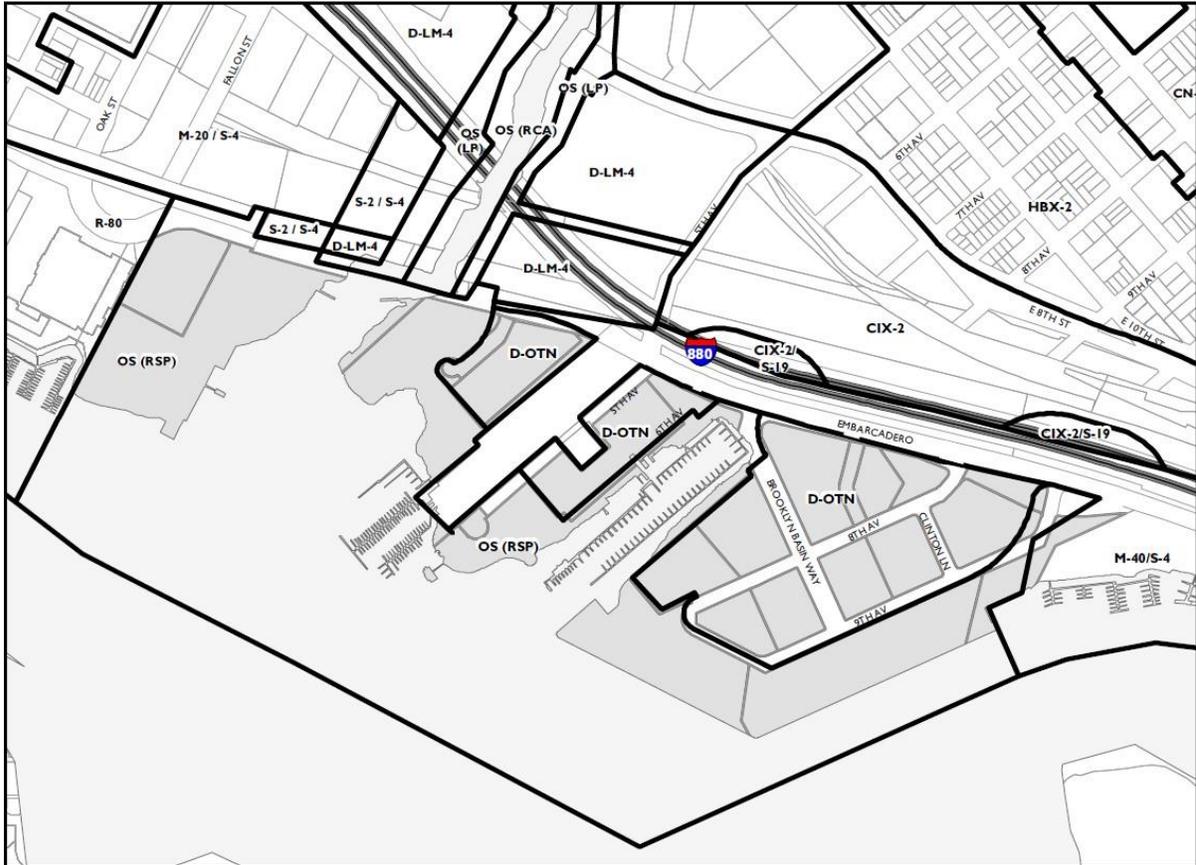


<b>Location:</b>	<b>Brooklyn Basin (including 845 Embarcadero, 1- 9<sup>th</sup> Ave)</b>
<b>Accessor’s Parcel Number:</b>	018-0430-001-14, 018-0460-004-06, 08, and 11, and 018-0465-002-06, 12, 15, 27, 29, and 30.
<b>Proposal:</b>	Modifications to the Brooklyn Basin Marina Expansion Project. The Project Modifications include an increase of 600 residential units (for a Project site total of up to 3,700 units), allowance to relocate planned tower sites, an update to the parking ratios, and marina improvements to accommodate a water taxi/shuttle service.
<b>Applicant:</b>	Zarsion-OHP 1, LLC, Eric Harrison
<b>Phone Number:</b>	(510) 251-9280
<b>Owner:</b>	Zarsion-OHP 1, LLC
<b>Case File Number:</b>	PUD06010-R02
<b>Planning Permits Required:</b>	CEQA review, General Plan Amendment, Zoning Code Amendment, Revision to the Preliminary Development Plan for the PUD, and Development Agreement Amendment.
<b>General Plan:</b>	Planned Waterfront Development
<b>Zoning:</b>	Oak to Ninth District Zone (D-OTN) (previously known as Planned Waterfront Zoning District (PWD-4))/ OS/RSP
<b>Environmental Determination:</b>	Supplemental Environmental Impact Report; please access documents at: <a href="http://oaklandca.gov">City of Oakland   Current Environmental Review (CEQA/EIR) Documents... (oaklandca.gov)</a> --located under “Brooklyn Basin (formerly Oak-to-Ninth)” heading.
<b>Historic Status:</b>	9 <sup>th</sup> Avenue Terminal Building OCHS Rating “A”
<b>City Council District:</b>	2 – Nikki Fortunato Bas
<b>Status:</b>	Staff recommendation for approval and positive recommendation by the Planning Commission to Council.
<b>Staff Recommendation:</b>	Certify SEIR; and recommend approval to City Council.
<b>Finality of Decision:</b>	Decision is not final. Receive public testimony and forward Commission’s recommendation to City Council.
<b>For further information:</b>	Contact case planner <b>Catherine Payne</b> at (510) 915-0577 or by e-mail at <a href="mailto:cpayne@oaklandca.gov">cpayne@oaklandca.gov</a>

# CITY OF OAKLAND PLANNING COMMISSION



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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)

## SUMMARY

In January 2018, Zarsion-OHP 1, LLC. (Project Applicant) filed an application for modifications (“Project Modifications”) to the Brooklyn Basin Project - an approved, mixed-use residential project located on the Oakland Estuary. The plans for the Project Modifications are attached hereto at **Attachment A**. Multiple components of the approved project have been completed; other components are under construction. With respect to the unconstructed components, the Project Modifications include changes to the residential density, parking ratios, location of tower elements, a new public small-craft water launch for a planned water taxi and some minor changes to the implementation of off-site traffic improvements. The proposed Project Modifications require a General Plan Amendment, Zoning Code Amendment, Development Agreement amendment, revision to the Planned Unit Development (PUD) permit, and environmental analysis in the form of a certified Environmental Impact Report (EIR). The key changes to the approved project would be to allow an increase in residential density by 600 units for a Project site total of up to 3,700 units, and a reduction in required parking ratios to 0.75 spaces per residential unit. There will also be a small-craft water launch for a planned water taxi. The larger marina expansion that was first proposed has been removed from the Project.

The purpose of this meeting is to take public testimony concerning the proposed Project Modifications and to consider the application submitted for the Project summarized in the Project Description section. Staff recommends the Planning Commission make the following recommendations to the City Council:

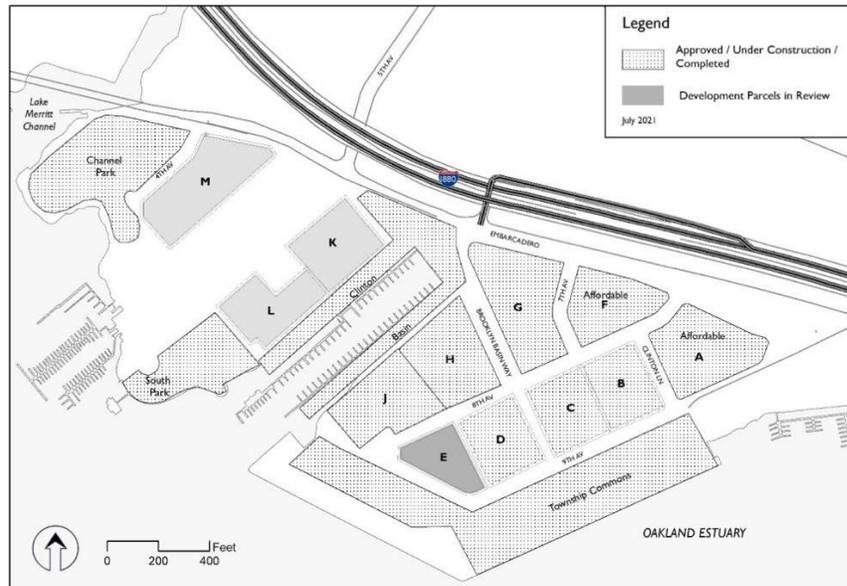
1. Recommend adoption of the enclosed CEQA findings, at **Attachment B**, including certification of the SEIR with the No Marina Expansion as the Environmentally Superior Alternative.
2. Recommend approval of amendments to the Development Agreement
3. Recommend approval of the General Plan amendment subject to the conditions (including the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP)), requirements, and findings attached to this staff report.
4. Recommend approval of the Zoning Code amendment subject to the terms and conditions in paragraph (2),
5. Recommend approval of the amendments to the Adopted PUD Permit subject to the terms and conditions in **Attachment A**.
6. Recommend approval of revisions to adopted Conditions of Approval 18 and 19.

## BACKGROUND

### *Approved Brooklyn Basin Project*

The Brooklyn Basin Project, formerly known as the Oak-to-Ninth Avenue Project, is an approved development that is currently under construction along the Oakland Estuary. The approved project includes up to 3,100 dwelling units (including 465 affordable housing units), 200,000 square feet of commercial uses, new streets, improvements to the existing marina, and approximately 30 acres of new City parks. At this time, over 500 dwelling units have been delivered, Phase 1 streets are publicly accessible, and Township Commons Park (formerly known as Shoreline Park) is constructed and open to the public.

