted by a third party  
paid for by Signature Properties and chosen by the local 5th Avenue Point community.

Beyond those concerns, there is also a great cultural concern surrounding the tower proposed for lot G. Directly next to the site is the Shadetree arts community. Shadetree is a historically recognized site which has been battling tooth and nail to preserve the safe and affordable housing they have provided to all walks of Oaklanders for over 40 years. Members of  
124-7 | Shadetree are greatly concerned that the condo tower will block out all available estuary views and sun to the area, they have  
already been told they will be losing their communal garden space and studio space which is on a piece of property only a  
couple hundred square feet large that Brooklyn Basin is demanding as their own. They have endured everything from neglect  
and outright disrespect from Signature Properties and are now faced with a monstrosity as a neighbor.

- 124-8 | In addition to all that has been stated above, it is also important to recognize the very real public safety issue  
surrounding the influx of people to this area. Embarcadero is currently a two lane road hemmed in by 880, railroad tracks and  
the estuary. Since the opening of the 9th avenue terminal as a palace to recreate, we have seen an increase in traffic and  
parking to a level no one ever expected. Once all the proposed housing is built, the amount of vehicular traffic will not be  
sustained in a safe and efficient manner. We will have bottlenecks and backups that will prevent emergency services from  
124-9 | reaching their destination, we will have collisions and pedestrian/bicyclist injuries and death. Signature Properties simply has  
not done their due diligence in making sure that an increase in population of this size will be sustainable.

Thank you for your time,  
Max Matheson

August 5th, 2021

To whom it may concern,

I am writing you today in order to express my concern over the proposed changes to the Brooklyn Basin development plan. As a Bay Area native and current 5th Avenue Point resident I am scared that we are allowing a wealthy development company to come in and exploit public space for their monetary gain. The addition of a 200+ slip marina would have negative ramifications effecting the local ecology, the local community, and the greater Oakland public. The proposed building of condo towers on parcel G has seismic, environmental and cultural concerns.

Currently the site of the proposed marina addition is a protected wildlife sanctuary and, despite what some of the commissioners said at the last meeting regarding these changes, there absolutely IS a vast amount of terrestrial, avian and nautical creatures relying on this area for the basic necessities of life. On a summer day you will find snowy white egrets and great blue herons flying and fishing and bat rays, leopard sharks, jelly fish and sea lions swimming. Humans use this area as an entry point for small craft to recreate in the estuary and once upon a time the shoreline was accessible to everyday people including artists and creators to gain inspiration, share works and commune with a natural environment just removed from the urban hustle and bustle. A marina of the size proposed would steal all of this from everyday Oakland residents and reserve it for the privileged individuals who can afford a boat and a slip. The developers say they want a bigger Marina because a smaller one is not economically viable, if they are to be granted this concession they - and you - will literally be stealing from Oakland residents in order to line developers pockets. Within the new proposal for this larger marina, the only public access that is given is in a dangerous area for small, unpowered craft to put in. There has been no discussion around parking, sanitary necessities (bathrooms, etc.) or security. Marinas are much, much more than just docks in the water. It is imperative that you understand the negative impacts of this marina in regard to native flora, fauna, local residents and the great Oakland population far outweigh any benefit besides more money for already rich developers.

The proposal to move a condo tower onto Parcel G, directly next to the Shadetree artist community is a concern for a multitude of reasons. Historically, parcel G has been a dumpsite for numerous dangerous materials such as tires, industrial waste, power supplies, etc. It was originally built up from sand dredged out of the bay and has subsequently been covered with all manner of other detritus none of which is stable, seismically or otherwise. There have been numerous fires on the site as a result of unstable chemicals and materials buried underground igniting once the right conditions are met. Any study that is done to ascertain the seismic and environmental viability of that parcel for a giant condo tower should be conducted by a third party paid for by Signature Properties and chosen by the local 5th Avenue Point community.

Beyond those concerns, there is also a great cultural concern surrounding the tower proposed for lot G. Directly next to the site is the Shadetree arts community. Shadetree is a historically recognized site which has been battling tooth and nail to preserve the safe and affordable housing they have provided to all walks of Oaklanders for over 40 years. Members of Shadetree are greatly concerned that the condo tower will block out all available estuary views and sun to the area, they have already been

told they will be losing their communal garden space and studio space which is on a piece of property only a couple hundred square feet large that Brooklyn Basin is demanding as their own. They have endured everything from neglect and outright disrespect from Signature Properties and are now faced with a monstrosity as a neighbor.

In addition to all that has been stated above, it is also important to recognize the very real public safety issue surrounding the influx of people to this area. Embarcadero is currently a two lane road hemmed in by 880, railroad tracks and the estuary. Since the opening of the 9th avenue terminal as palace to recreate, we have seen an increase in traffic and parking to a level no one ever expected. Once all the proposed housing is built, the amount of vehicular traffic will not be sustained in a safe and efficient manner. We will have bottlenecks and backups that will prevent emergency services from reaching their destination, we will have collisions and pedestrian/bicyclist injuries and death. Signature Properties simply has not done their due diligence in making sure that an increase in population of this size will be sustainable.

Thank you for your time,

Max Matheson

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**From:** Peter McInerney <mcinern.p@gmail.com>  
**Sent:** Tuesday, August 10, 2021 9:47 AM  
**To:** cpayne@oaklandca.gov  
**Subject:** Brooklyn Basin SEIR Comment

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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To the Oakland Planning Commission,

I25-1 | This is a letter in opposition to the recent Supplemental Environmental Impact Report issued by the Brooklyn Basin developers. I have lived in the 5th Ave Point Artist Community for the last five years.

**1. Tower relocation to Parcel L is a direct violation of the Estuary Policy Plan**

I25-2 | This would have drastic negative impacts on the existing community on 5th Ave, preventing access to direct sunlight and destroying the character of the neighborhood. The SEIR's shade study ends at 3pm, which is a gross oversight and must be amended. A tower in the proposed location would prohibit the use of our community garden and solar power resources.

I25-3 | Furthermore, relocating the tower would be in direct contradiction to Oakland's Estuary Plan, which specifically states:

Policies that promote preservation and expansion of the Fifth Avenue Point community should be carefully applied, so as not to adversely affect property values, or inadvertently change the very essence of what makes it unique. (Estuary Policy Plan OAK-4.1)

The developer already has viable sites for the towers closer to the freeway that can easily mitigate these concerns, so they must be compelled to use them.

I25-4 | An adequate traffic study has not been done that examines the increased vehicle flow from these towers, creating both safety and nuisance issues.

I25-5 | Lastly, although the 5 towers have already been approved it must be noted that it is still a disastrous idea in the face of seismic danger and the ongoing sea-level rise due to climate change. The city should not be supporting

I25-6 | new development on landfill that is destined to be under water in thirty years.

**2. Marina expansion would destroy the last natural shoreline in Oakland**

I25-7 | This is an opportunity to preserve the last existing piece of natural shoreline between Berkeley and San Leandro - it's that important. This small wetland area is host to numerous avian and aquatic species and holds inherent value through ecosystem services. The wetland should be protected for enjoyment by wildlife and the public, not the select wealthy few with a mega-yacht slip. The public wants to be able to come to a wetland park and have views of wildlife and the open water, not mega-yachts.

I25-8 | There has already been questionable dealing between the developer and the city with land buybacks. Now they're asking for an additional 10 acres of public space (open water and shoreline) for free. What has the developer done to deserve this? What services are they offering to the public to merit such a hand-out? None.

↑  
I25-8 cont. | They want to make more money by charging rich people to park their yachts, making it harder for the general public to use public water resources.

I25-9 | Please use this opportunity to exercise your oversight power for the good of the people of Oakland, not the for-profit developers.

Thank you,  
Peter McInerney

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**From:** Mike Perlmutter <mulchpermaculture@yahoo.com>  
**Sent:** Tuesday, July 27, 2021 10:15 AM  
**To:** cpayne@oaklandca.gov  
**Subject:** please protect wetlands - comments on Brooklyn Basin Marina Project Expansion Draft EIR

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Catherine,

I am providing comments on the [Brooklyn Basin Marina Project Expansion Draft EIR](#).

- 126-1 | The document on p 2 and 387 describes the No Marina Expansion as the Superior Environmental Alternative, and I am voicing support for that.
- San Francisco Bay has lost approximately 80% of its tidal wetlands due to development. Those that remain must be protected and restored.
- 126-2 | I have worked for years on various San Francisco Bay wetland conservation projects as an ecologist, and have published articles on the subject, such as this [Encyclopedia article describing the San Francisco Bay Estuary](#).
- Much of the Oakland shoreline has been altered and hardened. Wetlands that remain are that much more critical as wildlife habitat, soft shoreline protection against storms and sea level rise, and for their natural aesthetic value.
- 126-3 | **The wetlands of Clinton Basin should be protected.**
- 126-4 | The Draft EIR does not go into detail about the wetlands, and while it clearly describes the No Marina Expansion alternative as environmentally superior for reasons of wetland and aquatic habitat protection, the Draft EIR inconsistently states no wetland loss (p93) from the full development proposal and then mentions potential off-site wetland restoration mitigation at Channel Park (p252).
- 126-5 | It is curious why the marina expansion proposal did not consider a smaller footprint that would exclude and not impact the wetlands. That would be consistent at least with environmental laws which prioritize avoidance of impacts over mitigation.

Thank you for your consideration.

Mike Perlmutter

Berkeley, California

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**From:** Stewart Port <stuport@sonic.net>  
**Sent:** Monday, August 2, 2021 11:25 AM  
**To:** cpayne@oaklandca.gov  
**Subject:** Brooklyn Basin DSEIR PUD6010-R02-ER01

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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Catherine Payne  
City of Oakland Bureau of Planning  
250 Frank H. Ogawa, Suite 2114  
Oakland, CA 94612

August 2, 2021

Re: Brooklyn Basin Marina Expansion DSEIR; Oakland CAse File PUD6010-R02-ER01

Dear Ms. Payne:

Thanks for facilitating a well organized and productive meeting (8/21).

