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OAKLAND CITY COUNCIL

RESOLUTION NO. 78359 C.M.S.

REVISED

INTRODUCED BY COUNCILMEMBER _____

78358

RESOLUTION MODIFYING RESOLUTION NO. REGARDING THE LEONA QUARRY RESIDENTIAL PROJECT AT 7100 MOUNTAIN BOULEVARD

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 enacted 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, comprised the “EIR” for the PUD, VTM, Design Review and Variance that were approved in the Reapproval Resolution referenced below; 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, on February 17, 2004, the City Council certified the EIR as revised and supplemented by the SEIR, and approved the PUD permit, VTM, Design Review and Variance applications for the Modified Plan, all as revised by the mitigation measures in the EIR in Resolution No. _____ (the "Re-approval Resolution"); and

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WHEREAS, the Project Applicant, the petitioners in the *Dorsey v. Oakland* proceeding and the City negotiated a settlement agreement ("Settlement Agreement") pursuant to which the City agreed to consider in good faith whether to modify the Leona Quarry project as set forth in that agreement, and the Council adopted Resolution 78285 authorizing the City Attorney to execute that agreement; and

WHEREAS, as documented in the staff report for this Council meeting, in the SEIR, and other evidence in the record before the Council, the project modifications proposed in the Settlement Agreement will not involve any new or more severe significant impacts, there are no substantial changes with respect to the circumstances under which the project was approved that involve new or substantially more severe significant environmental impacts, and no significant new information has come to light that would indicate new or more significant impacts, or substantially different or feasible mitigation measures or alternatives the project sponsor refuses to adopt; 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, modifies the conditions of approval of the PUD permit, VTM, Design Review and Variance adopted in the Re-approval Resolution to include the following:

Modification 1 Stormwater Management System.

The Project Applicant will provide on-site capacity for detention of storm water flows by increasing the detention capacity on the entire Project site to 25 acre-feet. Certain details regarding the detention basin are set forth in the attached Hydrology Exhibit, HYD- 1. The City will obtain from its peer reviewer for Project hydrology, Philip Williams and Associates, Ltd. (PWA), concurrence on how to use the 25 acre feet of detention capacity to reduce existing stormflows downstream from the Project site by meeting the following minimum standards, using parameters recommended by PWA in its reports dated November 20, 2002, and June 10, 2003, including modeling Ponds 1 and 2 as initially empty. The minimum standards are: post-project, 25-year, 24-hour peak flows from the site not to exceed 172 cfs; and post-project, 100-year, 24-hour peak flows from the site to be equal to or less than the existing peak flows from the site. The Project Applicant will implement the recommendations from PWA regarding use of the 25 acre feet of detention capacity, and the City will have PWA determine

whether these PWA recommendations have been implemented. Upon completion of the stormwater management system, the City will obtain a letter from PWA confirming that the system has been completed in substantial conformance with these PWA recommendations. Promptly after its receipt thereof, the City will provide copies of the PWA letter to Petitioners in the *Dorsey v. Oakland* proceeding and to the Project Applicant. This modified basin includes three acre-feet of water quality treatment capacity in addition to the 25 acre feet of detention capacity. This modification supersedes the portions of Condition of Approval 23a, Mitigation Measure F.1a and Alternate Mitigation Measure F.1a that (a) specify a 15.6 acre-foot detention capacity, (b) pertain to use of Ridgmont Pond for detention, and (c) that specify a 20.3 acre-foot detention capacity basin, to the extent this Resolution supersedes the Re-approval resolution.

Modification 2 Substitution Of Cash Contribution For Gateway Senior Housing Component; Unit Limitation.

(a) The Gateway Senior Housing component of the Project is excluded, and the area on which that component was to be constructed will be landscaped for passive uses and improved for ride-sharing activities as shown on the attached Gateway Area Exhibit, GW- 1. This area will not be utilized for housing or commercial uses. This modification makes Condition of Approval No. 42 and all other Conditions of Approval relating to the Gateway Senior Housing component moot, and the Project Applicant shall not be required to comply with those conditions.

