



Oakland Measure DD Community Coalition

September 7, 2010

Bay Conservation and Development Commission
50 California Street, Suite 2600
San Francisco, CA 94111

Dear Chair Randolph and Commission Members:

This letter serves as a request from the Measure DD Community Coalition that, as a condition of its permit, the Bay Conservation and Development Commission require the Oak to Ninth Project developer to install an interim Bay Trail throughout the entire project within 18 months of issuance of the BCDC permit.

Background

The Measure DD Coalition was formed in 2003 and sanctioned by the Oakland City Council to provide public input concerning projects and expenditures designated in the 2002 Measure DD Bond. One of the key themes of the \$198M Bond was improved access to the shoreline which included the Oakland Estuary, Lake Merritt, and major creeks in Oakland. Measure DD designated \$22M for park projects and continuation of the SF Bay Trail along the Estuary shoreline. These projects were in compliance with the Estuary Policy Plan adopted in 2000 by the City Council as a component of the General Plan. A majority of the Oak to Ninth Avenue area is public trust land which cannot be privatized. Accordingly, no housing was proposed for the Oak to Ninth Avenue area in the General Plan.

In 2003, the Port of Oakland, trustee of the 64-acre Oak to Ninth parcel, entered into an exclusive negotiating agreement with Oakland Harbor Partners (OHP) for the Oak to Ninth development parcel. OHP proposed a project that did not reflect Oakland's Estuary Policy Plan for this area.

In 2004, Senator Perata initiated legislation on behalf of the Port of Oakland to trade out 8.75 acres of sovereign public trust lands so that housing could be built on the Oak to Ninth site. Senate Bill 1622 passed and was chaptered as Chapter 542, Statutes of 2004.

In 2006, the Oakland City Council amended the Estuary Policy Plan to incorporate the proposals of OHP for 3,100 housing units and a 40% decrease in open space for the area. The initial proposed schedule for the construction of the project was 2008 through 2022.

In spring 2010, the purchase agreement for the Oak to Ninth Avenue property was revised to permit a delay: the Port of Oakland received 25% down with the understanding that construction would not begin before a final payment which could occur as late as 2015. The revisions also included an extension opportunity at 2015.

Rationale for this Request

1. Delay is frustrating the clear intent of the voters. In November 2002, over 80% of Oakland voters passed Measure DD. The bond language specified:

Waterfront Trail and Parks Acquisition and Construction including \$22 million for acquisition and development of the following parks along the Estuary waterfront:

- * Estuary Park at mouth of Lake Merritt Channel into the Estuary*
- * Meadows Park at 5th Avenue*
- * New park in area of 9th Avenue Terminal*
- * Union Point Park at 23rd Avenue*

Only the last of these parks and trail segments has been constructed. The others have been put on hold because they fall within the Oak to Ninth parcel. When the City and Port of Oakland determined that the General Plan would not fit the intent of the designated developer, the City Council amended the plan and approved a delay in construction of the San Francisco Bay Trail in the Oak to Ninth area.

Measure DD's capital expenditure plan included \$41,245,982 for Waterfront Trail and Parks Acquisition and Construction. Beginning in 2003, expenditures of these funds have yielded substantial progress in extending the Bay Trail through other areas along the Estuary. However, no progress has been made in the Oak to Ninth area.

Further, under the City's development agreement with OHP, completion of any interim portion of the Bay Trail is **not required until 2020 at the soonest!**

(See Exhibit C, Phasing Schedule excerpt, which calls for interim trail segments at the completion of Phase 1 of the development, expected to be five years from the project start after OHP makes final payment in 2015.)

The voters' intentions are being fulfilled in all areas specified in the Measure DD bond language except within the Oak to Ninth parcel. An interim Bay Trail is needed now to help mitigate this delay.

2. There is no certain time frame for providing Bay Trail access. Economic conditions have affected the Oak to Ninth development schedule in the past and may do so again in the future, with the potential to further delay access to this public trust shoreline. An interim Bay Trail is needed now to help mitigate this uncertainty by filling this critical gap in Trail continuity.

Our thanks to the Commission for considering this request.