I have a few questions relating to these proceedings that I am hoping you can answer:

- I27-1 | 1. Is it possible to see written comments that have been submitted so far in response to the current DSEIR? I am particularly interested in anything from BCDC, or the Army Corps of Engineers.
- I27-2 | 2. In his introductory presentation, Eric from Zarsion / OHP mentioned a Community Benefits Agreement that had been made in connection with the proposed changes. A community benefits agreement is also mentioned in the Staff Report included in the NOP from 10/17/2018. How would one go about learning more about this agreement? Has it been submitted as part of OHP's proposal?
- I27-3 | 3. Until about three years ago, I had been receiving written notice via USPS of all Planning Commission proceedings concerning the Brooklyn Basin project and the Oak-to-Ninth District. (Three copies in fact: one each for my business, myself as a participant in various hearings and public fora, and in my capacity as contact person for the Fifth Avenue Waterfront Community Alliance.) More recently, I have had to rely on the kindness of strangers, and my careful attention to signs posted on fences and lamp-posts to stay current. Can I be placed (just once this time) on a contact list? Hard copies would be ideal, but email would suffice,

Thanks,

Stewart Port  
499 Embarcadero, STE 1-5  
Oakland, CA 94606

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**From:** Kate <katerannells@yahoo.com>  
**Sent:** Saturday, June 26, 2021 4:17 PM  
**To:** cpayne@oaklandca.gov  
**Subject:** Attn. Brooklyn Basin Marina Expansion Project DSEIR Comments  
**Attachments:** Brooklyn Basin DSEIR response .docx

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Planning Commission,

This is my response to the SEIR for the proposed expansion of the Brooklyn Basin project.

- I28-1 | The expansion of housing units and slips exceeds the capabilities of the existing AND proposed infrastructure in terms of traffic, light, sound, and water pollution. The whole area shuts down when there (used to be) Warriors victory parades in DOWNTOWN OAKLAND, and during every flea market or event at
- I28-2 | Laney. With the constrictions of the shoreline, the freeway, and the railroad there is no actual space for all the potential people and their multiple cars to exist here. People will drive regardless of the public transit options. There is no way to believe that the traffic isn't going to be a total nightmare with 3100 new units, let alone 3700, and people driving their boat trailers to a crowded marina, or to events at the parks.
- I28-3 | The proposed increase of slips at the marina in Clinton Basin is not sustainable for wildlife. The increase in the number of boat slips will pollute the narrow waterway at Clinton Basin with fecal matter, oil and trash until it will become a pollution soup and destroy the meaning of the tiny sliver of existing protected wetlands, which even disappears from some of the maps. There is no way that this amount of pollution will not affect
- I28-4 | the wildlife in the mudflats and wetlands. The San Francisco Bay area is a place of crucial breeding, nesting, and habitat for so many aquatic species. The build-up of the shoreline means that there will not be refuge, or filtration sites, or brackish water for breeding for countless species. The only real sustainable future for the shoreline is wetlands, which will not only protect wildlife, but also protect the shore from flooding from the INEVITABLE sea rise which will corrode buildings and destroy infrastructure, and back up sewage systems, further polluting the bay.
- I28-5 | There is no way that this whole area from the freeway to the shore, which is fill-land, will not become thixotropic (the technical term for "turn into pudding") in the next big earthquake, destabilizing or destroying
- I28-6 | everything on top. In an effort to prevent this collapse the driving of support piling deep enough will create an intolerable amount of sound for humans and wildlife alike, no matter what the mitigation purports to be. Bass frequencies travel through solid objects quite easily. The fish and marine mammals are affected by sound on the land as well as in the sea, more to the point, it is intolerable to make that level of noise where people are living already. We lived through the freeway repair. We know what it means. There is no way to live with that level of sound.

- I28-7 | Wetland protection is impossible with the expansion of the marina, or indeed a creation of a marina. There has been a long history of illegal boat wrecking and dumping in Clinton Basin, and if any of it is dredged an unknown amount of toxic materials (of unknown origin) would be stirred up, and released into the bay.
- I28-8 | Wetland mitigation is proposed to be located in another place in the bay altogether, which is not how wetlands work. The shoreline will become rigid, filled with polluting boats and the benefit of the existing mudflat wetlands will be destroyed, for wildlife (who do not know that their new place is now in the south bay) and for protection from flooding with the inevitable sea rise. This whole project is based on historic flooding, not on future projections.
- I28-9 |
- I28-10 | So much of this Brooklyn Basin (formerly Oak to Ninth) project from the beginning has been to promise one thing and then later behind closed doors to change it entirely. Starting with the changing of the California State Constitution to allow for the sale of public land for private benefit. The idea that the community would be able to read a 400-page document about this expansion and only have 45 days with which to respond is another example. We have asked for plan specifics for over a decade, so give us more than a month and a half to respond! So much money has been poured into the project, and the project is continuing to expand, pushing the limits of infrastructure, human and other wildlife habitation, the destruction of lifestyle, the standard of living, and housing for a whole existing vital community, and all for the greed of foreign investors who will never know what they want to destroy. The density of units is being allowed to shift all over the project, but the shift of the highest density and the highest of the towers to RIGHT NEXT to the thriving artists' community at Shadetree (which is only 2 stories high) is a direct effort to force out the existing community, the type of community that Oakland purports to support. It has always been the intent of Michael Ghielmetti Signature Development group and his foreign investors to wipe our existence off the map. Don't make it so easy for them to try.
- I28-11 | Hence the push for greater density. IT IS ONLY EVER ABOUT MONEY for this project, and to believe otherwise is foolish. The community at Shadetree and 5<sup>th</sup> avenue have never objected to revitalization and habilitation, but on a much-modified scale, following the science of climate change and the proven wealth of protecting communities rather than "redevelopment" and gentrification. NO PART OF THIS PROJECT whether within the existing plan or the proposed expansion is for the actual public benefit or good. This is the displacement of a vibrant community that is currently the home and refuge of so many people who cannot survive in Oakland if they do not live and work here.
- Signed,  
Kate Rannells  
A resident of Shadetree and longtime friend of the community at 5<sup>th</sup> Avenue.

Dear Planning Commission,

This is my response to the SEIR for the proposed expansion of the Brooklyn Basin project.

The expansion of housing units and slips exceeds the capabilities of the existing AND proposed infrastructure in terms of traffic, light, sound and water pollution. The whole area shuts down when there (used to be) Warriors victory parades in DOWNTOWN OAKLAND, and during every flea market or event at Laney. With the constrictions of the shoreline, the freeway and the railroad there is no actual space for all the potential people and their multiple cars to exist here. People will drive regardless of the public transit options. There is no way to believe that the traffic isn't going to be a total nightmare with 3100 new units, let alone 3700, and people driving their boat trailers to a crowded marina, or to events at the parks.

The proposed increase of slips at the marina in Clinton Basin is not sustainable for wildlife. The increase in the number of boat slips will pollute the narrow waterway at Clinton Basin with fecal matter, oil and trash until it will become a pollution soup and destroy the meaning of the tiny sliver of existing protected wetlands, which even disappears from some of the maps. There is no way that this amount of pollution will not affect the wildlife in the mudflats and wetlands. The San Francisco Bay area is a place of crucial breeding, nesting, and habitat for so many aquatic species. The build-up of the shoreline means that there will not be refuge, or filtration sites or brackish water for breeding for countless species. The only real sustainable future for the shoreline is wetlands, which will not only protect wildlife, but also protect the shore from flooding from the INEVITABLE sea rise which will corrode buildings and destroy infrastructure, and back up sewage systems, further polluting the bay.

There is no way that this whole area from the freeway to the shore, which is fill land, will not become thixotropic (the technical term for "turn into pudding") in the next big earthquake, destabilizing or destroying everything on top. In an effort to prevent this collapse the driving of support piling deep enough will create an intolerable amount of sound for humans and wildlife alike, no matter what the mitigation purports to be. Bass frequencies travel through solid objects quite easily. The fish and marine mammals are affected by sound on the land as well as in the sea, more to the point, it is intolerable to make that level of noise where people are living already. We lived through the freeway repair. We know what it means. There is no way to live with that level of sound.

Wetland protection is impossible with the expansion of the marina, or indeed a creation of a marina. There has been a long history of illegal boat wrecking and dumping in Clinton Basin, and if any of it is dredged an unknown amount of toxic materials (of unknown origin) would be stirred up, and released into the bay.

Wetland mitigation is proposed to be located in another place in the bay altogether, which is not how wetlands work. The shoreline will become rigid, filled with polluting boats and the benefit of the existing mudflat wetlands will be destroyed,, for wildlife (who do not know that their new place is now in the south bay) and for protection from flooding with the inevitable sea rise. This whole project is based on historic flooding, which is not future projections.

So much of this Brooklyn Basin (formerly Oak to Ninth) project from the beginning has been to promise one thing and then later behind closed doors to change it entirely. Starting with the changing of the California State Constitution to allow for the sale of public land for private benefit. The idea that the community would be able to read a 400 page document about this expansion and only have 45 days with which to respond is another example. We have asked for plan specifics for over a decade, so give us more than a month and a half to respond! So much money has been poured into the project, and the project is continues to expand, pushing the limits of infrastructure, human and other wildlife habitation, the destruction of lifestyle, standard of living and housing for a whole existing vital community, and all for the greed of foreign investors who will never know what they want to destroy. The density of units is being allowed to shift all over the project, but the shift of the highest density and the highest of the towers to RIGHT NEXT to the thriving artists community at Shadetree (which is only 2 stories high) is a direct effort to force out the existing community, the type of community that Oakland purports to support. It has always been the intent of Michael Ghielmetti Signature Development group and his foreign investors to wipe our existence off the map. Don't make it so easy for them to try.

A new solution isn't a solution if it is making more problems than it fixes.

