

**Case File Number: DA06011, PUD06010-PUDF01**

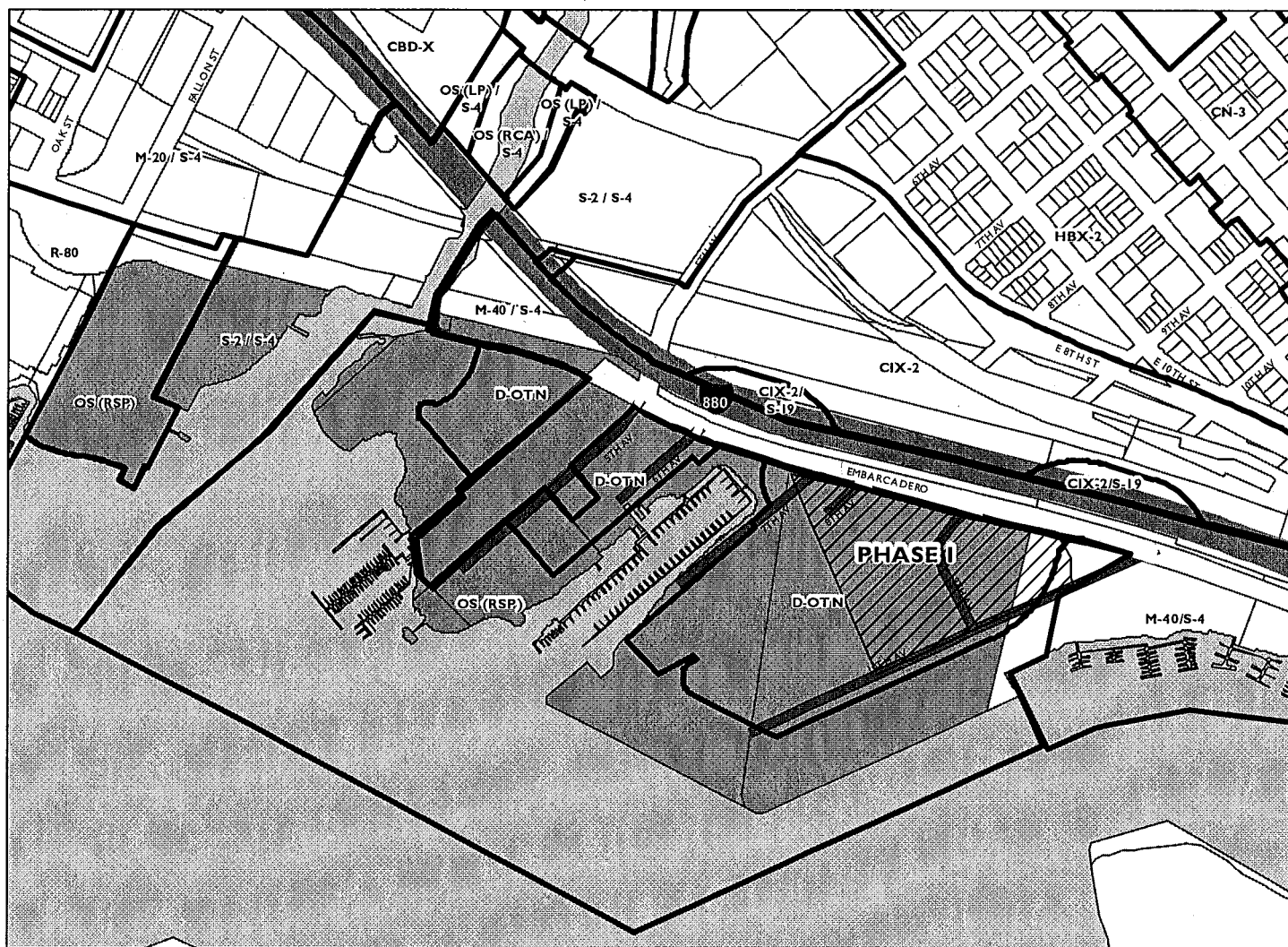
**November 5, 2014**

<b>Location:</b>	<b>Brooklyn Basin (formerly known as “Oak Street to Ninth Avenue”); specifically, Phase I, generally located south of Embarcadero, between future Main Street and 9<sup>th</sup> Avenue.</b>
<b>Proposal:</b>	<b>Final Development Permit (FDP) for streets, landscaping and infrastructure not part of development parcels or parks in Phase I; Revision to PDP to reduce required setbacks; and Transportation Demand Management Program (TDM).</b>
<b>Applicant:</b>	<b>Zarsion-OHP 1, LLC (ZOHP), Patrick Van Ness (510)251-9272.</b>
<b>Owner:</b>	<b>Zarsion-OHP 1, Port of Oakland, City of Oakland.</b>
<b>Planning Permits Required:</b>	<b>FDP, Revision to PDP, Compliance with CEQA.</b>
<b>General Plan:</b>	<b>Planned Waterfront Development-4.</b>
<b>Zoning:</b>	<b>Oak-to-Ninth District Zone (D-OTN)</b>
<b>Environmental Determination:</b>	<b>Final EIR certified on January 20, 2009.</b>
<b>Historic Status:</b>	<b>None for affected sites.</b>
<b>Service Delivery District:</b>	<b>3</b>
<b>City Council District:</b>	<b>2 – Patricia Kernighan</b>
<b>Action to be Taken:</b>	<b>Consider FDP and PDP revision applications and make CEQA determination; TDM recommendation to City Council.</b>
<b>Finality of Decision:</b>	<b>FDP and revision to PDP appealable to City Council; TDM recommendation not appealable.</b>
<b>For further information:</b>	<b>Contact case planner Catherine Payne at 510-238-6168 or by e-mail at <a href="mailto:cpayne@oaklandnet.com">cpayne@oaklandnet.com</a></b>

