

December 3, 2010

Application Summary
(For Commission consideration on December 16, 2010)

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Staff Assigned: Brad McCrea (415/352-3615 bradm@bcdc.ca.gov)

Summary

Applicants: Oakland Harbor Partners, LLC, the City of Oakland, and the Port of Oakland.

Location: The approximately 65-acre project site is located between the Oakland Estuary and Interstate 880, southeast of Jack London Square, in the City of Oakland, Alameda County. The site is bounded by Interstate 880 to the north, 10th Avenue to the east, the Oakland Estuary to the south and Fallon Street to the west (Exhibit A).



Making San Francisco Bay Better

Project: The proposed project involves redeveloping a former maritime/industrial district on the Oakland Estuary. The mixed-use waterfront development would be constructed in four phases over approximately 15 years (Exhibit I). Each phase would include demolition, site remediation, grading, utilities installation, street construction, development for mixed uses, shoreline reconfiguration and park and open space improvements (Exhibit F). The project would include:

- Construction of up to 3,100 residential units (a mix of flats, townhomes and lofts). Most buildings would be six- to eight-stories. However, five buildings would reach up to 240 feet in height;
- Up to 200,000 square feet of ground-floor retail and commercial distributed throughout the development to provide neighborhood-serving retail and small office uses;
- 25.7 acres of parks and open space, including the existing 8.6 acre Estuary Park;
- Shoreline stabilization and 0.93 acres of high marsh habitat creation;
- Seismic retrofit of the Ninth Avenue Terminal wharf, demolition of approximately 165,000 square feet (3.8 acres) of the existing Ninth Avenue Terminal building to create a waterfront park, and retention of approximately 20,000 square feet (0.3 acres) of the Terminal's bulkhead building for a variety of public trust uses; and
- New public streets and sidewalks.

The proposed project would include: (1) the removal of approximately 1.09 acres of solid Bay fill for high marsh creation, open water and shoreline reconfiguration; (2) the placement of approximately 0.92 acres of solid bay fill for the development of a public plaza and shoreline reconfiguration at Clinton Basin; (3) the removal of approximately 3.08 acres of pile-supported fill with the demolition of a portion the Ninth Avenue Terminal wharf; (4) the placement of approximately 0.84 acres of pile-supported fill to create portions of a public promenade; and (5) the removal of approximately 0.59 acres of floating fill with the demolition of the existing Clinton Basin Marina. The net result of the proposed fill removal and fill placement, would enlarge the Bay by approximately 3 acres (See Table 1 on page 8).

Issues**Raised:**

The staff believes that the application raises six primary issues: (1) whether the proposed fill is consistent with the McAteer-Petris Act and the Bay Plan policies on Fill, Safety of Fills, including sea level rise, and Fill for Bay-Oriented Commercial Recreation; (2) whether the proposed public access is the maximum feasible consistent with the project, and consistent with the Bay Plan policies on Public Access and Appearance, Design and Scenic Views; (3) whether the project is consistent with Bay Plan policies on the Public Trust; (4) whether the project is consistent with the Bay Plan policies on natural resources, including Fish, Other Aquatic Organisms and Wildlife, Subtidal Areas, Mitigation and Water Quality; (5) whether the project is consistent with the Bay Plan policies on Recreation; and (6) whether the project is consistent with the Bay Plan policies on Protection of the Shoreline.

Project Site

Use. Bay Plan Map No. Five of the *San Francisco Bay Plan* designates Estuary Park, an approximately 8.6 acre portion of the proposed development, as a Waterfront Park Priority Use Area. The project would enhance recreation uses at this location. On February 20, 2003, the Commission adopted Resolution No. 03-01 to amend the *San Francisco Seaport Plan*, the *San Francisco Bay Plan* and Resolution 16 to delete the Port Priority Use Area and Marine Terminal designation from the Port of Oakland's Ninth Avenue break bulk terminal at the eastern end of the site. Therefore, a priority use designation no longer exists for this portion of the project site.

Former Uses and Activities at the Site. Historic Bay maps indicate that a large portion of the project site was once occupied by a large, natural marsh that was bounded by the natural drainage of Lake Merritt Channel to the west, by San Antonio Creek (now the Oakland Inner Harbor) to the south, and by tidal waters and or bays associated with the San Antonio Creek watershed to the east and north.

Throughout the late 1800s and early 1900s, most of the site was filled and the filled areas were subsequently developed for commercial, industrial and marine-related uses. Additional fill was placed in 1942 with the creation of the Pacific Dry Dock Yard II parcel for use as a U.S. Naval training station. Sometime after 1953, fill was placed in the Bay to expand the Seabreeze parcel at Clinton Basin.

Up until the 1970s, the primary land uses were lumberyards, break-bulk cargo, chemical mixing and storage, above-ground petroleum product storage, ship repair, compressed gas manufacturing, sand and gravel operations, food warehouses and truck operations. After the 1970s, the industrial and chemical handling activities at the site declined.

Current Uses and Conditions at the Site. Today, the 65-acre project site is flat and generally built out with industrial and maritime-related structures. With the exception of Estuary Park, there is no public access to or along the Bay within the project boundaries and views of the Bay are obscured by existing structures (Exhibits B through E).

Most of the 7,250-foot-long shoreline is degraded and scarred by its historic industrial use. The existing shoreline is highly varied, including sheetpile walls and wharves, rock revetments, and eroded shorelines. The most degraded areas are dominated by concrete rubble, rock riprap, deteriorated pilings, and industrial debris. Mudflats exist at much of the project site, except at the two existing marinas where the water is deeper, and along Lake Merritt Channel where higher flow velocities prevent mudflat formation.

Most of the existing upland areas include buildings and impervious pavement. The land portion of the site ranges in elevation from 3 to 10 feet (Oakland City Datum where 0 is set slightly below Mean High Water). Numerous industrial buildings, warehouses, and commercial structures are present, some of which are no longer in use. Except for some vegetation near Clinton Basin, some of which was planted as part of a Port of Oakland mitigation project, the landscaped areas consist of a small number of ornamental trees, shrubs, and other non-native plantings at Estuary Park. The site drains to the Oakland Estuary.

Existing structures on the site include the Port of Oakland's former Ninth Avenue Marine Terminal. This facility includes the Ninth Avenue Terminal shed and bulkhead building, other industrial buildings and large areas of asphalt paving. West of the Ninth Avenue Terminal is Clinton Basin and a dilapidated marina that was closed several years ago by the Port of Oakland. Immediately west of Clinton Basin is the 5th Avenue Point live-work artist community and an existing marina. The six-acre live work community, which is not part of the project site, is a privately held property along 5th Avenue that includes residential, industrial and commercial uses.

Between 5th Avenue and Lake Merritt Channel, Berkeley Ready Mix operates a concrete batch plant. Estuary Park, an existing City of Oakland park leased from the Port of Oakland, is at the western end of the project site. A public boat launch ramp and parking lot, the Jack London Aquatic Center, picnic areas and a sports field are within Estuary Park. However, like many large parks in urban areas, Estuary Park suffers from a lack of ongoing maintenance and resources. Planting, paving and site furnishings are generally worn.

In the immediate vicinity of the project site are light industrial uses, live-work lofts and warehouses, and hotel and retail uses. North of Interstate 880, land uses include the Laney College Campus, and retail and residential uses in the San Antonio neighborhood. Interstate 880 is not a designated scenic highway or route, but affords some views of the estuary from the freeway as it crosses over Lake Merritt Channel. From the Embarcadero, the existing views of the Bay are primarily from the Lake Merritt Channel bridge and the north end of Clinton Basin.

Project Description

Project

Details:

The applicants, Oakland Harbor Partners, LLC, the City of Oakland and the Port of Oakland, describe the project as follows:

Estuary Park Subarea

Within the 100-foot Shoreline Band:

- a. Construct, use and maintain approximately 53,000 square feet (1.2 acres) of landscaping and shoreline park improvements at Estuary Park consistent with a future plan developed by the City of Oakland pursuant to the requirements of City of Oakland Measure DD. Bay Trail improvements include approximately 16 benches, at least one interpretive/historic marker, one vertical trail marker, three Bay Trail directional maps and a 30- to 40-foot-wide trail with separated bicycle and pedestrian pathways and landscaping.

Channel Park Subarea

In the Bay:

- a. **Shoreline Reconfiguration.** Excavate approximately 500 square feet of contaminated earth from an approximately 250-foot-long section of existing shoreline, place approximately 950 square feet of new backfill material, and place, use and maintain approximately 950 square feet of ACB mat and marsh plants to create new open water, shoreline protection and high tidal marsh; and
- b. **Outfall.** Construct, use, and maintain one approximately 100-square-foot storm drain outfall near the terminus of 4th Avenue.

