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OAKLAND

OAKLAND CITY COUNCIL

2004 FEB -4 AM 9: 51

RESOLUTION NO. 78358 C.M.S.

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

**RESOLUTION APPROVING THE APPLICATIONS OF THE DESILVA GROUP TO CLOSE THE LEONA QUARRY, RECLAIM IT AND REDEVELOP THE SITE FOR 477 RESIDENTIAL UNITS AT 7100 MOUNTAIN BOULEVARD IN COMPLAINECE WITH ALAMEDA SUPERIOR COURT ORDER (Action No. RG-03077607)**

**WHEREAS**, on July 30, 2001, in accordance with the California Environmental Quality Act ("CEQA"), City staff issued an Initial Study and Notice of Preparation ("NOP") indicating an intent to prepare an Environmental Impact Report for the Leona Quarry project, including the requested Zoning Boundary Line Adjustment ("ZBA"), Planned Unit Development ("PUD") permit, Vesting Tentative Map ("VTM"), Design Review and Variances; and

**WHEREAS**, on August 8, 2001, the Planning Commission conducted a public hearing to solicit comments on the NOP; and

**WHEREAS**, on June 11, 2002, a Draft EIR ("DEIR"), State Clearinghouse No. 199904205, was released by the City for a 49-day public review and comment period, which reviewed and evaluated the environmental impact of both the original proposal to develop 564 residential units, an approximately 10,000 square foot commercial center, an approximately 6,000 square foot community center and related urban facilities and the "Modified Plan" which would develop 477 residential units and an approximately 2,300 square foot community center and related urban facilities; and

**WHEREAS**, on July 17, 2002, the Planning Commission conducted a public hearing to provide the public with an additional opportunity to comment on the DEIR; and

**WHEREAS**, on September 23, 2002, a document entitled "Leona Quarry Final Environmental Impact Report" ("FEIR"), which responded to comments received by the City on the DEIR and provided a more detailed analysis of the Modified Plan was released; and

**WHEREAS**, on October 2, 2002, the Planning Commission conducted a public hearing and took testimony regarding the Modified Plan, the DEIR and the FEIR; and

**WHEREAS**, on October 23, 2002, the Planning Commission conducted another public hearing on and took testimony regarding the Modified Plan, the DEIR and the FEIR; and

**WHEREAS**, at the Planning Commission hearing on October 23, 2002, the Planning Commission determined that the EIR (consisting of the DEIR, Responses to Comments and other information presented in the FEIR) was adequate for decision-making on the requested land use entitlements and certification of the EIR; and

**WHEREAS**, the Planning Commission, including the Design Review Committee of the Planning Commission and the Special Projects Committee of the Planning Commission, duly noticed and conducted a total of 7 public hearings and 4 study sessions sponsored by the project applicant regarding the proposed development of the Leona Quarry, including the requested land use entitlements, between April, 2001 and October 23, 2002; and

**WHEREAS**, on October 23, 2002, the Planning Commission recommended that the City Council approve the ZBA, certified the EIR, adopted CEQA Findings and a Statement of Overriding Considerations, adopted a Mitigation Monitoring and Reporting Program, adopted General Findings and adopted accompanying Conditions of Approval, approved a PUD permit, approved a VTM, approved Design Review and approved certain Variances; and

**WHEREAS**, on November 4, 2002, Maureen Dorsey filed an appeal (“Dorsey Appeal”) of the Planning Commission’s certification of the DEIR and FEIR, approval of the land use entitlements and recommendations and requested that the City Council reduce the density of the Modified Plan; and

**WHEREAS**, on November 15, 2002, the City Council duly noticed a public hearing at which all interested members of the public were allowed to voice their opinions on the Dorsey Appeal, Modified Plan land use entitlements, and proposed ZBA; and

**WHEREAS**, on December 3, 2002, the City Council conducted a public hearing on and took testimony regarding the Dorsey Appeal, Modified Plan, DEIR and FEIR and the proposed ZBA; and

**WHEREAS**, on December 3, 2002, the City Council, having fully reviewed, considered and evaluated the DEIR and FEIR, staff reports, public testimony and all documents and other evidence submitted on this matter, resolved to take certain actions; and