The City approved the Brooklyn Basin Project in 2009. Since approval, the Project Proponent has sought final approvals for and/or constructed much of Phases 1 and 2, as shown in the figure below:



**Brooklyn Basin Status**

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

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

Milestone	Requirement	Status
Original Land Use Entitlements (DA, PUD/PDP, GPA, Rezone, EIR)	Amendment to the Oakland Municipal Code	Originally approved 7/18/2006; re-approved 1/2009 following CEQA challenge
Phase 1 Soil remediation (grading/surcharge permits)	EIR Mitigation Measure H, Prior to issuance of site development building permits	Activities completed 2014
Affordable Housing Developer Selection	DA Exhibit L, Section 4: proposal to City within one year of acquisition of Sites F, T and G	MidPen selected by Master Developer and approved by City Housing Department in 2015; affordable units complete and occupied
Phase 1 Final Map	TTM, DA	FM7621 Recorded May 2015
Phase 1 Infrastructure FDP and construction permits	Zoning regulations	Approved 2015; Complete
Township Commons Park FDP	DA and PUD	Approved December 2015, BCDC confirmation May 2016; park improvements are complete and open to public

Phase 2 Infrastructure FDP	Brooklyn Basin PUD	Approved 2017; Under construction; Delivery expected with delivery of Phase 2 vertical development
Parcel B Building Permits issued	PUD, FM7621	Approved September 2016, Received TCO July 2019 and approximately 20% leased/occupied
Parcel C FDP approved	PUD, FM7621	FDP approved August, 2017; Construction started April 2019
Phase 2 Final Map	PUD, TTM7621	Recorded June 2017
Parcel F FDP approved	Brooklyn Basin PUD	FDP approved November 2017; Construction started December 2019
All Parks FDPs approved	Brooklyn Basin PUD	FDPs approved August 2017
Parcel G FDP approved	Brooklyn Basin PUD	FDP approved March 2019
Parcel A FDP approved	Brooklyn Basin PUD	FDP approved June 2019, Building permits submitted November 2019
Parcel J FDP approved	Brooklyn Basin PUD	FDP approved December 2019, building permits submitted December 2019
Parcel H FDP approved	Brooklyn Basin PUD	FDP approved March 2020
Parcel D FDP approved	Brooklyn Basin PUD	Approved March 2021
Parcel E FDP	Brooklyn Basin PUD	Approved 2022

The current proposal for Project Modifications is subject to a particular set of milestones, as outlined below (with this meeting **bolded**, and future milestones in italicized text):

### **Project Modifications Milestones**

<b>Milestone</b>	<b>Body/Focus of Consideration</b>	<b>Date</b>
Project Modification Application Complete	Staff	September 2018 (latest revision, October 2021)
CEQA NOP	Planning Commission	October 2018
DSEIR published	Staff	June 11, 2021
DSEIR Public Hearing	Planning Commission	July 21, 2021
DSEIR public comment period ends		July 26, 2021
Consider Merits of Project	PRAC (plans)	September 8, 2021
Consider Merits of Project	Design Review Committee (plans)	September 22, 2021
Consider Merits of Project	Design Review Committee (plans)	March 23, 2022
FSEIR published	CEQA	December 29, 2022
Consider Merits of Project	Design Review Committee	December, 2022

<b>Recommendation</b>	<b>Planning Commission (FSEIR, GPA, Rezone, DA, PUD)</b>	<b>January 11, 2023</b>
<i>Decision</i>	<i>City Council (FSEIR, GPA, Rezone, DA, PUD)</i>	<i>Q1, 2023 (approx.)</i>

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

***Approved Tower Locations***

The approved Brooklyn Basin Project includes five possible tower locations on Parcels M, K, J, H, and A (as illustrated in the PUD, and shown below, from left to right). At this time, Parcels H, J, and A are fully entitled without tower components, and Parcel A is under construction.

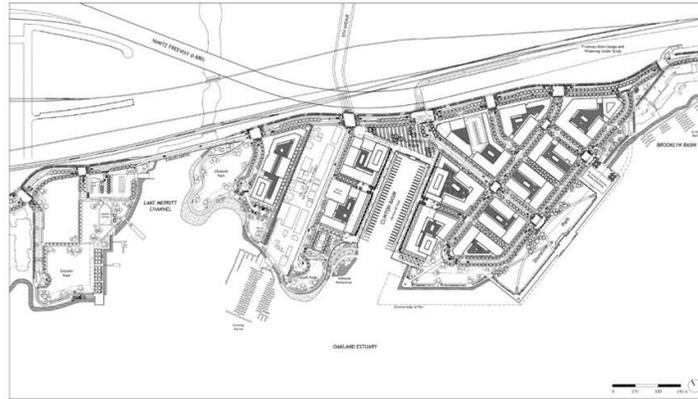
**Brooklyn Basin Planned Tower Locations:**



***Approved Brooklyn Basin Marina***

The approved Project includes renovated marina facilities at the base of 5<sup>th</sup> Avenue, and new marina facilities on both sides of Clinton Basin. The approved Project does *not* have marina facilities fronting either South Park or Township Commons Park. The plan below shows the approved project and marina facilities at the end of 5<sup>th</sup> Avenue and in Clinton Basin:

**Brooklyn Basin Approved Site Plan (including marinas):**



ILLUSTRATIVE DEVELOPMENT PLAN  
 Brooklyn Basin - Oak to 9th Development Plan  
 Prepared for Oakland Harbor Partners by ROMA Design Group in association with MVE Architects, Skidmore & Nishel and RRF Engineers  
 OCTOBER 2018

1.3

### **Public Review**

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

The Design Review Committee (DRC) reviewed the proposed development project on September 22, 2021, and again on March 23, 2022, and provided comments and/or design recommendations to the applicant and staff prior to the proposal moving forward to Planning Commission. As noted above, the DRC supported the increased units and tower location but was not in favor of the expanded marina. As such, the applicant has revised the project proposal by removing the expanded marina from the project.

Staff believes that the recommendations from the DRC have been incorporated into this latest proposal before the full Planning Commission.

<b>Public Review Body</b>	<b>Purpose of Review</b>	<b>Date of Hearing</b>
Landmarks Preservation Advisory Board (LPAB)	EIR Scoping Hearing	October 2018
Planning Commission	EIR Scoping Hearing	November 2018
Parks Recreation & Advisory Committee (PRAC)	Informational/Recommendation	September 2021
Design Review Committee (DRC)	Design Review	September 2021
Design Review Committee (DRC)	Design Review	March 2022

## **PROJECT DESCRIPTION**

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

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

### ***Revised Project Modifications (March 2022)***

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

- Tower Locations: Tower relocation from Phases 1 or 2 to Parcel M, only.
- Marina: Reduced the number of additional marina slips by 27 (from 158 additional slips to 131 additional slips), and revised siting of marina facilities as follows:
  - Relocated proposed marina between South Park and Clinton Basin further offshore of South Park. The intent of this revision was to protect the offshore wetland between South Park and Clinton Basin;
  - Reduced marinas (and slips) along Township Commons into marina clusters to preserve views of open water.

### ***Further Revisions to Project Modifications (April 2022)***

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

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

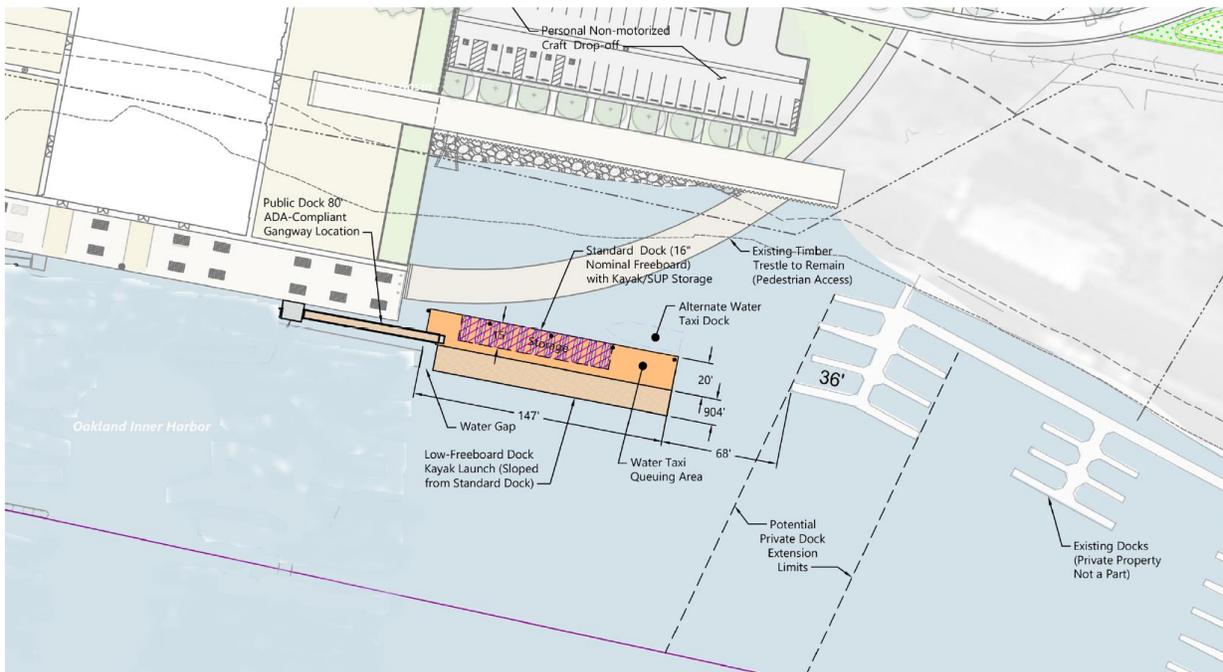
## Evolution of Brooklyn Basin Tower Location Proposal



RESIDENTIAL TOWER ALTERNATIVE LOCATIONS  
**Brooklyn Basin - Oak to 9th Development Plan**  
Prepared for Signature Properties and Reynolds and Brown by ROMA Design Group in association with MVE Architects and BKF Engineers  
 MAY 22, 2014



## Proposed Water Launch and Water Taxi



### ***Requested Entitlements***

The following summarizes the requested entitlements needed to amend the previously approved project:

1. **General Plan Amendment (Oakland Planning Code Chapter 17.01).** Amend the Oakland Estuary Policy Plan, which is part of the General Plan, to permit an increase in

the average residential density from 50 residential units per acre to 57.63 residential units per acre over the entire 64.2-acre planning area designated Planned Waterfront Development-4 (PWD-4)

2. **Zoning Code Amendment (Oakland Planning Code Chapter 17.101B).** Amend the Maximum Density Section of the Oak to Ninth District Zone (D-OTN) (previously known as Planned Waterfront Zoning District (PWD-4) to permit up to 3,700 units at a maximum average density of 167 units over 22 developable acres and conform the Brooklyn Basin Off-street Parking and Loading Requirements consistent with the City of Oakland Zoning Code downtown off-street parking provisions.
3. **Preliminary Development Plan Amendment** - Amend the Preliminary Development Plan to increase the allowable number of residential units by 600, from the entitled 3,100 residential units to a maximum of 3,700 residential units, permit one additional residential tower, for a total of up to two towers sited on Parcel M, and the provision of a publicly accessible small watercraft launch.
4. **Conditions of Approval Amendment.** The Applicant and City propose amending two adopted conditions of approval to ensure required improvements can be delivered to meet current jurisdictional requirements. Specifically, the Applicant and City propose amending adopted Conditions of Approval (CoA) 18 and 19, as shown in Attachment A5 to this report. The amendments would allow for off-site improvements at the Oak and Embarcadero intersection that would achieve the intended level of safety of the original CoAs, while accommodating Union Pacific Railroad requirements and current land use configuration at the intersection (both of which were unforeseen at the time of original project entitlement).
5. **Development Agreement Amendment (Oakland Planning Code Chapter 17.138).** – This third amendment to the Development Agreement (DA) would: 1) provide for a vested entitlement period to accommodate the proposed modifications to the project; 2) specify the City-imposed deal points that are triggered uniquely by the proposed modifications to the project (to be separate and apart from the previously approved project); 3) modify sections of the DA pertaining to the formation of the Community Services District (CSD); and 4) establish other commitments applicable to the project modifications.