Within the 100-foot Shoreline Band:

- c. **Shoreline Reconfiguration.** Excavate approximately 51,500 square feet (1.2 acres) of contaminated earth from an approximately 1,200-foot-long section of existing shoreline, place approximately 51,500 square feet of backfill material, and place, use and maintain approximately 21,300 square feet of ACB mat and marsh plants, to create new open water, shoreline protection and high tidal marsh;
- d. **Open Space Improvements.** Construct, use and maintain approximately 1,200 feet of pathway, landscaping and shoreline park improvements including approximately 14 benches, one Bay Trail directional map, and an approximately 30-foot-wide trail with separated bicycle and pedestrian pathways and landscaping, tying into the Lake Merritt Channel Bridge and Embarcadero pathways.

South Park (West) Subarea

In the Bay:

- a. **Shoreline Reconfiguration.** Excavate approximately 2,100 square feet of contaminated earth from an approximately 280-foot-long section of existing shoreline, place approximately 2,100 square feet of backfill material, and place, use and maintain approximately 2,100 square feet of ACB mat and marsh plants, to create new open water, shoreline protection and high tidal marsh; and
- b. **Wetland Enhancement.** Place, use and maintain up to approximately 100 cubic yards of fill material to improve the existing wetland enhancement project at the mouth of Clinton Basin.

Within the Shoreline Band:

- c. **Shoreline Reconfiguration.** Excavate approximately 20,650 square feet (0.5 acres) of contaminated earth from an approximately 650-foot-long section of existing shoreline, place approximately 20,650 square feet of backfill material, and place, use and maintain approximately 20,650 square feet of ACB mat and marsh plants, to create new open water, shoreline protection and high tidal marsh; and
- d. **Open Space Improvements.** Construct, use and maintain an approximately 730-foot-long section of 35-foot-wide public access path, landscaping and shoreline park improvements including approximately 10 benches, one Bay Trail directional map, one interpretive/historic marker, and an approximately 30-foot-wide trail with separated bicycle and pedestrian pathways and landscaping.

South Park (Clinton Basin) Subarea

In the Bay:

- a. **Dock Removal.** Remove approximately 25,800 square feet (0.6 acres) of existing marina docks and associated floating fill from a closed marina.
- b. **Shoreline Reconfiguration and Shoreline Protection.** Excavate approximately 33,000 square feet (0.8 acres) of contaminated earth from an approximately 970-foot-long section of existing shoreline embankment and place, use and maintain approximately 45,800 square feet (1.1 acres) of engineered fill and riprap on the east and west sides of Clinton Basin; and
- c. **Public Access.** Place, use and maintain a 23,100-square-foot (0.53 acres) portion of permanent pile-supported fill to create an approximately 30-foot-wide concrete public promenade along 1,340-foot of shoreline, and 33,000 square feet (0.8 acres) of permanent solid fill to create a public access plaza at Gateway Park. Overall public access improvements include approximately 36 benches, one Bay Trail directional map, two interpretive/historic markers, pedestrian-scale lighting and trash receptacles; and
- d. **Outfalls.** Construct, use, and maintain three approximately 100-square-foot storm drain outfalls, one on each of the three sides of Clinton Basin.

Within the Shoreline Band:

- e. **Mixed Use Development.** Construct, use and maintain approximately 104,300 square feet (2.4 acres) of mixed use development within portions of 86- and 240-foot-high residential buildings with ground floor retail/commercial;
- f. **Shoreline Protection.** Excavate approximately 19,600 square feet (0.45 acres) from an approximately 1,340-foot-long section of existing shoreline and place, use and maintain approximately 19,600 square feet of engineered fill and riprap on the east and west sides of Clinton Basin;
- g. **Public Access.** Place, use and maintain an 18,700-square-foot (0.43 acres) portion of permanent pile-supported fill along 1,340 feet of shoreline to create an approximately 30-foot-wide concrete public promenades, and 41,100 square feet (0.94 acres) of permanent solid fill to create a public access plaza at Gateway Park; and
- h. **Roadway Improvements.** Construct, use and maintain an approximately 195-foot-long section of roadway and streetscape improvements within an approximately 3,900-square-foot portion of the Embarcadero roadway and within an approximately 14,700-square-foot portion of Main Street.

Shoreline Park Subarea

In the Bay and within the Shoreline Band:

- a. **Open Water at Shoreline Park.** At the west end of the Ninth Avenue Terminal Wharf and at the west end of Shoreline Park, remove an approximately 165,000-square-foot (3.79 acre) shed building, remove up to 134,250 square feet (3.08 acres) of the wharf deck and substructure to create an open water area, and cut approximately 1,600 to 1,800 piles at least two feet below the mudline and remove;

- b. **Open Water at Ninth Avenue Terminal Wharf Wooden Apron.** Along the south edge of the Ninth Avenue Terminal Wharf, remove an approximately 4,400-square-foot wooden apron and substructure to create an open water area, and cut approximately 100 piles at least two feet below the mudline and remove;
- c. **Seismic Strengthening of the Ninth Avenue Terminal Wharf.** Repair, seismically strengthen and maintain the Ninth Avenue Terminal Wharf and substructure by conducting either: (1) a steel pile retrofit consisting of a series of concrete frames supported by four large-diameter steel pipe piles; or (2) a wrapped-pile retrofit consisting of encasing the upper 6-feet of each pile with a fiberglass wrap and installing dowels through the wharf deck and into each pile;
- d. **Public Access at Shoreline Park.** Construct, use and maintain landscape and park improvements at the proposed approximately 7-acre Shoreline Park (2,130 feet of shoreline frontage), including a public fountain, approximately 40 benches, pedestrian-scale lighting, wharf railings, one Bay Trail directional map, four interpretive/historic markers, and a vertical trail marker;
- e. **Ninth Avenue Terminal Bulkhead Building.** Renovate, use and maintain an approximately 15,000 square-foot bulkhead building for uses consistent with the public trust (i.e., Maritime Museum, Community Center, Café);
- f. **Stormwater Detention Basin.** Construct, use, and maintain one approximately 24,600-square-foot (0.56 acres) stormwater detention basin as a "rain garden";
- g. **Outfalls.** Construct, use, and maintain an approximately 150-square-foot storm drain outfalls adjacent to the 9th Avenue Terminal bulkhead building; and
- h. **Slope Dressing.** Place, use and maintain approximately 0.35 acres of riprap along approximately 430 feet of shoreline.

In All Areas of the Commission's Shoreline Band Jurisdiction:

- a. **Temporary and Interim Uses and Improvements.** During project construction, construct, use and maintain temporary and interim uses and improvements, such as temporary roads and recreational trails, staging areas, construction trailers and construction laydown areas within the Commission's jurisdiction.

Bay Fill:

In each of the four project phases, new fill would be placed and existing fill removed for the purposes of public access, marsh creation, shoreline protection, and/or the creation of new open water (Exhibit R). At the end of the projected 15-years it will take to construct the project, the proposed development would result in a net increase in the size of the San Francisco Bay by 130,990 square feet (3 acres). As summarized in Table 1, below, the project would increase the Bay surface area by the reducing the total amount of existing solid fill, floating fill and pile-supported fill.

At Channel Park, excavation for shoreline protection and marsh creation would result in a 0.64-acre increase in Bay surface area. At South Park, similar work would result in a 0.01-acre increase in Bay surface area. At Clinton Basin, the placement of solid fill for public access (0.54) would decrease the Bay surface area, removal of existing floating docks (0.59 acres) would increase the Bay surface area, and the construction of a pile-supported public access promenade (0.84

acres) would decrease the Bay surface area. At Shoreline Park and the Ninth Avenue Terminal Wharf, the removal of existing solid fill (0.06 acres) and pile-supported structure (3.08 acres) would result in a net increase of Bay surface area.