## **SUMMARY**

The purpose of this report is to request consideration of three actions related to implementation of the Brooklyn Basin Project (formerly known as “Oak Street to Ninth Avenue”). The Brooklyn Basin Project land use entitlements were originally approved in 2006. At this time, the applicant, Zarsion-OHP 1, LLC (ZOHP) is seeking additional approvals in response to or required under the terms of the original land use entitlements, in order to commence project construction. Specifically, ZOHP is seeking approval of a revision to the Preliminary Development Permit (PDP) to reduce the required building setbacks throughout the area. In addition, ZOHP is seeking the first Final Development Permit (FDP), consistent with the applicable zoning regulations, for Phase I streets, landscaping and infrastructure; and is seeking a recommendation from the Planning Commission to the City Council for the Transportation Demand Management Program (TDM), consistent with the terms of the project Conditions of Approval (CoAs). The FDP and TDM approvals are required before the City can issue the first Final Map, which would allow sale and development of parcels.

# CITY OF OAKLAND PLANNING COMMISSION



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Case File: DA06011, PUD06010-PUDF01  
Applicant: Zarsion-OHP I, LLC (ZOHP), Eric Harrison  
Address: Brooklyn Basin Phase I;  
generally located south of Embarcadero,  
between future Main Street and 9th Avenue  
Zone: D-OTN

## PROJECT SITE AND SURROUNDING AREA

Brooklyn Basin generally encompasses a 64-acre site that adjoins the Oakland Estuary to the south, the Embarcadero and I-880 freeway to the north, 10<sup>th</sup> Avenue to the east, and Fallon Street to the west. The Phase I Site is located in the eastern portion of Brooklyn Basin, generally between the future Main Street and 9<sup>th</sup> Avenue, and previously contained commercial and industrial uses (the Ninth Avenue Terminal, a retail furniture store, a metal recycling facility, and outdoor storage of shipping containers). The site is currently subject to the cleanup of hazardous materials and is vacant with no publicly accessible uses.

## PROJECT BACKGROUND

### *Project History*

The planned Brooklyn Basin Project consists of a mix of residential, retail/commercial, civic, and parks and open space uses preliminarily approved by the Planning Commission on March 15, 2006, and for which a Development Agreement was executed on July 18, 2006 by the City Council. Following a legal challenge, final entitlements were granted in 2009. The project sponsors plan to construct up to 3,100 residential units, 200,000 square feet of ground-floor commercial space, a minimum of 3,950 parking spaces, 29.9 acres of parks and public open space, two renovated marinas (total of 170 boat slips), and an existing wetlands restoration area. The existing buildings on the site will be demolished with the exception of a portion of the Ninth Avenue Terminal shed building and the Jack London Aquatic Center. The project does not include approximately six acres of privately-held property along and east of 5th Avenue that contain a mix of commercial and industrial uses, as well as a small community of work/live facilities.

Over the past year, ZOHP has worked with the City of Oakland to comply with the terms of the zoning regulations, Development Agreement (DA), Planned Unit Development permit (PUD), Environmental Impact Report (EIR) and the adopted project Conditions of Approval (CoAs) to prepare the Phase I site for parcel development activities. Parcel development cannot occur until a Final Map is issued, and specific CoAs must be met prior to issuance of the first Final Map. To this end, the applicant has worked to complete the following milestones toward issuance of the first Final Map (this matrix represents the highlights of the applicant's activities and is not exhaustive):

## Summary of Brooklyn Basin Milestones Fall 2014

Milestone	Requirement	Status
Land Use Entitlements (DA, PUD/PDP, GPA, Rezone, EIR)	Oakland Municipal Code	Complies: Initial (challenged) approval 7/18/2006; Final approval 1/2009
Schematic Master Improvement Plan	CoA 33, Prior to issuance of site development grading permit	Complies: Submitted to the City of Oakland and revised based on City comments 3/2014; City Engineer approval 5/2014
Soil remediation (grading/surcharge permits)	EIR MM-H, Prior to issuance of site development building permits	Complies: Activities initiated 6/2014
Sale of Parcels F, G and T to the City of Oakland	CoA 48 90 days after determination of Finished Lots or earlier	Complies: Close of escrow 8/2014 (prior to Finished Lot)
Phase I Infrastructure FDP	Zoning regulations	Complies: Staff review complete 9/14
CFD	CoA 38, Prior to issuance of first Final Map	Complies: In process as of this writing
Final TDM	EIR MM B and C, CoA 22, Prior to approval of FDP	Complies: Staff review complete 9/14; In process as of this writing
Submittal of CC&Rs	CoA 30, Prior to submittal of First Final Map	Complies: 8/2014

## PROJECT DESCRIPTION

*FDP and TDM*

At this time, ZOHP is working toward site preparation and parcel development for Brooklyn Basin Phase I. As noted above, there are a number of milestones that need to be met prior to actual development activities occurring. The proposed project includes two milestones that are required to issue the first Brooklyn Basin Final Map and initiate parcel development, and for which Planning Commission review and recommendation or approval is also required:

- Approval of FDP: The D-OTN zoning regulations require FDPs for all development activities, including proposed buildings on development parcels, parks, and private and public infrastructure. The purpose of a FDP is to demonstrate that the detailed, articulated schematic design phase (shown in the FDP) is consistent with and a refinement and evolution of the approved PDP (the conceptual design phase). The FDP currently under consideration is for streets, landscaping and site infrastructure for Phase I. The FDP includes the facilities that will eventually be included in the public right-of-way,

including: streets, sidewalks and streetscape improvements, and utilities to be located within those areas (see Attachment A).

- TDM Recommendation: The project CoA 22 requires the TDM to be considered by the Planning Commission and approved by the City Council. The purpose of the TDM is to establish methods for achieving reduction in automobile trips by promoting and supporting reliance on public transportation, shuttles, and bicycle facilities, amongst other techniques (Attachment B). The TDM is fully discussed in the “Zoning and Related Issues” section below.

