

2014 MAR 27 PM 12:45



Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. 84934 C.M.S.

RESOLUTION CONSENTING TO THE TRANSFER AND ASSIGNMENT OF THE DEVELOPMENT AGREEMENT FOR THE OAK TO NINTH (BROOKLYN BASIN) PROJECT FROM OAKLAND HARBOR PARTNERS, LLC, TO ZARSION-OHP I, LLC, PURSUANT TO THE DEVELOPMENT AGREEMENT AND PLANNING CODE SECTION 17.138.080

WHEREAS, the City of Oakland Planning Commission certified the Environmental Impact Report (EIR) for the Oak to Ninth development project on March 15, 2006; and

WHEREAS, the City of Oakland Planning Commission, on March 15, 2006, (1) certified the Final Environmental Impact Report; (2) conditionally approved Vesting Tentative Tract Map No. 7621; the Preliminary Development Plan; the Oak to Ninth Design Guidelines; and the Conditional Use Permit for activities proposed in the Open Space-Region Serving Park zone (contingent upon General Plan Amendment and Rezoning approvals); (3) recommended to the City Council approval of amendments to the Estuary Policy Plan text and land use map; adoption of the Planned Waterfront Zoning District-4 zoning district, amendments to the zoning maps; approval of a Tree Removal Permit; and approval of the Development Agreement; and (4) adopted a report and recommendations to the Redevelopment Agency and the City Council on adoption of the proposed amendments to the Central City East Redevelopment Plan and the Central District Urban Renewal Plan for an approximately 64.2 acre site bounded by Embarcadero Road, Fallon Street, Tenth Avenue, and the Estuary; and

WHEREAS, the Oakland City Council and the Redevelopment Agency of the City of Oakland (the "Redevelopment Agency"), on July 18, 2006:

- (1) Adopted a resolution denying the appeal of Arthur D. Levy, sustaining the March 15, 2006 Planning Commission actions on the Oak to Ninth Mixed Use Development Project and certifying the Final Environmental Impact Report for the Oak to Ninth Project;
- (2) Adopted a resolution amending the General Plan Estuary Policy Plan to create a new land use designation, Planned Waterfront Development-4, and to adopt land use map and text changes in connection with the Oak to Ninth Avenue Mixed Use Development Project;
- (3) Adopted a Redevelopment Agency Resolution approving and recommending adoption of the second amendment to the Central City East Redevelopment Plan to revise land use designations for the Oak to Ninth Project Site;
- (4) Adopted an ordinance adopting the second amendment to the Central City East

- Redevelopment Plan to revise land use designations for the Oak to Ninth Project Site;
- (5) Adopted a Redevelopment Agency resolution approving and recommending adoption of an amendment to the Central District Urban Renewal Plan to revise land use designations for the Oak to Ninth Project Site;
 - (6) Adopted an ordinance adopting an amendment to the Central District Urban Renewal Plan to revise land use designations for the Oak to Ninth Project Site;
 - (7) Adopted an ordinance of the City of Oakland adopting the Planned Waterfront Zoning District-4 (PWD-4) Oak to Ninth Mixed Use Development Project;
 - (8) Adopted an ordinance of the City of Oakland rezoning property in the Oak to Ninth Avenue Mixed Use Development project site from Heavy Industrial (M-40) to the Planned Waterfront Zoning District-4 (PWD-4) and Open Space-Regional Serving Park (OS-RSP), and from Civic Center/Design Review Combining Zone (S-2/S-4) to the Planned Waterfront Zoning District-4 (PWD-4) and Open Space-Regional Serving Park (OS-RSP);
 - (9) Adopted a resolution approving a Vesting Tentative Tract Map No. 7621, dated 3/8/06, within the Oak to Ninth Planned Waterfront Zoning District-4 (PWD-4);
 - (10) Adopted a resolution approving Preliminary Development Plan, dated February 2006, and Design Guidelines, for the Oak to Ninth Project Site;
 - (11) Adopted an Ordinance of the City of Oakland approving a Development Agreement Between the City of Oakland, the Redevelopment Agency of the City of Oakland, and Oakland Harbor Partners, LLC, for the Oak to Ninth project and Authorizing the City Administrator to Execute the Development Agreement on Behalf of the City;
 - (12) Adopted a Redevelopment Agency Resolution authorizing the Development Agreement with the City of Oakland and Oakland Harbor Partners, LLC; and