Table 1. Fill Areas for the Project (in acres)

Type of Fill	Description	Removed	Placed	Total Net Fill
Phase I (2012-2015)				
Solid (ac)	Shoreline Park (Remove Wharf Pilings)	(0.06)	0	(0.06)
Floating (ac)		0	0	0
Pile-supported (ac)	Shoreline Park West, (Remove Ninth Ave. Terminal Wharf)	(3.08)	0	(3.08)
Phase 2 (2016-2020)				
Solid (ac)	Clinton Basin, Channel Park Shoreline	(1.02)	0.92	(0.10)
Floating (ac)	Marina Docks	(0.59)	0	(0.59)
Pile-supported (ac)		0	0.84	0.84
Phase 3 (2020-2022)				
Solid (ac)	South Park (West) Shoreline	(0.01)	0	(0.01)
Floating (ac)		0	0	0
Pile-supported (ac)		0	0	0
Project				
Total Solid (ac)		(1.09)	0.92	(0.17)
Total Floating (ac)		(0.59)	0.00	(0.59)
Total Pile-supported (ac)		(3.08)	0.84	(2.24)
Overall Total Fill (ac)		(4.76)	1.76	(3.00)

Public Access:

With the exception of Estuary Park, there is currently no formal public access within the project boundary and the area is closed to public access. The proposed project includes a series of public parks interlinked by the Bay Trail. The proposed parks are: (1) Estuary Park (enhance the existing park); (2) Channel Park; (3) South Park (West); (4) South Park (Clinton Basin); and (5) Shoreline Park (Exhibit J). Prior to the construction of the new parks, all known subsurface contamination would be remediated. New site furnishings, including seating, trail markers, special lighting and way finding signage, would be added to each of the new parks and access areas would be designed to meet current ADA requirements. The parks would be permanently guaranteed for public uses and maintained by an assessment district created by the project.

The following is a brief summary of the proposed parks that comprise the public access component of the proposed development:

Estuary Park. Estuary Park is an existing 8.6-acre park west of the mouth of Lake Merritt Channel. The project would renovate and expand the existing park following a City of Oakland community design process. The proposed schematic design for Estuary Park includes a 30- to 40-foot-wide Bay Trail with separated bicycle and pedestrian pathways adjacent to the Bay. As required by the State Lands Commission, the remaining area of the park would be a relatively flat, landscaped open space providing a variety of uses such as pick up sporting events and general recreation. The existing trellis structure and benches would remain. The public parking at the site would be increased (Exhibit L).

Channel Park. Channel Park is proposed east of the mouth of Lake Merritt Channel and would be approximately six acres. The schematic design of the park includes a large landscaped area with grass berms and a newly constructed "tidal marsh terrace." An extension of the Bay Trail would be built along the shoreline. A 30-foot-wide Bay Trail would include separate bike and pedestrian pathways that tie into the Lake Merritt Channel bridge to the north. Public parking would be located on a public street (4th Avenue) adjacent to Channel Park (Exhibits L, M and O).

South Park (West). To the east of Channel Park, South Park (West) would be approximately two acres. The schematic design of the park includes a 30-foot-wide segment of the Bay Trail and a large landscaped area. A portion of this landscaped area would be depressed to accommodate storm water run-off as part of the requirements of the Regional Water Quality Control Board. Public parking (approximately 15 spaces) would be located adjacent to South Park on a public street, along 5th Avenue (Exhibits N and O). The project would also include enhancements to an existing small wetland as deemed appropriate.

South Park (Clinton Basin). Clinton Basin has two primary public access elements: Gateway Park, and a pair of promenades supported on piles over riprap. Together, these public access areas total approximately three acres. Gateway Park is envisioned as the center of the Brooklyn Basin Project. Located at the end of Clinton Basin, Gateway Park will be an urban plaza that could accommodate active uses, such as farmers markets and street fairs. On either side of Clinton Basin, two 30-foot-wide, pile-supported promenades would provide open space adjacent to commercial and retail spaces. Approximately half of these promenades would extend over new Bay surface areas excavated by the project (Exhibits P through T).

Shoreline Park. The 10-acre Shoreline Park, facing Brooklyn Basin, would be located on the deck of the former Ninth Avenue Terminal wharf on the eastern end of the project. The construction of Shoreline Park would require the demolition of a majority of the Ninth Avenue Terminal shed which exists on the wharf structure. Approximately 20,000 square feet of the Ninth Avenue Terminal bulkhead building would be retained and used as a restaurant, maritime museum, and/or community center. The remaining portion of the wharf would be improved as open space. The northern section of Shoreline Park would include an interactive bio-retention basin (rain garden) which is designed to work with the storm water system to reduce contaminants that would otherwise enter the Bay (Exhibits U through X).

Table 2. Approximate Public Access Areas

Type of Public Access	Square Feet	Acres	New or Improved?
Estuary Park	80,500	1.85	Improved *
Channel Park	231,800	5.32	New
South Park (West)	88,500	2.03	New
South Park (Clinton Basin)	135,050	3.10	New
Shoreline Park	576,100	13.22	New
	1,111,950	25.5	New

* Does not include 3.3 acres of existing dedicated public access at Estuary Park that will be improved as part of the approval for the Jack London Aquatic Center.

Schedule and Cost:

The applicants propose to begin construction in 2011 and complete the proposed project in 2022. Oakland Harbor Partners, LLC estimates the total project cost to be approximately \$1.28 billion.

Staff Analysis

- A. **Issues Raised:** The staff believes that the application raises six primary issues: (1) whether the proposed fill is consistent with the McAteer-Petris Act and the Bay Plan policies on Fill, Safety of Fills, including sea level rise, and Fill for Bay-Oriented Commercial Recreation; (2) whether the proposed public access is the maximum feasible consistent with the project, and consistent with the Bay Plan policies on Public Access and Appearance, Design and Scenic Views; (3) whether the project is consistent with Bay Plan policies on the Public Trust; (4) whether the project is consistent with the Bay Plan policies on natural resources, including Fish, Other Aquatic Organisms and Wildlife, Subtidal Areas, Mitigation and Water Quality; (5) whether the project is consistent with the Bay Plan policies on Recreation; and (6) whether the project is consistent with the Bay Plan policies on Protection of the Shoreline.
1. **Bay Fill.** The Commission may allow fill only when it meets the fill requirements identified in Section 66605 of the McAteer-Petris Act, which states, in part: (a) the public benefits from fill must clearly exceed the public detriment from the loss of water areas, and fill should be limited to water-oriented uses, including water-oriented recreation and public assembly; (b) no alternative upland location exists for the uses proposed on fill; (c) the fill should be the minimum amount necessary; (d) the fill should minimize harmful effects to the Bay including the Bay's water volume, circulation, water quality, and fish and wildlife resources; (e) the fill should be constructed in accordance with sound safety standards; and (f) the fill should be authorized when the applicant has valid title to the affected property.
- a. **Public Benefit v. Public Detriment and Water-Oriented Use.** Most of the project's proposed fill would be used to provide public access, provide a permanent shoreline, create a living shoreline, or seismically retrofit existing structures over the Bay. Specifically, the proposed new fill would: (1) seismically strengthen the Ninth Avenue Terminal wharf to create a 9.7-acre park, including the rehabilitated terminal bulkhead building, on top of the wharf; (2) improve public access to the Bay by creating two 30-foot-wide, pile-supported promenades at Clinton Basin; (3) create a 0.76-acre neighborhood bayfront public plaza in the center of the development; and (4) repair existing and install new shoreline revetments to protect the shoreline and improve

shoreline appearance. The rehabilitated bulkhead building would be used for public trust consistent uses, such as a restaurant, maritime museum, and/or community center, all considered Bay-oriented commercial recreation and/or public assembly uses.

In its informal opinion of October 8, 1986, the Attorney General's office advised the Commission that when a proposed development upon a pier involves work to the pier itself or its substructure, the scope of the Commission's permit review, and whether the water-oriented use requirement is triggered, varies with the physical extent, nature and purpose of the work. The Attorney General's office advised the Commission that routine repairs, such as those that are necessary to keep pace with the ordinary wear and tear suffered by an existing structure, that do not change the essential utility of the structure, or allow the structure to be perpetuated indefinitely through the periodic repetitions of such work, would not extend the Commission's Bay jurisdiction to piers that were constructed prior to September 17, 1965, the date the Commission obtained its permit jurisdiction over San Francisco Bay. However, the Attorney General's Office also advised that "...[A]nything beyond such routine repairs tends toward creation of what is essentially a 'new' structure, in that the structure is, at the very least, one that is significantly different from what existed prior to the work in terms of its utility or life expectancy or time period that will be necessary to amortize its overall cost....Accordingly, any such work on a pier should be treated as 'further filling' of the Bay within the meaning of Section 66605, and must be assessed for the water-oriented nature of the uses supported by the pier."