(b) The number of residential units on the Lower Development Area (as that term is used in the FEIR) of the site is limited to the remaining 404 residential units included in the Lower Development Area. This provision shall not limit the ability to remodel or replace structures on the Project site.

(c) The Project Applicant will contribute Five Hundred Thousand Dollars (\$500,000.00) to support alternate senior affordable housing project(s) selected and approved by the City Council. The Project Applicant will fund the \$500,000.00 at the time the City has approved an alternate project consistent with this paragraph. Initially, for a period not to exceed one (1) year from the date this Resolution becomes effective, the \$500,000 will be set aside for an affordable senior housing project at the Eastmont Town Center, if such a project is approved by the City and pursued by the applicant. Thereafter, if an affordable senior housing project at the Eastmont Town Center does not move forward, the City Council shall review and consider other, similar projects and shall redesignate the funds to a specific project.

Modification 3 Emergency Vehicle Access (EVA) Improvements.

(a) Altura Place EVA: 1) The constructed EVA to Altura Place will be designed as a maintenance road for the development in order to discourage pedestrian and bicycle access to and from the Project and Altura Place. 2) The EVA roadway will be 12' wide following the alignment, configuration and details depicted in the attached EVA Exhibits: Altura Place, Exhibit EVA-1; Gate Detail, Exhibit EVA-2; Altura Photographs, Exhibit EVA-3; and Legal Description, Exhibit EVA-4. 3) The 12' wide gate will be 6' tall, and locked with a chain and padlock. 4) An Oakland Fire Department approved "Knox Box" will be attached to the gate. 5) The gate will abut the retaining wall as depicted in Exhibits EVA-1 and EVA-2 and will be

designed to discourage pedestrian and bicycle access between the gate and the wall. 6) The gate will be connected to the existing fence on the common property line to discourage pedestrian and bicycle access. 7) The limits of construction will be per Exhibit EVA-1. 8) All constructed improvements outside of the Leona Quarry will occur within the existing 50' City Right of Way of Altura Place. 9) Signage will be placed on both sides of the gate prohibiting access except in an emergency. 10) For all modifications on Altura Place, all vehicles, trucks and equipment will use the quarry entry and exit located on Mountain Blvd only. 11) No Project vehicles will use Altura Place or Leona Street to access or exit the project site during grading or construction.

(b) Northwestern EVA: 1) Within the Easement area on the Suchan property a 12' wide scored concrete road way will be constructed. 2) The roadway will follow the existing EVA alignment between the existing 6' fence and the existing drainage ditch all within the 20' existing easement. 3) A 6' sturdy cyclone fence will be erected to separate the Suchan property from the easement being used as the EVA, the length of the EVA between the gate at Leona Street, and the lower gate to the development. The dead apricot tree and the large rosebush that are in line with where the fence will go, will be cut down, and all such debris removed from the property. 4) All live trees will remain and be protected during construction. 5) Signage will be placed on the gates at the top and bottom of the easement area prohibiting access except in an emergency. 6) An Oakland Fire Department approved "Knox Box" will be attached to each gate. 7) For all modifications for the Northwestern EVA, all vehicles, trucks and equipment will use the Leona Quarry entry and exit located on Mountain Blvd only.

(c) For all modifications on Altura Place, and Leona Street, necessary to create secondary EVAs, all vehicles, trucks and equipment must use the quarry entry and exit located on Mountain Blvd.

(d) The Project Applicant will not allow vehicles to use Altura Place, or Leona Street, to enter or exit the Project site during grading or construction.

(e) The EVA Improvements will be maintained by the HOA or other similar entity.

Modification 4 Geology.

The City will obtain from its peer reviewer for geologic and geotechnical issues at the Project, Lowney Associates, concurrence on the appropriate steps to be taken to respond to the specific, numbered and itemized recommendations 1 and 2 made by Nicholas Sitar in a report dated November 15, 2003. The Project Applicant will implement the recommendations from Lowney Associates regarding the appropriate steps to be taken to respond to these recommendations of Sitar, and the City will have Lowney Associates determine whether these Lowney Associates' recommendations have been implemented. The Project Applicant will implement the recommendations of Sitar (Items 3-5 of the November 15, 2003, report) and Seidelman (November 16, 2003, email and December 30, 2002, report), as directed by Lowney Associates. The November 15, 2003, Sitar report, the November 16, 2003, Seidelman email and the December 30, 2002, Seidelman report are attached as Geology Exhibits, GEO 1-3 for reference purposes only. Upon substantial completion of grading for the Project, the City will obtain a letter from Lowney Associates confirming that the Project has been developed in

substantial conformance with these Lowney Associates recommendations. Promptly after its receipt thereof, the City will provide copies of the Lowney Associates letter to Petitioners in the *Dorsey v. Oakland* proceeding and to the Project Applicant.

