

### A. Development Program and Approaches

Most of the Oak-to-Ninth District, and all of the Port-owned lands included in the Master Development opportunity, are classified in the *Oakland General Plan (Estuary Policy Plan)* as PWD-1: Planned Waterfront Development. The maximum recommended development intensity according to the *General Plan* is an average Floor Area Ratio (FAR) over the entire area of 1.0, and an average of 30 units per gross acre for potential residential uses. A portion of the Specific Plan area (Site D) is designated Mixed-Use District (MUD); this area has a recommended development density of 5.0 per parcel and 125 residential units per gross acre.

The Port encourages a relatively broad and creative approach to interpreting the intent of the *Estuary Policy Plan's* recommendations for land use and development intensity in the PWD-1 classification, especially in the early stages of the Specific Plan process. Several factors contribute to the need for such an approach, including the following:

- The *Estuary Policy Plan* acknowledged that more planning is needed to make the proposed redevelopment “realistic”; the Specific Plan should therefore consider a range of land uses and intensities.
- The *Estuary Policy Plan* contains strong policies calling for extensive public pathways and open space. Creative approaches are needed in order to achieve these objectives.
- The *Estuary Policy Plan* illustrative diagrams and policies were based on limited information and analysis of subsur-

face contamination conditions and historic preservation. More information is now available.

- The final draft of the *Estuary Policy Plan* did not include residential uses, except joint living and working quarters, in the PWD-1 “intent” and “desired character.” While some of the sites available for development are Tideland Trust grants, which prohibit residential uses, housing could nevertheless be evaluated as a potential component of future mixed-use development within the Specific Plan area. Any proposed housing development must be sited and designed in a manner that would not diminish public access to the waterfront and other public spaces.
- A range of development program elements, such as rehabilitation of Seabreeze Marina in Clinton Basin, were included in the *Estuary Policy Plan* as recommendations without substantive analysis of economic feasibility and alternative approaches.

### B. Tideland Trust

The State Lands Commission has jurisdiction over the lands granted in trust to the Port of Oakland. Much of the property that is subject to development pursuant to this RFQ is comprised of landfill placed on former tidelands and submerged lands and property acquired by the Port with Tideland Trust revenues. Properties offered for development in this RFQ that are encumbered by the Trust are shown in Figure 4. For these properties, the future development program must be in compliance with the State Lands Commission’s guidelines for administration of the

Trust. The Tideland Trust imposes three principal conditions: (1) land uses are limited to Trust purposes, (2) sale of fee title to Trust property to private entities or persons is prohibited (although ground leases of up to 66 years are allowed), and (3) revenues received by the trustee from the use of Trust property must be devoted to Trust purposes.

Permitted uses under the Tideland Trust generally include harbors and aviation, as well as uses that attract people to the waterfront, promote recreation, protect habitat, or preserve open space. Thus, hotel, entertainment, and recreation uses are generally permitted under the Tideland Trust. Visitor-serving retail uses are generally allowed; for example, Jack London Square was developed under Tideland Trust guidelines. On the other hand, residential, non-trust-related office, industrial, and research and development uses are generally not permitted uses of Tideland Trust properties.

One alternative for development of the Port property may be to exchange parcels encumbered by the Trust, but suitable for development of non-trust uses for other non-trust parcels that are of equal potential value to the Trust, such as improved open space. If an exchange is desired by the developer and approved by the Port Commission, the Port will assist in discussions with the State Lands Commission to arrange for transfer and substitution of properties. In light of past exchanges of similar nature and the normal concerns of lenders, such an exchange may likely require state legislation and involve the State Lands Commission and staff, and the Office of the Attorney General of California.

## C. Regulatory Approvals and Entitlement Process

While not intended to be exhaustive, the section below highlights the major regulatory approvals and entitlements required for development of the subject property. The Port seeks a master development team that can demonstrate expertise in, and understanding of, the regulatory processes impacting waterfront development.