The staff believes that the proposed seismic strengthening and repair of the Ninth Avenue Terminal wharf go beyond routine repairs because the proposed improvements would significantly extend the life of this structure. Therefore, the Commission should treat the Ninth Avenue Terminal wharf and bulkhead building as if they were located in the Commission's Bay jurisdiction under the McAteer-Petris Act and the Bay Plan, and any uses on the wharf and bulkhead building must be consistent with the McAteer-Petris Act requirements for Bay fill. Because a significant percentage of the project's overall public access relies on converting the 1920s pile-supported wharf to a public access bayfront "green", the applicants have proposed improving the pier sufficiently that it will withstand a credible seismic event to ensure that the proposed public access on the wharf is available for the life of the project.

At Clinton Basin, approximately three-quarters of an acre of solid fill is proposed at the north end of the basin for public access (Gateway Park). According to the applicants, the fill would improve the public benefit of the overall project.

The application states:

"The vision for the project's waterfront is a continuous series of parks and pedestrian and bicycle pathways. In order to realize this vision it is necessary to create a central park linking the parks and pathways of the two peninsulas where Clinton Basin meets the Embarcadero. The size and location of the Gateway Park are intended to create this link and become a gathering place for public events such as farmers markets and street fairs."

The Commission's Design Review Board concurred with the project proposal for Gateway Park, stating that the "Bay fill for public access around Clinton Basin would be beneficial to the scheme and is an important enhancement to the project."

Approximately 0.84 acres of pile-supported fill would be placed to create public promenades on the north and south sides of Clinton Basin. These 30-foot-wide promenades are intended to create a different public access benefit than is typically provided along the shoreline of the Bay. The Commission's Design Review Board concurred with this design approach, stating that the urban quality of Clinton Basin would be beneficial to the public and that the shoreline should have a vertical edge at Clinton Basin and amenities that support that urban quality.

Additionally, some fill would be placed to repair existing revetments and to improve shoreline appearance in other areas of the project site where riprap currently exists.

- b. **No Alternative Upland Location.** As discussed above, the project proposes some fill to improve shoreline protection and shoreline appearance. Much of the existing water-front edge consists of debris, concrete rubble, various sizes of riprap, and abandoned structures. The application states, "[t]he fill along the east and west of Clinton Basin is necessary to...provide the necessary shoreline protection to prevent erosion." No alternative upland location exists for protecting the shoreline against wave energy.

Some fill is proposed for two pile-supported promenades and a public plaza at the north end of Clinton Basin. The applicants believe the pile-supported promenades would add a closeness to the water that would otherwise be impossible if located within the Commission's shoreline band, above and away from the fluctuating tides. The application states, "by locating the urban promenade over the water, the project's overall public access plan would be improved, offering the public a unique shoreline access opportunity that does not currently exist at other Oakland locales." This approach is consistent with the Bay Plan's public access policies and with the Commission's Design Review Board advice, which supports design variation and diversity of shoreline access areas.

The solid fill at the north end of Clinton Basin would create much of the proposed Gateway Park, a public plaza that would function as the project's main gathering space for visitors and residents. The plaza design is intended to provide greater separation between the heavily trafficked Embarcadero roadway and I-880 and the water's edge, while improving continuity between the two main land masses at the site.

The application states:

"A significant portion of the project is located on two peninsulas that project into Brooklyn Basin in the Oakland Estuary. These two peninsulas are separated by Clinton Basin, which lies at the center of the project. Currently, Clinton Basin extends almost to the Embarcadero, the roadway that establishes the project's northern boundary. The current configuration of Clinton Basin negatively impacts the planned parks and pathways by effectively cutting the project in two."

- c. **Minimum Amount of Fill.** As described above, the proposed fill would be primarily for protecting the shoreline from erosion, improving shoreline appearance, and providing public access. A stated goal of the project is to minimize the amount of Bay fill necessary to create the public parks and pathways within the project. The applicants state that, "[t]he location and design of the public access were scrutinized to the point that the proposed project contains the minimum amount of fill necessary to provide this access to the Bay." The application further states that "[t]he amount of fill proposed at the head of Clinton Basin is the least amount necessary to create this critical link in the chain of public open spaces within the project."

Within Clinton Basin, approximately half of the two 30-foot-wide, pile-supported, public promenades would be constructed mostly over areas that are currently land but that would become Bay after the basin is widened. The promenade is envisioned as a shared-use zone occupied by pedestrians and bicyclists. In determining whether a 30-foot-wide promenade is the minimum amount necessary for its intended use, the Commission should consider other similar projects that have been approved and constructed in the past. Promenade widths vary around the Bay, however, the proposed promenade dimensions are generally consistent with other promenades authorized by the Commission. For example, the East Promenade on the Bay side of the San Francisco Ferry Building is 32 feet wide. The "Portwalk" promenade along McCovey Cove at the San Francisco Giants ballpark ("AT&T Park") is approximately 25 feet wide.

At the end of Clinton Basin, approximately 0.76 acres of solid fill would be placed to create a central neighborhood gathering area in the form of a public plaza (Gateway Park). At its first review of this project, the Commission's Design Review Board agreed that some fill at the end of Clinton Basin would be appropriate for public access purposes, and an important enhancement to the project, but that exact amount needed studying.

- d. **Minimizing Impacts.** Approximately 10,200 cubic yards of material would be excavated and approximately 26,320 cubic yards of material would be placed for shoreline protection, to remediate contaminated areas, to create marsh habitat, and to construct outfall structures. As discussed more fully in the "Natural Resources Policies" section below, the measures incorporated into the project minimize the fill impacts to the Bay, including water volume, circulation and quality, and fish and wildlife resources. The Final Environmental Impact Report (FEIR) for the project determined that with implementation of identified mitigation measures, any potential impacts to biological resources and water quality would be reduced to a less than significant level. The Regional Water Quality Control Board (RWQCB) staff has stated that it expects to issue a water quality certification and waste discharge requirements for the project by March 2011.
- e. **Sound Safety Standards/Sea Level Rise.** Policy 1 of the Bay Plan Safety of Fills section states, in part: "The Commission has appointed the Engineering Criteria Review Board...to: (a) establish and revise safety criteria for Bay fills and structures thereon; (b) review all except minor projects for the adequacy of their specific safety provisions, and make recommendations concerning these provisions...." Policy 3 states: "To provide vitally-needed information on the effects of earthquakes on all kinds of soils, installation of strong-motion seismographs should be required on all future major land fills. In addition, the Commission encourages installation of strong-motion seismographs in other developments on problem soils, and in other areas recommended by the U.S. Coast and Geodetic Survey, for purposes of data comparison and evaluation." Policy 4 states: "To prevent damage from flooding, structures on fill or near the shoreline should have adequate flood protection including consideration of future relative sea level rise as determined by competent engineers." Policy 5 states, in part: "To minimize the potential hazard to Bay fill projects and bayside development from subsidence, all proposed developments should be sufficiently high above the highest estimated tide level for the expected life of the project..."

The application states, "The proposed shoreline improvements will be designed to meet current engineering standards based on recent geotechnical investigations. Project features to be constructed in areas with unstable existing soil conditions may require soil stabilization (or removal) or may require the feature to be supported on piles."

The Commission's Engineering Criteria Review Board (ECRB) reviewed the Ninth Avenue Terminal wharf seismic strengthening project for seismic and engineering design safety on July 11, 2007. The ECRB was satisfied with the engineering criteria used in the design of the proposed project but encouraged the applicants to further study whether sand lenses are present at the site. The permittees agreed that if it was determined, upon more detailed review by the Commission's senior engineer, that the project should return to the ECRB, that such a review would occur after Commission action.

The project proposal does not include the installation of strong-motion seismographs.

Regarding sea level rise, current estimates vary widely, from an observed, historically measured value of 8-inches per century to 33-inches per century predicted (maximum) by the Intergovernmental Panel on Climate Change (IPCC). In 2010, the California Climate Action Team developed future sea level rise projections (relative to sea level in 2000) that range from 10 inches to 17 inches at 2050, and 31 inches to 69 inches at 2100. There is strong agreement among climate models for the likely amount of sea level rise at 2050. However, beyond 2050, there is more uncertainty because modeling results vary depending on how quickly the international community reduces greenhouse gas emissions.

Because the science of climate change and sea level rise is evolving, the applicants believe it is prudent to establish a planning horizon and accommodate sea level rise rather than design to an estimate which will very likely change over time.

The proposed project consists of two flood protection components – a perimeter protection component along the shoreline, and another protection component for the interior areas of the site. Both of these components provide for some level of protection against future 100-year flood events as a result of rising sea levels.