Hence the push for greater density. IT IS ONLY EVER ABOUT MONEY for this project, and to believe otherwise is foolish. The community at Shadetree and 5<sup>th</sup> avenue have never objected to revitalization and habilitation, but on a much modified scale, following the science of climate change and the proven wealth of protecting communities rather than "redevelopment" and gentrification. NO PART OF THIS PROJECT whether within the existing plan or the proposed expansion is for the actual public benefit or good. This is displacement of a vibrant community that is currently the home and refuge of so many people who cannot survive in Oakland if they do not live and work here.

Signed,

Kate Rannells

Resident of Shadetree and longtime friend of the community at 5<sup>th</sup> Avenue.

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**From:** John Rogers <johnkojohnkojohnko@yahoo.com>  
**Sent:** Monday, August 9, 2021 10:27 PM  
**To:** cpayne@oaklandca.gov  
**Subject:** Response to Brooklyn Basin SEIR

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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August 9th, 2021

To the Oakland Planning Commission and Catherine Payne,

**129-1 | SEIR is incomplete, full of vagaries, and public should be allowed to have input before the SEIR is issued. Redo with public input and further research.**

This is in regards to the very incomplete Supplemental Environmental Impact report issued by the Brooklyn Basin developers. I am a longstanding member (28+ years) of the 5th Ave Point Artist Community, right in the middle of the development area. To my knowledge, at no point in the development of this expansion was any kind of public process initiated. The public outcry at the marina expansion and the privatization of the water's edge alone should be allowed to be vetted by the citizens of Oakland. Go back to square one with this nonsense...

**129-2 | Infrastructure is not capable of supporting project as planned, let alone this expansion.**

To put it bluntly, the infrastructure as created (and existing in the surrounding areas) is woefully inadequate to handle a development of this size, let alone any kind of expansion. No new traffic study has been done. The original EIR states repeatedly that all intersections for miles around will be "significantly impacted" by the development, yet they continue to try to fit 10 pounds of manure into a 5 pound sack.

**129-3 | New traffic study needs to be made taking into consideration one-lane traffic where two lanes were promised, transit corridor on East 12th st and International, and increased population in East Lake District, Alameda, and Jack London Square.**

**129-4 |** If you approve this new proposal, you will be in charge of creating what I can only see as a death trap, with the traffic boondoggle potentially causing a situation where first responders will be greatly hampered by congestion, delaying response to life and death situations such as an active shooter or cardiac arrest victim. The developers promised two lanes of traffic (with the acknowledgment that the Embarcadero Bridge would be a bottleneck) but instead we have one lane going each way. The development is only beginning to fill up and already we see back-ups happening along Embarcadero and 5th ave. Throw a train into the mix and it quickly becomes a hot mess. Any kind of evacuation in the event of a gas leak or major disaster would certainly be out of the question.

**129-5 | Parking needs to be examined more closely, including expanded marina proposal as well as the success of the new park and events happening there. Public transit is limited to BB shuttle, no bus stop has been planned, foot transit to BART or Bus is subject to increase in crime.**

Parking has already become an issue, with events at the 9th ave Terminal overflowing up and down Embarcadero including into our area at 5th ave Point, and now the developers want to include over 100 new boat slips on top of the 600 units. The new park is terrifically successful, but again, no infrastructure has been provided for this. I'm not sure how .75 parking spaces per unit became the new standard in the city, but it is simply not realistic. California is still a car culture. With no dedicated bus stop (as clearly noted in the SEIR) there is simply no realistic access to Rapid Transit. Walking to and from Lake Merritt BART station is simply an invitation to get robbed. Crime in Oakland has not disappeared, but statistically gotten worse.

129-6 | **Moving tower block to either side of the end of 5th ave Point in direct violation of Estuary Policy Plan stating the 5th ave Point Artist's Community is to be "preserved and enhanced". Seismic viability should be further examined in detail as doubling the number of tower blocks at the end of 5th ave Point has never been examined.**

To add insult to injury, the proposal included in the SEIR to move a light-killing Tower Block further toward the water on the Phase 3 area completely ignores the Estuary Policy Plan's specific verbiage stating that the integrity of the 5th ave Point Artist's Community is to be "preserved and enhanced". It calls for a ziggurat style of building around our community that specifically addresses the issue of light blockage, and now they want to kill the sky for not only our

129-7 | community, but the rest of Phase 3 and 4 of their own development. The shadow study suspiciously ends at 3pm every day. This needs to be revised to include the impact of not only the new tower placement, but also the placement and height of all buildings in Phases 3 and 4. This is not only for our thriving community, but also the residents of Oakland as a whole. Humans need open sky, not gigantic luxury high-rises only available to the very very rich. Put the tower blocks along the freeway edge of the development if they need to exist at all. And I very much question the need for their existence, except to make a very small number of people very rich, give the wealthy a place to gaze down on the worker

129-8 | bees, and to block out the light to the residents of the East Lake District and beyond. There is also the question of whether the area is seismically fit to accommodate such elements right along the waters edge. Further in detail studies need to be made.

129-9 | **Expanded Marina will destroy rich habitats and obstruct views of the water and SF from successful new park. Claim of**  
129-10 | **scant biodiversity needs to be seriously reexamined.**

Others will address the proposed marina expansion in depth, but I must say that it sickens me to think of the impact the at 150+ more luxury pleasure craft will have on the avian and waterborne residents of the small ecosystem known as

129-11 | Clinton Basin. Petrochemical and sewage discharge from boats is inevitable, let alone the disruptive noise caused by boats going in and out. The developers have publicly stated their hatred of the protected wetlands area which has been protected by the state IN PERPETUITY as reparations after the mess the Port of Oakland made with their destruction of the Moby Dick back in 1999. The developer's proposal drawings include a COMPLETE ERASURE of this area, replacing it with a walking path and more rip-riff. In my mind, the proposal to wrap the marina around this area solidifies their

129-12 | intent to sterilize the entire shoreline. In addition, the massing of masts of crafts wrapping around the new park would destroy the view of the water and SF now enjoyed by folks just getting used to having some nice views... The SEIR's claim that there is very little biodiversity is complete nonsense, obviously written by someone who has never been down to the waterside at all. I would urge an expansion of the wetlands as opposed to a reduction of them as all of the area from here from here to Jack London square is quickly being sanitized... Mega-Marshland, not Mega-Marina!!

129-13 | **Moving of tower block, the expanded marina, and increased density (and this development in general) will annihilate a community that has given cities around the world an immense amount of joy.**

In all, this development is marching toward a similar elimination of our community, a community that has provided an untold quantity of art and music to the Bay Area and beyond. Anish Kapoor's "Cloudgate", the epic mirrored stainless steel sculpture in Millennium Park in Chicago was created here, as well as numerous other of his works scattered around the globe, from NYC to Jerusalem. My own "Undercurrent" light sculpture below the 12th St Bridge was created here with Measure DD funding. The giant baseball glove at ATT park was built here, as well as endless music and art that has rippled outward from our small enclave into the entire world. Globe-trotting music tours have been launched from here, and art made that has circled the globe. We are a thriving artist community, we need our light, we need respect. The rest of Oakland does as well.

Thank you for your time,  
John Colle Rogers  
Friendly Neighborhood Blacksmith

---

**From:** t sage <10ofhearts79@gmail.com>  
**Sent:** Monday, August 2, 2021 10:15 PM  
**To:** cpayne@oaklandca.gov  
**Subject:** Brooklyn Basin Marina Expansion Project DSEIR Comments  
**Attachments:** Letter to Planning Commission.pdf

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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Dear Planning Commissioners,

Thank you for taking the time to consider public comments regarding the Brooklyn Basin's expansion proposal. Please see the PDF file attached to read my comments regarding the proposal.

Sincerely,

Teri Sage

August 1, 2021

City of Oakland Planning Commission

Dear Chairperson Limon and Planning Commissioners,

I30-1 | I'm a 14 year resident of the 5th Ave. waterfront community, and I have major concerns regarding the proposed modifications to the Brooklyn Basin's development project, as they would severely impact, and possibly up-end my community. Even in its incipient phases, the magnitude of the development has already had a negative impact on the neighboring community, with regard to traffic, after-hours construction noise, air quality, and lack of access to previously free and open stretches of waterfront. Now the developer is asking the city to make an amendment to the Estuary Policy Plan and to change a zoning code to increase the permitted average residential density in order to accommodate the hefty expansion they hope to tack on to the existing plans.

I30-2 | Presumably, zoning standards are developed with public safety in mind. Pre-established zoning codes shouldn't be on the table for hasty modifications, based on the whims of big developers, who may be more profit driven than safety driven. The proposed expansions to the project come across as imprudent, greedy and unnecessary, considering that this is already the largest approved development project in Oakland since WW2.

I30-3 | The areas that I find the most worrisome are the impacts of:  
**1) Tower relocation**~ seismic and geological issues, as well as shadow impact on the adjacent property.  
**2) Traffic and parking**~ inadequate road infrastructure to accommodate traffic caused by the influx of 1000's new residents and event-goers, and very inadequate roads for emergency vehicle access, or in the event of a mass evacuation of residents from this area; it is a choke point with only one lane in either direction on all roads leading to and from the project site, where likely over 6000 new people are about to reside.

(\*all blue text below is a direct quote, cited from the 2005 Draft EIR, the 2021 SEIR or the Estuary Policy Plan)

I30-4 | **Regarding tower relocation (to Parcel L) and the current shade study:**  
The current study ends at 3 and is therefore incomplete. No approval should go through without a new, comprehensive shade study, examining the impact it will have on the adjacent property- Shadetree.  
  