#### *Revision to the PDP*

- The proposed revision to the PDP is described and analyzed in this section to reduce confusion regarding the analysis of the FDP throughout the remainder of this report. The proposed revision to the PDP (see Attachment C) to reduce the required building setbacks is not required for issuance of the first Final Map. The proposed revision is a minor change to the PDP and associated Design Guidelines to reduce the required setbacks from eight feet to permit a range in setback dimension from “two to eight feet”. This proposed revision is a refinement intended to finesse the setbacks so that they are consistent with the intent of the approvals for an urban, mixed-use neighborhood. Specifically, the intent is to provide a more urban standard consistent with the intent of the existing zoning regulations and Design Guidelines. The revision to the PDP is fully discussed in the “Zoning and Related Issues” section below.

## **GENERAL PLAN ANALYSIS**

### *Existing General Plan Land Use Classifications*

The Brooklyn Basin project site is located in the Planned Waterfront Development-1 (PWD-1) Estuary Policy Plan land use designation (the Estuary Policy Plan is the General Plan for the area that includes Brooklyn Basin). The adopted intent of the PWD-1 is to “provide for the transformation of maritime and marine industrial uses into a public-oriented waterfront district that encourages significant public access and open space opportunities. Encourage unique mix of light industrial, manufacturing, artist lofts and workshops, hotel, commercial, recreation, cultural uses, and water-oriented use that complement the recreational and open space character of the waterfront.” The PWD-1 land use designation includes an allowable residential density of 50 units per gross acre and 140 units per net acre).

The proposed FDP is consistent with the intent of the PWD-1 designation. The proposed streets and infrastructure would provide ample and attractive access to the entire Phase I site, as well as to the Ninth Avenue Terminal and future Shoreline Park.

See "Project Description" section for analysis of the proposed revision to the PDP.

## ZONING ANALYSIS

### *Zoning District Analysis*

The Phase 1 area of the Brooklyn Basin site is located entirely within the D-OTN zoning district of the Oakland Planning Code (formerly known as, and identified in the regulations as, PWD-4). The D-OTN zoning district is intended to facilitate the development of an integrated mixed-use development, including residential, public and private open space and commercial land uses. The zoning regulations require FDPs for all improvements, including streets, sidewalks and infrastructure. FDPs are to be approved by the Planning Commission, which must find that the plans are in substantial compliance with the PDP and the Oak to Ninth Design Guidelines.

### **Excerpts from the D-OTN District Regulations**

"Final Development Plans shall be submitted for each phase of development. Final Development Plans shall include all information contained in the Preliminary Development Plan plus the following requirements in sufficient detail to indicate the operation and appearance of all development shown on the Final Development Plan:

1. The location of all public infrastructure that provides water, sewage, and drainage facilities and other utility services.

...

7. Detailed improvement plans for all public and private streets, driveways, sidewalks, pedestrian and bikeways, and off-street parking and loading areas.

The Planning Commission shall approve the Final Development Plan if it makes written findings that the Final Development Plan is in substantial conformance with the Preliminary Development Plan; Oak to Ninth Design Guidelines, Planned Waterfront Zoning District-4 (PWD-4) Regulations, the Open Space-Region Serving Park (OS-RSP) zoning regulations, the Civic Center/Design Review Combining Zone (S-2/S4) regulations, Vesting Tentative Tract Map No. 7621, Conditions of Approval, Mitigation Monitoring Reporting Program, and the Development Agreement..."

### *PDP Analysis*

The PDP includes street design drawings and descriptions of the character of specific streets. The street design drawings establish general Right-of-Way (ROW) width and details, as well as landscaping and hardscape materials (plant palates, pavers and furnishings).

The PDP is consistent with the Vesting Tentative Tract Map (VTTM) in terms of establishing the ROW area and roadway design and layout. The proposed FDP substantially conforms to the PDP and VTTM in terms of ROW and this conformance is discussed fully under the VTTM section (see below).

In terms of the landscaping and hardscape materials (including plant palates, pavers and furnishings), the proposed FDP substantially conforms to the PDP. The proposed FDP includes a

refined plant palate that includes plants that were part of the PDP plant palate, and is refined to include complementary plants (in terms of aesthetics, geographic origins and maintenance requirements). The paving and furnishings have been only minimally refined to specify actual brands, models, materials and fabricators for the hardscape materials (resulting in non-substantive changes to styles).

The project includes a refinement to the stormwater treatment system that provides stormwater retention basins along Embarcadero on both sides of the intersection with 9<sup>th</sup> Avenue. These features provide an attractive entry to the project made possible by a change to the alignment of Embarcadero at that location that allowed for more land on the project-side of Embarcadero. These entry features are in keeping with the aesthetic quality of the project and constitute a refinement and substantially conform to the PDP.

Regarding the ROW (and this is fully discussed below), street widths are generally consistent between the approved PDP and the proposed FDP. There are minor changes to the roadway and sidewalk widths; some roadways are widened by up to two feet (and sidewalks narrowed on either side accordingly) to accommodate changes to the Fire Code requiring increased emergency access. It should be noted that the 9<sup>th</sup> Avenue ROW is widened to allow for diagonal parking where parallel parking was previously accommodated. This is a refinement requested by the Bay Conservation and Development Commission (BCDC) to maximize public access to the future Shoreline Park and the waterfront. This refinement is a minor change that improves both vehicular access and the pedestrian experience adjacent to Shoreline Park, and is consistent with the goals of the original project approvals for maximum access to open space along the waterfront.

#### *Open Space-Region Serving Park (OS-RSP) Zoning Regulations*

The FDP does not coincide with the OS-RSP zoning district and the regulations do not apply. The entire FDP area is located in the D-OTN zoning district.