The applicants state that, for the perimeter system, it is not practical to build a wall around the project for a design condition that may develop over several decades. At the same time, it is not prudent to build to present sea level conditions and keep raising the developed areas as Bay waters rise. Therefore, the project would provide perimeter protection along the project boundary with a perimeter elevation of +6.0 feet above Mean High Water. The application states that the perimeter protection is designed to provide flood protection for present day 100-year flood conditions plus freeboard of approximately 28 inches. The additional freeboard provides flood protection against the future 100-year flood event (tide or wave induced), which would be brought about by rising sea levels.

The applicants state that interior building elevation provide a minimum finish floor elevation of +6.5 feet above Mean High Water. The buildings would not be flooded during a storm surge that is approximately 34-inches higher than the present day 100-yr flood event. Over a 50-year planning horizon, the proposed interior elevations are high enough to provide flood protection for current estimates of sea level rise. Beyond the 50-year planning horizon and under the highest rate of relative sea level rise, the proposed interior grades are high enough to provide flood protection for a period of at least 61 years, based on current sea level projections.

The applicants state that, beyond these planning horizons, additional protection can be achieved through shoreline adaptation. The horizontal space exists for a variety of shoreline adaptations that would increase perimeter elevations in the future as necessary.

- f. **Valid Title of Project Site.** The project site is owned by the City of Oakland, a municipal corporation acting by and through its Board of Port Commissioners (Port of Oakland), and is subject to the Public Trust. On October 17, 2008, the Port of Oakland and Oakland Harbor Partners, LLC (OHP) entered into an option agreement that authorizes the sale of certain portions of the project site to OHP, the interim ground lease of the balance of the project site to OHP, and the ultimate transfer of the balance of the project site to the City of Oakland. Additionally, the Port of Oakland, OHP and the State of California, acting by and through its State Lands Commission, have entered into an exchange agreement that authorizes, among other matters, the sale of the applicable portions of the project site to OHP and the transfer of the balance of the project site to the City of Oakland.
- g. **Fill for Bay Oriented Commercial Recreation and Public Assembly.** The San Francisco Bay Plan contains a policies concerning filling for Bay-oriented commercial recreation and Bay-oriented public assembly. Known as the "50% Rule," the policies restrict uses permitted on replacement fill to water-oriented uses, such as Bay-oriented commercial recreation and public assembly, public recreation, open space and public access to the Bay. The Bay Plan defines Bay-oriented commercial recreation and Bay-oriented public assembly as "facilities specifically designed to attract large numbers of people to enjoy the Bay and its shoreline, such as restaurants, specialty shops and hotels." The policies further require that, on replacement fill, those uses other than public recreation, open space and public access to the Bay, would cover an area of the Bay no larger than 50 percent of the area being uncovered. Bay-oriented commercial recreation and public assembly uses on publicly owned and are required to be consistent with a comprehensive special area plan for the geographic vicinity of the project. The goal behind this policy is to ensure that redeveloped maritime piers provide public benefits, such as open water, public access and public views of the Bay.

The project involves rehabilitating and reusing approximately 20,000 square feet of the Ninth Avenue Terminal Bulkhead building. Bay-oriented commercial recreation and public assembly uses, including a maritime museum, café and community center, are proposed within the rehabilitated pier shed building. This rehabilitation work will require such substantial repairs to the pilings, support structures and deck supporting the pier shed building that the entire structure, including the pier shed building will be considered Bay fill once the repairs are complete. Similar uses have been approved by the Commission in the past on Bay fill.

In evaluating whether the project is consistent with the Bay Plan's fill policies for commercial recreation on fill, the Commission should consider the larger context in which this proposal is being made, and that the majority of the historic finger-pier, pile-supported Bay fill in the Port of Oakland has already been removed. Over the past forty years, the Port of Oakland modernized its maritime shipping waterfront to accommodate container ships, which required removal of old finger piers and the construction of crane wharves throughout the much of the Port. In the non-port areas of the Port's jurisdiction, much of the historic port piers were removed and only small piers remain mostly supporting commercial recreation uses such as restaurants or public access. The only large piers remaining in the non-port area are the Livingston Street Pier and the wharf located on this project site.

In addition to the 2.24 acres (net) of pile-supported pier removal proposed with this project, there have been other significant fill removal efforts in the Oakland Inner Harbor over the past few decades. In the early 1990s, a large area of Bay fill was removed from the project site (Channel Park) with the demolition of the Pacific Dry Dock operations located near the 5th Avenue Marina in Oakland.

No comprehensive special area plan has been prepared for the project site. However, in the late 1990s, the BCDC staff participated in a planning effort resulting in the Estuary Policy Plan (1999). The Estuary Policy Plan, is intended to be incorporated into the City of Oakland's General Plan. Compared to the General Plan, the Estuary Policy Plan has a more focused geographic scope and is, therefore, more specific on the topics of land use, transportation, open space, recreation and historic preservation. The Estuary Policy Plan calls for recognizing that the Ninth Avenue Terminal shed, or portions thereof, may be suitable for rehabilitation and adaptive reuse, but that the terminal building impedes public access to and views of a key area of the Estuary.

The Commission should consider whether the goals of its Bay Plan policies addressing fill for Bay-oriented commercial recreation and public assembly have been met along the Oakland waterfront without the preparation of a Commission-sponsored special area plan. The Commission should also consider whether it is appropriate to prepare a special area plan for the Oakland Estuary in the Port of Oakland's jurisdiction pursuant to the Bay Plan replacement fill policies, given the minimal amount of historic pile-supported fill that remains. The Commission should also consider whether the proposed pier removal to create permanent open water, pier rehabilitation, and limited Bay-oriented commercial recreation and public assembly uses that are part of this project are consistent with the general thrust of these Bay Plan policies. When the Commission reviews a project, it seeks to harmonize the policies of the Bay Plan. The Commission should determine whether this project as proposed, in the context of historical and proposed fill removal and the public access on the rehabilitated pier, and the limited commercial recreation and public assembly uses proposed would be generally consistent with the Commission's replacement fill policies.

The Commission should determine whether the proposed project would be consistent with the Bay Plan policies on Fill for Bay-Oriented Commercial Recreation and Public Assembly.

2. **Public Access.** Section 66602 of the McAteer-Petris Act states that "...maximum feasible public access, consistent with a proposed project, should be provided." In assessing whether a project provides maximum feasible public access consistent with the project, the Commission relies on the McAteer-Petris Act and the policies of the San Francisco Bay Plan.

Policy 1 and Policy 6 of the Bay Plan policies on Public Access state that "a proposed fill project should increase public access to the Bay to the maximum extent feasible" and that the public access improvements "...should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for the physically handicapped to the maximum extent feasible, should include an ongoing maintenance program, and should be identified with appropriate signs." Policy 7 states that, "in some areas, a small amount of fill may be allowed if the fill is necessary and is the minimum absolutely required to develop the project in accordance with the Commission's public access requirements." Policy 8 states that, "access to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available...." Policy 11 states that, "the Design Review Board should advise the Commission regarding the adequacy of the public access proposed" and Policy 2 of the Bay Plan's Appearance, Design and Scenic Views section state that "all bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay" and that "maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore."

In determining whether the project will provide the “maximum feasible public access consistent with the project,” the Commission considers a number of factors, including the demand on existing public access areas and the need for additional public access generated by the Brooklyn Basin project.

A very limited amount of improved public access currently exists within the project area. The proposed project will result in the creation of a new neighborhood in the City of Oakland, replacing a primarily industrial section of the City. The new development would contain up to 3,100 housing units and 200,000 square feet of commercial and retail space. The application states that approximately 5,061 new residents and employees are expected to live and work within the Brooklyn Basin neighborhood and use the proposed open spaces.

The employment, housing and population growth associated with the Brooklyn Basin project will generate a greater demand for public access to the Bay and shoreline along the Oakland Estuary. New employees, residents, and visitors will use the nearby shoreline before and after work and during lunch, thereby adding to the existing public access demand.

To offset the project impacts on public access, the permittees would provide a series of public parks interlinked by the Bay Trail. The qualities of these open spaces are generally discussed above in the Project Description section. Of the 62 acre site, approximately 17.3 acres are within the Commission’s jurisdiction; of this area, approximately 11.6 acres (67%) would be dedicated for public access purposes. In total, the project would provide approximately 25.5 acres (40% of the project site) of new public access.