**WHEREAS**, on December 3, 2002, the City Council certified the DEIR and FEIR as adequate for the ZBA and Ordinance 12457, An Ordinance of the City of Oakland Adjusting the Zoning District Boundary Line for the Leona Quarry Property Located at 7100 Mountain Blvd., So That the R-50 (Medium Density Residential) Is Designated for the Lower Development Area Consistent with the Approved Planned Unit Development for the Leona Quarry Residential Project, was introduced and passed to print; and

**WHEREAS**, on December 3, 2002, the City Council adopted Resolution No. 77544, Resolution Denying the Appeal of Maureen Dorsey and Sustaining the Decision of the City Planning Commission in Approving the Applications of the DeSilva Group to Close the Leona Quarry, Reclaim It and Redevelop the Site for 477 Residential Units at 7100 Mountain Blvd.,

which Resolution certified the DEIR and FEIR as adequate for, and approved, a PUD permit, VTM, Design Review and Variance applications for the Modified Plan; and

**WHEREAS**, on December 17, 2003, Ordinance 12457 was adopted by the Council; and

**WHEREAS**, on January 2, 2003, a proceeding was initiated in the Alameda County Superior Court entitled *Dorsey v. City of Oakland*, Action No. RG-03077607 challenging CEQA compliance for Ordinance 12457 and Resolution 77544; and

**WHEREAS**, in the *Dorsey v. City of Oakland* proceeding, on August 5, 2003 the court entered final judgment on the CEQA claims by issuing an “Amended Judgment Granting Petition For Writ of Mandate” (“Amended Judgment”) and on August 29, 2003 the court issued a “Second Amended Peremptory Writ of Mandate” (“Second Amended Writ” or “Writ”); and

**WHEREAS**, the Amended Judgment and Writ stayed the force and effect of Ordinance 12457 pending a showing that decisions arising from the subsequent EIR process require the Court to take further action; remanding the matter to the City Council; ordered the City to set aside certification of the EIR and set aside the approvals issued pursuant to Resolution 77544 until a subsequent EIR was prepared with regard to only that portion of the EIR dealing with hydrological issues; and ordered that, as to the Geology segment of the EIR, additional review was ordered only if changes arising out of matters related to hydrology resulted in changes to the geology analysis in accord with standards set forth in CEQA Guideline 15162; and

**WHEREAS**, Ordinance 12457 remains valid, but its force and effect has been stayed by the court in the *Dorsey v. Oakland* proceeding; and

**WHEREAS**, on August 18, 2003, City staff issued an NOP indicating an intent to prepare a Subsequent Environmental Impact Report (“SEIR”) to comply with the Amended Judgment and Second Amended Writ; and

**WHEREAS**, on October 23, 2003, City staff issued a Notice of Availability of a Draft Subsequent Environmental Impact Report For The Leona Quarry Project (DSEIR), and solicited public comment during a comment period initially scheduled to conclude on December 8, 2003, and later extended to conclude on December 22, 2003; and

**WHEREAS**, on November 19, 2003, the Planning Commission conducted a public hearing to provide the public with an additional opportunity to comment on the DSEIR; and

**WHEREAS**, on January 14, 2004, a document entitled “Leona Quarry Final Subsequent Environmental Impact Report” (“FSEIR”), which responded to comments received by the City on the DSEIR was released; and

**WHEREAS**, the DEIR and FEIR, as revised and supplemented by the DSEIR and FSEIR, comprise the “EIR” for the Land Use Entitlements approved by this Resolution; and

**WHEREAS**, on January 21, 2004, the Planning Commission conducted another public hearing on and took testimony regarding the Leona Quarry Modified Plan, and the EIR, and made recommendations to the Council that it certify the EIR, and that it re-approve the PUD permit, VTM, Design Review and Variance applications for the Modified Plan, all as revised by the mitigation measures in the EIR; and

**WHEREAS**, on February 17, 2004, the City Council conducted another public hearing on and took testimony regarding the Leona Quarry Modified Plan and the EIR; and

**WHEREAS**, the SEIR was prepared in accordance with the Amended Judgment, the Second Amended Writ and CEQA; and

**WHEREAS**, all documents comprising the EIR were made available to responsible agencies and the public for review and comment in accordance with CEQA; and

**WHEREAS**, the Project Applicant and all other interested parties were given opportunities to participate in all public hearings by submittal of oral and written comments.