#### *Civic Center/Design Review Combining Zone (S-2/S-4) regulations*

The requirement for design review under the S-2 and S-4 combining districts does not specifically apply to the FDP because the project is already subject to a valid PUD (that was the subject of design review) (Planning Code Section 17.76.200).

#### *Vesting Tentative Tract Map No. 7621*

The proposed FDP includes refinements from the Vesting Tentative Tract Map (TTM7621). The refinements are all minor, do not necessitate revisions to TTM7621, and enhance the design and layout of the streets and infrastructure. In general, although the ROW remains unchanged, the roadways have become wider and the sidewalks narrower (with new mid-block bulbouts) to accommodate changes to the Fire code requiring 26-foot wide roadway clearance for emergency access. In addition, intersection details (e.g., curb radii, bulbout geometrics) have been refined

based on best practices recommended by the Public Works Agency. Specific non-substantive refinements include the following:

- Main Street: There is a slight realignment to Main Street in response to I-880 structural upgrades and off-ramp realignment.
- Seventh Street: Seventh Street was previously eliminated through a Parcel Map Waiver to allow flexibility in the conveyance of the affordable housing parcels to the City of Oakland. The affordable housing parcels were originally separated by Seventh Street. However, due to the intensive land use program for the affordable housing sites and the constrained parcel configurations, the City opted to eliminate Seventh Street to allow for more flexibility in developing the program for the affordable housing sites.
- Ninth Avenue: Ninth Avenue has been refined to increase the ROW to allow for diagonal parking where previously the TTM indicated parallel parking. The purpose of this refinement is to provide more public parking adjacent to Shoreline Park and the waterfront. This refinement was requested by Bay Conservation and Development Commission and is consistent with the intent of the project approvals to maximize access to waterfront open space.
- Embarcadero: Embarcadero, immediately adjacent to the project area, is realigned near Ninth Street to improve street geometrics and aesthetics, thereby allowing for stormwater treatment retention basins at the intersection with Ninth Avenue (see further discussion under next bullet).
- The retention basins are a change from the TTM but do not affect project parcels and are accommodated by the realignment of Embarcadero (discussed above). The stormwater retention system has been added to the project since the TTM was approved and was a requirement of the project so is considered an expected refinement and not a substantive change.

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

The Conditions of Approval for the Brooklyn Basin Project include conditions that provide specific guidance regarding what should be included in each FDP, requirements for FDPs and other milestones for which specific FDPs might be required. The following conditions of approval are specific to all FDPs and/or the Phase 1 streets and infrastructure FDP, in particular:

- CoA 22: CoA 22 requires each FDP to be responsive to the approved TDM. As this is the first FDP to be processed, staff is processing the Final TDM simultaneously. Although the Planning Commission and City Council previously reviewed and approved the Draft TDM, the Conditions of Approval require the Planning Commission and the City Council to approve the Final TDM, as well. Accordingly, the Planning Commission is asked to determine that the FDP considered herein is consistent with the TDM, contingent upon final approval of the TDM by the City Council.



The FDP includes the streets and ROW previously approved by the Planning Commission and the City Council. Refinements include additional parking adjacent to Shoreline Park, as well as refinements to the sidewalks (balancing narrower sidewalk sections with mid-block bulbouts) to ensure a pleasant experience for all users of and visitors to the area. The first FDP would not result in the addition of any residents or visitors to the area (as the FDP is only for streets and infrastructure, and not for development or parks parcels) so no specific components of the TDM would be required at this time.

- CoAa 32, 33 and 34: CoA 32 states requirements for revisions to the street and infrastructure improvement design included in the Vesting Tentative Tract Map (VTTM), based on Public Works Agency review. In compliance with CoA 33, the applicant has submitted a Schematic Master Improvement Plan showing all street designs to be included in this FDP. In compliance with CoA 34, The City Engineer found the Schematic Master Improvement Plan to be in compliance with CoA 33. In summary, the street and infrastructure design included in the FDP has been reviewed and found in compliance with the project approvals by the Public Works Agency, the Oakland Fire Department and the Bureau of Engineering Services.
- CoA 40: CoA 40 requires a Landscape, Open Space, Park and Trail Plan substantially consistent with the approved PDP. In compliance with this CoA, the FDP considered herein includes streetscape improvements (and no open space, parks or trails) which are fully detailed in Attachment A to this report with regards to street sections, typical paving and materials, trees and plant materials.

### *Development Agreement*

The DA does not specifically dictate any requirements for FDPs or revisions to the PDP.

### *Oak to Ninth Design Guidelines*

The Oak to 9<sup>th</sup> Brooklyn Basin Design Guidelines (Design Guidelines) refer to “generous sidewalks” throughout the project, and to the quality and design of specific Phase 1 streets:

- Main Street: “The wide street serves as a commercial mixed-use spine and gathering place for the community. Between the Embarcadero and 8<sup>th</sup> Avenue, it is lined with neighborhood-serving shops that will benefit from the intensity of activity, the high levels of visibility, and the convenient on-street diagonal parking.” Main Street is subject to only small refinements and is designed to support attractive, intensive commercial activities.
- 8<sup>th</sup> Street: “The street will have an urban village character, with tree-lined sidewalks...” Eighth Street is narrower than Main Street and, as designed, continued to have the urban village character referred to in the Design Guidelines.

- 9<sup>th</sup> Avenue: "A wide bicycle and pedestrian promenade along the park edge of the street accommodates the significant volumes of waterfront visitors that are expected, and the street offers generous on-street curbside parking..." Ninth Avenue has been refined to further achieve the goal of providing a promenade that accommodates generous on-street curbside parking with the replacement of parallel with diagonal parking adjacent to Shoreline Park.

See "Project Description" section for analysis of the proposed revision to the PDP.