Relocation to Parcel L would, in fact, have a SIGNIFICANT impact on the lives and well-being of all residents of the Shadetree live/work property on 5th ave. point. PLEASE do not approve the proposal to move a large tower to LOT L, as it is immediately adjacent to Shadetree's building and would effectively block out any direct sunshine at any time of day. This would adversely



I30-4  
cont.

affect our ability to continue growing food and would alter the existing greenery throughout our property. We have also considered eventually converting to solar power as funds become available, but this would become an impossibility if the tower is placed on Lot L. Please adhere to the original plan, keeping the tower on Parcel H or J, where the shade and visual impacts would be worked out within the project design for those lots, and **would not adversely affect an already existing community**. There is no good reason to place this tower as close as it could possibly be to an already existing residence. If the development wishes to preserve our community as they claim, this is a really bad look, and is a direct contradiction to the following assessment:

**Table II-2 SDEIR: Summary of Impacts, Standard conditions of Approval, Mitigation Measures and Residual Impacts; Section IV-K Aesthetics, Shadow and Wind**

*Impact AES-4: Project modifications would not cast a shadow that would substantially impair a nearby use reliant on sunlight*

I30-5

**Regarding tower relocation and geology, soils & seismicity concerns:**

Due to the type of fill and the nature of the soil on the entire project site, which consists of “poorly engineered artificial fill of varied depth and thickness,” (Section IV.F- 8-20. 2005 Draft EIR) combined with compressible Bay Mud and presence of historic sloughs, buried foundations and former marshes, the project site is vulnerable to multiple seismic hazards, such as strong potential for:

- **differential settlement-** “New Fill and structural loads would cause a new cycle of primary consolidation to occur, with the settlement depending on the magnitude of the load and thickness of Bay Mud: the amount of settlement is anticipated to be significant. Differential settlement is often the most damaging and could occur at the site, due to liquefaction, variations in the thickness of the fill and Bay Mud...(IV.F-17. 2005 Draft EIR)
- severe **ground shaking**
- **Liquefaction-** “the project site is located within a Seismic Hazard Zone for liquefaction, as designated by the California Geological Survey. (IV.F-11. 2005 Draft EIR)

A 24 story tower will put a significant structural load on the ground fill under and around the tower. It seems imprudent to place 24 story towers anywhere on the project site, but certainly, relocation should not be approved without first doing a new parcel-specific geotechnical investigation of the ground in the vicinity of where the tower would be relocated-- especially if said tower is moved to the proposed location on Parcel L, which is directly adjacent to the Shadetree live/work building and could pose dangerous seismic consequences to the building and/or foundation of the the existing property. Differential settlement also has the potential to cause damage to gravity utilities on the Shadetree property by flattening the gradient or changing the direction of flow.

**Regarding traffic and parking with relation to an additional 600 residential units and 158 boat slips:**

I30-6 | The most recent traffic study was done in Dec of 2018, which, as stated in the SEIR, was conducted during a time in which the Embarcadero Bridge had been shut down for 3 years for bridge retrofit. The 3 yr. shutdown significantly altered the traffic flow through the intersection at 5th. Ave and Embarcadero, such that many people learned to take alternate routes during those years. Therefore, the traffic study conducted during the bridge closure is completely inadequate to have assessed traffic patterns for that time in 2018 and certainly inadequate to estimate the impact of an additional 6000 or more people once the project is complete.

A new study needs to be done under current and realistic (non pandemic) rush hour conditions. Even before there were 3100 new residences at Brooklyn Basin, there was always a major back-up along Embarcadero during rush hour. The 2005 report gives the intersection at 5th Ave and Embarcadero an F, indicating it is an intersection with “extreme congestion, and very high delays and long queues unacceptable to most drivers.” (section IV. B-9. 2005 Draft EIR). The report states that heavy eastbound traffic flow back then was around 500 vehicles during each peak hour. (IV. B-8). Any commuter who works in San Francisco and lives in the Brooklyn Basin or Jack London area is contributing to this eastbound clog in the afternoon, or westbound clog in the mornings. Even if said commuters use BART or bus, the nearest station is a 20-25 minute walk (1 mile) from Brooklyn Basin; many will still likely drive to park their vehicles at BART or hire a ride to get to BART, therefore still contributing to peak hour congestion in this area. No local bus service directly serves this site.

I30-7 | Another important thing to note here is that train tracks used by Amtrak and Union Pacific run parallel to Embarcadero along the project site. Amtrak alone runs 38 trains through daily. Union Pacific has no set schedule, but when it goes through, traffic going up and down 5th ave is cut off, sometimes for longer than 5 minutes, depending on the length of the train-- this is a major obstacle for emergency vehicle access during peak hours. Also take into account that the new boardwalk at Brooklyn Basin has become a major hotspot for hundreds and sometimes thousands of non-residents every weekend and whenever events are held. There are now major traffic jams in the area every Sunday during events.

I30-8 | In order to moderately improve the flow of traffic in this bottleneck and, most importantly, for the safety of new and existing residents, additional lanes in each direction should be added to Embarcadero between Oak st and 16th ave, as was recommended in the mitigation measures in the 2005 Draft EIR. At present, there is only a single lane in each direction going along this section of Embarcadero from Oak to 16th Ave. It is a choke point and could be a death trap if 3700+ people ever needed to evacuate in a hurry.

The 2005 Draft EIR traffic study found that the project would significantly impact certain intersections. In specific reference to the intersection at Embarcadero and 5th Ave, it states that:

*“The project site plan does not provide sufficient capacity for this intersection. A modification of the project site plan would be needed to add additional lanes on Embarcadero and to restripe 5th. Avenue to provide sufficient capacity at this location.*”

*Mitigation Measure B.2j: Widen Embarcadero to provide two travel lanes in each direction along the project site frontage (i.e., from north of 4th ave to 9th ave), with separate left-turn lanes provided at the intersections, and provide appropriate lane configurations on the streets that intersect Embarcadero within the above-cited limits.*

***The project applicant shall pay for this measure.” (section IV.B-40)***

I30-9 | The same assessment is made for the intersection at Embarcadero and I-880 Northbound off-ramp. These are the 2 intersections nearest to the Brooklyn Basin Development, and this part of the mitigation measure has NOT been adhered to. Embarcadero from Oak to 5th Ave was shut down for 3 years for the bridge reconstruction. The Bridge is in fact wider, but mostly due to a very wide sidewalk for pedestrians on either side. There is still only one lane for each direction of traffic along Embarcadero until 16th ave, so due to the lack of mitigation measures currently in place to address the significant traffic impact of the originally proposed 3100 new units, it would be foolish and very poor planning to slap on an additional 600 dwelling units, plus an additional 158 marina slips with no additional traffic or parking mitigation measures on the table.

I30-10 | **Regarding the parking plan in general: .75 spaces per unit?!!**  
Some, if not many households will likely have more than one vehicle, so the ratio of spaces to residents is severely inadequate and there is no bus access! It is entirely unrealistic to assume that everyone will ride a bike or hire a ride to get to their apartments-- especially if they are families with children or are elderly or disabled. Though we'd all like to live in a world where less people drove cars, we can't assume that providing fewer parking spaces will magically cause residents to give up their vehicles. It will more likely result in Brooklyn Basin resident parking to spill over into surrounding areas, thus placing a burden on surrounding communities, as is

I30-11 | already the case. Again, I have to mention the new boardwalk's weekend traffic impact. There are major traffic jams every Sunday throughout the surrounding neighborhoods caused by the heavy influx of event-goers looking for non-existent parking.

I30-12 | Nothing about this proposed project expansion sits right. It is shamelessly greedy and lacks any concern for the impact it would have on the neighboring communities or the wildlife that inhabits the area. I could go on, but this letter is already lengthy, so I'll close with a section from the Estuary policy plan that the developer has continuously turned a blind eye to, but that I hope the Oakland Planning Commission will kindly take into consideration:

**Preserving the 5th ave. community:** *Preserve and expand the existing Fifth Avenue Point community as a neighborhood of artists and artisan studios, small businesses, and water-dependent activities. West of Clinton Basin, the Fifth Avenue Point community is one of Oakland's most unique neighborhoods. It has nestled among declining waterfront industrial uses, creating a spark of life and activity. The artisan work that takes place there is an economic asset which is valuable for local residents. In addition, the existing work/live units within the Fifth Avenue artisan village contribute to the inventory of affordable studio spaces within Oakland. These units should be maintained and reinforced through the provision of additional units,*



I30-12  
cont.

*including artist and artisan work/live studios and small light industrial and water-dependent businesses. A limited amount of retail and restaurant use, such as the existing Seabreeze Cafe, should also be promoted within the area. It should be noted that enclaves such as this are rarely planned. Rather, they develop through the spontaneous vision and dedication of creative, entrepreneurial property owners and residents. By their very nature and character, these enclaves are economically fragile. Policies that promote preservation and expansion of the Fifth Avenue Point community should be carefully applied, so as not to adversely affect property values, or inadvertently change the very essence of what makes it unique. (Estuary Policy Plan OAK-4.1)*

Thank you for taking the time to read this letter and to consider the concerns and the lives of the local community.

Sincerely,

Teri Sage  
Resident of Shadetree and the 5th Ave. Point community

---

**From:** Elizabeth Sher <liz1943@gmail.com>  
**Sent:** Monday, July 12, 2021 10:40 AM  
**To:** cpayne@oaklandca.gov  
**Subject:** Re Brooklyn Basin Expansion

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Catherine Payne,

We live in Jack London Square. We are very opposed to allowing the Brooklyn Basin Development to expand. Below are some of our reasons:

- I31-1 | 1. The development is already overly dense. The promised open space is limited to a swath along the estuary and not the park spaces pictured on the original plans
- I31-2 | 2. Particularly in our "climate changed" environment, wetlands are more important than ever. This expansion would encroach on
- I31-3 | the wetlands there. Across the country and around the state communities who have destroyed wetlands have experienced increased flooding and due to sea rise have waters coming over the banks and onto the sidewalks. NOTE - many of these communities are now struggling with how to bring back these protective natural environments - not to mention the life within them.
- I31-4 | 3. Brooklyn Basin is not easily accessible to any public transportation or grocery store. Rocky's Market cannot service this large tenant community so tenants either have to drive or order grocery delivery. Both of these options will increase the already dismal traffic situation, not to mention the lack of parking for any visitors to the amenities, restaurants, stores or open space.
- I31-5 | 4. Doubling the boat slips is not a necessary amenity for most low and middle income tenants. It is purely a marketing tool for higher end prospective tenants. This is not what is being promoted as increasing housing in Oakland and the Bay Area. Even more importantly this outrageous increase in boat traffic in the estuary will cause harmful environmental damage to the estuary and cause traffic problems for kayakers, swimmers, etc.
- I31-6 |

For all of these reasons and more, we hope you will not allow this expansion/land grab. Thank you for considering denying the expansion.