WHEREAS, the City, the Redevelopment Agency, and Oakland Harbor Partners, LLC, entered into the Development Agreement for the Oak to Ninth project, now known as the Brooklyn Basin project, on or about August 24, 2006 (the "Development Agreement"); and

WHEREAS, the City, pursuant to California Health and Safety Code Section 34176, elected to retain and assume the housing assets, obligations, and functions of the Redevelopment Agency upon dissolution of the Redevelopment Agency, including the Redevelopment Agency's interests in the Development Agreement; and

WHEREAS, the Development Agreement and the Oakland Planning Code (Section 17.138.080) require City Council consent to a transfer or assignment of any right or interest of the developer in the Development Agreement to a Non-Exempt Transferee as defined in the Development Agreement; and

WHEREAS, Zarsion-OHP I, LLC, a California limited liability company, submitted a letter to the City of Oakland on February 12, 2014, requesting consent to a transfer and assignment of the interests of Oakland Harbor Partners, LLC, in the Development Agreement to Zarsion-OHP I, LLC; and

WHEREAS, Zarsion-OHP I, LLC, is a Non-Exempt Transferee; and

WHEREAS, under the California Environmental Quality Act (CEQA) Guidelines Section 15162, no subsequent environmental review is required unless the project has changed substantially, the circumstances under which the project would occur have changed substantially, or new information demonstrates that any potential environmental impacts would be substantially

more severe than previously demonstrated; and

WHEREAS, in reviewing the currently proposed transfer of interests, staff has determined that none of the circumstances necessitating further environmental review under CEQA Guidelines Section 15162 are present. The reasons for this determination include, among others, the following: (1) the currently proposed transfer of interest does not affect the development envelope previously reviewed in the EIR and is not a change in the project that involves any new significant effects or a substantial increase in the severity of previously identified significant effects; (2) circumstances under which the project is undertaken have not occurred that will involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (3) no new information has come to light that would involve new or substantially more severe effects or feasible alternatives or mitigation measures; and

WHEREAS, the matter came before the Community and Economic Development Committee on April 8, 2014, which recommended approval of the consent; and

WHEREAS, the matter came before the City Council at a duly noticed public hearing on April 22, 2014; now, therefore, be it

RESOLVED: That the City Council, having independently heard, considered and weighed all the evidence in the record and being fully informed of the Applications and the Planning Commission's decision on the Project, hereby finds that, in accordance with CEQA Section 15162, none of the circumstances requiring preparation of a subsequent or supplemental EIR are present for this action; and be it further

RESOLVED: That the City Council hereby consents to the transfer and assignment of the interests of Oakland Harbor Partners, LLC, in the Development Agreement to Zarsion-OHP I, LLC; and be it

FURTHER RESOLVED: That the City Council authorizes the City Administrator to provide written consent to the proposed transfer and assignment and take such other steps as may be necessary and appropriate for the transfer and assignment to be completed; and be it

FURTHER RESOLVED: That the decision is based, in part, on the April 8, 2014 CEDC Report and 2006 certified EIR, which are all hereby incorporated by reference as if fully set forth herein; and be it

FURTHER RESOLVED: That the City Council finds and determines that all of the conditions precedent to the City's consent to the transfer and assignment set forth in the Development Agreement have either been met or waived; and be it

FURTHER RESOLVED: That the City Council independently finds and determines that this Resolution complies with CEQA and the Environmental Review Officer is directed to cause to be filed a Notice of Determination with the appropriate agencies; and be it

FURTHER RESOLVED: That the record before this Council relating to the Project Applications includes, without limitation, the following:

1. the Project Applications, including all accompanying maps and papers;

2. all plans submitted by the Applicant and their representatives;
3. all staff reports, decision letters and other documentation and information produced by or on behalf of the City, including without limitation the EIR and supporting technical studies, all related and/or supporting materials, and all notices relating to the Project Applications and attendant hearings;
4. all oral and written evidence received by the City staff, the Planning commission, and the city Council before and during the public hearings on the Project Applications; and
5. all matters of common knowledge and all official enactments and acts of the city, such as (a) the General Plan; (b) Oakland Municipal Code, including, without limitation, the Oakland real estate regulations and Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and, (e) all applicable state and federal laws, rules and regulations; and be it

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City Council's decision is based are respectively; (a) Community and Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland, California; and be it

FURTHER RESOLVED: That the recitals contained in this resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, APR 22 2014, 20


PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST: 
 LaTonda Simmons
 City Clerk and Clerk of the Council
 of the City of Oakland, California