## CALIFORNIA ENVIRONMENTAL QUALITY ACT

The City Council certified an EIR for the existing project approvals on January 20, 2009. The Oak to Ninth Avenue Project Environmental Impact Report [SCH No. 2004062013] is provided under separate cover to the Planning Commission (Attachment D) and is available to the public at the Planning Department offices and on the web at:

<http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/DOWD008409>.

Staff has determined that no new information about the site, changes to the project, or circumstances under which the project would be undertaken have occurred that would require subsequent or supplemental environmental review for the proposed revision to the PDP, the Phase 1 streets and infrastructure FDP, and/or the TDM. In accordance with CEQA, the City reviewed and analyzed the proposed project changes and other relevant information to determine whether circumstances requiring the preparation of a subsequent or supplemental EIR exist. Based upon available information, the City has determined that none of those circumstances are present. Because the revision to the PDP, the FDP and the TDM are refinements of, and not substantive changes to, the approved project, no further environmental review is required. None of the circumstances that require a supplemental or subsequent EIR pursuant to CEQA Guidelines Section 15162 have occurred. Specifically:

- There are no substantial changes proposed in the project which would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- There are no substantial changes with respect to project circumstances which would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
- There is no new information of substantial importance which would result in new significant environmental effects, a substantial increase in the severity of previously identified significant effects, previously infeasible mitigation measures or alternatives now found to be feasible, or new mitigation measures or alternatives which are considerably different from previous ones that would substantially reduce environmental effects.

With regards to the proposed revision to the PDP, once an EIR has been completed and certified for a project, an agency may not require additional environmental review unless it grants a subsequent discretionary approval for the project and certain statutorily enumerated criteria are met. (Pub. Res. Code section 21166; CEQA Guidelines section 15162.) If the subsequent discretionary approval is sufficiently limited, however, additional environmental review may not be triggered. In this matter, the Planning Commission has discretionary approval of amendments to one PDP exhibit and to the project Design Guidelines (part of the PDP) to permit a variation in the required street front setbacks for architectural articulation. This minor design criteria modification does not reopen the larger project approval or implicate any environmental topics and significance criteria under the project EIR and CEQA. Although the Planning Commission has the discretion to approve or deny the proposed design change, this limited discretion does not establish a broader discretion to reconsider the project or address environmental impacts covered in the EIR. Consequently, the proposed PDP and Design Guidelines revisions do not require any additional environmental review. [San Diego Navy Broadway Complex Coalition v. City of San Diego (2010) 185 Cal. App. 4th 924; Health First v. March Joint Powers Authority (2009) 174 Cal. App. 4th 1135.] Thus, the certified Oak to Ninth Project EIR satisfies the CEQA requirements for this approval.

Here, based upon available information, the City believes that none of the circumstances described above have occurred since 2006 and, therefore, no subsequent or supplemental environmental review is required under CEQA.

## **ZONING AND RELATED ISSUES**

The proposed revision to the PDP and the TDM are fully discussed in this section. It should be noted that the Brooklyn Basin project covers an unusually long timeframe (as addressed in the background section of this report) and is subject to a complex permitting process. Therefore, this section also provides some detail regarding project status for interested parties.

### *Proposed Revision to the PDP*

The proposed revision to the PDP would apply to the entire Brooklyn Basin Project. The proposal would likely reduce the effective setback along all non-retail project streets (all streets other than Main Street and the Clinton Basin frontage) from eight feet to two feet. This would result in a much more urban aesthetic and ambiance than under the current approvals. Applied literally, however, a two-foot setback could potentially result in a monotonous hard edge with no opportunity for softscaping (most hardy perennials that can withstand proximity to the public ROW require a minimum three feet horizontal dimension planting area for optimum survival). On the other hand, a shallower setback requirement would also support the established intent for Brooklyn Basin to be an urban neighborhood with strong connectivity between public and private realms.

The proposed two- to eight-foot building setback is intended to encourage a variety of urban design features at the street level consistent with ground-floor uses in urban areas. A flexible

building setback allows for increased connectivity between the public and private spheres adjacent to the ROW (a goal for urban areas to support safety and a sense of place). While certain features could be required through design review to be set back (such as lobbies, planting areas, stoops and patios), other features such as bay windows, cantilevers, and corner elements would be encouraged closer to the property line. Staff would use the design review process to discourage a continuous two- or eight-foot street wall and to provide for interesting ground floor treatments.

The proposed revision to the PDP is consistent with the intent of the Planned Waterfront Development-1 Estuary Policy Plan (EPP) land use classification. The proposed revision is a refinement of the PDP that would further support the EPP goals of providing a more intimate and urban characteristic to the area, supporting the synergy of the range of land uses and attractions of the district.

With regards to the Planned Waterfront District-4 zoning regulations, the proposed revision to the PDP is a refinement to the design standards to better support the urban characteristic desired by the underlying zoning. The revision would only affect the aesthetic and architectural character of the parcel edges (and adjacent to the ROW). The proposed revision would not affect approved land use, density, bulk or height regulations or approvals for the project.

Staff believes the proposal should be enhanced to address the following potential concerns (staff recommendation is indented and italicized):

- Risk of continuous building wall: Applied literally, reliance on a two-foot setback could potentially result in a monotonous, continuous building wall along the project frontage.
  - *Staff recommends that the Planning Commission revise the Design Guidelines to require ground-floor articulation where average development setback is less than 3' along non-commercial street frontages.*
- Risk of sterile edge between ROW and private parcels:
  - *Staff recommends that the Planning Commission revise the Design Guidelines to require that 50% of the provided setback area (back to 8' if a deeper setback area is provided) be softscape (vegetation) along non-commercial street frontages. The 50% area would be calculated based on the total amount of setback area provided, up to 8' in depth).*
- Protection of Privacy: Where setbacks are shallow, at-grade residential units adjacent to the property line would have compromised privacy.
  - *Staff recommends that the Planning Commission revise the Design Guidelines to require ground-floor residential uses be raised a minimum of three feet above grade if development does not have an average setback of 3' or greater from any property line along a non-commercial street. In addition, setback areas adjacent to residential units should provide separation from the public ROW with decorative low fences, vegetation or other attractive barriers.*