Sincerely,

*Elizabeth Sher & Philip Schnayerson*

Elizabeth Sher  
Art & Film for the 21st Century  
[www.ivstudios.com](http://www.ivstudios.com)  
[www.pennythedocumentary.com](http://www.pennythedocumentary.com)  
Facebook Elizabeth Sher  
Penny the Documentary  
Rituals of Remembrance Movie  
Instagram elizabethsher\_artandfilm

*Enjoy Each Healthy Day!!!*

---

**From:** Donna Smithey <donna.smithey@gmail.com>  
**Sent:** Tuesday, July 27, 2021 4:56 PM  
**To:** Payne, Catherine  
**Subject:** Quick Brooklyn Basin question

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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Hi:

132.1-1 | We've scoured through documents, and may have missed this, but how many residential units are proposed for "towers" at 22?

Thanks,

Donna

--

Donna Smithey  
48 5th Avenue  
Oakland, CA 94606  
312-404-6204

---

**From:** Donna Smithey <donna.smithey@gmail.com>  
**Sent:** Tuesday, August 10, 2021 12:49 PM  
**To:** Payne, Catherine  
**Subject:** Letter regarding the Brooklyn Basin DSEIR  
**Attachments:** SMITHEY DSEIR letter of comments 8 10 21.docx

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Please see attached. Let me know if you have any questions.

Thanks very much,

Donna Smithey

--  
Donna Smithey  
48 5th Avenue  
Oakland, CA 94606  
312-404-6204

Donna Smithey  
48 5<sup>th</sup> Avenue  
Oakland, CA 94606  
Cell: 312-404-6204

Board Member, SHADE (Shadetree Historical Artisan Development Engine), a nonprofit

August 9, 2021

Catherine Payne  
City of Oakland, Bureau of Planning  
Re: Brooklyn Basin Draft SEIR PUD06010-R02-ER01  
CEQA State Clearinghouse Number: 2004062013

Dear Ms. Payne:

I am a resident of 5<sup>th</sup> Avenue Point and a member of the Shadetree Community. Shadetree is an historical artisan focused live work property. As recognized in the Estuary Plan, 5<sup>th</sup> Avenue Point is a historic community of mixed uses with artisan and cultural significance to Oakland. As the Estuary Plan states on page 93, Section OAK 4.1, Fifth Avenue Point regarding this unique community:

***“Policies that promote preservation and expansion of the 5<sup>th</sup> Avenue Point community should be carefully applied, so as to not adversely affect property values or inadvertently change the very essence of what makes it unique.”***

All of the projected and proposed development for the Brooklyn Basin parcels K,L, and M will have a dramatic impact on the 5<sup>th</sup> Avenue Point community. To date, community members have not only **not** been consulted about these impacts, but our concerns when expressed have been largely ignored.

Shadetree is a nonprofit resident owned property and is zoned as a legal Joint Live Work Quarter (JLWQ). Other properties at 5<sup>th</sup> Ave Point are also live/work, as recognized in the Estuary Plan, but have not been re-zoned for this use.

- 132.2-1 | In particular the Shadetree community is adversely and negatively impacted by many elements of the Brooklyn Basin project including losing its driveway access to the building courtyard when the historical driveway easement was “removed” in favor of the Brooklyn Basin developers. Proposed designs for 5<sup>th</sup>
- 132.2-2 | Avenue ignore our historical community and setbacks and parking are badly neglected nor assessed
- 132.2-3 | adequately for negative impacts on Shadetree. The proposed development revised plans as reviewed in the DSEIR have ignored the impacts on this vital part of the 5<sup>th</sup> Avenue Point community.

These are my comments:

Addition of 600 units to parcels K, L, and M:

- 132.2-4 | 1. Do not add 600 units to parcels K, L, and M. Increasing the number of units for parcels K, L, and M from the current proposal (after allowed unit “swaps” between parcels) from 607 to 1207 creates extreme density and will cause extensive adverse effects on streets, infrastructure, and the fragile 5<sup>th</sup> Ave Point community. If 600 additional project units are added, they should be scattered across all remaining development parcels.

- I32.2-5 | 2. Failure to add additional affordable units with the increased density request. If 600 additional units are approved, the 20% should be affordable.
- I32.2-6 | 3. The requested amendment to the Estuary Plan to increase unit density from 50 to 58 is an illusion since the density is applied to the entire project. This is misleading because the density for parcels K, L, and M will be vastly higher if 60 units are added to just these parcels.
- I32.2-7 | 4. Page IV.J-10 implies that there is no displacement effect on 5<sup>th</sup> Avenue Point. This is highly erroneous. Adding market rate units does not create a trickle-down effect of more affordable units emerging within the market generally, and adding more market rate units potentially increases nearby property values significantly. Because the vast majority of 5<sup>th</sup> Avenue Point and 5<sup>th</sup> Ave Marina are controlled by one property owner, there is no way to discern if and when property values rise enough that that owner decides to sell. If that should happened, there will be massive displacement of residents and business at the heart of what makes the 5<sup>th</sup> Ave. community unique and valuable for Oakland.

Tower Relocation:

- I32.2-8 | 5. Relocation of a tower from either H or J to either L or M is unnecessary and creates significant infrastructure challenges and quality of life problems for current residents and businesses.
- I32.2-9 | 6. A tower on either L or M adds an undefined number of units to the parcels. There is no information readily available in the DSEIR or Development Plan that clearly lays out how many units are in a tower compared to an 8 story building. Is it 400? This number is important because the swap to L or M of additional tower units is above the 600 increased density request. So instead of these parcels being 1207 units, could it be 1600? This issue is not addressed at all and impacts all categories of the report from flooding to traffic to infrastructure and more.
- I32.2-10 | 7. The Shadowing and Viewpoint studies ignore Shadetree as a JLWQ property. A tower on L would place the Shadetree property in perpetual shade at all times and days of the year. Not only is this a high impact on the light for residents but precludes our current plans to use solar for most of our utility needs. The shadowing studies demonstrate the adverse effects on both Shadetree and all local residents and businesses. The Viewpoint studies completely and totally ignore the Shadetree community and all of 5<sup>th</sup> Avenue Point.

Roadways and Infrastructure:

- I32.2-11 | 8. The design of the roadway, parking, landscaping, and infrastructure on 5<sup>th</sup> Avenue from Embarcadero to the water is poorly designed, ignores current uses by residents and businesses, and creates a density of traffic and “trips” that are not sustainable and have a highly negative impact on the existing community.
- I32.2-12 | 9. The lack of a new traffic study that analyzes both existing conditions compared to projected, but also makes it impossible to adequately comment on this area. The DSEIR approval process should be postponed until an adequate traffic study is completed.
- I32.2-13 | 10. Already events at the Shoreline Park are causing massive traffic and parking problems. Whatever parking is being provided is clearly inadequate, and because there is virtually no public transportation on site, parking and roadways are overwhelmed, and local residents and businesses find that it is difficult to access their places, and already barely adequate parking is swamped. Attendees at these events have also been trespassing onto Shadetree’s property and courtyard.

Marina:

- I32.2-14 | 11. Adding additional Marina slips is wrong on every level and well refuted and addressed by many organizations and knowledgeable individuals.

I32.2-15 | 12. Section V-13, VD-D Environmental Superior Alternative, clearly states “In summary, the No Marina Expansion Alternative is considered the environmentally superior alternative as it would avoid and/or substantially reduce new Biological Resources impact 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.”

I32.2-16 | 13. The impact on the existing 5<sup>th</sup> Avenue Marina is not clearly addressed. Will those slips be eliminated? The 5<sup>th</sup> Ave Marina plays a vital role in the artisan and cultural life of 5<sup>th</sup> Ave Point and is one of the remaining affordable boat slip locations in the Bay Area.

I32.2-17 | 14. Currently the project proposes that the 5<sup>th</sup> Avenue Marina be brought up to “world class” standards. Would existing slip renters be relocated during construction? Would the existing slip renters be allowed a right to return at affordable rates?

15. 5<sup>th</sup> Ave Marina plans must be made transparent, and the existing community should be involved in decision making. To quote again from the Estuary Plan regarding 5<sup>th</sup> Ave Point: ***“Policies..., should be carefully applied so as to not adversely affect property values or inadvertently change the very essence of what makes it unique.”***

I32.2-18 | Infrastructure

16. Infrastructure impacts are vastly understated and completely dismiss the need for updated Sea Level Rise accommodations.

17. Shadetree sites surrounded on all 4 sides by the Brooklyn Basin project, but as Shadetree needs to make its own plans for infrastructure, it has had no access to the plans for Brooklyn Basin nor any information on how infrastructure design and planning will impact Shadetree both currently and in the future.

General Comments:

The most deeply impacted communities, 5<sup>th</sup> Ave Point and Shadetree, have been ignored for planning and impact. The community benefit plan does not address these communities for support and mitigation of the Brooklyn Basin project in any substantial way.

I32.2-19 | All approvals for the proposed Project Modifications should be postponed until an adequate community engagement process has been initiated and completed with 5<sup>th</sup> Ave Point residents, businesses and boaters.

Thank you for your consideration of this letter.