Public access areas and improvements would be phased with the development of adjoining parcels. Public Access in Phase I will be completed prior to the certificate of occupancy of the 550th residential unit or 5 years from issuance of the first building permit; Phase II will be completed prior to the certificate of occupancy of the 1,650th residential unit or 8 years from the first building permit issued in Phase I; Phase III will be completed prior to the certificate of occupancy of the 2340th residential unit or 11 years from the issuance of the first building permit in Phase I. Phase IV will be completed prior to the certificate of occupancy of the 2,800th residential unit or 14 years from the issuance of the first building permit in Phase I. .

The applicants state that the shoreline public access has been designed to encourage diverse Bay-related activities and different waterfront experiences. Given the public access locations proposed, their site orientation, aspect and type of shoreline (e.g., riprap, high marsh, pile-supported promenade, seawall, wharf), it is likely that each open space would have a distinct character. For example, Estuary Park, originally designed in the 1960s by landscape architect Lawrence Halprin, is an existing park that includes an existing deck, a large trellis shade structure, picnic areas, a public parking lot, a public boat ramp and the Jack London Aquatic Center facility. Scheduled to be environmentally remediated, augmented and updated with new design features, the overlay of new improvements on the existing park would provide a highly active waterfront open space. Across the mouth of Lake Merritt channel, Estuary Park would provide passive open spaces adjacent to newly created “soft” shorelines where new marsh and upland transition plants meet the park edge. Further to the east, South Park, including the public access areas around Clinton Basin, would provide the project’s most urban shoreline spaces. The two promenades, plaza and park areas come in close proximity to retail, commercial and residential uses where residents and the public mix in this neighborhood core. At the east end of the project, Shoreline Park would be built upon the Ninth Avenue Terminal wharf after the terminal shed building is demolished. Designed in a grand classical style, the park would provide a flexible open space area

with various paths, a large public fountain at the terminus of Main Street and a panorama of the Brooklyn Basin area. At the end of Shoreline Park, an approximately 15,000-square-foot portion of the Ninth Avenue Terminal bulkhead building would be retained for public trust uses, such as restaurants, a museum and/or interpretive displays. Adjacent to the bulkhead building, stormwater detention basins would be built as publicly-accessible rain gardens, providing play opportunities similar to the successful park element in Portland, Oregon's Pearl District neighborhood. Although qualitatively distinct from one another, all of the open space areas would be unified in style through use of similar design elements and site furnishings, such as the Bay Trail design, street lights, pedestrian path lights, trash receptacles, 20-foot-tall "trail markers," interpretive historic markers, directional signage and landscaping.

In its review of the proposed project, the Commission's Design Review Board (Board) stated that the size of the public access area seemed adequate for the anticipated uses, but that the quality of the public access areas should be more closely reviewed at future Board meetings. The Board was generally supportive of the project but had concerns that the creation of new shoreline areas would be done in a manner that erodes the "gritty waterfront" character and creates a quality of "sameness", thereby losing "the fabric of the place." The Board also questioned the use of large amounts of lawn within the public areas, stating that Channel Park may be an opportunity for something other than turf. The Board stated that the urban edge of Clinton Basin would be interesting and desirable. The Board also agreed that a soft shoreline around Channel Park made sense, but questioned the type of enhancement proposed at the existing habitat area at South Park. Regarding the enhancement, the Board questioned whether a tidal marsh mudflat was sustainable in a sandy beach area that is depositional. The Board expressed interest in retaining the Ninth Avenue Terminal shed building (instead of demolishing it for a green open space), stating that the building would help retain the distinctive industrial waterfront character.

Regarding the open space design and, particularly, the Ninth Avenue Terminal building, the Final Environmental Impact Report (FEIR) identifies mitigation measures to ensure that the park design incorporates landscaping, sculptural elements, paths and lighting that conceptually reference the expanse of the Ninth Avenue Terminal's footprint and height. The FEIR further requires that a minimum of 200 square feet of floor area within the bulkhead building be set aside for an historical exhibit depicting the history of the Oakland Municipal Terminals.

The project proposes public parking along new streets and adjacent to new parks and open spaces. Specifically, public parking is proposed within the existing public parking lot at Estuary Park, within two new 15-vehicle parking lots, one each at Channel Park and South Park, and approximately 90 spaces along the entire length of Shoreline Park. All streets within the project have been designed with on-street public parking, although it has not yet been decided whether or not those spaces would be metered.

Due to the projected 15-years that it will take to construct the project, the applicants have proposed temporary shoreline access trails that would be built pursuant to the obligations set forth in the development agreement between the City of Oakland and Oakland Harbor Partners, LLC. The proposal includes constructing an eight-foot-wide asphalt trail along a mutually agreed upon alignment with a chain link fence along the landward side of the temporary trail. The temporary trail would not include lighting and would be open from dawn to dusk. The trail would be built within development Phases II, III and IV prior to the remediation of such phases, pending the approval of the California Department of Toxic Substances Control (DTSC). The developer would have the right to remove or suspend the use of the temporary trail as necessary in order to allow for site remediation, project construction or to provide for public safety during development. When trail closures are needed, an alternative alignment would be sought.

There has been considerable concern from members of the public over the timing for implementing the temporary trail. The proposed trail would be built within Phases II and III upon occupancy of the 550th Phase I residential unit or five years from the issuance of the first Phase I building permit. The Commission staff has received written comments on the topic, which state concern that the allowable timeframes might result in shoreline access being delayed by up to 10 years or more. In the past, the Commission has required interim public access during construction. In December 2000, the Commission required the following of Catellus Development Corporation, the City and County of San Francisco and the Port of San Francisco:

“Interim Public Access around Mission Creek Channel. Where access will not be provided along a portion of the Mission Creek Channel shoreline for any period of time because the adjacent and/or associated portion of the project is not to be constructed until a later date, interim public access connections...shall be provided to allow pedestrian access between those portions of the public access that have been constructed. Construction of interim access on each side of the channel shall commence with the first development on each side of the channel. Such temporary public access connections may be located inland of the shoreline where shoreside access would be unsafe or otherwise hazardous pending construction of authorized shoreline improvements.”

The Commission should determine whether the applicants’ proposed public access including plans for interim access is the maximum feasible consistent with the project, and is consistent with the Bay Plan policies on Public Access.

3. **Public Trust Consistency.** The Bay Plan provides that the “purpose of the public trust is to assure that the lands to which it pertains are kept for trust uses, such as commerce, navigation, fisheries, wildlife habitat, recreation and open space.”

All areas of Bay fill would be for the purposes of creating new marsh such as at Channel Park and South Park, providing new public access and open space such as at Clinton Basin and Shoreline Park, and protecting the shoreline from erosion and improving shoreline appearance along segments of the shoreline where deteriorated shoreline protection currently exists.

The Commission should determine whether the proposed uses would be consistent with the Public Trust doctrine.

4. **Natural Resources Policies.** Policy 1 of the Bay Plan policies on Subtidal Areas state: “Any proposed filling or dredging project in a subtidal area should be thoroughly evaluated to determine the local and Bay-wide effects of the project on: (a) the possible introduction or spread of invasive species; (b) tidal hydrology and sediment movement; (c) fish, other aquatic organisms and wildlife; (d) aquatic plants; and (e) the Bay’s bathymetry. Projects in subtidal areas should be designed to minimize and, if feasible, avoid any harmful effects.”

Policy 2 of the Bay Plan policies on Fish, Other Aquatic Organisms, and Wildlife states, in part: “Specific habitats that are needed to conserve, increase, or prevent the extinction of any native species, species threatened or endangered...should be protected....” Policy 4 states that the Commission should “...consult with the California Department of Fish and Game and the U.S. Fish and Wildlife Service or [NMFS] whenever a proposed project may adversely affect an endangered or threatened...species” and “...[g]ive appropriate consideration to the recommendations of the [state and federal resource agencies] in order to avoid possible adverse effects of a proposed project on fish, other aquatic organisms and wildlife habitat.”

Policy 1 of the Bay Plan policies on Mitigation states, "Projects should be designed to avoid adverse environmental impacts...Whenever adverse impacts adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable." Policy 2 states that "[i]ndividual compensatory mitigation projects should be sited and designed within a Bay-wide ecological context, as close to the impact site as practicable." Policy 3 states, "[w]hen determining the appropriate location and design of compensatory mitigation, the Commission should also consider potential effects on benefits provided to humans from Bay natural resources, including economic (e.g., flood protection, erosion control) and social (e.g., aesthetic benefits, recreational opportunities).

Policy 1 of the Bay Plan policies on Water Quality states, "Bay water pollution should be prevented to the greatest extent feasible..." and Policy 2 states that, "...the policies, recommendations, decisions, advice and authority of the State Water Resources Control Board and the Regional Board, should be the basis for carrying out the Commission's water quality responsibilities."