*TDM*

The 2006 Conditions of Approval for the Oak to Ninth Mixed Use Development Project (i.e., Brooklyn Basin) included specific requirements related to Travel Demand Management (TDM):

*The Project Applicant shall prepare a transportation demand management plan, following the recommendations included in the report entitled "Oak to Ninth Project, Transportation Demand Management Plan" by Nelson\Nygaard, dated January 2005, as well as the applicable mitigation measures set forth in the EIR (MM B.4.a., B.4.b., C.7.a., C.7.b., C.7.c., C.7.d., C.7.e., C.7.f., C.7.g., C.7.h., C.7.i.). The plan shall include a written commitment from AC Transit concerning bus service to the site and a shuttle operations plan serving the project area. An implementation schedule shall be included in the plan, including a specific commitment of financial participation for peak hour service, routing, schedule and phased implementation according to the threshold established for the issuance of occupancy permits for the transportation improvements phasing plan set forth in Condition of Approval No. 18. The shuttle service shall become operative within six months of occupancy of the 1,000<sup>th</sup> unit. Thereafter, the implementation and service increase required for the shuttle shall be in accordance with the approved schedule. At the Project Applicant's discretion and with the approval of the City, the shuttle program may be implemented through a provider such as AC Transit and may be coordinated with the service commitment required for the Jack London Square Development Project. In these events, the Project Applicant shall execute agreements with such providers or partners as part of the transportation demand management plan.*

*The final TDM plan shall specify that the management of on-street public parking shall be through two to four-hour time limits rather than charging for parking. The plan shall also include secure bicycle parking for residents.*

*The final TDM plan shall be reviewed by the Planning Commission and approved by the City council. Each Final Development Plan submitted for individual development projects or phases shall demonstrate compliance with the approved TDM plan.*

In accordance with the above requirements, Signature Development contracted with Nelson\Nygaard to update the 2005 TDM Plan. The updated plan was completed in August 2014 and is included in this report (see Attachment B). The following summarizes key issues and components associated with the TDM Plan, including compliance with the CoAs.

On-Street Parking Management

The COAs preclude parking pricing as a means to effectively manage on-street parking within Brooklyn Basin. However, recent experience and research both locally and nationally show that demand-responsive pricing is a critical component of on-street parking management and travel

demand management more generally. In recognition of the benefits of the proactive parking management, Oakland City Council adopted Parking Principles in 2013 (84664 C.M.S.), which establish a target usage rate of 85% and state that “Parking should be priced to achieve usage goals”.

Given the efficacy of parking pricing and the 2013 policy directive regarding on-street parking management, the TDM Plan includes recommendations for on-street parking pricing. Implementing these recommendations will require a subsequent Ordinance to designate the streets within Brooklyn Basin as parking meter zones per OMC Chapter 10.36.140, and Resolution to identify parking meter locations per OMC Chapter 10.36.141.

Flexible parking pricing (e.g., varying prices by time-of-day or by location) to achieve parking management goals should be considered in Brooklyn Basin, based on the adopted Parking Principles. Preliminary results from the Montclair Flexible Parking Pilot will be available in late 2015, and should be evaluated to determine the feasibility and desirability of extending flexible parking to Brooklyn Basin.

#### “Free B” Shuttle Extension

The TDM Plan includes the commitment to provide a shuttle service that meets the requirements of the CoAs, including the minimum frequency and duration of the service. The TDM Plan identifies an extension of the existing Free B Shuttle to Brooklyn Basin as the preferred option for several reasons:

- Increased efficiency by making use of existing service;
- Provision of a direct connection from Brooklyn Basin to Jack London Square and downtown Oakland; and
- Reliance on a recognized brand to increase awareness of the new transit option.

Under the preferred option, the Applicant will pay the incremental costs associated with extending Free B service to Brooklyn Basin. In the event that a workable arrangement to extend the Free B proves infeasible, the TDM Plan provides a firm commitment to operating a private shuttle.

#### AC Transit

The COAs state that the TDM Plan should include a written commitment from AC Transit on fixed route bus service to Brooklyn Basin. AC Transit is interested in serving Brooklyn Basin but has not yet made any firm commitments as to the level of service that will be provided.

#### Other

Mitigation Measure B4.a in the EIR specifically identifies that “bus turnouts” be included as part of the design. Turnouts are no longer a preferred method of accommodating transit vehicles (they

can actually increase delay by making it difficult for buses to exit stops), and have not been incorporated into site design per direction of AC Transit and Oakland Public Works staff.

#### *Status of Ongoing Work*

The Applicant has commenced physical work on the Brooklyn Basin project. All current activities can precede issuance of construction-related permits (such as a building permit). Specifically, the Applicant is currently conducting soil remediation (which involves active grading and creek permits). In addition, the Applicant recently demolished three on-site buildings that were condemned by the City due to health and safety risks and nuisance (455-9<sup>th</sup> Avenue, 105 Embarcadero Road and 845 Embarcadero Road). The Applicant is also currently seeking permits to improve Embarcadero generally between the bridge over the Estuary and 9<sup>th</sup> Avenue and to construct horizontal improvements in Phase 1. With proper assurances from the Applicant to the City regarding the ability to complete the work, the existing entitlements would not hinder the City of Oakland from issuing p-job permits, creek permits and other required development permits. With this in mind, there may be street and infrastructure improvement activity occurring on Embarcadero and on-site in the near future and without any further land use entitlements beyond the permits considered in this report (such as a Final Map).