Respectfully,

Donna Smithey

---

**From:** Donna Smithey <donna.smithey@gmail.com>  
**Sent:** Tuesday, August 10, 2021 2:32 PM  
**To:** Payne, Catherine  
**Subject:** DSEIR letter re: Fires on Parcel L  
**Attachments:** SMITHEY DSEIR letter of comments 8 10 21 Supplemental on Fire Incident.docx

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

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Hello:

This is a separate letter because of the specifics of the issue. Please see attached.

Thanks,

Donna

--

Donna Smithey  
48 5th Avenue  
Oakland, CA 94606  
312-404-6204

**Donna Smithey**  
**48 5<sup>th</sup> Avenue**  
**Oakland, CA 94606**  
**Cell: 312-404-6204**

**Board Member, SHADE (Shadetree Historical Artisan Development Engine), a nonprofit**

August 9, 2021

Catherine Payne  
City of Oakland, Bureau of Planning  
Re: Brooklyn Basin Draft SEIR PUD06010-R02-ER01  
CEQA State Clearinghouse Number: 2004062013

**RE: FIRE INCIDENT ON PARCEL L**

Dear Ms. Payne:

132.3-1 | I am a resident of 5<sup>th</sup> Avenue Point and a member of the Shadetree Community. Shadetree is an historical artisan focused live work property at 48 5<sup>th</sup> Ave. Our property can be found on the Development Plan along 5<sup>th</sup> Avenue labeled "Not in Project". The actual dimensions of our parcels are incorrect on that planset. While I have already submitted written comments on the DSEIR, this particular issue deserves a separate letter.

132.3-2 | Late on the night of August 2<sup>nd</sup>, 2021, a fire occurred on Parcel L just adjacent to the Shadetree driveway. The flames reached over 30' in the air. The Shadetree fire alarm system was activated, our resident Fire Wardens responded, and residents rushed to the site. Residents used over 30 fire extinguishers to put out the fire. This took approximately 20 minutes. Had the wind been coming from a different direction, Shadetree would have been in imminent danger.

By the time the fire department arrived on the scene the flames were out though smoke was still present. Brooklyn Basin security never appeared on the scene, and no one at Shadetree has heard from the developers. Debris from the fire remains.

Residents reported a toxic taste and many reported coughing and scratchy throats for several days. The smell of fire smoke lingered in the Shadetree building for a few days.

The Fire Marshall and Fire Incident personnel have not done a "cause of fire" inspection, and, it seems, will not.

This is the 3<sup>rd</sup> fire incident on Parcel L over the last as many years. Previous fires were smaller and put out by Shadetree residents, and the debris was immediately removed by the developer.

132.3-3 | Our concern is now that there be an investigation into this fire, the results of any Environmental Studies already done or to be conducted in the future should be publicly released, and any current dangers or threats be immediately mitigated. The residents of 5<sup>th</sup> Ave Point and Shadetree are justifiably concerned about the toxicity of the site, fire dangers, and other environmental hazards. The DSEIR should be revised to investigate Parcel L more extensively.

132.3-4 | Until the issues with Parcel L are resolved, the property should be put on Fire Watch for the protection of the adjacent residents and businesses.

Shadetree has undertaken extensive efforts and expenses to be a safe live/work space. Our residents are trained, we have a Fire Warden system, and elaborate and redundant fire alarm systems. Residents and neighbors are very shaken to have had a blaze of such size literally adjacent to our homes and business.

Respectfully submitted,

Donna Smithey

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**From:** Patty St.Louis <pattyridesherbike@gmail.com>  
**Sent:** Monday, July 19, 2021 10:41 AM  
**To:** drarmstrong@oaklandca.gov  
**Cc:** cpayne@oaklandca.gov  
**Subject:** July 21 Planning Meeting Screen Share - Patty St.Louis  
**Attachments:** July 21 Planning Meeting screen share- Patty St.Louis.pdf

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Dear Ms. Armstrong,

Attached please find the pdf I would like you to share during my two minutes at the Planning Meeting on Wednesday July 21 at 3 pm.

I will be attending with my friend Gabriella Ramos. We will both be speaking from my Zoom account and she would like this pdf to remain visible during her two minutes as well.

Thank you for your help with this.

Looking forward,

Patty St.Louis  
510-472-8697

**I33.1-1 | NO MEGA MARINA - RESPECT OUR VIEW AND USE OF THE OPEN WATER  
WE HAVE A RIGHT TO CLOSELY EXPERIENCE ABUNDANT WILDLIFE**

**I33.1-2 | STICK TO THE PLAN - THE ESTUARY POLICY PLAN**

**I33.1-3 | THIS IS NOT A MODIFICATION, IT'S A SWITCHEROO**

**WHAT'S THE DEAL?**

**UNVEILED AS 50/50 THIS WOULD MAKE IT 40/60**

**9TH AVENUE IS THRIVING - DSEIR IS WOEFULLY INCOMPLETE**

**I33.1-4 | ● BARELY A MENTION OF THE WETLAND SITE**

**● NOT DESCRIPTIVE OF PRESENT CONDITIONS**

**I33.1-5 | ● DOES NOT STUDY THE PREFERRED PROJECT**

**I33.1-6 | ● NO TRAFFIC STUDY INCLUDED**

**I33.1-7 | ● WATER TRANSPORTATION TO ALAMEDA IS VERY POPULAR**

**I33.1-8 | NO MARINA BETWEEN BERKELEY AND SAN LEANDRO IS FULL**

**● 158 SLIPS ARE APPROVED, 325 ARE OVERKILL**

**“THE BEST PLACE IN OAKLAND” - REGIONAL DESTINATION**

**I33.1-9 | RIGGING IS NOISY**

**● JAZZ, SALSA, ROLLERSKATE DANCE PARTY IS HAPPENING**

**THE INNER HARBOR IS A SAFE AND QUIET PLAYGROUND**

**● PADDLE BOARDERS AND KAYAKERS ARE USING IT NOW, AS IS**

**● INVITING TO NOVICE SAILORS AND CAUTIOUS ADVENTURERS**

**THE MARSHLAND NEEDS OPEN SPACE TO FUNCTION**

**● PELICANS AND EGRETS ARE FISHING**

**● PEOPLE ARE WATCHING AND TAKING PICTURES**

**I33.1-10 | OUTREACH FOR THESE COMMENTS IS POOR**

**● OBVIOUSLY INTERESTED PARTIES ARE UNINFORMED**

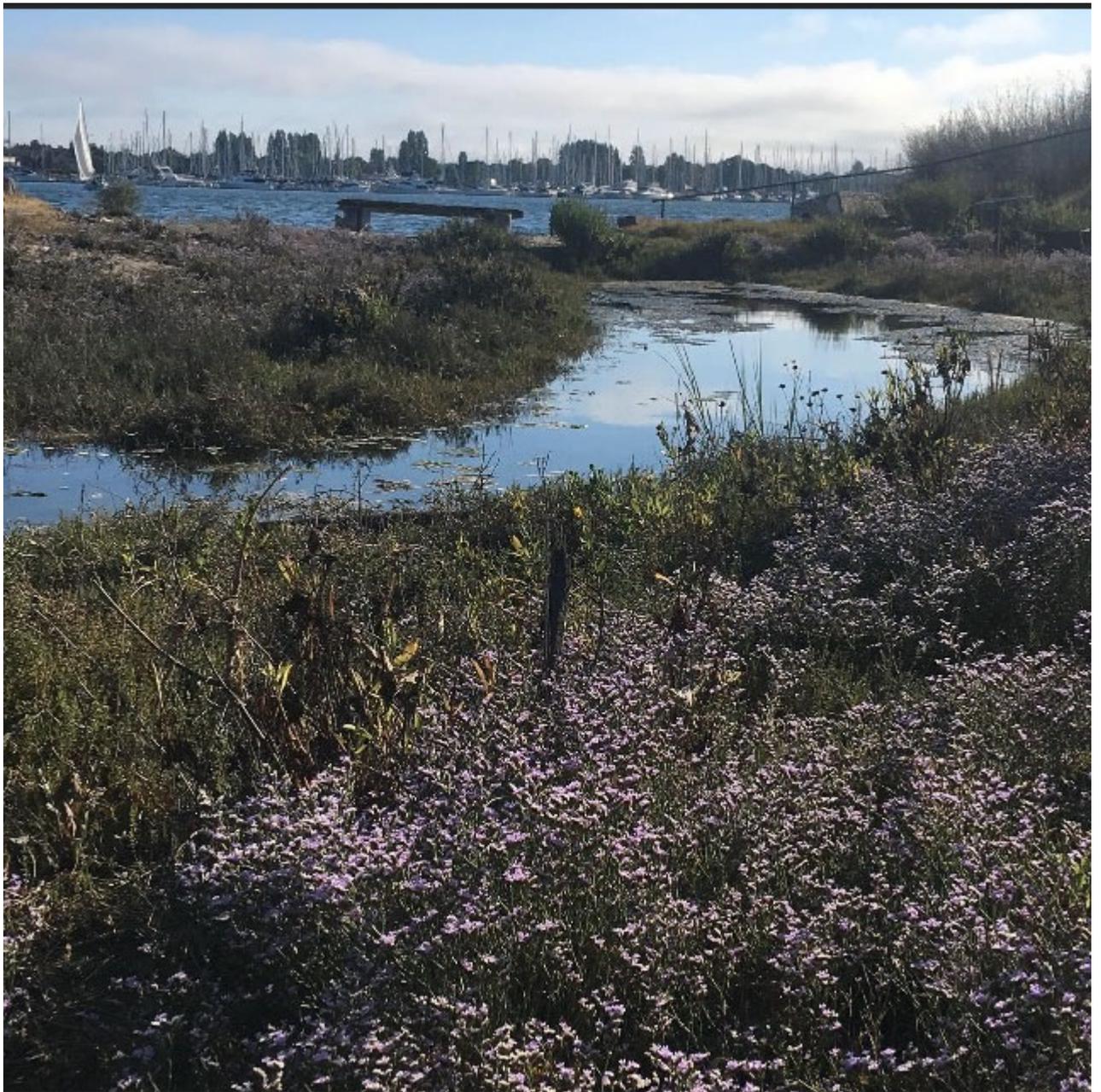
**● STUDIED AND REVIEWED DURING COVID**

---

**From:** Patty St.Louis <pattyridesherbike@gmail.com>  
**Sent:** Tuesday, August 10, 2021 4:56 PM  
**To:** Payne, Catherine <CPayne@oaklandca.gov>  
**Subject:** Comments on DSEIR: Brooklyn Basin Marina Expansion Proposal

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Catherine Payne  
Planning Manager, City OF Oakland  
Members of the Planning Commission  
Oakland City Council  
All Interested Parties

Dear Ms.Payne,

Herein please find comments on The DSEIR for the Brooklyn Basin Marina Expansion Proposal

Please add these to the public record to be entered into the DSEIR for this project and not deflected as comments that are only shared with the developer.

