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CITY OF OAKLAND



ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA  
94612

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April 21, 2009

**HONORABLE REDEVELOPMENT AGENCY AND CITY COUNCIL**  
Oakland, California

President Brunner and Members of the City Council and Redevelopment Agency:

**SUBJECT:** CITY AND AGENCY RESOLUTIONS AUTHORIZING WAIVER OF ANY POTENTIAL CONFLICT OF INTEREST THAT THE LAW FIRM OF COX, CASTLE & NICHOLSON LLP, MAY HAVE AS A RESULT OF REPRESENTING: (1) THE DEVELOPER OF THE OAK TO NINTH PROJECT; AND (2) CLIENTS IN OBTAINING PROJECT APPROVALS FROM THE AGENCY OR CITY, TO ALLOW THE FIRM TO PROVIDE SPECIALIZED LEGAL ADVICE REGARDING BROWNFIELDS & HAZARDOUS MATERIALS LAW TO FACILITATE ECONOMIC AND REDEVELOPMENT PROJECTS IN THE CITY

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**I. Introduction**

The purpose of this report is to request that Council/Agency waive any potential conflict of interest that the City's and Agency's outside environmental counsel, Cox, Castle & Nicholson LLP ("law firm"), may have due to its representation of the Oak to Ninth developer and clients in obtaining land use or project approvals from the City or the Agency. The City Attorney's Office wishes to continue to retain the law firm to provide environmental advice regarding brownfields/hazardous materials law to facilitate economic and redevelopment projects in the city.

There is no legal conflict of interest because there is no connection between the firm's provision of environmental advice to the City and Agency, and the firm's representation of clients on general land use entitlement or other project approvals before the City and Agency.

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However, the City Attorney's Office is requesting that the Council authorize the waiver because of the Council's policy that the City Attorney present such conflict waivers to the Council for approval.

The City Attorney requests that the Council grant the waiver because the law firm has provided excellent legal advice in the past that resulted in cost savings for the City/Agency in the Uptown Project. The law firm also recently provided a free seminar for CEDA staff on the latest cutting-edge strategies to get private parties to pay for hazardous materials cleanup in redevelopment and other areas of the City.

## II. DISCUSSION

The City has granted certain project entitlements to Oakland Harbor Partners for the Oak to Ninth Project, and both the City and Agency have executed a development agreement with the developers. The Oak to Ninth Project is a mixed-use residential, retail, commercial, open space project that will bring both market rate and affordable housing to Oakland.

The law firm has provided and continues to provide project approval advice to Oakland Harbor Partners. The law firm has asked the City and the Agency to waive any potential conflict of interest it may have because it has previously provided environmental advice to the Agency and the City.

There is no legal conflict of interest between the firm's advice to the Oakland Harbor Partners and the firm's environmental law advice to the City and Agency because: (1) the environmental attorney representing the City and the Agency is not involved in the Oak to Ninth Project and has committed not to discuss any confidential matters that he might have obtained with his partners representing Oakland Harbor Partners; and (2) the Oak to Ninth Project is unrelated to any environmental matters the law firm has previously advised the City or Agency about.

The law firm also represents and likely will represent clients who own or may acquire land in the City. Accordingly, the firm advises and likely will advise clients in routine land use entitlement and other project approval work within the jurisdiction of the City and the Agency.

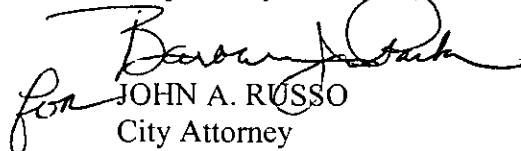
As noted above, the City Attorney's office believes that such representation does not represent an actual conflict of interest. The law firm has agreed that if a potential **actual** conflict of interest arises (for example, a client asks the law firm to sue the City or the Agency over a land use approval), the law firm could **not** represent that client unless and until it sought and obtained approval from the City or Agency. If the City or Agency refused to provide the waiver, the law firm could **not** represent that client against the City or Agency.

## III. CONCLUSION

The City Attorney's Office recommends that the Agency waive the potential conflict of interest of the law firm so that the firm may continue to advise Oakland Harbor Partners and other clients who seek land use approvals or other project approvals from the City or the Agency.

As discussed in this report there is no legal conflict of interest between the law firm's provision of advice in those matters, and the firm's provision of environmental law advice to the City and Agency. If an actual potential conflict arises, the law firm could **not** represent that client unless the City or Agency agreed.

Respectfully submitted,

  
for JOHN A. RUSSO  
City Attorney

Attorney Assigned:  
Dianne M. Millner

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Approved as to Form and Legality

  
Oakland City Attorney's Office

REDEVELOPMENT AGENCY  
OF THE CITY OF OAKLAND

Resolution No. \_\_\_\_\_ C.M.S.