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

The Third DA Amendment also replaces the following updated Exhibits: (a) Exhibit A (CEQA Documents) to add the new California Environmental Quality Act (CEQA) documents related to the Third DA Amendment; (b) Exhibit C (Phasing Schedule) that among other things allows the Developer to alternate the order of Phases III and IV; (c) Exhibit G (Approval Documents for the Oak to Ninth/Brooklyn Basin Mixed Use Development Project) to add approval documents related to the Third DA Amendment;

(d) Exhibit J (Local Hiring and Construction Job Training Benefits) to include the additional benefits required by the Third DA Amendment; and (e) Exhibit O (Form of the Assumption Agreement) to add the agreed upon form approved transfers to certain exempt transferees permitted by the Development Agreement.

On July 18, 2006, the City Council adopted Ordinance No. 12760 C.M.S., which authorized a Development Agreement for development of Brooklyn Basin (originally known as the Oak to Ninth project). The Brooklyn Basin project is a multi-phase, mixed use development project on Oakland's waterfront. The Development Agreement approved in 2006 called for 3,100 housing units, over 200,000 square feet in retail space, 29.9 acres of parks and public open space, two renovated marinas and restoration of an existing wetland area. The original Development Agreement was subsequently assigned from the original developer to the current developer, Zarsion-OHP I, LLC (Developer), and administratively amended twice.

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

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

1. **Affordable Housing.** The Developer will provide \$9,000,000 towards the preservation and acquisition of affordable housing in the nearby neighborhoods of Chinatown, Eastlake and San Antonio.
2. **Local Hire.** The Third DA Amendment requires a new 20% local hire goal for the Additional 600 units (192,000 job hours), inclusive of 6% apprentice hours already required in the original Development Agreement. In addition, the Third DA Amendment will proportionately increase the local hiring requirement already provided in the original Development Agreement for the 600 Additional Units.
3. **Job Training Assistance.** The Developer will provide an additional \$325,000 to be distributed equally between the West Oakland Job Resource Center, Cypress/Mandela, and Rising Sun Center for Opportunity; and \$350,000 to the West Oakland Jobs Resource Center to provide job training to residents in the Eastlake/Chinatown, Fruitvale, and Lower San Antonio neighborhoods.

## **PROPERTY DESCRIPTION**

Brooklyn Basin is bounded by Fallon Street and the Jack London District to the west, Embarcadero and Interstate 880 (I-880) to the north, and 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 nine (9) Alameda County Assessor's Parcel Numbers (APNs) 018-0430-001-14, 018-0460-004-11, 018-0460-004-06, 08, 018-0465-002-06, 12, 15, 27, 29, 30.

## **GENERAL PLAN ANALYSIS**

The Brooklyn Basin Project site is located in the Planned Waterfront Development-4 (PWD-4) Estuary Policy Plan (EPP) land use designation (the Estuary Policy Plan is the applicable General Plan Land Use Element for the area that includes Brooklyn Basin). The intent of the PWD-4 land use designation is to “provide for the transition of underutilized industrial land to public parks and open space, commercial/retail, multifamily residential, cultural and civic uses. Improve public access to the waterfront by providing additional public parks and open space areas and a waterfront trail.” In terms of desired character, future development should “create a new mixed-use residential, commercial/retail, recreational neighborhood in the areas south of the Embarcadero. New parks and open space areas will provide public access to the Estuary and will continue the series of waterfront parks and the San Francisco Bay Trail. Civic and cultural uses may be incorporated into the development. Two existing marinas will be renovated to enhance boating and marine-related uses in the area.” The maximum allowed intensity is currently 50 residential units per gross acre over the entire 64.2-acre planning area included in the PWD-4 land use classification, and approximately 200,000 square feet of commercial development.

The proposed increase in residential units requires that the Estuary Policy Plan be amended to permit a higher density of residential units than currently allowed in this zoning district. The applicant is proposing to increase the density in the PWD-4 land use classification from 50 to 57.63 dwelling units per gross acre. With these amendments, the Project's applicable General Plan designation would permit an increase in the total number of units allowed on the Project site from 3,100 to a total of 3,700 units (an approximately 19 percent increase from the currently allowed residential units).

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

## **ZONING ANALYSIS**

The Project Site is located within the Oak to Ninth Zoning District (D-OTN Zone). The intent of the D-OTN Zone is to provide mid-rise and high-rise housing opportunities together with ground-floor retail and commercial uses. Future development is to be set back from the waterfront and address compatibility between residential and nonresidential uses, and reflect a variety of housing and business types. The D-OTN Zone incorporates, by reference, regulations from the site's former zoning designation as Planned Waterfront District-4 (PWD-4). The D-OTN zoning regulations currently allow for development of up to 3,100 residential units; the

proposed Zoning Amendment would allow for up to 3,700 residential units and reduce parking requirements, to coincide with the proposed changes to the project and align with the City of Oakland's goals of increasing delivery of housing and reducing reliance on automobiles (and associated parking) for transportation.

## **ZONING AND DESIGN RELATED ISSUES**

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

### **Zoning Amendment**

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

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

### **Planned Unit Development (PUD) Permit**

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

The proposed Project Modifications would increase the number of residential units permitted in the Brooklyn Basin planning area, providing additional residential opportunities in an area where the City desires sufficient residential density to create safe, livable communities. The project would be contained within the same development envelope that the City approved as part of the Brooklyn Basin PDP in 2009 and will be adequately served by existing or proposed facilities and services. The proposed modifications will not require excessive earth moving or destroy desirable natural features, will not be visually obtrusive and will harmonize with surrounding areas and facilities, will not substantially harm major views for surrounding residents, and will provide sufficient buffering in the form of spatial separation, vegetation, topographic features, or other devices. Staff is supportive of the proposed amendment. The amendments to Conditions of Approval 18 and 19 are appropriate because the previously required signalization of

Embarcadero and Oak Street has currently become infeasible due to changed circumstances in the intersection configuration and requirements of an independent agency (CPUC). The City has also determined that signalization of this intersection is not required until more projects are constructed in the vicinity, therefore making it appropriate to amend the conditions to require an in-lieu, fair share payment of the cost of the signalization.

## **KEY ISSUES AND IMPACTS**

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

### ***Public Access to Estuary***

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

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

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

### ***Development Agreement***

On August 24, 2006, the City, OHP LLC (Developer and Applicant), and the former Redevelopment Agency of the City of Oakland entered into a Development Agreement related to the development now commonly known as Brooklyn Basin. The original agreement was authorized by Ordinance No. 12760C.M.S. and adopted on July 18, 2006. The original agreement, among other things, vested the developer’s right to develop the subject property into a mixed-use, urban in-fill project containing up to 3,100 residential units, 200,000 square feet of retail uses, and 60 boat slips located in two marinas. After the dissolution of the Redevelopment Agency in 2012, the City obtained the assets, responsibilities and functions of the Development Agreement. In 2014, the developer and the City entered into the first administrative Amendment to the Development Agreement. A second Amendment to the Development Agreement was approved in 2017. Currently, the Applicant has requested a third amendment to the Development

Agreement as part of the proposed modifications to the project. As such, the Oakland Planning Code includes factors for consideration in negotiating a Development Agreement, as follows:

### **Section 17.138.060 Factors for Consideration**

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

### **Existing Development Agreement**

On July 18, 2006, the City Council adopted Ordinance No. 12760 C.M.S., which authorized a Development Agreement for development of Brooklyn Basin (originally known as the Oak to Ninth project). The Brooklyn Basin Project is a multi-phase, mixed use development project on Oakland's waterfront. The Development Agreement approved in 2006 called for 3,100 housing units, over 200,000 square feet in retail space, 29.9 acres of parks and public open space, two renovated marinas and restoration of an existing wetland area. The original Development Agreement was subsequently assigned from the original developer to the current developer, Zarsion-OHP I, LLC (Developer), and administratively amended twice.

### **Overview of Proposed Third Amendment**

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

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

The Third DA Amendment also replaces the following updated Exhibits: (a) Exhibit A (CEQA Documents) to add the new California Environmental Quality Act (CEQA) documents related to the Third DA Amendment; (b) Exhibit C (Phasing Schedule) that among other things allows

the Developer to alternate the order of Phases III and IV; (c) Exhibit G (Approval Documents for the Oak to Ninth/Brooklyn Basin Mixed Use Development Project) to add approval documents related to the Third DA Amendment; (d) Exhibit J (Local Hiring and Construction Job Training Benefits) to include the additional benefits required by the Third DA Amendment; and (e) Exhibit O (Form of the Assumption Agreement) to add the agreed upon form approved transfers to certain exempt transferees permitted by the Development Agreement.

### **Summary of New Community Benefits**

As noted above, the Developer has committed to a substantial bundle of community benefits as part of the Third DA Amendment including:

1. **Affordable Housing.** The Developer will provide \$9,000,000 towards the preservation and acquisition of affordable housing in the nearby neighborhoods of Chinatown, Eastlake and San Antonio.
2. **Local Hire.** The Third DA Amendment requires a new 20% local hire goal for the Additional 600 units (192,000 job hours), inclusive of 6% apprentice hours already required in the original Development Agreement. In addition, the Third DA Amendment will proportionately increase the local hiring requirement already provided in the original Development Agreement for the 600 Additional Units.
3. **Job Training Assistance.** The Developer will provide an additional \$325,000 to be distributed equally between the West Oakland Job Resource Center, Cypress/Mandela, and Rising Sun Center for Opportunity; and \$350,000 to the West Oakland Jobs Resource Center to provide job training to residents in the Eastlake/Chinatown, Fruitvale, and Lower San Antonio neighborhoods.

### **ENVIRONMENTAL DETERMINATION**

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

As stated above, the “project” for CEQA purposes, as analyzed in the SEIR, consists of the proposed modifications to the approved Brooklyn Basin Project (originally known as the Oak to Ninth Project). The City published the Draft Supplemental EIR (DSEIR) in September 2020.

Following a public comment period on the draft SEIR, the environmental consultant prepared a Response to Comments/Final SEIR document that was published by the City on December 29, 2022. The DSEIR, together with the comments, responses to comments, and other information included in this Response to Comments document constitutes the Final SEIR, consistent with State CEQA Guidelines Section 15132.

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

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

### ***No Potentially Significant Impacts Identified in the SEIR***

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

### ***Project Alternatives***

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

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

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

for Phases III and IV, and proposed tower relocation from Phase II to either Phase III or IV.

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

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

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

### ***Comments on the DSEIR***

The public review and comment period for the Draft SEIR, began on June 11, 2021, and ended at 5:00 p.m. August 10, 2021. In total, there were 44 comments received, including from public agencies (5), organizations (5), and individuals (34), on the Draft SEIR during the comment period. The Final SEIR provides responses to all comments as well as the 12 public speakers and the seven Commissioners at the Planning Commission held on July 21, 2021.

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

Consistent with CEQA guidance, the Draft SEIR is required to evaluate only the changes in the project, circumstances, or new information that could rise to new significant impacts or substantially more severe significant impacts than were analyzed in the 2009 EIR for the Approved Project. Therefore, the Draft SEIR analysis compares the Project Modification to the Approved Project to determine if the modifications would create any new or substantially more severe impacts on the environment. Pursuant to the CEQA Guidelines, due to the limited scope of the analysis in the SEIR, the scope of the responses required on the Draft SEIR are similarly limited to portions of the Approved Project that are proposed for revision.