**NOW, THEREFORE, BE IT RESOLVED** that the City Council, as the final decision making body of the lead agency, sets aside certification of the DEIR and FEIR and the approvals issued pursuant to Resolution 77544 to the extent required by the Amended Judgment and Second Amended Writ.

**FURTHER RESOLVED:** That the City Council, as the final decision making body of the lead agency, makes the following certifications:

- 1) The EIR has been completed in compliance with the Amended Judgment, the Second Amended Writ, CEQA, and the City’s Environmental Review Regulations, all as more specifically set forth in Exhibit A of this Resolution;
- 2) The EIR reflects the lead agency’s independent judgment;
- 3) The City Council, as the final decision-making body of the lead agency, was presented with and reviewed and considered all information in the EIR before approving the project that is subject to this Resolution, as more specifically set forth in Exhibit A to this Resolution;

**FURTHER RESOLVED:** That the City Council, as the final decision making body of the lead agency, adopts all the CEQA findings set forth in Exhibit A – CEQA Findings and Statement of Overriding Considerations Related to Approval of the Leona Quarry Project by the Oakland City Council.

**FURTHER RESOLVED:** That, the City Council, as the final decision-making body of the lead agency, adopts all of the mitigation measures identified in the EIR as the Mitigation Monitoring and Reporting Program (MMRP), as set forth as Exhibit B to this Resolution, and directs the City Manager to ensure that these are duly and diligently implemented and enforced.

**FURTHER RESOLVED:** That the City Council approves the PUD permit, VTM, Design Review and Variance applications (collectively, “Land Use Entitlements”) for the Modified Plan, as revised by the mitigation measures in the EIR, and approves these Land Use Entitlements based in part on the reasons set forth in the General Findings, contained in Exhibit D to this Resolution and incorporated by this reference.

**FURTHER RESOLVED:** That the City Council adopts the Conditions of Approval (“COA”) of the foregoing Land Use Entitlements contained in Exhibit C to this Resolution, which is incorporated by this reference.

**FURTHER RESOLVED:** That the City Council makes the further findings contained in Exhibit D to this Resolution, which are incorporated by this reference.

**FURTHER RESOLVED:** That the City staff is directed to undertake the clerical task of amending the approved MMRP and/or the COA, if necessary, to conform to this Resolution.

**FURTHER RESOLVED:** That the Land Use Entitlements approved by this Resolution shall not take effect until the court in the *Dorsey v. Oakland* proceeding lifts the stay of the force and effect of Ordinance 12457.

**FURTHER RESOLVED:** That the Council 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.

**FURTHER RESOLVED:** That the record before this Council relating to this reconsideration and project applications include, without limitation, the information set forth in Exhibit C, all final staff reports and final documentation and information produced by or on behalf of the City, including without limitation the Draft and Final EIRs, the Draft and Final SEIRs, and supporting final technical studies and appendices, and all related and supporting material, and all final notices relating to the application and attendant hearings and meetings; all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the Leona Quarry project; all written evidence received by relevant City staff before and during public hearings on the application; and all matters of common knowledge and all official enactments of the City such as the General Plan, Oakland Municipal Code, Oakland Fire Code, Oakland Planning Code, other applicable City policies and regulations and all applicable state and federal laws, rules and regulations.

**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: 1) the Community and Economic Development Agency (CEDA),

Planning Division, 250 Frank Ogawa Plaza, suite 3300, Oakland, CA and 2) the Office of the City Clerk, 1 Frank Ogawa Plaza, 1<sup>st</sup> Floor, Oakland, CA.

**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, February 17, 2004

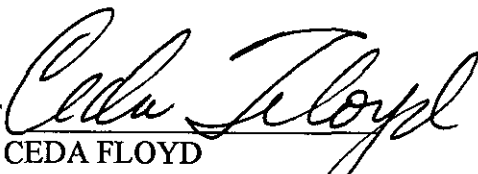
**PASSED BY THE FOLLOWING VOTE:**

AYES: BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND  
PRESIDENT DE LA FUENTE - 8

NOES: 0

ABSENT: 0

ABSTENTION: 0

ATTEST   
CEDA FLOYD  
City Clerk and Clerk of the Council of the  
City of Oakland, California

Attachments (4)

Exhibit "A", CEQA Findings;

Exhibit "B", CEQA Mitigation Monitoring and Reporting Program;

Exhibit "C", Conditions of Approval;

Exhibit "D", General Findings.