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DEPUTY CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. 83435 C.M.S.

RESOLUTION DENYING THE APPEALS AND UPHOLDING THE DECISIONS OF THE CITY PLANNING COMMISSION AND PARKS AND RECREATION ADVISORY COMMISSION APPROVING THE AMENDMENT TO THE OAKLAND ZOO MASTER PLAN AND RELATED TREE PERMIT FOR PHASE ONE OF THE AMENDED MASTER PLAN, RESPECTIVELY, LOCATED AT 9777 GOLF LINKS ROAD (CASE FILE NUMBERS CM09-085; CP09-078; ER09-005; AND T09-019)

WHEREAS, a Master Plan for the Oakland Zoo (“Zoo”) was prepared in 1990 (“1990 Master Plan”); and

WHEREAS, the City Council adopted the Open Space, Conservation, and Recreation (“OSCAR”) Element of the General Plan in 1996; and

WHEREAS, the OSCAR acknowledges the 1990 Master Plan; and

WHEREAS, the City Council adopted a Mitigated Negative Declaration (“MND”) pursuant to the California Environmental Quality Act (“CEQA”) in 1998 (“1998 MND”) and approved a Master Plan for the Zoo in 1998 (“1998 Master Plan”); and

WHEREAS, the 1998 Master Plan is similar to the 1990 Master Plan and is consistent with OSCAR; and

WHEREAS, the 1998 MND and 1998 Master Plan approval were not legally challenged and thus are presumed valid; and

WHEREAS, CEQA Guidelines sections 15162 and 15164 preclude the preparation of an environmental impact report, when a previously adopted CEQA document was not legally challenged, except under certain specific circumstances not applicable here; and

WHEREAS, the City Council adopted Uniformly Applied Development Standards pursuant to CEQA Guidelines section 15183, applied as Standard Conditions of Approval, on

November 3, 2008, via Ordinance No. 12899 C.M.S., finding, in relevant part, that the Standard Conditions of Approval are designed to and will mitigate environmental impacts of future projects, and this ordinance was not legally challenged; and

WHEREAS, the East Bay Zoological Society (“Applicant”) filed applications for a major conditional use permit and creek protection permit (“Development Permits”) to amend the 1998 Master Plan (“Project”) on April 20, 2009; and

WHEREAS, the Applicant also filed an application for a tree permit for the Project on April 20, 2009, which was subsequently revised (which together with the application for the Development Permits is hereafter referred to as the “Applications”); and

WHEREAS, the City, commencing in 2009, began preparing a combined CEQA document (an Addendum together with a Subsequent Mitigated Negative Declaration, hereafter referred to as a “SMND/A”), which independently and collectively satisfy the City’s obligations under CEQA, and issued a Notice of Intent to Adopt a SMND/A for the Project, in accordance with CEQA, on February 11, 2011; and

WHEREAS, the City received comments on the Draft SMND/A and the City believes the issues raised in the comment letters have been adequately addressed and do not change the conclusions of the SMND/A; and

WHEREAS, the Parks and Recreation Advisory Commission (“PRAC”) conducted a duly noticed public hearing on the Project on March 9, 2011, which was continued until March 14, 2011, and voted to recommend approval of the Project at the close of said public hearing; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on the SMND/A and the Project on March 16, 2011, at which time the public hearing on the SMND/A and Project were closed; and

WHEREAS, the matter was continued and properly noticed for April 20, 2011, to provide time for City staff to respond to the public comments submitted up to and including March 16, 2011, but the meeting was adjourned, due to a lack of a quorum, and properly noticed for April 27, 2011; and

WHEREAS, the Planning Commission adopted/approved, and made appropriate CEQA findings for, the SMND/A and approved the Development Permits for the Project on April 27, 2011, subject to findings and conditions of approval; and

WHEREAS, the Planning Commission found, in part, that the Project would improve the 1998 Master Plan, would further enhance a City-owned facility by providing a unique and valuable recreational and educational opportunity for visitors, is consistent with applicable General Plan policies and zoning regulations, would not result in new significant environmental impacts or the substantial increase in previously identified significant impacts, and would continue to allow public access to a substantial amount of open space in Knowland Park and the surrounding area; and

WHEREAS, the Public Works Agency, on April 28, 2011, based upon its independent review and consideration, and the exercise of its independent judgment, relied upon and adopted the Planning Commission's CEQA-related findings, and approved the tree permit for phase one of the Project finding that the tree permit is necessary for the construction of the Project and complies with the applicable criteria of the Oakland Municipal Code; and

WHEREAS, the Friends of Knowland Park filed an appeal to the PRAC of the Public Works Agency's approval of the tree permit on May 5, 2011; and

WHEREAS, the Friends of Knowland Park, California Native Plant Society, and California Native Grasslands Association ("Appellants"), filed an appeal to the City Council of the Planning Commission's decision on May 6, 2011; and