### 1. Bay Conservation and Development Commission

The San Francisco Bay Conservation and Development Commission (BCDC) was granted authority in 1965 by the California legislature through the McAteer-Petris Act to control development on and around the waters of San Francisco Bay, which includes the Oakland Estuary. BCDC regulates development and ensures that appropriate locations are reserved for priority shoreline uses (e.g., ports, airports, water-related industry and recreation and wildlife refuges), by requiring permits for development within its jurisdiction — generally property located within a 100-foot wide shoreline band of and within the Bay.

The San Francisco Bay Plan is BCDC's guiding plan document. The emphasis of the San Francisco Bay Plan is on providing substantial public benefit from the Bay and the shoreline, protecting the Bay as a natural resource, minimizing filling of the Bay, and — where the shoreline is not required for transportation or industrial uses — providing new recreational facilities and public access, from commercial marinas to trails, piers, beaches, and scenic drives. BCDC affects development of the subject site in two major areas, as described below.

## Port Priority Use Status

Ninth Avenue Terminal is currently designated for Port Priority Use in the San Francisco Bay Area Seaport Plan, which was adopted by the BCDC and the Metropolitan Transportation Commission (MTC), and incorporated into the San Francisco Bay Plan. Although the Seaport Plan allocates an annual future throughput capacity of approximately 340,000 metric tons of break-bulk cargo to Ninth Avenue Terminal, the Seaport Plan also acknowledges that there is little bulk cargo now handled at the Port of Oakland. Redevelopment of Ninth Avenue Terminal to non-maritime uses will require amendment of the Seaport Plan and the Bay Plan to remove the Port Priority Use designation.

To remove a Port Priority Use designation, BCDC must evaluate the impact of the deletion on the region's capacity to handle the waterborne cargo projected to pass through Bay Area ports by 2020. If BCDC determines that eliminating the area from Port use will not negatively affect the region's cargo handling capacity, and will not increase the need to fill the Bay for future port development, then the designation may be removed. The Port will actively participate in seeking the required Seaport Plan amendment.

## Consistency with Public Access Requirements

The San Francisco Bay Plan includes policies that establish requirements for waterfront public access. The Bay Plan states that "maximum feasible public access" to and along the San Francisco Bay should be provided in and through every new development within BCDC jurisdiction. The Bay Plan recog-

nizes visual access to the Bay as a critical aspect of public access.

The BCDC Design Review Board conducts a detailed design analysis of proposed projects, with special regard to public access and associated issues of water-oriented development. The Public Access Design Guidelines indicate that all public access provided through the BCDC permit process should "feel public; be usable by the greatest number and diversity of people, including the physically handicapped; provide, maintain, and enhance visual access; enhance and maintain the visual quality of the shoreline; connect to public areas or thoroughfares, or to other public access areas; take advantage of the Bay setting; and be compatible with the natural features of the shoreline, the project, and adjacent development."

Following successful completion of negotiations with the Master Developer, the Port will serve as the co-applicant for required BCDC approvals.

## 2. Environmental Oversight

The State of California's Department of Toxic Substance Control, the San Francisco Bay Regional Water Quality Control Board, and the Alameda County Health Care Services Agency, among other agencies, may exercise jurisdiction over the property to be developed.

## 3. California Environmental Quality Act (CEQA)

The *Estuary Policy Plan* was subject to environmental review when it was adopted into the *General Plan*. However, adoption

of a Specific Plan is a project subject to the California Environmental Quality Act (CEQA). A Program or Master Environmental Impact Report (EIR) is likely to be the selected approach for environmental review of the Specific Plan.

#### **4. City of Oakland**

The Oak-to-Ninth District is within the jurisdiction of the City of Oakland for land use regulation, planning review and development approvals. The City Council and Planning Commission will be responsible for considering the draft Specific Plan for adoption, and certifying the appropriate environmental documents under CEQA. Public hearings and public comment periods will be included in the City's review and approval process.

City staff will play an active role in the Specific Plan process. The work will be coordinated by the Planning and Zoning staff and Redevelopment Agency staff, but will also involve a broad spectrum of departments including Fire, Public Works, and the Life Enrichment Agency, Parks and Recreation Department.