#### *Status of Current Applications*

At this time, the Applicant's objective is to have the City of Oakland issue the Final Map for Phase 1 to allow sale and development of individual land parcels consistent with the project approvals. In order for the City of Oakland to issue the first Final Map for Phase I, the CFD needs to be formed and the TDM needs to be approved. The FDP considered herein need only be approved by the Planning Commission. However, the TDM, also considered herein, is subject to a recommendation by the Planning Commission and approval by the City Council; and the CFD needs to be considered and approved by the City Council, only. City staff is currently processing all three items with the objective of having the Phase 1 Final Map in front of City Council for consideration in the first quarter of 2015.

### **RECOMMENDATION**

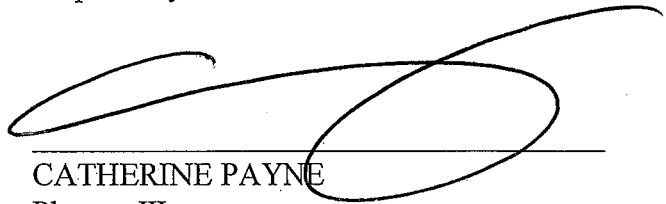
Staff has reviewed the Brooklyn Basin Phase 1 streets and infrastructure FDP application and finds it to be in substantial conformance with the Preliminary Development Plan; Oak to Ninth Design Guidelines, Planned Waterfront Zoning District-4 Regulations, the Open Space-Region Serving Park (OS-RSP) zoning regulations, the civic Center/Design Review Combining Zone (S-2/S-4) regulations, Vesting Tentative Tract map No. 7621, Conditions of Approval, Mitigation Monitoring Reporting Program, and the Development Agreement. The FDP includes only non-substantive changes that constitute a refinement to the PDP and is therefore entirely consistent with the PDP and the terms of the land use entitlements.

**CONCLUSION**

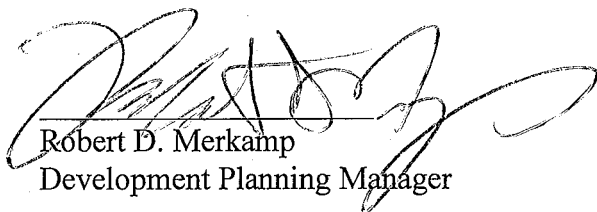
Staff requests that the Planning Commission consider the following:

- Pursuant to CEQA Guidelines Section 15162, and based on the attached findings, rely on the Oak to Ninth Avenue Project EIR as adequate under CEQA for analysis of the revision to the PDP, the FDP and the TDM;
- Recommend approval of the Final TDM to City Council;
- Based on the attached findings, approve the FDP and determine compliance with the TDM, contingent upon approval of the TDM by the City Council; and
- Based on the attached PUD and Design Review findings, approve Revision #1 to the PDP for Brooklyn Basin.

Prepared by:

  
CATHERINE PAYNE  
Planner III

Approved by:

  
Robert D. Merkamp  
Development Planning Manager

Approved for forwarding to the Planning Commission

  
Darin Ranelletti, Deputy Director  
Bureau of Planning

Attachments:

- A. Proposed FDP, dated September 17, 2014
- B. Draft Final TDM, dated August 2014



- C. Proposed Revision to the PDP, dated September, 2014 (specifically, “Oak to 9<sup>th</sup> Brooklyn Basin Design Guidelines, November 20016 and revised September 2014”)
- D. Oak to Ninth Avenue Redevelopment Project EIR (provided under separate cover to the Planning Commission; available to the public at 250 Frank Ogawa Plaza, Suite 3315, Oakland CA, 94612 during regular business hours, and at <http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/DOWD008409> ).
- E. Background Documents:
  - a. D-OTN Zoning District Regulations (formerly Planned Waterfront Zoning District (PWD-4) Oak-to-Ninth Mixed Use Development Project)
  - b. Brooklyn Basin – Oak to 9<sup>th</sup> Preliminary Development Plan, October 2006, and Oak to 9<sup>th</sup> Brooklyn Basin Design Guidelines, November 2006
  - c. Two- to Eight-Foot Setback Image Study
  - d. Vesting Tentative Tract Map Excerpt, March 2006
  - e. Conditions of Approval, 2006

**FINDINGS:**  
**BROOLYN BASIN PHASE I STREETS AND INFRASTRUCTURE**  
**FINAL DEVELOPMENT PERMIT**

**California Environmental Quality Act**

The City Council certified an EIR for the existing project approvals on January 20, 2009. The Oak to Ninth Avenue Project Environmental Impact Report [SCH No. 2004062013] is provided under separate cover to the Planning Commission (Attachment D) and is available to the public at the Planning Department offices and on the web at:

<http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/DOWD008409>.

Staff has determined that no new information about the site, changes to the project, or circumstances under which the project would be undertaken have occurred that would require subsequent or supplemental environmental review for the proposed revision to the PDP, the Phase 1 streets and infrastructure FDP, and/or the TDM. In accordance with CEQA, the City reviewed and analyzed the proposed project changes and other relevant information to determine whether circumstances requiring the preparation of a subsequent or supplemental EIR exist. Based upon available information, the City has determined that none of those circumstances are present. Because the revision to the PDP, the FDP and the TDM are refinements of, and not substantive changes to, the approved project, no further environmental review is required. None of the circumstances that require a supplemental or subsequent EIR pursuant to CEQA Guidelines Section 15162 have occurred. Specifically:

- There are no substantial changes proposed in the project which would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- There are no substantial changes with respect to project circumstances which would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
- There is no new information of substantial importance which would result in new significant environmental effects, a substantial increase in the severity of previously identified significant effects, previously infeasible mitigation measures or alternatives now found to be feasible, or new mitigation measures or alternatives which are considerably different from previous ones that would substantially reduce environmental effects.