WHEREAS, the PRAC, on May 11, 2011, conducted a duly noticed public hearing on the appeal of the tree permit and denied said appeal, thereby sustaining the decision of the Public Works Agency, determining that the tree permit complies with CEQA and conforms to the applicable criteria of the Oakland Municipal Code; and

WHEREAS, the Appellants filed an appeal to the City Council of the PRAC's decision on the tree permit on May 16, 2011 (which together with the appeal of the Planning Commission's decision is hereafter referred to as the "Appeals"); and

WHEREAS, the City Council conducted a duly noticed public hearing on the Appeals on June 21, 2011; and

WHEREAS, all interested parties were given the opportunity to participate in the public hearing by submittal of oral and written comments; and

WHEREAS, although the Appeals before the City Council are not de novo, but rather limited to the issues and/or evidence presented to the Planning Commission and/or PRAC prior to the close of the public hearings before those bodies, as stated in the notices, decision letters, Oakland Planning Code section 17.134.070A, and Oakland Municipal Code section 12.36.120, and as determined by *Mashoon v. City of Oakland* (Appeal No. A077608; filed December 9, 1997; First Appellate District, Division Five), the City Council has nevertheless considered all issues and evidence submitted into the record prior to and at the public hearing on June 21, 2011; and

WHEREAS, the City responses to public comments on the SMND/A in the staff report for the April 27, 2011, Planning Commission meeting and the June 21, 2011, City Council Agenda Report were prepared by the technical experts that prepared the SMND/A and constitute substantial evidence that adequately address the issues raised by Appellants;

WHEREAS, the public hearing was closed by the City Council on June 21, 2011; now, therefore, be it

RESOLVED: 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 Applications, SMND/A, the decisions of the Planning Commission, Public Works Agency, and

PRAC (collectively called “City Decisions” and/or “City Decisionmakers”), and the Appeals, hereby finds and determines that the Appellants have **not** shown, by reliance on evidence in the record, that the City Decisions were made in error, that there was an abuse of discretion by the City Decisionmakers, and/or that the City Decisions were not supported by sufficient, substantial evidence in the record. This decision is based, in part, on the June 21, 2011, City Council Agenda Report, the March 16, 2011, and April 27, 2011, Planning Commission staff reports, the May 11, 2011, PRAC staff report, and the SMND/A, which are hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeals are denied, the City Decisions to adopt the above-referenced CEQA findings and approve the Project are upheld, and the Project and the applications therefore are approved; and be it

FURTHER RESOLVED: That, in further support of the City Council’s decision to deny the Appeals and approve the Project, the City Council affirms and adopts as its own findings and determinations (i) the June 21, 2011, City Council Agenda Report, including without limitation the discussion, findings, conclusions, specified conditions of approval (including the Standard Conditions of Approval / Mitigation Monitoring and Reporting Program (“SCAMMRP”)) (each of which is hereby separately and independently adopted by this Council in full); (ii) the March 16, 2011, and April 27, 2011, Planning Commission staff reports, including without limitation the discussion, findings, conclusions, conditions of approval and SCAMMRP (each of which is hereby separately and independently adopted by this Council in full); and (iii) the May 11, 2011, PRAC staff report, including without limitation the discussion, findings, conclusions, specified conditions of approval and SCAMMRP (each of which is hereby separately and independently adopted by this Council in full), except where otherwise expressly stated in this Resolution; and be it

FURTHER RESOLVED: The City Administrator, or designee, is hereby authorized to take any and all steps necessary to implement and/or effectuate this Resolution, including without limitation, negotiating and executing agreements with State and federal Resource Agencies, determining and requiring appropriate financial assurances, and the like, which are consistent with the basic purposes and intent of this Resolution; provided, however, any legal agreements shall be subject to the review and approval of the Office of the City Attorney; and be it

FURTHER RESOLVED: The City 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; and be it

FURTHER RESOLVED: The record before this Council relating to this Resolution includes, without limitation, the following:

1. the Applications, including all accompanying maps and papers;
2. all plans submitted by the Applicant and its representatives;
3. all staff reports, decision letters, and other documentation and information produced by or on behalf of the City, including without limitation the SMND/A and supporting technical

studies, all related and/or supporting materials, and all notices relating to the Applications and attendant hearings;

4. all oral and written evidence received by City staff, the PRAC, the Planning Commission, and the City Council before and during the public hearings on the Applications;

5. 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: 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 (a) the Community & Economic Development Agency, Planning & Zoning Division, 250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, (b) the Public Works Agency, Tree Section, 7101 Edgewater Drive, Oakland, California, and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, California; and be it

FURTHER RESOLVED: 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, JUN 21 2011, 2011

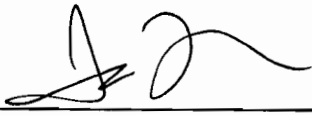
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL
SEHAAP, AND PRESIDENT REID - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

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

LEGAL NOTICE: This action of the City Council is final and is not administratively appealable. Any party seeking to challenge such decision in court must do so within ninety (90) days of the date the decision was announced, unless a different date applies.