133.2-1 Thank you, Ms.Payne, for the skillful way you facilitated the July 21 Planning Commission meeting on the proposed marina expansion at Brooklyn Basin. I especially appreciate that you paused the meeting to clarify someone's misspoken point. It's good for us all to be clear.

A lot of new information was brought up during that meeting and I also appreciate the 15 extra days to clarify my concerns.

133.2-2 This project should never have been studied. The environment in which you are operating this review is a public process with a decades long history of extensive public input. This marina expansion project is clearly antithetical to all of the objectives set forth during that public input process. The value of public open space, public access to the water, and the public's right to give direction to the City on matters of parks and open space are woefully disregarded in the very suggestion of this mega-marina. I feel strongly that the staff should not have allowed this to go through to the SEIR process.

133.2-3 I request further clarification on the issue of public notice and the presentation of this project proposal.

Specifically:

1. Was there a Oakland public meeting titled: Brooklyn Basin Marina Expansion? I am aware of only a BCDC scoping meeting.
2. If so, was I on the list of notified parties?
3. If not, please confirm whether or not the project was presented only to the Planning Department staff.
4. When was the SEIR ordered by the Commission?

133.2-4 I ask because there have been very few meetings on the fate of Clinton Basin and since 1997, I have attended all but one. Likewise, I personally know several people who are on your list of Oak through Ninth / Brooklyn Basin interested parties who were shocked to see the graphic I mentioned in my speaker comments suddenly being used as though it was representative of Brooklyn Basin's future. It is NOT.

I clearly have made myself known as an interested party particularly as concerns the wetland restoration project at the Mouth of Clinton Basin. I and other interested parties received no invitation to a City of Oakland meeting to discuss the project proposal prior to the invitation to the July 21, 2021 meeting to discuss the DSEIR.

133.2-5 Since 1997, I have been volunteering as the shoreline clean-up coordinator, I was the whistle blower that initiated the mitigation project that resulted in the Clinton Basin Wetland Enhancement Project and I have now officially adopted the place through the amazing City of Oakland Adopt-A-Spot program.

I care very deeply for this place and I have served as your boots in the mud down there for more than two decades pulling tires, shopping carts, mattresses, boat demolition debris, flotsam and jetsam out of the inter-tidal zone. I am very familiar with the place over seasons and I have observed with my own eyes a vast amount of biodiversity contrary to what seems to be stated in the BIO portion of this DSEIR.

I find it not interesting, concerning and conniving to mention that no species on the endangered list would be significantly impacted by the project and fail to give a comprehensive description of what is there now. This week, as often they do, terns and pelicans have been diving exactly where the awkward finger of docks are proposed in front of the restoration project. In one day I saw a harbor seal, a jellyfish, a ray, schools of small fish, lots of water birds, and rabbits.

Attached are pictures of the Clinton Basin project twenty years ago and today. With \$64,000 and no maintenance program whatsoever, the shoreline has restored itself to a thriving marshland.

133.2-6 Your contract with the developer clearly states that they are supposed to clean up the project site and maintain our parks.

It also states that they are supposed to hold town hall meetings on Clinton Basin and they have not.

133.2-7 I look forward to designing the Superior Alternative project with you.  
As the Estuary Policy Plan and the General Plan dictate you do, let's study and move forward with the building of a low cost/high gain mega-marshland wrapping the entirety of the Fifth Avenue point peninsula.

133.2-8 I.A.1  
*The Project Modifications site is the same...with the addition of approximately 10 acres of water surface area.*

so, it's not the same

surface area is a flat plane, obviously, boat parking occupies the depths of the water below it. The very nature of this extension of the project area into the open water space would add complications that are beyond the scope of this project and would make a change significant enough to preclude it from being described as a modification. When you have modified something beyond recognition, you no longer have a modification.

Correct and forthcoming language: The Project Modification site differs from the Approved site by adding 16% additional overall space to the project area in the form of 10 acres out into the open water.



- ↑
- I33.2-8 cont. | Water area by its very nature is not surface area, it includes its depths.
- Patty St.Louis  
your boots in the mud down at Clinton Basin
- Thank you and good afternoon
- I33.2-9 | No you haven't worked with many community groups, this is not supportive of the community
- California canoe and kayak knows nothing of this and has confirmed that novice kayakers would have difficulty navigating the marina
- I33.2-10 | Starting with the massing and development area are not changed they are increased by 10 acres!
- It's a relief to finally get a chance to speak to you about this hair-brained idea of a mega marina in our quiet Inner Harbor. Of course it would have a significant impact. It changes the whole concept of the area
- I33.2-11 | My feathers have been ruffled about this since 2018 when we were first bombarded with the idea at two simultaneously held public meetings. Apologies were made back then and accepted for that scheduling snafu.
- But it is egregious and not so easily forgiven that at those two meetings, a concept illustration was suddenly being used titled "Master Plan" with no clear explanation that what we were actually looking at was merely a proposal.
- This graphic suddenly and confoundingly replaced the Open Space with Views to the Estuary concept that we had been working with for more than two decades prior, beginning with the 1993 League of Women Voters initiative to take back our waterfront for public open space use.
- This switcheroo is confusing to people like myself who have so generously given 24 years of community input service and deceptive to those who are new to the process. I am confident that there are protocols that prevent you from presenting false or conniving information
- and that illustration and this DSEIR are full of false and conniving information.
- I33.2-12 | The EIR does not *offer a meaningful description of the project area or reference the joint city of alameda the estuary crossing study*
- I33.2-13 | I cannot understand why this proposal was even entertained by an EIR as it floats so blatantly opposed to ALL of the objectives of our Estuary Policy Plan. You put the cart before the horse on this one and are wasting everyone's summer vacation reviewing it.
- I33.2-14 | I hope that the feedback you receive makes it clear that multitudes of people would band together and stand up to prevent such a breach of the public's trust. Let's not hear of it again and let's get on with more appropriate summer time discussions like not losing the A's
- I33.2-15 | The wetland restoration project requires a wide berth into the open water space around it and the full depths of the channel where water birds dive. It's not wise to park boats between an anchovy and a pelican.
- ↓

133.2-15  
cont.

The marshland is thriving as is, kayaks are abundant as is, Township Commons is being called the Best Place in Oakland. You'd be hard pressed to come now and try and draw a curtain of boat rigging between the roller skaters and the paddle boarders or drown out the fresh and fancy sounds of jazz, salsa and dance party dj's with the noisy clanking of privatized yacht parking.

Makeda: Van Wijk

my mom is willing to go all Julia Butterfly on you and anchor herself in a canoe near the wetland and order take out until you stop this crazy idea and refocus your relationship with the Brooklyn Basin developers.

they are our parks maintenance guys, not our open space concept designers.

That is our job, our right, and our responsibility to protect.

I get it, a developer's vocation is to imagine what can be built in empty spaces.

But to ogle our Shared Public Open Space in that way is unprofessional, lecherous, creepy, and sad.

Maybe if you spend some time there you will realize how incongruous and utterly hyperbolic 325 boat slips would be. Of course it would significantly impact the area.

There are empty slips in every marina between San Leandro and Berkeley and we are already expecting 52 new boat neighbors in the refurbished Clinton Basin marina.

Sadly, it shows that these developers don't see the value of the wetland habitat or of sharing open space.

133.2-16

Urban wild places do not function abstractly on a developer's map

They act organically through the serenity we take back home to our communities and smiles which help relieve the pressures of our daily lives.

Please reject the EIR. PLEASE REJECT the project



July 21 Planning Meeting screen share

## South Park and Channel Park complement the dynamic industrial character of Shoreline Park and Gateway Park with a more contemplative natural character.

**HISTORY** Historic maps and aerial photographs show the Brooklyn Basin site was once a large natural marsh. In the early 1900s it was filled-in for industrial purposes such as lumberyards, break-bulk-cargo, ship repair, food warehouses, and other activities. Shoreline Park at the site of the 9th Avenue Terminal will remain the most industrial in character--preserving some of the 9th Avenue Terminal and integrating the overall geometry and scale of the railroads and building into the design. As the terminal building gives way to lands at the north end, the parks will become softer and will wrap across to South Park with a more natural landscape in the bioswales and upland at Channel park.

**CONTEXT** South Park and Channel Park are located on the Oakland Estuary at the northern end of the Brooklyn Basin Development in Oakland, California. These parks will be the third and fourth phase of development for open space within the Brooklyn Basin project following Gateway park and the development of Shoreline Park at the site of the 9th Avenue Terminal. The site is located adjacent to the Lake Merritt Channel and faces Estuary Park's beloved and heavily used community boating facility. A new bridge connection along Embarcadero will provide improved access for cars and bicycles in 2018. A planned bicycle and pedestrian bridge from Lake Merritt will make a critical connection to the waterfront trails from neighborhoods to the east.