With regards to the proposed revision to the PDP, once an EIR has been completed and certified for a project, an agency may not require additional environmental review unless it grants a subsequent discretionary approval for the project and certain statutorily enumerated criteria are met. (Pub. Res. Code section 21166; CEQA Guidelines section 15162.) If the subsequent discretionary approval is sufficiently limited, however, additional environmental review may not be triggered. In this matter, the Planning Commission has discretionary approval of amendments

to one PDP exhibit and to the project Design Guidelines (part of the PDP) to permit a variation in the required street front setbacks for architectural articulation. This minor design criteria modification does not reopen the larger project approval or implicate any environmental topics and significance criteria under the project EIR and CEQA. Although the Planning Commission has the discretion to approve or deny the proposed design change, this limited discretion does not establish a broader discretion to reconsider the project or address environmental impacts covered in the EIR. Consequently, the proposed PDP and Design Guidelines revisions do not require any additional environmental review. [San Diego Navy Broadway Complex Coalition v. City of San Diego (2010) 185 Cal. App. 4th 924; Health First v. March Joint Powers Authority (2009) 174 Cal. App 4th 1135.] Thus, the certified Oak to Ninth Project EIR satisfies the CEQA requirements for this approval.

Here, based upon available information, the City believes that none of the circumstances described above have occurred since 2006 and, therefore, no subsequent or supplemental environmental review is required under CEQA.

#### **Planned Waterfront Zoning District-4(PWD-4) Findings for FDP**

“The Planning Commission shall approve the Final Development Plan if it makes written findings that the Final Development Plan is in substantial conformance with the Preliminary Development Plan; Oak to Ninth Design Guidelines, Planned Waterfront Zoning District-4 (PWD-4) Regulations, the Open Space-Region Serving Park (OS-RSP) zoning regulations, the Civic Center/Design Review Combining Zone (S-2/S4) regulations, Vesting Tentative Tract Map No. 7621, Conditions of Approval, Mitigation Monitoring Reporting Program, and the Development Agreement...”

As demonstrated throughout this staff report, the Brooklyn Basin Phase 1 Streets, Landscaping and Infrastructure Final Development Permit is consistent with the Preliminary Development Plan, the Oak to Ninth Design Guidelines, the PWD-4, OS-RSP, and S-2/S-4 zoning regulations, TTM7621, the Conditions of Approval, the MMRP, and the Development Agreement. As noted in this report, the FDP is a refinement of the PDP and includes only non-substantive changes intended to refine and not alter the design of streets and infrastructure in the Brooklyn Basin Phase 1 project.

**Planned Unit Development Findings  
Findings for Revision to PDP**

**17.140.080 - Permit Criteria.**

A planned unit development permit may be granted only 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:

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

The revision to the PDP would result in a minor change to the building envelope in which approved development could occur. It would only affect the location of building footprints. The revised setback is a refinement to the project that would result in a more urban development pattern, consistent with the intent of the PWD-4 zoning district, approved PDP, and Design Guidelines.

- 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 revision to the PDP would result in a minor change to the building envelope in which approved development could occur. The revised setback is a refinement to the project that would result in a more urban development pattern, consistent with the intent of the PWD-4 zoning district, approved PDP, and Design Guidelines.

- 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 revision to the PDP would not alter the allowable land uses, densities/intensities, and/or parcel configuration in any way and would therefore not affect traffic in any way.

- 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 revision to the PDP would not alter the allowable land uses, densities/intensities, and/or parcel configuration in any way and would therefore not affect demand for infrastructure and utilities.

- 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 revision to the PDP would result in a minor change to the building envelope in which approved development could occur. The revised setback is a refinement to the project that would result in a more urban development pattern, consistent with the intent of the PWD-4 zoning district, approved PDP, and Design Guidelines.

- 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 revision to the PDP would result in a minor change to the building envelope in which approved development could occur. The revised setback is a refinement to the project that would result in a more urban development pattern, consistent with the intent of the PWD-4 zoning district, approved PDP, and Design Guidelines. The proposed revision to the PDP would not affect the width of any adjacent ROW and would not affect any views to the planned parks or the Estuary.

### **Regular Design Review**

#### **17.136.050 - Regular design review criteria.**

**Regular design review approval may be granted only if the proposal conforms to all of the following general design review criteria, as well as to any and all other applicable design review criteria:**

**A. For Residential Facilities.**

- 1. That the proposed design will create a building or set of buildings that are well related to the surrounding area in their setting, scale, bulk, height, materials, and textures:**

The revision to the PDP would result in a minor change to the building envelope in which approved development could occur. The revised setback is a refinement to the project that would result in a more urban development pattern, consistent with the intent of the PWD-4 zoning district, approved PDP, and Design Guidelines.

- 2. That the proposed design will protect, preserve, or enhance desirable neighborhood characteristics;**

The revision to the PDP would result in a minor change to the building envelope in which approved development could occur. The revised setback is a refinement to the project that would result in a more urban development pattern, consistent with the intent of the PWD-4 zoning district, approved PDP, and Design Guidelines.

- 3. That the proposed design will be sensitive to the topography and landscape.**

The revision to the PDP would result in a minor change to the building envelope in which approved development could occur. The revised setback is a refinement to the project that would result in a more urban development pattern, consistent with the intent of the PWD-4 zoning district, approved PDP, and Design Guidelines. The proposed revision to the PDP would not affect the width of any adjacent ROW and would not affect any views to the planned parks or the Estuary.

4. **That, if situated on a hill, the design and massing of the proposed building relates to the grade of the hill;**

Not applicable because the project is not located on a hilly site.

5. **That the proposed design conforms in all significant respects with the Oakland General Plan and with any applicable design review guidelines or criteria, district plan, or development control map which have been adopted by the Planning Commission or City Council.**

The revision to the PDP would result in a minor change to the building envelope in which approved development could occur. The revised setback is a refinement to the project that would result in a more urban development pattern, consistent with the intent of the PWD-4 zoning district, approved PDP, and Design Guidelines.