## ***Publication and Distribution of the SEIR***

The DSEIR was made available for public review on June 11, 2021. Response to Comments/Final SEIR document was made available for public review on December 29, 2022. The Notice of Availability for the FSEIR was mailed to property owners within 300 feet of the Project site. Interested Parties and State and Local Agencies were also provided notice. Due to Alameda County's continuing Shelter-in-Place order to prevent the spread of COVID-19, the City of Oakland's administrative offices, including the Bureau of Planning, remains closed to the public. Therefore, hard copies of the document are not available for public review. Therefore, pursuant to the Governor's Executive Order N-80-20, the City of Oakland is following an alternative process for providing access to the FSEIR. Consistent with the Executive Order, the FSEIR was uploaded to the State Clearinghouse CEQAnet portal (<https://ceqanet.opr.ca.gov/>).

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

The FSEIR and its appendices may also be viewed or downloaded from the City of Oakland's website at:

[City of Oakland | Current Environmental Review \(CEQA/EIR\) Documents... \(oaklandca.gov\)](#)--located under "Brooklyn Basin (formerly Oak-to-Ninth)" heading.

## **CONCLUSION**

The proposed Project Modifications to the Brooklyn Basin Project would facilitate a significant increase in additional units within the overall Brooklyn Basin development footprint. The proposed tower relocation is supportable because the location of the additional tower to Parcel M will not result in additional environmental impacts. The public watercraft launch, and water taxi proposal, complement the existing public access and uses at Township Commons Park. Additionally, the proposed amendment to the DA includes substantial community benefits for the City of Oakland, as described in this report. The SEIR determined that all potentially significant impacts could be reduced to a level of Less Than Significant after application of Standard Conditions of Approval and Mitigation. The SEIR also determined that the No Marina Expansion Alternative is the environmentally superior alternative. As such all potential impacts can be administered through the City's Standard Conditions of Approval and Mitigation Measures. Therefore, staff supports the proposed amendments and recommends approval of the project subject to the attached Conditions.

## **RECOMMENDATIONS:**

Staff requests that the Planning Commission recommend that the City Council:

1. Adopt the attached CEQA findings, including Certification of the EIR with the "No Marina Expansion" Alternative as the environmentally superior alternative and, Standard Conditions of Approval/Mitigation Monitoring and Reporting Program (SCAMMRP).
2. Approve, based on the attached findings, and subject to conditions of approval:
  - General Plan Amendment;
  - Zoning Amendment;

- Amendment to the Preliminary Development Plan to allow a maximum of 3,700 residential units, permit one additional residential tower, for a total of up to two towers sited on Parcel M and the provision of a publicly accessible small watercraft launch and amendments to previously approved Conditions 18 and 19.
- Amendment #3 to the Development Agreement (DA) to that would 1) provide for a vested entitlement period for the modification to the project, 2) specify requirements imposed on the modification to the project separate and apart for the previously approved project, 3) modify sections of the DA pertaining to the formation of the Community Services District (CSD) and 4) establish other commitments applicable to the modification to the project.
- Amend adopted Conditions of Approval 18 and 19.

Prepared by:

*Catherine Payne*

~~Catherine Payne, Development Planning  
Manager~~

Approved for forwarding to the Planning Commission:



Ed Manasse, Deputy Director Bureau of Planning

## ATTACHMENTS:

### **Attachment A: Proposed Project (Under Separate Cover)**

1. Plans (December 2022)
2. General Plan Amendments
3. Zoning Text Amendments
4. Development Agreement Amendment
  - a. Development Agreement 3<sup>rd</sup> Amendment
  - b. Affordable Housing Term Sheet
5. Conditions of Approval Amendments & SCAMMRP

### **Attachment B: Project Approval Findings (Embedded in Report)**

1. CEQA Findings
2. General Plan Amendment (GPA) Findings
3. Rezoning Findings
4. Planned Unit Development (PUD) Findings
5. Development Agreement (DA) Findings

### **Attachment C: SEIR (EIR, DSEIR, FSEIR Provided via Link)**

1. [City of Oakland | Current Environmental Review \(CEQA/EIR\) Documents...](#)

[oaklandca.gov](http://oaklandca.gov)--located under “Brooklyn Basin (formerly Oak-to-Ninth)” heading.

**Attachment D: Background Documents (Under Separate Cover)**

1. Zoning Regulations
  2. Adopted PUD
    - a. Preliminary Development Permit (PDP)
    - b. Design Guidelines
  3. Adopted Conditions of Approval
  4. Brooklyn Basin Master Creek Permit Conditions of Approvals
  5. Development Agreement
    - a. Recorded Development Agreement
    - b. 1<sup>st</sup> Amendment to Development Agreement
    - c. 2<sup>nd</sup> Amendment to Development Agreement
-

**ATTACHMENT A**

**Proposed Project Documents (Under Separate Cover)**

**ATTACHMENT B**

**Findings for Approval**

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

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

### I. INTRODUCTION

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

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

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

### II. PROJECT DESCRIPTION

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

5. The Revised Project Modifications, which was analyzed within the SEIR, is a modification of the Approved Project analyzed under the 2009 EIR (discussed below). The Revised Project Modifications includes a residential density increase of up to 600 units (for a Project site total of up to 3,700 units), the potential relocation (and shift in timing of construction) of one of the five high-rise tower elements currently designated for either Parcel H or J (from Phase II) to Parcel M (to Phase IV)—potentially resulting in two towers on Parcel M, an update to the parking ratios applicable to the Project site to current zoning code requirements in other zoning districts—which would reduce required parking spaces from 1.0 spaces per residential unit to 0.75 spaces per residential unit, and a publicly accessible dock for public access to launch small watercraft and which may accommodate an existing water taxi/shuttle service currently operating on the San Francisco Bay (the “Publicly Accessible Small Watercraft Launch Dock”). The Project site is materially the same as the Approved Project site in that it consists of the same

approximately 64.2 acres of land area and only increases the water surface area of the Approved Project Site by approximately 3% (or approximately 0.25 acres).

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

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

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

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

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

10. Pursuant to CEQA and the CEQA Guidelines, the City determined that a SEIR would be prepared for modifications to the Approved Project. On September 21, 2018, the City published a Notice of Preparation ("NOP") to prepare an SEIR for modifications to the Approved Project, which was circulated to responsible agencies and interested groups and individuals for review and comment. A copy of the NOP and the comments thereon are included in Appendix A of the Draft SEIR. To obtain comments on the scope of the SEIR, the City Planning Commission held Scoping Meetings on October 17, 2018 and November 7, 2018. The NOP review period ended on November 13, 2018.

11. As a result of an evaluation of the potential environmental impacts of the modifications to the Approved Project, review of the 2009 EIR, the consultation with City staff and other agencies, and review of the comments received as part of the scoping process, the

following environmental topics are addressed in detail as separate sections of the Draft SEIR: Land Use, Plans, and Policies; Transportation and Circulation; Air Quality; Hydrology and Water Quality; Cultural and Tribal Cultural Resources; Geology and Soils; Noise and Vibration; Hazards and Hazardous Materials; Biological Resources; Population and Housing; Aesthetics, Shadow, and Wind; Public Services and Recreation; Utilities and Service Systems; Greenhouse Gas Emissions. Other environmental topics including: Agricultural and Forestry Resources, Mineral Resources, and Wildfires were determined not to be directly relevant to the Project Modifications.

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

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

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

15. The City received written and oral comments on the Draft SEIR. The City prepared responses to comments and, where necessary, made minor clarifications to the Draft SEIR. The responses to comments, changes to the Draft SEIR, and additional information, including updates to the Draft SEIR analysis to address the Revised Project Modifications, were published in a Response to Comments/Final SEIR ("Final SEIR") on December 30, 2022. The Draft SEIR, Final SEIR, and all appendices thereto constitute the "SEIR" referenced in these findings. The Final SEIR was made available on December 30, 2022, twelve (12) days before the duly noticed January 11, 2023 Planning Commission public hearing. The Notice of Availability and Release of the Final SEIR was distributed to those state and local agencies who commented on the NOP and Draft SEIR, posted at the Project site, mailed to property owners within 300 feet of the Project site, and mailed/mailed to individuals who have requested to specifically be notified of official City actions on the Project. Copies of the Draft SEIR and Final SEIR were also made available or distributed to those state and local agencies who commented on the Draft SEIR, City officials including the Planning Commission, and for public review at the City offices and City's website. Pursuant to CEQA Guidelines, responses to public agency comments on the Draft SEIR have been published and made available to all commenting agencies at least 10 days prior to the public hearing to consider certification of the SEIR. The City Council has had the opportunity to review all comments and responses thereto prior to consideration and certification of the SEIR and prior to taking any action on the Project.

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

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

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

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

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

18. In accordance with CEQA and the CEQA Guidelines, the City Council, after receiving a recommendation from the Planning Commission, certifies that the SEIR has been completed in compliance with CEQA. The City Council has independently reviewed and considered the information contained in the record and the SEIR prior to certifying the SEIR and approving the Project or any aspect thereof. By these findings, the City Council confirms, ratifies, and adopts the findings and conclusions of the SEIR as supplemented and modified by these findings. The SEIR and these findings represent the independent judgment and analysis of the City and the City Council.

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

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

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

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

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

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

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

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

25. The mitigation measures set forth in the SCAMMRP are specific and enforceable and are capable of being fully implemented by the City of Oakland, the Project applicant, and/or other identified public agencies of responsibility. As appropriate, some mitigation measures define performance standards to ensure no significant environmental impacts will result. The SCAMMRP adequately describes implementation procedures, monitoring responsibility, reporting actions, compliance schedule, non-compliance sanctions, and verification of compliance in order to ensure that the Project complies with the adopted mitigation measures.

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

significant level, through the implementation of SCAMMRP.

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

## **VIII. FINDINGS REGARDING IMPACTS**

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

29. The City Council recognizes that the environmental analysis of the Project raises debatable environmental issues, and that a range of technical and scientific opinion exists with respect to those issues. The City Council acknowledges that there are differing and potentially conflicting expert and other opinions regarding the Project. The City Council has, through review of the evidence and analysis presented in the record, acquired a better understanding of the breadth of this technical and scientific opinion and of the full scope of the environmental issues presented. In turn, this understanding has enabled the City Council to make fully informed, thoroughly considered decisions after taking account of the various viewpoints on these important issues and reviewing the record. These findings are based on a full appraisal of all viewpoints expressed in the SEIR and in the record, as well as other relevant information in the record of the proceedings for the Project.