**CHARACTER** Each of the open spaces at Brooklyn Basin as well as Estuary Park to the north will provide a continuous family of open space, but will also establish very different strong characters. South Park and the southern end of Channel Park will be the most contemplative providing spaces for quiet views to the water surrounded by native plantings. Smaller picnic areas and activation at the edges will provide clear nodes for accessing the Bay Trail at the water's edge. An existing wetland site that was created through a mitigation with the Port of Oakland will remain as a feature in the landscape. The central and northern edges of Channel Park are designed for larger groups and more dynamic passive recreation. A large flexible pavement area provides opportunities for parking by cars or bicycles as well as the staging area for events. The design of the pavement area can be right sized for changing needs of transportation and events. At the water's edge a community porch provides porch swings for visiting the water and defining your arrival. The porch swings repeat elsewhere in the parks as a trail maker and wayfinding device. At the northern edge of Channel Park a large mound elevates park goers for bigger water views and provides a gentle slope for play and picnicking. In compliance with the State Lands Commission, the parks must be regional in program and will serve the entire Bay Area.

**LAND TRAILS** In compliance with locating the Bay Trail at the edge of water, a new 30'-0" wide trail area will circumnavigate Brooklyn Basin and connect to existing Bay Trail at both the north and south ends. The design was created to emphasize the public access by multiple modalities and to strengthen connects to the existing residential fabric of Oakland at numerous critical intersections. The team is working with the city led project for the new bike bridge connection to insure the designs are integrated and positively reinforce each other. In total South Park and Channel Park provide nearly 2000 Linear Feet of water's edge trail.

**6.6 Habitat Enhancement Project; WaterKeepers Settlement.** Seller has disclosed to Buyer, and Buyer acknowledges such disclosure, that pursuant to an Amended Order re Complaint for Administrative Civil Liability, in the matter of The Port of Oakland, Clinton Basin Site, 6<sup>th</sup> Avenue, City of Oakland, Alameda County, Complaint No. 00-040 issued on August 8, 2000 ("Order"), Seller agreed to construct a supplemental environmental project, referred to by Seller as the Habitat Enhancement Project or the Clinton Basin Wetland Construction Project, and that pursuant to BCDC Permit M02-48 ("Permit"), Seller is required to monitor and report to BCDC the existence of invasive plants, sediments, and other items as set forth in the Permit. If applicable, upon Close of Escrow, Buyer agrees to comply with all legal requirements of the Order and Permit.

Additionally, pursuant to the Settlement Agreement dated September 19, 2000, entered into between Seller and WaterKeepers Northern California, formerly San Francisco BayKeeper, Seller agreed, among other things, to conduct Town Hall Meetings for the Clinton Basin Community, as defined in the Settlement Agreement, and to establish a beach Clean-Up Program for the Clinton Basin, as defined in the Settlement Agreement, for a period of five (5) years from the effective date of the Settlement Agreement. If applicable, upon Close of Escrow, Seller agrees to continue to comply with the obligation to conduct Town Hall Meetings, and Buyer agrees to comply with all of the other provisions in the Settlement Agreement. The provisions of this **Section 6.6** shall survive Close of Escrow.

---

**From:** William Threlfall <wthrelfall@pacbell.net>  
**Sent:** Monday, June 14, 2021 10:58 AM  
**To:** City of Oakland Planning & Building Department  
**Subject:** Brooklyn Basin Marina Project DSEIR Comments  
**Attachments:** Brooklyn Basin wetlands letter.pdf

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Ms Payne,

Please convey the attached comments to the Planning Commission.

Thanks!

William Threlfall

# W.E. THRELFALL

11 WOODSIDE GLEN COURT • OAKLAND • CA • 94602

June 12, 2021

Catherine Payne  
City of Oakland, Planning and Building Dept. Development Planning Division  
250 Frank Ogawa Plaza, Suite 2114  
Oakland, CA 94612  
Attn. **Brooklyn Basin Marina Expansion Project DSEIR Comments**

Ms. Payne,

Please convey the following comments to the Chair and Members of the Planning Commission:

The Marina Expansion Project summary indicates that the project incorporates the “Clinton Basin Wetland Restoration and Enhancement Project”, an existing Port of Oakland mitigation project on the west shore of the mouth of Clinton Basin. This Port of Oakland project was designed to improve the habitat value for shore birds, gulls, ducks, and other avian life that frequent the area. It is shown on the attached South Park Illustrative Plan.

I34-1

The original August 2005 Oak to Ninth Project DEIR included this language:

“Clinton Basin Wetland Restoration and Enhancement Project. In addition to new and permanent open space areas, the project would maintain the existing Clinton Basin Wetland Restoration and Enhancement Project wetland restoration area at the west shore at the mouth of Clinton Basin (Figure III-6). **No changes are proposed to this resource as part of the project.**”

However, the June 2021 SEIR, if approved, will allow construction of a set of connected floating structures including marina slips and floating ramps that create a wall between the wetlands and open water. The proposed slips and ramps are highlighted in red on Figure III-6, attached. I urge consideration of the following questions about floating marina proposed in front of the wetland restoration area:

I34-2

- Can the project design be properly reviewed without detailed information about the slips, ramps, fences, lighting, and other proposed structures?

I34-3

- Are the proposed structures consistent with the conditions of DESIR Impact BIO-4, especially 2009 Mitigation Measure I.2b: Wetland Avoidance?

I34-4

- How would the biological performance of the wetland and the health of its wildlife be affected by these proposed structures?

I34-5

- How would the floating structures affect the ongoing deposition of silt and sand that is a design objective of the existing wetland?

I34-6

- How would noise, artificial light, and physical activity associated with these structures affect wildlife?

I34-7

- How would public views of open water from South Park be affected?

I34-8

- Would the project adversely affect or disrupt the performance and effectiveness of the existing Port of Oakland mitigation? See: *Impact LU-4: “The Project Modifications would not fundamentally conflict with any applicable habitat conservation plan or natural community conservation plan. (Criterion D)”*

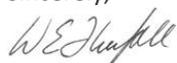
I34-9

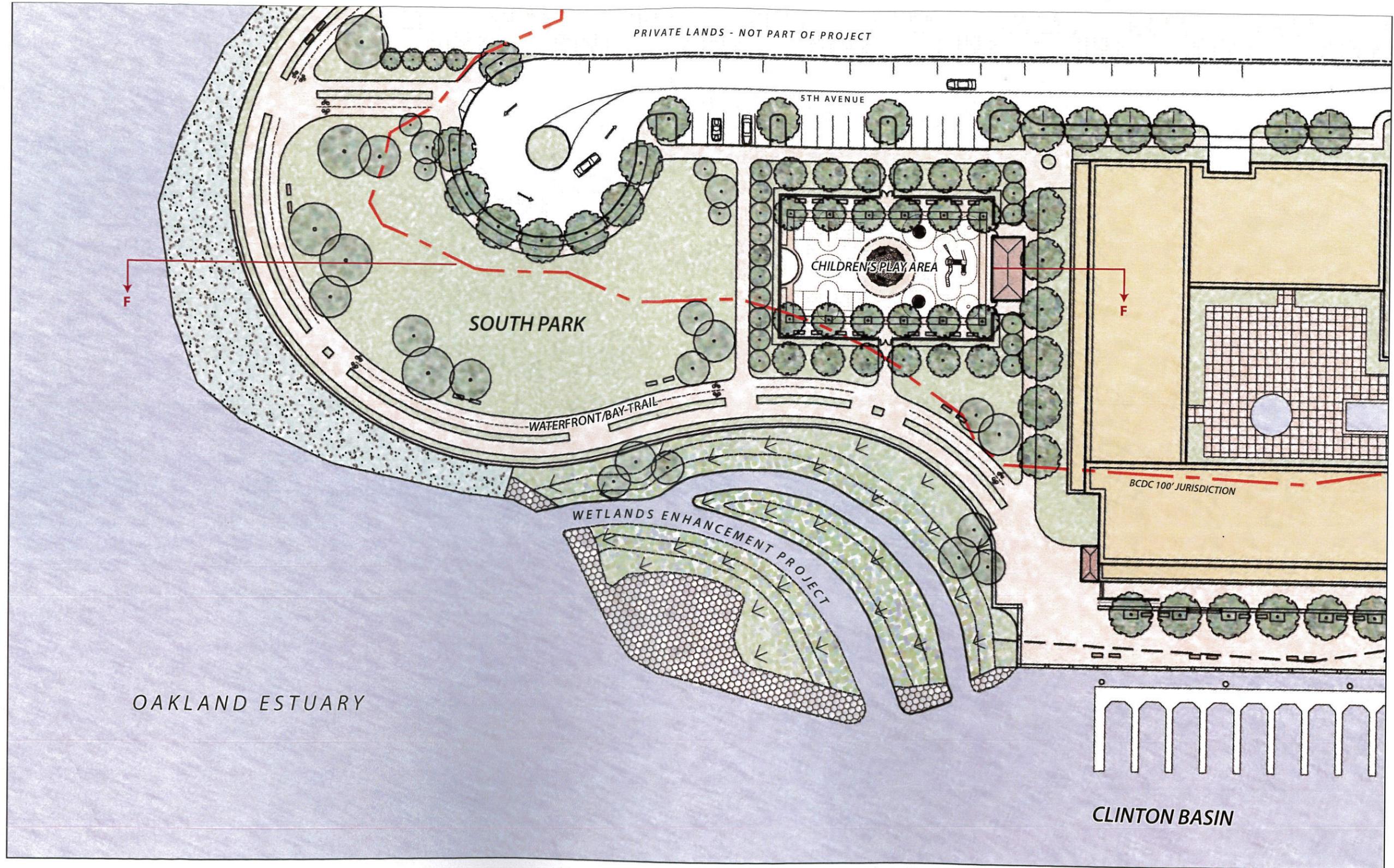
Clearly, the proposed project treats the existing wetland very differently than the 2009 project, and the DSEIR is not correct in saying “The conclusion for the Project Modifications is the same as identified in the 2009 EIR.”

I34-10

Thank you for considering these questions. I urge the Commission to reject any design that includes new floating marina structures near the South Park wetlands.

Sincerely,





### SOUTH PARK ILLUSTRATIVE PLAN