#### **5. Port of Oakland**

Required project approvals will include reviews and approvals by the Real Estate Committee and the Board of Port Commissioners. The Board must approve all leases and development projects on Port property.

#### **6. Sustainable Development Policies and Guidelines**

The development team should be prepared to take into consideration City and Port of Oakland sustainable development guide-

lines in planning and designing site, water systems, energy systems, interior environment, building materials, waste management systems and transportation systems. The guidelines are in the process of being refined, and include not only measures to protect the environment, but also to support the local economy and promote social equity. Draft summary guideline materials are included in Appendix F. Important considerations will likely include:

- Environmentally responsive site design strategies including, where appropriate and economically feasible, preservation and enhancement of wetland habitat values
- Management of water runoff, with special attention to runoff from vehicle parking and maintenance areas, and piping infrastructure to use reclaimed water anticipated to be available from EBMUD
- Use of natural light and ventilation integrated with electrical controls
- Use of low VOC-emitting materials
- Use of materials that are reusable, recyclable or biodegradable
- Provision for reduction and recycling of waste from demolition, construction, and subsequent building users
- Transportation systems management and transit alternatives

## V. DEVELOPMENT RESPONSIBILITIES

### A. Master Developer's Responsibilities

The Master Developer will plan for and undertake the development of the property consistent with the objectives of the *Estuary Policy Plan*. All development activities shall be undertaken solely at the cost of the Master Developer, with the exception of the jointly funded Specific Plan/CEQA process.

#### 1. Development Planning

- Collaboratively fund a Specific Plan for the entire Oak-to-Ninth District, in partnership with the Port, and fund the associated environmental review process to be undertaken by the City of Oakland as lead agency under the California Environmental Quality Act (CEQA). The Port will match the developer's costs for the Specific Plan and EIR up to a maximum of \$200,000.
- Secure entitlements for the development of the property consistent with the guidelines from the approved Specific Plan.
- Develop a plan for funding infrastructure, including open space.
- Secure financing for and construct backbone infrastructure improvements.

#### 2. Deposit Requirements

- A \$100,000, non-refundable good faith deposit must ac-

company all responses to the RFQ. All of the deposit will be returned to respondents who are not selected for exclusive negotiations.

- At the time the developer submits its letter of intent to enter into a Master Lease with the Port, and prior to transfer of possession of the property, payment of a \$250,000 security deposit will be required. The developer's previous \$100,000 deposit will be credited against this deposit. The security deposit is not deductible against lease payments.
- Entitlement Process - Following selection, the Master Developer, in partnership with the Port, will proceed with the Specific Plan. The Port and the developer will jointly seek all required regulatory approvals. In the implementation process, the developer will have sole financial responsibility for the other parts of the entitlement process, including filing tentative maps, precise development plans, potential property exchanges, and subsequent environmental reviews. The Port will reasonably cooperate with the developer during these processes.

### B. Port's Responsibilities

The Port will assume the following principal responsibilities:

- Work in partnership with the developer to prepare the Specific Plan and review environmental documents prepared by the City. The Port will match the developer's costs for the Specific Plan up to a maximum Port contribution of \$200,000.

- Assist in obtaining key entitlements, including City of Oakland adoption of the Specific Plan and *General Plan* Amendment (if applicable), certification of environmental documents, BCDC approvals and permits, removal of Port Priority Use designation, and agreements as required with the State Lands Commission and other regulatory agencies.
  
- Complete ongoing site characterization studies, risk assessments and corrective action plans, in coordination with the master planning activities. The Port has conducted site characterization studies for some of the property offered in this RFQ (see Appendix B). The Port will also continue to take the lead in negotiations with regulatory agencies to establish reasonable and cost effective solutions to soil and groundwater conditions affecting the site and the site development process. The Port’s environmental team, which has extensive experience in obtaining approval from regulatory agencies and redevelopment of properties that have been impacted by these conditions, utilizes onsite management techniques wherever feasible.
  
- The Port and developer will jointly explore options to make the property available for development, including site clearance and/or tenant relocation, subject to completion of the Specific Plan and negotiation of a master lease. The Port will work with the developer to relocate existing tenants in compliance with applicable laws.