As further described in the Bay Fill section above, the project would involve construction activities such as dredging, pile driving and other in-water work. This includes excavation of material for shoreline protection and marsh creation, and placement of solid and pile-supported fill for public access. Additionally, the project includes removal of existing floating docks and existing pile-supported wharf structures.

The existing shoreline includes old wharves, unprotected, eroding banks, and shorelines where concrete blocks, slabs, and debris have been dumped or placed for shoreline protection. The proposed marsh restoration would regrade and revegetate the shoreline from the mouth of Lake Merritt Channel to the existing sandy beach at the existing wetlands restoration project at the northwest corner of Clinton Basin. Clinton Basin would be recontoured and armored and areas around Shoreline Park would be improved by dressing the slope with new riprap where needed. The Draft Environmental Impact Report (DEIR) found that the existing shoreline conditions at the project site result in reduced tidal ebb and flow and that the project would improve shoreline conditions and natural areas for potential habitats along the estuary and Lake Merritt Channel.

The project's DEIR identified four special-status fish that have the potential to occur at or near the project site: Pacific herring, central California coast and central valley steelhead, central California coast coho salmon, and Chinook salmon. In addition, the DEIR identified one special-status marine mammal species (harbor seal) and two special-status birds (California brown pelican and Cooper's hawk) that could occur at or near the site. The DEIR concluded that for each of the four fish species, there is a low to moderate likelihood that the species will occur within the project site. There is potential for Pacific herring to spawn in the project area because the area is within or near spawning habitat and marine structures provide suitable substrates on which egg masses could be attached. Steelhead and coho and Chinook salmon may incidentally occur in the Oakland Inner Harbor during migration, but would not use it as foraging or spawning habitat. Harbor seals use the Bay for foraging, resting and reproduction, but the closest known haul-out near the project area is at the Alameda Breakwater Gap, approximately five miles from the Oakland Inner Harbor. The DEIR states that no harbor seals were observed during a survey conducted by a biologist for the DEIR. The California brown pelican is a common visitor to the Oakland Estuary. However, no nesting colonies are documented in the Bay Area or in the project vicinity. However, a brown pelican was observed in flight at the project site by project biologists during an October 2004 site visit. The Cooper's hawk is known to occur within the urban areas of Oakland and near Lake Merritt and preys on small urban-adapted birds such as pigeons and mourning doves. In addition, the double-crested cormorant is a resident species and the closest

documented rookery site is at the San Francisco-Oakland Bay Bridge. However, based on lack of suitable nest sites within the project site, the cormorants are not expected to nest in or near the project site.

The DEIR found that construction-related activities, such as dredging and pile-driving, conducted during spawning and migration could result in potentially significant impacts to fisheries resources.

To reduce potential impacts to fisheries, the applicants propose 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 (LTMS) for the Placement of Dredged Material in the San Francisco Bay Region* (2001). These include restricting dredging and other in-water construction activities to the specified work windows that avoid the direct and indirect impacts on juvenile or adult herring or salmonids that would otherwise result from dredging-related increases in turbidity or changes in water quality. The DEIR found that impacts of dredging operations on coho salmon, Chinook salmon, steelhead, and Pacific herring would be less than significant, provided that dredging activities are conducted within the work windows identified in the LTMS.

Potential impacts resulting from pile-driving activities would be avoided or reduced to a less-than-significant level by either avoiding pile-driving activities between November 1 and June 1 or assuring that pile-driving would result in noise levels below 150 decibels at 10 meters. Any pile-driving work occurring outside of these work windows would be conducted in accordance with National Marine Fisheries Service directives and Army Corps of Engineers permits to reduce potential impacts on fish species.

Further, implementation of Best Management Practices (BMPs) as outlined in the LTMS would reduce impacts on special-status fish species. As feasible, BMPs would include using silt curtains and gunderbooms that isolate the work area and prevent silt and sediment from entering the estuary. To further prevent silt and sediment from entering the estuary, the applicants propose to conduct excavation and dredging operations from land, where feasible. Backhoes and cranes, operating from land, would be used for the removal of debris and concrete riprap along the estuary edge. A similar process is proposed in areas where excavation for marsh restoration is planned. Construction operations along Clinton Basin and Shoreline Park would be barge-mounted or involve water-based equipment such as scows, derrick barges and tugs. All dredged material would be placed in upland areas.

The DEIR determined that fish and wildlife would likely move away from the area during the actual dredging process. However, the dredging equipment would likely entrain benthic fish and organisms. Because this is a relatively small area in the Bay, the benthic fish and invertebrate community will likely regenerate in this area from adjacent areas.

Additionally, the DEIR identified mitigation measures that would protect the Port of Oakland's existing restoration project at the southwest end of Clinton Basin during construction activities. The Port's mitigation area will be clearly marked by a qualified biologist prior to the start of any grading or construction activities and a buffer zone established. All construction personnel working in the vicinity of the mitigation area shall be informed of its location and the buffer zone.

The DEIR found that construction activities conducted during the nesting season for breeding raptors and passerine birds, including Cooper's hawk, could result in potentially significant impacts. The DEIR, however, determined that with implementation of identified mitigation measures, such as limiting construction activities to outside the

breeding season, conducting preconstruction surveys of all potential nesting habitat and creating no-disturbance buffer zones, any potential impacts on these species would be reduced to a less than significant level.

Regarding compensatory mitigation for environmental impacts associated with filling, the project has proposed an on-site mitigation plan. To offset the impacts of placing approximately 0.92 acres of solid fill to create Gateway Park, the project includes: (1) the removal of approximately 0.38 acres of solid fill at Clinton Basin to create a wider basin and more open water; and (2) the removal of approximately 0.65 acres of solid fill at Channel Park and South Park to create more open water, new high marsh habitat and provide the aesthetic benefit of a natural shoreline. Additionally, approximately 0.06 acres of solid fill would be removed at the east end of the project site resulting from wharf and pile demolition. As a result of the mitigation for solid fill placement, the Bay would get larger by approximately 7,450 square feet (0.17 acres).

To offset the approximately 0.84 acres of pile-supported fill for public promenades at Clinton Basin, the project would remove approximately 3.08 acres of pile-supported fill at the Ninth Avenue Terminal wharf to create open water. As a result of this mitigation for work associated with the pile-supported fill, the Bay would get larger by approximately 97,575 square feet (2.24 acres).

Regarding water quality, the staff at the Regional Water Quality Control Board (RWQCB) has worked closely with the applicant over the past year. The RWQCB staff has stated that a water quality certification in conjunction with waste discharge requirements (WDRs) will likely be issued by the RWQCB in February or March 2011. WDRs would be required due to the long-term build out of the project. As part of RWQCB's approval, the applicants would be required to obtain the water quality certification and WDRs prior to the commencement of construction of the project. These approvals will include conditions that the applicants must incorporate in the project to avoid or mitigate for potential water quality impacts.

In addition, dewatering may be performed in open excavation areas that extend below the water table both during remedial activities and during construction. All extracted groundwater will be either hauled offsite to a facility approved by the Department of Toxic Substances Control (DTSC), discharged to the East Bay Municipal Utilities District (EBMUD) facilities, or discharged to a storm sewer or directly to surface water under a General National Pollutant Discharge Elimination System (NPDES) permit. At the time that any specific project phase involving groundwater extraction is undertaken, an analysis would be made as to whether it is cost effective and appropriate to discharge to EBMUD or the surface water. If needed, an NPDES permit would be obtained following procedures set out by the RWQCB.

The Commission should determine whether the proposed project would be consistent with the Bay Plan policies regarding Subtidal Areas, Fish, Other Aquatic Organisms, and Wildlife, Mitigation, and Water Quality.

5. **Shoreline Protection.** Policy 2 of the Bay Plan policies on Protection of the Shoreline state: "New shoreline erosion control projects and the maintenance or reconstruction of existing erosion control facilities should be authorized if: (a) the project is necessary to protect the shoreline from erosion; (b) the type of the protective structure is appropriate for the project site and the erosion conditions at the site; and (c) the project is properly designed and constructed." Policy 4 states, "[s]horeline protective projects should include provisions for nonstructural methods such as marsh vegetation where feasible" and "[a]long shorelines that support marsh vegetation or where marsh establishment

has a reasonable chance of success, the Commission should require that the design of authorized protective projects include provisions for establishing marsh and transitional upland vegetation as part of the protective structure, wherever practicable.”