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

31. The City Council finds, based on the SEIR and the record of proceedings, that the following environmental impacts of the Project are less than significant and require no mitigation: Impact LU-3; Impact LU-4; Impact Trans-2; Impact Trans-3; Impact Trans-4; Impact AQ-1; Impact AQ-2; Impact AQ-3; Impact AQ-4; Impact AQ-5; Impact AQ-6; HYD-2; Impact HYD-3; Impact CUL-1; Impact CUL-2; Impact GEO-1; Impact GEO-2; Impact GEO-3; Impact GEO-4; Impact NOI-1; Impact NOI-2; Impact NOI-3; Impact NOI-5; Impact NOI-6; Impact HAZ-1; Impact HAZ-2; Impact HAZ-3; Impact HAZ-4; Impact HAZ-5; Impact HAZ-6; Impact BIO-6; Impact BIO-7; Impact POP-1; Impact POP-2; Impact POP-3; Impact AES-1; Impact AES-2; Impact AES-4; Impact AES-6; Impact PS-1; Impact PS-2; Impact PS-3; Impact PS-4; Impact PS-5; Impact PS-6; Impact PS-7; Impact UTL-1; Impact UTL-3; Impact UTL-5; and GHG-1. These environmental impacts are covered throughout Chapters IV.A (Land Use, Plans,

and Policies); IV.B (Transportation and Circulation); IV.C (Air Quality); IV.D (Hydrology and Water Quality); IV.E (Cultural Resources and Tribal Cultural Resources); IV.F (Geology and Soils); IV.G (Noise); IV.H (Hazards and Hazardous Materials); IV.I (Biological Resources); IV.J (Population and Housing); IV.K (Aesthetics, Shadow, and Wind); IV.L (Public Services and Recreation); IV.M (Utilities and Service Systems); IV.N (Greenhouse Gas Emissions) of the Draft SEIR as supplemented by Chapter II of the Final SEIR and were determined to have less than significant impact without mitigation for the reasons detailed in the SEIR, hereby incorporated by reference as if fully set forth herein. No further findings are required for these environmental impacts.

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

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

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

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

35. Under Public Resources Code section 21081(a)(1) and CEQA Guidelines sections 15091(a)(1) and 15092(b), and to the extent reflected in the SEIR, the SCAMMRP, and the City's Standard Conditions of Approval (SCA or SCAs), the City Council finds that changes or alterations have been required in, or incorporated into, the components of the Project that mitigate or avoid potentially significant effects on the environment. The following potentially significant impacts will be reduced to a less than significant level through the implementation of Project mitigation measures, or where indicated, through the implementation of SCAs (which are incorporated into and an integral part of the SCAMMRP):

- a. Impact LU-1 finds that the 2009 EIR concluded that the Approved Project through the implementation of 2009 EIR Mitigation Measure A.1, which includes specific design standards and buffering to effectively reduce the potentially significant impact with respect to the physical division of an existing community, would reduce this impact to a less than significant level; and that because the Project would not include changes to the building envelope or land use character of the Approved Project and would still be subject to 2009 EIR Mitigation Measure A.1, the conclusion regarding this LU-1 impact is substantially the same as that identified in the 2009 EIR under Impact A.1 as mitigated by 2009

Mitigation Measure A.1. Impact LU-1 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s continued implementation of 2009 EIR Mitigation Measure A.1, the potential for adverse Project impacts associated with physical division of an existing community would be reduced to a less than significant level.

- b. Impact LU-2 finds that the 2009 EIR concluded that the Approved Project through the implementation of 2009 EIR Mitigation Measure A.3a and 2009 EIR Mitigation Measure A.3b, which include new specific zoning regulations and standards to specifically address the impacts resulting from the change in land use, would reduce this impact to a less than significant level; and that because the Project would not substantially change the land use character of the Approved Project and would still be subject to Mitigation Measure A.3a and Mitigation Measure A.3b, the conclusion regarding this LU-2 impact is substantially the same as that identified in the 2009 EIR under Impact A.3 as mitigated by 2009 Mitigation Measure A.3a and 2009 EIR Mitigation Measure A.3b. Impact LU-2 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s continued implementation of 2009 EIR Mitigation Measure A.3a and 2009 EIR Mitigation Measure A.3b, the potential for adverse Project impacts associated with conflicting with adjacent and nearby land uses would be reduced to a less than significant level.
- c. Impact LU-5 finds that the 2009 EIR concluded that the Approved Project would not result in a significant cumulative impact with respect to land use, plans, and policies when considering the combined effect of the Approved Project with other past, present, and reasonably foreseeable future projects, through the implementation of 2009 EIR Mitigation Measure A.1, 2009 EIR Mitigation Measure A.3a, 2009 EIR Mitigation Measure A.3b, and 2009 EIR Mitigation Measure I.2b; and that because the Project would not substantially change the building envelope and land use character of the Approved Project, and that because past projects have been, and present and reasonably foreseeable future projects would be, subject to development guidance contained within the General Plan and other applicable land use plans to ensure land use compatibility, and that because the Project would still be subject to 2009 EIR Mitigation Measure A.1, 2009 EIR Mitigation Measure A.3a, 2009 EIR Mitigation Measure A.3b, and 2009 EIR Mitigation Measure I.2b, the conclusion regarding this LU-5 impact is substantially the same as that identified in the 2009 EIR under Impact A.5 as mitigated by 2009 EIR Mitigation Measure A.1, 2009 EIR Mitigation Measure A.3a, 2009 EIR Mitigation Measure A.3b, and 2009 EIR Mitigation Measure I.2b. Impact LU-5 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s continued implementation of 2009 EIR Mitigation Measure A.1, 2009 EIR Mitigation Measure A.3a, 2009 EIR Mitigation Measure A.3b, and 2009 EIR Mitigation Measure I.2b, the potential for a significant cumulative impact from the Project with respect to land

- uses, plans, and policies would be reduced to a less than significant level.
- d. Impact HYD-5 finds that the 2009 EIR concluded that the Approved Project through the implementation of 2009 EIR Mitigation Measure D.1, which includes compliance with all NPDES requirements, RWQCB Construction Permit requirements, and all City regulations and Creek Protection Permit requirements, would reduce this impact to a less than significant level; and that because the Project would operate within the same overall building envelope and site plan of the Approved Project where no traditional creeks occur and would still be subject to 2009 EIR Mitigation Measure D.1, the conclusion regarding this HYD-5 impact is substantially the same as that identified in the 2009 EIR under Impact D.1 as mitigated by 2009 Mitigation Measure D.1. Impact HYD-5 finds there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s continued implementation of 2009 EIR Mitigation Measure D.1, the potential for adverse Project impacts associated with potential impact to creek flow would be reduced to a less than significant level.
- e. Impact HYD-6 finds that the 2009 EIR concluded that the Approved Project would not result in a significant cumulative impact with respect to hydrology and water quality when considering the combined effect of the Approved Project with other past, present, and reasonably foreseeable future projects, through the implementation of 2009 EIR Mitigation Measure D.1; and that because the Project would not substantially change the overall building envelope of the Approved Project, and that because cumulative projects would continue to be subject to the same regulatory requirements discussed for the Approved Project, and that because the Project would still be subject to 2009 EIR Mitigation Measure D.9 (as well as implement SCA HYD-1 and SCA HYD-2 discussed below), the conclusion regarding this HYD-6 impact is substantially the same as that identified in the 2009 EIR under Impact D.9 as mitigated by 2009 Mitigation Measure D.1. Impact HYD-6 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s continued implementation of 2009 EIR Mitigation Measure D.1 (and SCA HYD-1 and SCA HYD-2), the potential for a significant cumulative impact from the Project with respect to hydrology and water quality would be reduced to a less than significant level.
- f. Impact BIO-2 finds that the Project, due to the limited in-water construction activity associated with the Publicly Accessible Small Watercraft Launch Dock, could have a significant impact, either directly or through habitat modifications, on special-status aquatic species; however, this impact will be mitigated to a less than significant level through implementation of new Mitigation Measure BIO-2, which requires prior to the start of any in-water construction that would require pile driving, the Project applicant shall prepare a National Marine Fisheries Service-approved sound attenuation monitoring plan to protect fish and marine mammals, and the approved plan, including BMPs, shall be implemented during applicable construction. Impact BIO-2 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved

Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s implementation of new Mitigation Measure BIO-2, the potential for adverse Project impacts associated with potential impact to special-status aquatic species would be reduced to a less than significant level.

- g. Impact BIO-3 finds that the Project, due to the limited in-water construction activity associated with the Publicly Accessible Small Watercraft Launch Dock, could have a significant impact on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, or National Marine Fisheries Service; however, this impact will be mitigated to a less than significant level through implementation of new Mitigation Measure BIO-3, which requires prior to the start of any in-water construction the Project applicant to conduct a National Marine Fisheries Service and California Department of Fish and Wildlife-approved eelgrass survey in the water construction area consistent with the measures described in the National Marine Fisheries Service’s (“NMFS”) October 2014 California Eelgrass Mitigation Policy and Implementation Guidelines (2014 CEMP), and approved mitigation consistent with NMFS 2014 guidance shall be implemented during construction, as necessary. Impact BIO-3 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s implementation of new Mitigation Measure BIO-3, the potential for adverse Project impacts associated with potential impact to habitat or other sensitive natural communities would be reduced to a less than significant level.
- h. Impact BIO-4 finds that the Project could have a significant impact on jurisdictional wetlands or waters of the U.S. under the jurisdiction of the U.S. Army Corps of Engineers (USACE), waters of the State under the jurisdiction of the Regional Water Quality Control Board (RWQCB), and wetlands under the jurisdiction of BCDC; however, this impact will be mitigated to a less than significant level through implementation of 2009 EIR Mitigation Measure I.2c, 2009 EIR Mitigation Measure I.2d, and new Mitigation Measure BIO-4. 2009 EIR Mitigation Measure I.2c requires, prior to the start of construction activities for the Project, that the Project applicant obtain all required permit approvals from the USACE, the RWQCB, BCDC, and all other agencies with permitting responsibilities for construction activities within jurisdictional waters of other jurisdiction areas. 2009 EIR Mitigation Measure I.2d requires that the Project applicant implement standard Best Management Practices (“BMPs”) to maintain water quality and control erosion and sedimentation during construction as well as to avoid impacts on water quality resulting from dredging activities within the San Francisco Bay. New Mitigation Measure BIO-4 requires that the Project applicant prepare and submit for approval to the City a mitigation and monitoring program for the Publicly Accessible Small Watercraft Launch Dock that outlines the mitigation obligations for temporary and permanent impacts to waters of the U.S. resulting from construction and/or operation of the Publicly Accessible Small Watercraft Launch Dock or requires that the Project applicant negotiate, with the applicable regulatory agencies, compensatory mitigation for temporary and permanent impacts to waters of the U.S. resulting from construction and/or operation of the Publicly Accessible Small Watercraft Launch Dock. Impact

BIO-4 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s implementation of 2009 EIR Mitigation Measure I.2c, 2009 EIR Mitigation Measure I.2d, and new Mitigation Measure BIO-4, the potential for adverse Project impacts associated with impacts on jurisdictional wetlands or waters of the U.S., State, or BCDC would be reduced to a less than significant level.