Measure DD Interim Bay Trail Drafting Committee:

- Sandra Threlfall
- James E. Vann
- Naomi Schiff

Exhibit C

Oak to Ninth Phasing Schedule Excerpt

Exhibit C phasing schedule located at

<http://www.oaklandnet.com/government/ceda/revised/planningzoning/majorProjectsSection/EXHIBIT%20C%20-%20Phasing%20Schedule1%20FINAL.pdf>

Phase I: Parcels A, B, C, F, G

This phase will involve at a minimum for Parcels A, B, C, F, and G a) demolition and remediation, b) onsite improvements, c) offsite improvements and d) completion timeframes and conditions. .

a) Demolition and Remediation;

- i. Demolition of approximately 88,000 square foot of manufacturing, storage, 78,400 square foot warehouse building, approximately 160,000 square feet of the Ninth Avenue Terminal Shed Building, and approximately 120,000 square feet of timber supported pier structure.
- ii. Implementation of the site remediation plan under the regulatory oversight of the California State Department of Substance Control (DTSC).

b) Onsite Improvements;

- i. Construction of a portion of Shoreline Park to the south of parcels A, B, C and D including all landscaping, pier renovation, tree removal and installation, **bike paths, pedestrian walk ways, bay trail connections**, and shoreline improvements.
- ii. Renovation of a minimum of 20,000 square of the existing 9th Avenue Terminal Shed Building as a mixed use commercial/cultural resource building.
- iii. Site improvements including grading, underground wet and dry utility installation, construction of streets, bike paths, pedestrian trails, bay trail connections, sidewalks, street trees and landscaping.
- iv. **Installation of a temporary eight foot wide asphalt bay trail for phase II and phase III**

c) Offsite Improvements;

- i. Removal of existing street section, sidewalks and landscaping of the Embarcadero from the South Bound On-Ramp to I-880 at 10th Avenue to 5th Avenue.
- ii. Widening of the Embarcadero from the South Bound On-Ramp to I-880 at 10th Avenue to 5th Avenue including construction of street section, medians, traffic signals, sidewalks, bike trails, street trees and landscaping
- iii. Installation of wet and dry underground utilities fronting the project on the project side of Embarcadero

All offsite mitigation measures and conditions as required for the development of this phase. The reconstruction of Embarcadero includes demolition of the existing street section and underground utilities.

d) Completion Time frames;

- i. **Completed of Phase I park improvements prior to the issuance of a certificate of occupancy for the 550th residential unit for the project or five (5) years from the issuance of the first building permit for Phase I.**

EXHIBIT N

Construction of Temporary Bay Trail

Located at

<http://www.oaklandnet.com/government/ceda/revise/planningzoning/majorProjectsSection/EXHIBIT%20N%20-%20Construction%20of%20Temporary%20Bay%20Trail%20-%20FINAL.pdf>

Temporary Trail. Developer shall use commercially reasonable efforts to obtain the California Department of Toxic Substances Control's (DTSC) and the San Francisco Bay Conservation and Development Commission's (BCDC) approval for the installation of temporary trail improvements for the Bay Trail within Phases II, III and IV prior to the Remediation of such Phases. A Temporary Trail Plan shall be submitted to the City, DTSC and BCDC which includes plans and specifications following the criteria set forth below, as well as any requested information and construction management provisions for dust control, setbacks, directional signs, proposed routes and projected periods and locations of removal or suspension of use to provide for completion of remediation, construction of the project and public safety during development of the project.

As used in Section 4.16 the term "temporary trail improvements" means (a) the establishment of a level grade, (b) an eight (8) foot wide asphalt trail along a mutually agreed upon alignment and (c) a chain link fence along the landward side of the temporary trail. The temporary trail improvements shall not include any lighting. If approved, the temporary trail improvements shall be installed as follows:

- a. Phases II and III: Concurrently with the installation of the permanent Bay Trail improvements located in Phase I; and
- b. Phase IV: Upon the termination/expiration of the Berkeley Ready Mix lease (if development of permanent improvements for Phase IV have not commenced concurrently therewith), but in no event earlier than June 1, 2016.

The temporary trail improvements shall be installed and removed at Developer's cost.

After consultation with the City Planning Department, Developer shall have the right to remove or suspend the use of the temporary trail improvements as necessary in order to allow for completion of remediation, construction of the Project and to provide for public safety during the development of the Project. Notwithstanding the foregoing to the contrary, in the event that the Developer determines that it is necessary to remove or suspend the use of a portion of the temporary trail improvements, the Developer shall use commercially reasonable efforts to establish an alternate route along sidewalks within or adjacent to the Project to maintain access. The alternate routes and timing associated therewith shall be established in consultation with the City. The parties acknowledge that there may be time when construction within or adjacent to the Project will prevent the Developer from maintaining access (either along the temporary trail improvements or alternate routes) and in such an event, the Developer shall provide the City and public with a minimum of 72 hour's notice regarding the location and closure of the expected duration of such interruptions.

Subject to the foregoing, the temporary trail improvements shall be open to the public (a) after the formation and funding of the CSD/CFD and (b) from dawn to dusk. The CSD/CFD shall be responsible for the maintenance of the temporary trail improvements.