The project would include various shoreline protection solutions at different locations along the project site. In a report, entitled “Proposed Shoreline Improvements,” the applicant states that the existing riprap at Estuary Park “looks in good shape, but is failing in isolated areas where individual rocks have been scoured out, probably due to wave action.” The project, however, includes no shoreline treatment along this section of shoreline. At Channel Park and South Park (West), the shoreline protection concept includes a high marsh edge with an Articulating Concrete Block (ACB) mat revetment along most of the 1,850-foot shoreline. The report states that, “this treatment will improve the appearance of the shoreline, compensate for some of the Bay Fill within Clinton Basin, and resist erosion.” At South Park (West), steep contours along approximately 350 feet of shoreline may require more management to establish upland vegetation. At South Park (Clinton Basin), the shoreline would be straightened to accommodate an urban promenade edge and recreational boating when the future marina is built. On the east and west sides of the basin, the riprap would be placed under a pile supported promenade. At the north end of the basin, a vertical, steel sheet pile bulkhead would be built. The applicant states that, “these alternatives were selected to balance the issues of performance, durability, constructability, and cost.” At Shoreline Park (West), a portion of the Ninth Avenue Terminal wharf will be demolished, exposing open water and the existing breakwater that is currently under the wharf. The bulkhead is believed to be in good condition. Therefore, new shoreline protection would be limited to replacing slope dressing, which is defined in the application as, “Rock Slope Protection that is placed on the slope [against the existing bulkhead] without significant excavation or foundation support, and consists of smaller armor stone....” At the Ninth Avenue Terminal Wharf, no shoreline protection work is proposed under the existing wharf.

The Commission should determine whether the proposed project would be consistent with the Bay Plan policies regarding shoreline protection.

6. **Recreation.** Policy 1 of the Bay Plan policies on Recreation states: “Diverse and accessible water-oriented recreational facilities, such as marina, launch ramps, beaches, and fishing piers, should be provided to meet the needs of a growing and diversifying population...and improved to accommodate a broad range of water-oriented recreational activities for people of all races, cultures, ages and income levels. Periodic assessments of water-oriented recreational needs that forecast demand into the future and reflect changing recreational preferences should be made to ensure that sufficient, appropriate water-oriented recreational facilities are provided around the Bay.” The Bay Plan policies on Recreation support recreational facilities such as waterfront parks, trails, marinas, non-motorized small boat access, fishing piers, launching lanes and beaches, provided they are located, improved and managed consistent with certain standards identified in the Bay Plan.

Bay Plan Map No. Five of the *San Francisco Bay Plan* designates the existing Estuary Park as a Waterfront Park Priority Use Area. No change to the boundary of that priority use designation is proposed. Estuary Park currently contains, a launching ramp, a public parking lot, the Jack London Aquatic Center, a low public dock for non-motorized small boat access, boat slips for approximately 8 sailboats, a fishing pier, a waterfront trail, a large grass area, and a picnic area. The project proposal includes changing the existing worn waterfront trail into a separated bicycle and pedestrian Bay Trail with shoulders and landscaping to accommodate greater user demand. Further, the project would facilitate the redesign of Estuary Park. At this time, no specific uses are proposed other than the existing uses described above. The new design of the park would be a product of a community planning process that would occur in the future.

The Commission should determine whether the proposed project would be consistent with the Bay Plan policies on Recreation.

B. Review Boards

1. **Engineering Criteria Review Board.** On June 11, 2007, the Commission's Engineering Criteria Review Board (ECRB) reviewed the proposed project for seismic and engineering design safety. The scope of the work reviewed was primarily related to the 9th Avenue Terminal wharf. The ECRB was satisfied with the engineering criteria used in the design of the proposed project but encouraged the applicants to further study whether sand lenses are present at the site. The permittees agreed that, if it was determined upon more detailed review by the Commission's senior engineer that the project should return to the ECRB, that such a review would occur after Commission action.
2. **Design Review Board.** The Design Review Board (DRB) reviewed the Brooklyn Basin project four times at its meetings of May 9, 2005, April 10, 2006, November 6, 2006 and May 7, 2007.

At its first meeting, the Board advised that: (1) the project should consider street geometries that relate to important views; (2) building heights should vary; (3) eight-story buildings need to be considered as they relate to public views; (4) the retention of the Ninth Avenue Terminal shed building would maintain the distinctive industrial waterfront character; (4) the proposed urban edge of Clinton Basin would be interesting and desirable; (5) public parking for open spaces and impacts on existing public parking need to be further evaluated; (6) increasing the height of the residential towers and lowering the podium buildings might improve public connections and views to the Bay; and (7) the exact amount of Bay fill for public access needs studying and should be determined based on the public's sense of arrival to Gateway Park and to the Bay.

At its second review, the Board advised that: (1) buildings should be evaluated to maximize views and sunlight on the public open space areas; (2) the character of the site should be integrated into the project design; (3) Bay fill for public access and shoreline appearance around Clinton Basin would be beneficial to the scheme and is an important project enhancement; and (4) the pile-supported Ninth Avenue Terminal structure is a critical component of the proposed public access and that there should be a commitment to maintaining the structure in perpetuity. Additionally, the Board agreed that the views from the street grid north of the freeway appear to be blocked and requested an analysis of the view corridors from those streets.

At its third review, the Board recommended that the project take into account climate change and sea level rise. The Board agreed that the 9th Avenue terminal building and the wharf edge lent a good quality to the waterfront. Regarding the shoreline treatments, the Board stated that a tidal marsh mudflat in a sandy area may not make sense because of the depositional nature of the site, but that a soft shoreline edge should be maximized where feasible throughout the project. The Board said that the street widths appeared to be adequate for the anticipated uses and that the quantity of open space is adequate. There was Board support for the density of development around Clinton Basin and encouraged an urban shoreline in this area. However, there was concern about whether enough sunlight would be available for Gateway Park and the promenades along the edge of Clinton Basin. There was not consensus on how maximum sunlight on the public spaces might be achieved. The Board asked that the size of and expected level of use for Gateway Park be explained as it relates to the amount of fill placed for public access. The Board agreed that short time restrictions for public parking would benefit the public open spaces and that adequate public art should be part of the project proposal.

In its last review of the project, the Board stated that the applicant had been responsive to the concerns about views to the water from the city and that the shadow study eliminates concerns about shadows on public spaces. The Board said that Channel Park would be an opportunity for a planting design that does not include turf, but that, otherwise, the open space design meets the Board's expectations about variety and diversity of shoreline spaces.

C. **Environmental Review.** On June 20, 2006, the City of Oakland, the lead agency, certified an Environmental Impact Report (EIR) for the proposed project in accordance with the California Environmental Quality Act (CEQA). The certification was set aside by order of Alameda Superior Court due to a finding of certain deficiencies in the EIR. Following the release of revisions to the analysis for the EIR, the City of Oakland adopted the EIR revisions and re-adopted the related EIR certification on January 20, 2009.

D. **Relevant Portions of the McAteer-Petris Act**

1. Section 66605
2. Section 66602

E. **Relevant Portions of the San Francisco Bay Plan**

1. Bay Plan Policies on Fish, Other Aquatic Organisms, and Wildlife (page 16)
2. Bay Plan Policies on Water Quality (page 19)
3. Bay Plan Policies on Subtidal Areas (pages 27-28)
4. Bay Plan Policies on Safety of Fills (pages 32-33)
5. Bay Plan Policies on Protection of the Shoreline (pages 34-35)
6. Bay Plan Policies on Recreation (pages 53-57)
7. Bay Plan Policies on Public Access (pages 59-60)
8. Bay Plan Policies on Appearance, Design, and Scenic Views (pages 62-63)
9. Bay Plan Policies on Fill for Bay-Oriented Commercial Recreation and Bay-Oriented Public Assembly on Privately-Owned or Publicly-Owned Property (pages 73-75)
10. Bay Plan Policies on Mitigation (pages 77-79)

Exhibits

1. **Vicinity Map** (Exhibit A)
2. **Existing Conditions** (Exhibits B-E)
3. **Site Plan** (Exhibit F)
4. **BCDC Jurisdiction Diagrams** (Exhibits G-H)
5. **Phasing Plan** (Exhibit I)
6. **Proposed Public Access Plan** (Exhibits J-K)
7. **Public Access Subareas** (Exhibits L-P, S-X)
8. **Proposed Fill Diagram** (Exhibits Q-R)
9. **Environmental Impact Report, Executive Summary** (Exhibit Y)