- i. Impact BIO-5 finds that the 2009 EIR concluded that the Approved Project through the implementation of 2009 EIR Mitigation Measure I.3, which requires the Project applicant to implement measures for protection of salmonids and Pacific herring during dredging projects and for indirect impacts on the San Francisco Bay “Essential Fish Habitat” (“EFH”) that are identified in the Long-Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region (“LTMS”), would reduce this impact to a less than significant level; and that because the Project would not result in an additional impact to migratory wildlife corridors, and that because the Project would still be subject to 2009 EIR Mitigation Measure I.3, the conclusion regarding this BIO-5 impact is substantially the same as that identified in the 2009 EIR under Impact I.3 as mitigated by 2009 Mitigation Measure I.3. Impact BIO-5 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s continued implementation of 2009 EIR Mitigation Measure I.3, the potential for adverse Project impacts associated with impacts on migratory wildlife corridors would be reduced to a less than significant level.
- j. Impact BIO-8 finds that the Project could have a significant cumulative impact with respect to biological resources, including wetlands, other jurisdictional waters, and special-status species when considering the combined effect of the Project with other past, present, and reasonably foreseeable future projects; however, this impact will be mitigated to a less than significant level through implementation of new Mitigation Measure BIO-2, new Mitigation Measure BIO-3, new Mitigation Measure BIO-4, 2009 EIR Mitigation Measure I.2c, 2009 EIR Mitigation Measure I.2d, and 2009 EIR Mitigation Measure I.3, as described above. Impact BIO-8 finds that there are no new significant environmental effects or a substantial increase in the severity of previously identified significant effects that would result from changes to the Approved Project due to the Project, “changed circumstances,” or “new information,” pursuant to CEQA Guidelines section 15162. The City finds that with the Project’s implementation of new Mitigation Measure BIO-2, new Mitigation Measure BIO-3, and new Mitigation Measure BIO-4 as well as continued implementation of 2009 EIR Mitigation Measure I.2c, 2009 EIR Mitigation Measure I.2d, and 2009 EIR Mitigation Measure I.3, the potential for adverse Project impacts associated with potential for a significant cumulative impact from the Project with respect to biological resources, including wetlands, other jurisdictional waters, and special-status species would be reduced to a less than significant level.
- k. Other Impacts Requiring Implementation of the City’s Standard Conditions of Approval (SCA): The following impacts will be less than significant because of required implementation of the City’s SCA:

(1) Impact Trans-1 finds that the Project would not conflict with a plan, ordinance, or policy addressing the safety or performance of the circulation system, including transit, roadways, bicycle lanes, and pedestrian paths. (Criterion A.) The Project will implement SCA-TRANS-3, which requires a Project applicant to submit a Transportation and Parking Demand Management (TDM) Plan for review and approval by the City to address issues for projects that generate 50 or more net new AM or PM peak-hour vehicle trips

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

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

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

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

3, as described above.

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

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

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

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

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

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

(12) Impact UTL-4 finds that the Project would be served by a landfill with sufficient permitted capacity to accommodate the Project Modifications' solid waste disposal needs and would not violate applicable federal, state, and local statutes and regulations related to solid waste. (Criteria E and F). The Project will implement SCA UTL-2, which requires the Project applicant submit project drawings containing recycling collection and storage areas be submitted to the City for review and approval in compliance with the City of Oakland Recycling

Space Allocation Ordinance (Chapter 17.118 of the Oakland Planning Code).

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

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

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

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

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

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

39. The City Council additionally finds that changed circumstances have made signalization of the intersection of Embarcadero and Oak Streets infeasible at this time. These changed circumstances include the installation of a new crosswalk, approved by the City, in said

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

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

## **XI. FINDINGS REGARDING ALTERNATIVES**

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

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

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

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

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

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

meet some of the basic objectives outlined in the SEIR for the project modifications to the Approved Project.

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

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

49. The City Council finds, based on the SEIR and the record of proceedings, that the Project, and its elimination of much of the in-water construction activity, would have less environmental impact than the Project Modifications, No Project Alternative, and No Tower Relocation Alternative, for the same reasons that the No Marina Expansion Alternative is considered the environmentally superior alternative, as the Project would avoid and/or substantially reduce new biological resources impacts of the modifications to the Approved Project to the greatest extent compared to the Project Modifications, No Project Alternative, and No Tower Relocation Alternative. Because the Project applicant proposed the Project, which is environmentally superior to the No Project Alternative and No Tower Relocation Alternative,

no further findings with respect to those are required in this section. Nonetheless, in addition, for the reasons given below, the City Council finds that specific economic, social, environmental, technological, legal, policy, or other considerations make infeasible the alternatives to the Project.

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

51. Alternative 3—No Tower Relocation: The No Tower Relocation Alternative looks at the impacts on environmental effects by eliminating the new potential tower locations from the modifications to the Approved Project. The proposed new tower locations on Parcel M and on Parcel L would not be added to project approvals. There would be no potential for two towers on Parcel M, which would increase building mass in Phases III or IV and decrease building mass in Phase II. Under this alternative, the approved locations for high-rise tower elements of up to 24 stories (240 feet) would remain on Parcels A, H, J, K and M as analyzed in the 2009 EIR. The Approved Project would be developed along with other components of the Project Modifications, including the proposed additional residential units, updated parking ratios, and Marina Expansion, which would accommodate 158 additional boat slips and the Publicly Accessible Small Watercraft Launch on the Project site. This alternative is rejected as infeasible because it would fail to realize the original density of the Approved Project because the parcel on which the tower was to be located has been developed without a tower. The City supports maintaining, at least, the original density. Furthermore, as discussed above, the Project would avoid and/or substantially reduce new environmental impacts of the modifications to the Approved Project to a greater extent compared to the No Tower Relocation alternative, and as such, this alternative is additionally rejected on those grounds.

## **XII. SEVERABILITY**

52. If any term, provision, or portion of these findings or the application of these findings to a particular situation is held by a court to be invalid, void or unenforceable, the

remaining provisions of these findings, or their application to other actions related to the Project, shall continue in full force and effect unless amended or modified by the City.

## **General Plan Amendment Findings**

The addition of 600 units to the Brooklyn Basin area (the “Project”) requires an amendment to the Oakland Estuary Policy Plan, which is part of the General Plan, to permit an increase in the average residential density from 50 to 57.63 units per gross acre over the entire 64.2-acre planning area designated Planned Waterfront Development-4 (PWD-4). The intent of the PWD-4 land use designation is to “provide for the transition of underutilized industrial land to public parks and open space, commercial/retail, multifamily residential, cultural and civic uses.” This amendment is proposed to allow an additional 600 units in the planning area (an approximately 19 percent increase from the currently approved residential units) for a total of 3,700 units.

Policy A3 of the General Plan LUTE states that the City may amend its General Plan, if deemed to be in the public interest, up to four times per year per mandatory element, subject to specific findings including: a) how the amendment advances General Plan implementation; b) how it is consistent with the policies in the LUTE; c) any inconsistencies that would need to be reconciled; and d) examination of citywide impacts to determine if the amendment is contrary to achievement of citywide goals.

**The Amendment of the PWD-4 Residential Density Standard is consistent with Policy A3 of the Land Use and Transportation Element (LUTE) of the Oakland General Plan.** The Amendment to the PWD-4 residential density standard is consistent with and will further advance the Oakland General Plan including the LUTE and Estuary Policy Plan (EPP). By way of example and not by limitation, the following summary lists the major objectives and policies of the LUTE and EPP and discusses how the Project is consistent with these objectives and policies.

**EPP Objective LU-1, Provide for a broad mixture of activities within the Estuary area.** This objective states that “[a] balance of uses and activities such as commercial, recreation, and residential - both traditional and non-traditional - will add to a dynamic waterfront.”

The Project increases the permitted residential units, fostering a balance between those uses and the permitted commercial and recreational uses.

**EPP Objective LU-3, Expand opportunities and enhance the attractiveness of the Estuary as a place to live.** This objective states that “opportunities to develop housing should be supported in the Estuary study area” and “[a]n expanded residential population and associated services would support commercial and recreational uses, and over time generate neighborhoods.” In addition, this objective notes that “[a] larger day and night population would add to the safety and livability of the waterfront.”

The Project, which increases the number of residential units allowed in the PWD-4 area creates greater opportunities for housing development and once constructed those units will expand the residential population to support commercial uses and create safe, livable communities.

**LUTE Objective W9, Develop and encourage mixed use areas along the estuary shoreline, while enhancing and promoting economic opportunities in Oakland which take advantage of the waterfront’s unique character to attract public uses and activities.**

The Project would increase the number of residential units allowed in the PWD-4 area while maintaining the mixed-use neighborhood (e.g., residential, retail, open space) already approved for the planning area. The addition of new housing opportunities offers more opportunities to live along the estuary shoreline and support existing and proposed economic opportunities.

*Policy W9.1, Defining Mixed-use Along the Estuary: Mixed use areas are areas or developments where residential uses are integrated with other non-residential uses such as commercial, recreation, and industrial areas. Live/work units are appropriate mixed use developments and unique residential opportunities for the waterfront.* | The Project, which increases the number of residential units allowed in the PWD-4 area, would further support the transformation and improvement of the Oakland Estuary waterfront into a mixed use area that integrates a combination of residential, retail, and public open space already approved for the planning area.

*Policy W9.2, Encouraging Mixed Land Uses Along the Estuary: Mixed land uses should be encouraged in areas where the integration of housing with other compatible uses will add to the overall environmental, social, and economic vitality of the waterfront, and will create a safe environment.* | The Project, which increases the number of residential units allowed in the PWD-4 area, would further enhance and enliven the Oakland Estuary waterfront planning area already approved for a mix of land uses. The addition of new housing opportunities offers more opportunities to live along the estuary shoreline and enhance the environmental, social and economic vitality of the waterfront.

*Policy W9.6, Developing Housing Along the Estuary: Quality Type and Services: Housing quality, type, and services should be developed in a manner that is consistent with the policies and requirements of: future detailed plans created for the Waterfront; the Housing Element of the General Plan; the City's Building Code; and/or other appropriate codes or regulations.* | The Project, which increases the number of residential units allowed in the PWD-4 area, creates greater opportunities for housing development in the midst of an acknowledged housing crisis, which would help address the City's Regional Housing Needs Allocation (RHNA) and more broadly the housing needs and demand of the Bay Area region and the State, and in a location that is already approved for and contains housing.

*Policy W9.7, Supporting Existing Residential Communities Along the Estuary: The existing residential communities within and adjacent to the waterfront should be supported and enhanced.* | The Project, which increases the number of residential units allowed in the PWD-4 area, creates greater opportunities for housing development and increases the size of the residential community already approved for the Oakland Estuary waterfront planning area, which would further foster social interaction and mixing among the residential communities within and adjacent to the waterfront.

**LUTE Objective N3, Encourage the construction, conservation, and enhancement of housing resources in order to meet the current and future needs of the Oakland community.**

The Project would provide up to 600 additional residential units to meet the current and future needs of the Oakland community. The Oakland community—and more broadly the State—is in the midst of an acknowledged housing crisis. The addition of new housing opportunities would help address Oakland's housing needs and demand, and in a location that is already approved for and contains housing.

*Policy N3.1, Facilitating Housing Construction: Facilitating the construction of housing units should be considered a high priority for the City of Oakland.* | The Project would provide up to 600 residential units. The addition of new housing opportunities, in the midst of an acknowledged housing crisis, would help address the City's Regional Housing Needs Allocation (RHNA) and more broadly the housing needs and demand of the Bay Area region and the State, and in a location that is already approved for and contains housing.