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RESOLUTION AUTHORIZING WAIVER OF ANY POTENTIAL CONFLICT OF INTEREST THAT THE LAW FIRM OF COX, CASTLE & NICHOLSON LLP, MAY HAVE AS A RESULT OF REPRESENTING: (1) THE DEVELOPER OF THE OAK TO NINTH PROJECT; AND (2) CLIENTS IN OBTAINING PROJECT APPROVALS FROM THE AGENCY OR CITY, TO ALLOW THE FIRM TO PROVIDE SPECIALIZED LEGAL ADVICE REGARDING BROWNFIELDS/HAZARDOUS MATERIALS LAW TO FACILITATE ECONOMIC AND REDEVELOPMENT PROJECTS IN THE CITY

**WHEREAS**, Robert Doty, a partner in the law firm of Cox, Castle & Nicholson (the "Firm"), represents the City of Oakland (City) and the Redevelopment Agency as outside counsel in toxics and environmental matters; and

**WHEREAS**, economic and redevelopment projects in the City increasingly involve land with hazardous materials/toxics/brownfields ("environmental law") issues; and

**WHEREAS**, environmental law is a specialized area of law, and the City Attorney's office does not have an attorney trained this area; and

**WHEREAS**, Mr. Doty has previously provided excellent advice regarding environmental law strategies to lower or eliminate the cost of toxic cleanup to facilitate economic and redevelopment in the City; and

**WHEREAS**, Mr. Doty's Firm represents Oakland Harbor Partners (OHP) in connection with the Oak to Ninth project in Oakland and currently advises clients and will probably advise other clients in the future in obtaining from the Agency or City land use entitlements or other real estate project related approvals; and

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**WHEREAS**, because Mr. Doty represents the Agency and the City in environmental matters, the Firm's representation of OHP and other clients in land use entitlement and other project related approvals potentially raises a conflict of interest; and

**WHEREAS**, Mr. Doty does not and would not represent OHP regarding the Oak to Ninth Project; other attorneys in the Firm would represent OHP; and

**WHEREAS**, the Firm has agreed not to represent any client in a matter which raises an actual potential conflict of interest unless the Agency or the City (as the case may be) first approves, and if it doesn't approve, the Firm could not represent that client in the matter; and

**FURTHER RESOLVED**: That the Agency waives the Firm's potential conflict of interest and allows the Firm to represent OHP and other clients in obtaining land use entitlements or other project approvals from the Agency without such representation being considered an actual conflict of interest; and be it

**FURTHER RESOLVED**: That this waiver of the conflicts of interest is conditioned on the Firm's agreement not to represent any client in a matter which raises an actual potential conflict of interest without first obtaining approval from the City or Agency, as the case may be, and that if approval is not obtained, the Firm will not represent the client in that matter.

**IN AGENCY, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2009**

**PASSED BY THE FOLLOWING VOTE:**

**AYES-** DE LA FUENTE, KERNIGHAN, QUAN, BROOKS, REID, KAPLAN AND CHAIRPERSON BRUNNER,

**NOES-**

**ABSENT-**

**ABSTENTION-**

Attest: \_\_\_\_\_

LaTonda Simmons  
SECRETARY OF THE REDEVELOPMENT AGENCY  
OF THE CITY OF OAKLAND

**10.3-1CC**  
**ORA/COUNCIL**

**APR 21 2009**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

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Approved as to Form and Legality

  
Oakland City Attorney's Office

## OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.

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RESOLUTION AUTHORIZING WAIVER OF ANY POTENTIAL CONFLICT OF INTEREST THAT THE LAW FIRM OF COX, CASTLE & NICHOLSON LLP, MAY HAVE AS A RESULT OF REPRESENTING: (1) THE DEVELOPER OF THE OAK TO NINTH PROJECT; AND (2) CLIENTS IN OBTAINING PROJECT APPROVALS FROM THE AGENCY OR CITY, TO ALLOW THE FIRM TO PROVIDE SPECIALIZED LEGAL ADVICE REGARDING BROWNFIELDS/HAZARDOUS MATERIALS LAW TO FACILITATE ECONOMIC AND REDEVELOPMENT PROJECTS IN THE CITY

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**WHEREAS**, economic and redevelopment projects in the City increasingly involve land with hazardous materials/toxics/brownfields ("environmental law") issues; and

**WHEREAS**, environmental law is a specialized area of law, and the City Attorney's office does not have an attorney trained this area; and

**WHEREAS**, Mr. Doty has previously provided excellent advice regarding environmental law strategies to lower or eliminate the cost of toxic cleanup to facilitate economic and redevelopment in the City; and

**WHEREAS**, Mr. Doty's Firm represents Oakland Harbor Partners (OHP) in connection with the Oak to Ninth project in Oakland and currently advises clients and will probably advise other clients in the future in obtaining from the Agency or City land use entitlements or other real estate project related approvals; and

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**WHEREAS**, Mr. Doty does not and would not represent OHP regarding the Oak to Ninth Project; other attorneys in the Firm would represent OHP; and

**WHEREAS**, the Firm has agreed not to represent any client in a matter which raises an actual potential conflict of interest unless the Agency or the City (as the case may be) first approves, and if it doesn't approve, the Firm could not represent that client in the matter; now therefore be it

**RESOLVED**: That the Agency waives the Firm's potential conflict of interest and allows the Firm to represent OHP and other clients in obtaining land use entitlements or other project approvals from the Agency without such representation being considered an actual conflict of interest; and be it.

**FURTHER RESOLVED**: That this waiver of the conflicts of interest is conditioned on the Firm's agreement not to represent any client in a matter which raises an actual potential conflict of interest without first obtaining approval from the City or Agency, as the case may be, and that if approval is not obtained, the Firm will not represent the client in that matter.,

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - DE LA FUENTE, KERNIGHAN, NADEL, QUAN, BROOKS, REID,  
KAPLAN, AND PRESIDENT BRUNNER

NOES -  
ABSENT -  
ABSTENTION -

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California

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