

2016 FEB -3 PM 4:30

OAKLAND CITY COUNCIL

RESOLUTION NO. 86006 C.M.S.

RESOLUTION DENYING APPEAL CASE FILE PUD06010-PUDF02-A01 AND UPHOLDING THE DECISION BY THE OAKLAND CITY PLANNING COMMISSION TO APPROVE THE BROOKLYN BASIN SHORELINE PARK FINAL DEVELOPMENT PERMIT; ACTION TAKEN IN RELIANCE ON PREVIOUSLY CERTIFIED 2009 ENVIRONMENTAL IMPACT REPORT (CEQA GUIDELINES 15162, 15183)

WHEREAS, on December 16, 2015, the Planning Commission held a public hearing and approved an application submitted by Zarsion-OHP 1, LLC (ZOHP or Applicant) for a Final Development Permit (FDP) for Shoreline Park, related to the Brooklyn Basin Planned Unit Development (PUD); and

WHEREAS, on June 20, 2006 and July 18, 2006, the City Council and the Oakland Redevelopment Agency took the following actions with respect to the approval of the Brooklyn Basin Project: (1) approved Resolution 79981 C.M.S. denying an administrative appeal of the Planning Commission actions (including approval of a Planned Unit Development) and certifying the EIR; (2) approved Resolution 79982 C.M.S. amending the General Plan Estuary Policy Plan; (3) approved Resolution 2006-0045 C.M.S. regarding amending the Central City East Redevelopment Plan; (4) adopted Ordinance 12756 amending the Central City East Redevelopment Plan; (5) approved Resolution 2006-0046 C.M.S. regarding amending the Central District Urban Renewal Plan; (7) adopted Ordinance 12758 C.M.S. creating the Planned Waterfront Zoning District-4 (PWD-4); (8) adopted Ordinance 12759 C.M.S. rezoning property in the Project site; (9) approved Resolution 79984 C.M.S. for the vesting tentative map 7621; (10) approved Resolution 2006-0047 C.M.S. authorizing the development agreement; (12) adopted Ordinance 12760 C.M.S. approving a development agreement; (13) approved Resolution 2006-0060 C.M.S. authorizing a cooperation agreement; (14) adopted Exhibits A through D to the approval documents, consisting of the CEQA Findings and Statement of Overriding Consideration, the Mitigation Monitoring and Reporting Program, Conditions of Approval, and General Findings; and

WHEREAS, on January 20, 2009, the Oakland City Council approved Resolution 81769 C.M.S rescinding certification of the Oak to Ninth Project Environmental Impact Report , approving revisions to the analysis in the EIR, recertifying the EIR as revised, and readopting the CEQA findings and Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program as revised; and

WHEREAS, The adopted PWD-4 zoning regulations and Planned Unit Development (PUD) require approval of a Final Development Permit prior to issuance of building permits for each phase of the PUD; and

WHEREAS, the Applicant submitted a complete application for the Shoreline Park FDP in February 2015; and

WHEREAS, the FDP application was subject to eight public hearings, two community meetings hosted by the Applicant and one public meeting held by the Bureau of Planning between April and December 2015; and

WHEREAS, the FDP application was agendized for the Planning Commission hearing of December 16, 2015, and public notices were duly distributed; and

WHEREAS, the Planning Commission staff report was published in a timely manner on December 11, 2015 and made available online at Oaklandnet.com as a public courtesy on the same date; and

WHEREAS, on December 16, 2015, the Planning Commission independently reviewed, considered, and determined that the Project is subject to the Oak to Ninth Avenue Project Environmental Impact Report and, that because the FDP is refinement of, and not a substantive change to, the approved project, no further environmental review is required. None of the circumstances that require a supplemental or subsequent EIR pursuant to CEQA Guidelines Section 15162 have occurred; and

WHEREAS, on December 16, 2015, the Planning Commission approved the FDP application, subject to CEQA findings, the Planned Waterfront Zoning District-4(PWD-4) Findings for FDP findings, and design review findings, and previously adopted mitigation measures and conditions of approval; and