*Policy N3.2, Encouraging Infill Development: In order to facilitate the construction of needed housing units, infill development that is consistent with the General Plan should take place throughout the City of Oakland.* | The Project would encourage consummate infill development that is compatible with the surrounding area. The Project would increase the number of residential units allowed on a site that is already approved for 3,100 units of housing. Moreover, notwithstanding the increase in density, there would be no change to the number or

height of the approved development pattern for the Brooklyn Basin Project. The density would be developed within the approved overall building envelope and site plan and would not require changes to approved building heights or setbacks, landscaping, infrastructure, or planned circulation.

**LUTE Objective N4, Actively encourage the provision of affordable housing throughout the Bay Area.**

The Project would provide up to 600 residential units that would be subject to the City's Affordable Housing Impact Fee provided in Chapter 15.72 of the Oakland Municipal Code. The Project's substantial Affordable Housing Impact Fee payment will be deposited into the Affordable Housing Trust Fund to be used to increase, improve, and preserve the supply of affordable housing in the City.

**LUTE Objective N8, Direct urban density and mixed use housing development to locate near transit or commercial corridors, transit stations, the Downtown, waterfront, underutilized properties where residential uses do not presently exist but may be appropriate, areas where this type of development already exists and is compatible with desired neighborhood character, and other suitable locations.**

The Project would increase the number of residential units allowed in the PWD-4 area. This would increase the urban density and mixed use housing development that would occur in this area, located along the waterfront and not far from Downtown and transit stations and corridors. Furthermore, the Amendment to the PWD-4 residential density standard would advance implementation of, and would not cause any internal inconsistencies with, other elements of the General Plan. By way of example and not by limitation, the following summary lists the major objectives and policies of the Housing Element and discusses how the Project would advance those objectives and policies.

**Housing Element Policy 1.7, The City of Oakland will strive to meet its fair share of housing needed in the Bay Area region.**

The Project would provide up to 600 residential units. The addition of new housing opportunities, in the midst of an acknowledged housing crisis, would help address the City's Regional Housing Needs Allocation (RHNA) and more broadly the housing needs and demand of the Bay Area region and the State, and in a location that is already approved for and contains housing.

**Housing Element Policy 7.3, Continue to direct development toward existing communities and encourage infill development at densities that are higher than—but compatible with—the surrounding communities. Encourage development in close proximity to transit, and with a mix of land uses in the same zoning district, or on the same site, so as to reduce the number and frequency of trips made by automobile.**

The Project would encourage consummate infill development that is compatible with the surrounding area. The Project would increase the number of residential units allowed on a site that is already approved for 3,100 units of housing. Moreover, notwithstanding the increase in density, there would be no change to the number or height of the approved development pattern for the Brooklyn Basin Project. The density would be developed within the approved overall building envelope and site plan and would not require changes to approved building heights or setbacks, landscaping, infrastructure, or planned circulation.

**Housing Element Policy 7.4, Work with developers to encourage construction of new housing that, where feasible, reduces the footprint of the building and landscaping, preserves green spaces, and supports ecological systems.**

The Project would encourage construction of new housing that would reduce the footprint of buildings otherwise required to accommodate 600 new units of housing. The Project would provide up to 600 residential units, but there would be no change to the number or height of the approved development pattern for the Brooklyn Basin Project. The density would be developed within the approved overall building envelope and site plan and would not require changes to approved building heights or setbacks, landscaping, infrastructure, or planned circulation.

Furthermore, the Land Use and Planning Chapter IV.A and the Greenhouse Gas Emissions Chapter IV.N of the Supplemental Environmental Impact Report (SEIR) for the Project, also discusses the Project's consistency with the objectives and policies of the above-mentioned General Plan elements as well as with the objectives and policies of the Open Space Conservation

and Recreation (OSCAR) Element, Historic Preservation Element, Noise Element, Safety Element, Scenic Highway Element, as well as the Energy and Climate Action Plan and Bicycle and Pedestrian Master Plans. This SEIR discussion is hereby incorporated by reference throughout these findings, as applicable, as if fully set forth herein.

### **Planning Code Amendment Findings Pursuant to Planning Code Section 17.144.060**

The Project requires Zoning Code text amendments to increase the permissible residential density and alter the parking requirements to match the downtown off-street parking provisions (a reduction in required parking from 1.0 spaces per residential unit to 0.75 spaces per residential unit). To approve these amendments, the City considers whether the existing zone or regulations are inadequate or otherwise contrary to the public interest.

The existing zoning regulations do not allow the City to maximize multifamily housing because it restricts density and requires too much parking. Existing density requirements in the Brooklyn Basin area are contrary to public interest because they prevent the construction of additional, small multifamily residential units in an area the City has found appropriate for residential development. Given that many of the units would be smaller in size, and more affordable by design, than typical suburban type of developments, the Project would provide more housing opportunities for a wider and more diverse array of income groups. Existing parking requirements in the Brooklyn Basin area are also contrary to public interest because they prevent the realization of sustainable, pedestrian-oriented development. Facilitating reduced parking would reduce dependence on single-occupancy vehicles, which would encourage more people to walk, bike, and/or take transit, which in turn would reduce pollution and greenhouse gas emissions and promote public health and protect the natural environment.

Furthermore, in light of the state's housing crisis, which is particularly acute in the Bay Area, the public interest is best served by allowing additional housing within the same development envelope the City has already found appropriate in terms of bulk and height. With an additional 600 residential units, the Project will promote the local and regional welfare as it demonstrates a substantial investment in the Oakland community that moves the City and the Bay Area closer to achieving the goal of building the State out of the housing crisis.

The zoning for the Project site would remain Planned Waterfront Zoning District 4 (PWD-4), which zoning would remain consistent with the applicable General Plan land use designation of Estuary Policy Plan Planned Waterfront Development 4 (PWD-4). The zoning amendment, including the increase in permissible residential density, is consistent with the General Plan and the proposed density increase General Plan amendment discussed above.

## **Preliminary Planned Unit Development Permit Amendment Findings Pursuant to Planning Code Section 17.140.080**

The Project requires an amendment to the approved Brooklyn Basin Preliminary Development Plan (PDP) to permit the construction of an additional 600 units and a publicly accessible small watercraft launch as well as the relocation of an approved residential building within the approved PDP building envelope resulting in the potential for two residential buildings on Parcel M. The Project also includes amendments to Conditions of Approval #18 and #19, which incorporate Mitigation Measure (MM) B.1a from the 2006 Oak to Ninth Avenue Mixed Use Development Project EIR. MM B.1 required the signalization of the intersection of Embarcadero and Oak Street by the certificate of occupancy for the 1000<sup>th</sup> unit. For reasons described below in subsection C, this requirement is amended to require an in-lieu fair share payment of \$795,199.14 prior the occupancy of the 3,700th residential unit.

A Preliminary Planned Unit Development may be granted (or amended) if it is found that the development (including conditions imposed under the authority of Sections 17.142.060 and 17.140.030) conforms to all of the following criteria, as well as to the planned unit development regulations in Chapter 17.142. The PDP amendment for the Project conforms to all of the following criteria:

**A. That the location, design, size, and uses are consistent with the Oakland General Plan and with any other applicable plan, development control map, or ordinance adopted by the City Council.**

The City previously approved the Brooklyn Basin project and the Brooklyn Basin PDP. In that process, the City determined that the Brooklyn Basin project's overall location, design, size, and uses are consistent with the Oakland General Plan and with other applicable plans, maps, and guidelines, and ordinances. The Project increases the number of residential units permitted in the Brooklyn Basin planning area, includes a publicly accessible small watercraft launch to accommodate an existing water taxi service, and changes the location of an approved residential building from what was previously approved, but does not include any proposed substantial changes to the Brooklyn Basin project or the Brooklyn Basin PDP, or the circumstances under which the Brooklyn Basin project would proceed, that would alter the City's previous findings. The City's previous determinations for the Brooklyn Basin project would remain valid.

The additional 600 residential units, watercraft launch, and building relocation would occur within the same overall development envelope that the City approved as part of the Brooklyn Basin PDP and that the City determined was appropriate in location, design, size, and use for the Brooklyn Basin area. The location, design, size, and uses of the proposed additional residential units would be consistent with the City's General Plan, including the Estuary Policy Plan and applicable zoning as amended by the Project. The Project will increase the average residential density from 50 to 57.63 over the entire applicable 64.2-acre planning area designated Planned Waterfront Development-4 (PWD-4), accommodating the additional 600 units in the planning area. The building relocation would not materially change the approved development as it would not increase the total number of towers in the planning area, nor would it modify the design

parameters or overall building envelope approved for the planning area.

In addition, the incorporation of the publicly accessible watercraft launch is consistent with the Estuary Policy Plan's policy OAK-2.3 to enhance and enliven the marina and with the City's 2030 Equitable Climate Action Plan (ECAP) as it would reduce greenhouse gas emissions through integration of an existing water taxi service, which would increase the multi-modal transit options within the Brooklyn Basin PDP and in turn reduce dependence on single-occupancy vehicles and create a more sustainable community.

The Project also conforms to the General Plan's and other applicable plan's objectives and policies as discussed above and in the SEIR. Likewise, the Project conforms to the applicable zoning as amended, as discussed above.

In sum, the Project's location design, size, and uses are consistent with the Oakland General Plan and with other applicable plans, development control maps, and ordinances.

**B. That the location, design, and size are such that the development can be well integrated with its surroundings, and, in the case of a departure in character from surrounding uses, that the location and design will adequately reduce the impact of the development.**

The City previously approved the Brooklyn Basin project and the Brooklyn Basin PDP. In that process, the City determined that the Brooklyn Basin project's location, design, size can be well integrated with its surroundings. The Project increases the number of residential units permitted in the Brooklyn Basin planning area, includes a publicly accessible small watercraft launch to accommodate an existing water taxi service, and changes the location of an approved residential building from what was previously approved, but does not include any proposed substantial changes to the Brooklyn Basin project or the Brooklyn Basin PDP, or the circumstances under which the Brooklyn Basin project would proceed, that would alter the City's previous findings.

The City's previous determinations for the Brooklyn Basin project would remain valid. The additional 600 residential units, watercraft launch, and building relocation would occur within the same overall development envelope that the City approved as part of the Brooklyn Basin PDP and that the City determined was appropriately integrated with its surroundings. The location, design, and size of the Project would continue to be well integrated into the Brooklyn Basin area, as it would introduce additional residential units and a watercraft launch into an area already approved for such uses and which uses were previously found to be well integrated with its surroundings. The Project would occur within the same development envelope that is already approved as it would not increase the total number of towers in the planning area, nor would it modify the design parameters or overall building envelope approved for the planning area, and therefore would not change the character, location, design, or size of the Brooklyn Basin planned development. In addition, the increase in the marina activity, through integration of an existing water taxi service, is consistent with the character of the area as a location for waterfront uses. Further, these uses are consistent with the surrounding area. To the west of the Project site is the Jack London District, which contains a mix of uses including residential, commercial, retail, entertainment and water-oriented uses similar to those that would be developed in Brooklyn Basin and which was previously approved. To the east of the Project site is the Embarcadero Cove area, which contains commercial, recreational, and water-dependent uses, which are all compatible with the approved uses for Brooklyn Basin.

In sum, the location, design, and size are such that the development can be well integrated with its surroundings and is not a departure from uses existing in the immediate surroundings.