Modification 5 Traffic Improvements.

(a) The Project Applicant will leave with the City any “credits” due the Project Applicant from the implementation of the Traffic Improvement Program related to the improvement work at intersections 1, 2, 4 and 8 (as numbered in the FEIR) rather than receiving said refunds. City will earmark, set aside and use such credits for the traffic mitigations at the three (3) intersections listed in (b) immediately below. Upon completion of the improvements related to the (b) intersections, the Project Applicant shall be entitled to return of any remaining “credits”.

(b) Regarding Intersections #9 (Keller@Fontaine), #7 (Keller@Mountain), and #27 (Mountain@1580 West bound), the Project Applicant will obtain traffic studies of these intersections after the 200th unit has been occupied and after the 423rd unit has been occupied. In the event either of those traffic studies reveals that the traffic existing at the time of the study has caused the LOS levels at any of the above intersections to fall to Level of Service “E” (“LOS E”) or worse, the Project Applicant will pay for and construct all of the traffic mitigations contained in the DEIR and FEIR for any of the three (3) intersections at LOS E or worse (i.e., #9, #7 and/or #27). The Project Applicant shall be entitled to utilize the credits it left with the City under subdivision (a) for this construction work.

(c) At the time of occupancy of the 150th unit, the Project Applicant will provide to the HOA a Van Pool vehicle in new condition with seating capacity of at least twelve (12) and with at least standard features.

(d) Signage at the Coliseum and Airport: The Project Applicant and City will cause signage to be placed in the area of the Oakland Airport and the Coliseum directing through traffic to use Seminary and 98th Ave. The City will require that the signage located at or near the Airport and Coliseum be placed in locations recommended by the City traffic engineer.

(e) The Project Applicant and Petitioners in the *Dorsey v. Oakland* proceeding will make a good faith effort to obtain permission from CALTRANS, and if approved, the Project Applicant will fund both installation of new signage on I580 and Highway 13 indicating that Seminary and 98th Ave are the exits for the Airport and the Coliseum, and removal of inconsistent existing signage on I580 and Highway 13.

Modification 6 Dedication of Open Space.

Condition of Approval No. 32, which requires dedication of an open space and conservation easement to the City concurrent with submittal of the last final map for the Project, is modified to add the requirement that the easement shall be perpetual in nature and shall constitute an interest in real property pursuant to Civil Code section 815.2. The HOA will be a co-grantee on the open space and conservation easement.

FURTHER RESOLVED: That this Resolution will 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: This Resolution shall supersede the Re-approval Resolution only for so long as this Resolution is not invalidated, vacated or set aside in whole or in part, and for only so long as the Settlement Agreement has not been terminated.

FURTHER RESOLVED: The City will not waive or modify the requirements of the project modifications specified in Modification 1 through Modification 6 above unless, upon a duly noticed public hearing, the City Council has made a finding that the waiver or modification is necessary due to overriding concerns of public health, safety or welfare.

FURTHER RESOLVED: That the Council finds and directs City staff to implement the project modifications specified in Modification 1 through Modification 6 as Conditions of Approval, and to incorporate, monitor and administer them as part of the documentation and requirements for the project.

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 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:

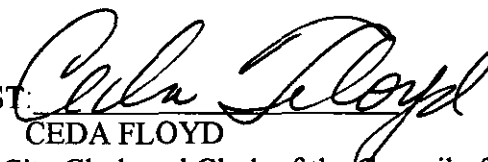
AYES: BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND
PRESIDENT DELA FUENTE - 8

NOES: 0

ABSENT: 0

ABSTENTION: 0

ATTEST:



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