WHEREAS, on December 24, 2015, the Appellants, Leal Charonnat, Daniel Franco and Eve Tolmach (together, "Appellants") filed a timely Appeal (case file PUD06010-PUDF02-A01) of the Planning Commission's decision to approve the Shoreline Park FDP; and

WHEREAS, after giving due notice to the Appellants, the Applicant, supporters of the application, those opposed to the application and interested neutral parties, the Appeal came before the City Council in a duly noticed public hearing on February 16, 2016; and

WHEREAS, the Appellants, the Applicant, supporters of the application, those opposed to the application and interested neutral parties were given ample opportunity to participate in the public hearing by submittal of oral and/or written comments; and

WHEREAS, the public hearing on the Appeal was closed by the City Council on February 16, 2016; now, therefore, be it

RESOLVED: The City Council independently finds and determines that the Project is subject to the Oak to Ninth Avenue Project Environmental Impact Report and, that because the FDP is refinement of, and not a substantive change to, the approved project, no further environmental review is required. None of the circumstances that require a supplemental or subsequent EIR pursuant to CEQA Guidelines Section 15162 have occurred, and the Environmental Review Officer is directed to cause to be filed a Notice of Determination/Exemption with the appropriate agencies; and be it

FURTHER RESOLVED: That the City Council, having independently heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the Application, the Planning Commission's decision, and the Appeal, hereby finds and determines that the Appellants have **not** shown, by reliance on appropriate/proper evidence in the record, that the Planning Commission's decision was made in error, that there was an abuse of discretion by the Planning Commission, or that the Planning Commission's decision was not supported by substantial evidence in the record. This decision is based, in part, on the February 16, 2016, City Council Agenda Report and the December 16, 2015 Planning Commission staff report, both of which are hereby incorporated by reference as if fully set forth herein, on the reports and testimony provided at the hearing, and on the City's General Plan, Planning Code, and other planning regulations as set forth below; and be it

FURTHER RESOLVED: That the Appeal is hereby denied, and the Planning Commission's decision to approve the Brooklyn Basin Shoreline Park FDP is upheld, subject to the findings for approval, additional findings, and conditions of approval adopted by the Planning Commission, each of which is hereby separately and independently adopted by this Council in full; and be it

FURTHER RESOLVED: That, in support of the City Council's decision to deny the Appeal and approve the Project, the City Council affirms and adopts as its own independent findings and determinations: (i) the February, 2016 City Council Agenda Report, including without limitation the discussion, findings and conclusions (each of which is hereby separately and independently adopted by this Council in full), and (ii) the December 16, 2015 Planning Commission staff report approving the Project, including without limitation the discussion, findings, additional findings, conclusions, and conditions of approval (each of which is hereby separately and independently adopted by this Council in full); and be it

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

1. the Application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and its representatives;
3. the notice of appeal and all accompanying statements and materials;
4. all final staff reports, final decision letters, and other final documentation and information produced by or on behalf of the City, including without limitation all related/supporting final materials, and all final notices relating to the Application and attendant hearings;
5. all oral and written evidence received by the Planning Commission and City Council before and during the public hearings on the Application and Appeal;

and all written evidence received by relevant City Staff before and during the public hearings on the Application and Appeal; and

6. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan; (b) the Oakland Municipal Code; (c) the 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 located at (a) the Planning and Building Department, Planning and Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, First Floor, Oakland, California; and be it

FURTHER RESOLVED: That per standard City practice, if litigation is filed challenging this decision, or any subsequent implementing actions, then the time period for obtaining necessary permits for construction or alteration and/or commencement of authorized construction-related activities stated in any applicable conditions of approval or regulations is automatically extended for the duration of the litigation; 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, FEB 16 2016

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, CAMPBELL-WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, REID AND PRESIDENT GIBSON MCELHANEY — 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

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

LEGAL NOTICE:

PURSUANT TO OAKLAND MUNICIPAL CODE SECTION 17.136.090, THIS DECISION OF THE CITY COUNCIL IS FINAL IMMEDIATELY AND IS NOT ADMINISTRATIVELY APPEALABLE. ANY PARTY SEEKING TO CHALLENGE SUCH DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE DATE OF THIS DECISION, UNLESS A DIFFERENT DATE APPLIES.