**C. That the location, design, size, and uses are such that traffic generated by the development can be accommodated safely and without congestion on major streets and will avoid traversing other local streets.**

The City previously approved the Brooklyn Basin Project and the Brooklyn Basin PDP. In that process, the City determined that the Brooklyn Basin Project's location, design, size, and uses are such that traffic generated by the development can be accommodated safely and without congestion on major streets and will mostly avoid traversing other local streets. The Project increases the number of residential units permitted in the Brooklyn Basin planning area, includes a publicly accessible small watercraft launch to accommodate an existing water taxi service, and changes the location of an approved residential building from what was previously approved, but does not include any proposed substantial changes to the Brooklyn Basin project or the Brooklyn Basin PDP, or the circumstances under which the Brooklyn Basin project would proceed, that would alter the City's previous findings. The City's previous determinations for the Brooklyn Basin project would remain valid.

The Project would not materially change the Brooklyn Basin's planned circulation system, including site access intersections as well as on-site streets, sidewalks, and bike facilities. The Project remains located in an area that can be accessed by major roads and freeways and does not require traversing local residential streets for Project access. Furthermore, while the Project proposes an increase in residential units, the traffic generated by the Project would not be materially different than that previously approved and can be accommodated safely and without unsafe congestion on major streets and will mostly avoid traversing local streets outside the Project area—as the Project is subject to a robust Transportation Demand Management (TDM) Plan. TDM measures include frequent, direct weekday shuttle service between Brooklyn Basin and BART, full pedestrian and bicycle network, secure and on-street bicycle parking, wayfinding and lighting for travelers, unbundled residential parking, and metered on-street parking. These features reduce traffic congestion attributable to the Project.

Likewise, the publicly accessible watercraft launch would contribute to increased mobility choices that support the transportation network, as it would accommodate integration of an existing water taxi service, which would reduce dependence on single-occupancy vehicles and in turn reduce traffic congestion otherwise attributable to the Project.

Similarly, the Project would reduce the minimum parking requirements from 1.0 spaces per residential unit to 0.75 spaces per residential unit. This updated residential parking ratio would apply not only to the 600 additional units, but also future development of the approved Brooklyn Basin project, such that the Project would only introduce an additional 60 parking spaces (or a less than two percent increase) beyond that of the approved Brooklyn Basin project. This reduced parking ratio would further reduce dependence on single-occupancy vehicles and in turn reduce traffic congestion otherwise attributable to the Project.

With respect to the amendment to Conditions of Approval #18, and #19, the City determines that, changed circumstances have made current signalization of the intersection infeasible. These circumstances include the installation of a new cross-walk in the intersection, the presence of which has led the California Public Utilities Commission to reject the project's signalization plans and to require either the removal of the crosswalk or a significant and costly redesign of the intersection not previously contemplated. The City has determined that maintaining the cross-walk in the intersection is in the public interest to serve pedestrians and that the CPUC's additional conditions have made intersection improvements infeasible at this time. The City has also determined that the Project can mitigate any contribution that it is making to the safety conditions at the intersection by contributing its fair share cost to the signalization of the intersection. An amendment to Conditions of Approval #18 and 19 is therefore appropriate to require an in-lieu, fair share contribution of \$795,199.14 to be paid prior to the issuance of a certificate of occupancy for the 3,700th residential unit. Payment of this fee shall be in full satisfaction of the Project's obligations with respect to the intersection of Embarcadero and Oak Street.

In sum, the Project's location, design, size, and uses are such that traffic generated by the Project can be accommodated safely and without unsafe congestion on major streets and will mostly avoid traversing other local streets.

**D. That the location, design, size, and uses are such that the residents or establishments to be accommodated will be adequately served by existing or proposed facilities and services.**

The City previously approved the Brooklyn Basin project and the Brooklyn Basin PDP. In that process, the City determined that the Brooklyn Basin project's location, design, size, and uses are such that residents or establishments to be accommodated will be adequately served by existing or proposed facilities and services. The Project increases the number of residential units permitted in the Brooklyn Basin planning area, includes a publicly accessible small watercraft launch to accommodate an existing water taxi service, and changes the location of an approved residential building from what was previously approved, but does not include any proposed substantial changes to the Brooklyn Basin project or the Brooklyn Basin PDP, or the circumstances under which the Brooklyn Basin project would proceed, that would alter the City's previous findings. The City's previous determinations for the Brooklyn Basin project would remain valid.

As discussed in the SEIR, the location, design, size, and uses of the Project are such that the residents and establishments to be accommodated will be adequately served by existing or proposed facilities and services, such as: fire protection, police protection, public schools, libraries, parks and recreation, water supply, sanitary wastewater, stormwater management, and solid waste. Furthermore, as discussed in the SEIR, the Project would not materially change the City's previous findings as to these facilities and services. In addition, the area is covered by a Community Facilities District that levies a special tax to fund maintenance for the area's public improvements, including the Project's ample public parks.

In sum, the location, design, size, and uses of the Project are such that the residents and establishments to be accommodated will be adequately served by existing or proposed facilities and services.

**E. That the location, design, size, and uses will result in an attractive, healthful, efficient, and stable environment for living, shopping, or working, the beneficial effects of which environment could not otherwise be achieved under the zoning regulations.**

The City previously approved the Brooklyn Basin Project and the Brooklyn Basin PDP. In that process, the City determined that the Brooklyn Basin Project's location, design, size, and will result in an attractive, healthful, efficient, and stable environment for living, shopping, or working, the beneficial effects of which environment could not otherwise be achieved under the zoning regulations. The Project increases the number of residential units permitted in the Brooklyn Basin planning area, includes a publicly accessible small watercraft launch to accommodate an existing water taxi service, and changes the location of an approved residential building from what was previously approved, but does not include any proposed substantial changes to the Brooklyn Basin project or the Brooklyn Basin PDP, or the circumstances under which the Brooklyn Basin project would proceed, that would alter the City's previous findings. The City's previous determinations for the Brooklyn Basin project would remain valid.

The overall location, design, and building envelope of the residential uses would not change from what was approved in the original PDP and thus the Project would not alter the findings related to location, design, size, and uses that the City already made. The Project would increase the number of residential units within the approved massing envelopes. The additional residential units will continue to support the approved retail and commercial uses and open space in the area and increase the sense of community, thereby creating a stable environment for living, shopping, and work. Likewise, the publicly accessible watercraft launch, and its accommodation of an existing water taxi service, would improve access to and from the Brooklyn Basin planning area

further supporting the attractive, healthful, efficient, and stable Brooklyn Basin environment.

Moreover, the Project, and its addition of residential units and watercraft launch along with the relocation of an approved building, does not alter the fact that the approved Brooklyn Basin PDP allows the construction of an integrated master plan community, including a mix of residential, retail and commercial, and open space uses that would not have been possible under the City's standard zoning regulations.

In sum, the location, design, size, and uses of the Project will result in an attractive, healthful, efficient, and stable environment for living, shopping, or working, the beneficial effects of which environment could not otherwise be achieved under the zoning regulations.

- F. That the development will be well integrated into its setting, will not require excessive earth moving or destroy desirable natural features, will not be visually obtrusive and will harmonize with surrounding areas and facilities, will not substantially harm major views for surrounding residents, and will provide sufficient buffering in the form of spatial separation, vegetation, topographic features, or other devices.**

The City previously approved the Brooklyn Basin Project and the Brooklyn Basin PDP. In that process, the City determined that the Brooklyn Basin Project will be well integrated into its setting, will not destroy desirable natural features, will not be visually obtrusive and will harmonize with surrounding areas and facilities, will not substantially harm major views for surrounding residents, and will provide sufficient buffering in the form of spatial separation, vegetation, topographic features, or other devices. The Project increases the number of residential units permitted in the Brooklyn Basin planning area, includes a publicly accessible small watercraft launch to accommodate an existing water taxi service, and changes the location of an approved residential building from what was previously approved, but does not include any proposed substantial changes to the Brooklyn Basin project or the Brooklyn Basin PDP, or the circumstances under which the Brooklyn Basin project would proceed, that would alter the City's previous findings. The City's previous determinations for the Brooklyn Basin project would remain valid.

Notwithstanding the increase in residential units, inclusion of a watercraft launch, or relocation of an approved building, the Project would look substantially similar to the approved Brooklyn Basin PDP because the Project would occur within the overall approved development envelope. Therefore, the City's findings that the development of Brooklyn Basin will be well integrated into its setting, not require excessive earth moving or destroy desirable natural features, will not be visually obtrusive and will harmonize with surrounding areas and facilities, will not substantially harm major views for surrounding residents, and will provide sufficient buffering in the form of spatial separation, vegetation, topographic features, or other devices remain valid.

In sum, the Project will be well integrated into its setting, will not destroy desirable natural features, will not be visually obtrusive and will harmonize with surrounding areas and facilities, will not substantially harm major views for surrounding residents, and will provide sufficient buffering in the form of spatial separation, vegetation, topographic features, or other devices.

## **Development Agreement Amendment Findings Pursuant to Planning Code Section 17.138.050**

The Project requires amendments to the approved Brooklyn Basin development agreement (the Brooklyn Basin DA), which amendments would provide a vested right for a period of time to complete the Project, specify requirements on the Project separate from the approved Brooklyn Basin project, modify sections of the Brooklyn Basin DA related to Community Services District formation, and establish other commitments applicable to the Project.

A development agreement may be approved (or amended) if it is found that the development agreement is consistent with the Oakland General Plan and with any applicable district plan or development control map which has been adopted by the City Council. The Brooklyn Basin DA amendment is consistent with the City's General Plan, including the Estuary Policy Plan as amended, in accordance with the findings set forth above.

In reviewing and approving the Brooklyn Basin DA amendment, the City has considered the factors contained in Oakland Planning Code Section 17.138.060. More specifically, the City has determined that: (a) the Project will provide 600 new housing opportunities (in addition to the 3,100 already approved) to help meet the local and regional housing needs and provide more desperately needed housing during an acknowledged housing crisis; (b) the Project, by increasing the multi-modal transit options (e.g., watercraft launch supporting existing taxi-service) and reducing the parking requirements within the Brooklyn Basin PDP, would create a more sustainable community that promotes public health and protects the natural environment as they would reduce dependence on single-occupancy vehicles, and in turn reduce pollution and greenhouse gas emissions as well as reduce impacts to the transportation network otherwise attributable to the Project; (c) plans for development of the Project as reflected in the comprehensive elements of the amended PDP are adequate; and (d) traffic, parking, public service, visual, and other impacts of the Project on abutting properties and the surrounding area have been adequately reviewed in the Supplemental Environmental Impact Report (SEIR) for the Project and mitigated as necessary through the Mitigation Monitoring and Reporting Program and the Conditions of Approval.

## **ATTACHMENT C**

### **Final Supplemental Environmental Impact Report (Provided via Link Below)**

[City of Oakland | Current Environmental Review \(CEQA/EIR\) Documents... \(oaklandca.gov\)](#)-  
-located under “Brooklyn Basin (formerly Oak-to-Ninth)” heading.

**ATTACHMENT D**

**Project Background Documents  
(Provided Under Separate Cover)**