

APR 12 2007

CITY OF OAKLAND



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April 3, 2007

HONORABLE REDEVELOPMENT AGENCY AND CITY COUNCIL
Oakland, California

President De La Fuente and Members of the City Council and Redevelopment Agency:

SUBJECT: RESOLUTION AUTHORIZING WAIVER OF ANY POTENTIAL CONFLICT OF INTEREST THAT THE LAW FIRM OF COX, CASTLE & NICHOLSON LLP, MAY HAVE AS A RESULT OF: (1) REPRESENTING THE DEVELOPER OF THE OAK TO NINTH PROJECT; AND (2) REPRESENTING CLIENTS IN OBTAINING LAND USE ENTITLEMENTS OR OTHER PROJECT APPROVALS FROM THE AGENCY OR CITY

I. Introduction

The City and Redevelopment Agency have previously retained the law firm of Cox, Castle & Nicholson LLP ("law firm") to represent them in environmental and hazardous materials matters. This report asks the City and the Agency to allow the law firm to continue providing such advice by waiving any potential "conflict of interest" that the law firm may have because the firm (1) has provided and is providing land use and real estate advice to the developers of the Oak to Ninth Project, Oakland Harbor Partners; and (2) represents clients in obtaining land use entitlement or other project approvals from the City and Agency, as long as the representation does not create an actual conflict of interest that could prejudice the interests of the City or the Agency.

There is not a **legal** conflict of interest because: (1) there is no connection between the firm's provision of environmental advice to the City and Agency, and the firm's provision of general real estate and land use entitlement advice to Oakland Harbor Partners in the Oak to

April 3, 2007

Ninth Project; and (2) there is no connection between the firm's representation of clients on general land use entitlement or other project approvals before the City and the Agency, absent a potential **actual** conflict of interest that might arise in the future; For example, if one of the firm's clients wanted to retain the law firm to sue the City or the Agency over a land use or project entitlement, the law firm would **not** be able to represent the client in that matter unless and until the law firm obtained a specific waiver from the Agency or City. Therefore, the interests of the City and the Agency would not be compromised.

The City Attorney's Office is presenting the firm's "conflict waiver" requests because it is the Agency's and City's practice to review retention of outside counsel that is or may be in an adverse position to the City in other matters, regardless of whether there is any legal conflict.

II. SUMMARY OF THE ISSUE

The question is whether the City and the Redevelopment Agency should waive the potential conflicts of interest of the City's and Agency's outside environmental counsel to allow the firm to: (1) represent the developers of the Oak to Ninth Project; and (2) represent clients in obtaining land use or project approvals from the City or the Agency, absent an actual conflict of interest.

III. RECOMMENDATION

The decision ultimately is a policy question for the body to decide. From a legal standpoint, the City Attorney's Office recommends that the Agency waive any potential conflict because there is no legal conflict of interest as discussed in the introduction to this report.

The law firm is experienced in environmental and hazardous materials law and has represented the Agency and the City well in past matters. Moreover, the City Attorney's office currently needs environmental advice on at least one somewhat urgent matter and will likely need similar advice in the near future on other matters.

The firm has agreed not to allow the attorney in the firm who is providing environmental law advice to the City and Agency to discuss with or disclose to his fellow lawyers representing other clients in Oakland land use or entitlement or other project related matters any information he may have obtained from advising the City or Agency.

IV. DISCUSSION

A. Oak to Ninth Project

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.

Item: _____
April 3, 2007

April 3, 2007

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; (2) the Oak to Ninth Project is unrelated to any environmental matters the law firm has previously advised the City or Agency about.

B. General Waiver for Routine Project Entitlement Work

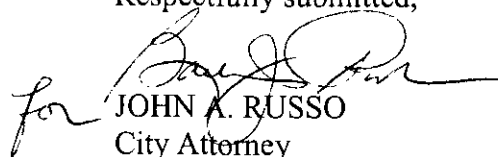
The law firm represents and likely will represent clients who own or may acquire land in the City. Accordingly, the firm advises and likely will advise clients in routine land use entitlement and other project approval work within the jurisdiction of the City and the Agency.

As noted above, the City Attorney's office believes that such representation does not represent an actual conflict of interest. CNN 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.

V. CONCLUSION

From a legal standpoint, 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 advise 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 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

Item: _____
April 3, 2007

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Approved as to Form and Legality


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. _____ C.M.S.

RESOLUTION AUTHORIZING WAIVER OF ANY POTENTIAL CONFLICT OF INTEREST THAT THE LAW FIRM OF COX, CASTLE & NICHOLSON LLP, MAY HAVE AS A RESULT OF: (1) REPRESENTING THE DEVELOPER OF THE OAK TO NINTH PROJECT; AND (2) REPRESENTING CLIENTS IN OBTAINING LAND USE ENTITLEMENTS OR OTHER PROJECT APPROVALS FROM THE AGENCY OR 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, the Firm represents Oakland Harbor Partners (OHP) in connection with the Oak to Ninth mixed use residential, retail, open space project in Oakland; and

WHEREAS, the Firm represents and likely will represent clients who own property in Oakland; and

WHEREAS, the Firm 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

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 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

WHEREAS, the Firm's representation of OHP could facilitate redevelopment of the Oak to Ninth Project area, and help eradicate blight in the Project Area; now, therefore, be it

RESOLVED: That the City waives the Firm's potential conflict of interest and allows the Firm to represent OHP regarding the redevelopment of the Oak to Ninth Project ; and be it

FURTHER RESOLVED: That the City waives the Firm's potential conflict of interest and allows the Firm to represent clients in obtaining land use entitlements or other project approvals from the City 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 - BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, QUAN,
REID, AND PRESIDENT DE LA FUENTE

NOES –
ABSENT –
ABSTENTION –

ATTEST:

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

2007 MAR 22 PM 12: 03



REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

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FURTHER RESOLVED: That the Agency waives the Firm's potential conflict of interest and allows the Firm to represent 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, _____, 2007

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

Attest: _____

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