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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 89363 C.M.S.

A RESOLUTION DENYING THE APPEAL BY EAST BAY RESIDENTS FOR RESPONSIBLE DEVELOPMENT AND THUS UPHOLDING THE PLANNING COMMISSION'S ENVIRONMENTAL DETERMINATION AND APPROVAL OF A PROPOSAL TO CONSTRUCT 222 DWELLING UNITS ON THE EXISTING VACANT LOT LOCATED AT 1396 5TH STREET, OAKLAND CA (PROJECT CASE NO. PLN20-101).

WHEREAS, the project applicant, the Michaels Organization (Applicant), filed an application with the City of Oakland (City) Bureau of Planning on June 24, 2020, to develop an eight-story residential building that would include 222 dwelling units, 16 of which would be designated as affordable for very-low-income households, at 1396 5th Street (Project); and

WHEREAS, the project site is located within Opportunity Area 2 (7th Street) of the West Oakland Specific Plan across Mandela Parkway from the West Oakland Bay Area Rapid Transit (BART) Station; and

WHEREAS, the Design Review Committee of the Planning Commission considered the design review aspects of the Project at a duly noticed public meeting on October 28, 2020, during which the Committee recommended design modifications prior to the item moving forward to the full Planning Commission for consideration; and

WHEREAS, the design recommendations were incorporated into the revised Project prior to proceeding to the full Planning Commission; and

WHEREAS, the City Planning Commission took testimony and considered the Project at its duly noticed public meeting of March 3, 2021 and, at the conclusion of the public hearing, deliberated the matter and voted (7-0-0) to 1) affirm staff's environmental determination and adopt California Environmental Quality Act (CEQA) findings and 2) approve the conditional use permits, design review, and tentative parcel map for the Project; and

WHEREAS, on March 12, 2021, Adams Broadwell Joseph & Cardozo, on behalf of East Bay Residents for Responsible Development (Appellant), filed an appeal (PLN20-101-A01) of the Planning Commission's CEQA determination and approval of the Project, which appeal included a statement setting forth the basis of the appeal; and

WHEREAS, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the Appeal came before the City Council for a public hearing on September 21, 2021; and

WHEREAS, the Appellant, 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, at said hearing, the City Council voted to direct staff to prepare a resolution for future City Council consideration that would allow for additional time for further consideration of the environmental impacts to the residents with focus on hazards and hazardous materials on the basis that the CEQA Analysis prepared for the Project inadequately described the current status of soil and groundwater hazards conditions, did not adequately compare the current status with the analysis conducted under the West Oakland Specific Plan (WOSP) Environmental Impact Report (EIR), and did not address whether any additional mitigation measures beyond those identified in the WOSP EIR were necessary;

WHEREAS, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the City Council held a public hearing on April 19, 2022; and

WHEREAS, at said hearing, the Appellant, 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;

WHEREAS, at said hearing, the City Council directed Oakland Bureau of Planning staff, through the City Administrator, to prepare further environmental analysis of Project impacts pertaining to potential existing soil and groundwater hazards conditions and community outreach, and for staff to return to City Council with the additional analysis and a recommendation as to whether the Project will have one or more significant effects not described in the WOSP EIR such that an additional EIR, such as a supplemental EIR under CEQA Guidelines Sections 15163, 15182, and 15183, and/or an infill EIR under CEQA Guidelines Section 15183.3, as determined appropriate based on the additional information reviewed and analyzed, be prepared;

WHEREAS, the City's new soil studies, the revised CEQA Analysis, and the Voluntary Remediation Action Agreement with Alameda County Dept. of Environmental Health address the health-related soil contamination concerns articulated in the appeal; and

WHEREAS, after giving due notice to the Appellant, the Applicant, all interested parties and the public, the City Council held a public hearing on July 19, 2022; and

WHEREAS, at said hearing, the Appellant, 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; now, therefore be it

RESOLVED: That, after review of the additional requested materials provided within the July 19, 2022 Agenda Report, the City Council hereby independently finds and determines that the requirements of the California Environmental Quality Act (CEQA) of 1970, as prescribed by the Secretary of Resources, and the City of Oakland's environmental review requirements, have been satisfied, and specifically, that the Project is exempt from CEQA pursuant to CEQA Guidelines Sections 15182 (specific plan exemption), 15183 (projects consistent with community plan, general plan, or zoning) and/or 15183.3 (qualified infill projects); and furthermore none of the factors requiring further CEQA review are met and the City can rely on an Addendum to the previously Certified 2014 West Oakland Specific Plan Environment Impact Report, pursuant to CEQA Guidelines section 15162-15164; and that each of the foregoing provides a separate and independent basis for CEQA compliance; and be it

FURTHER RESOLVED: That the City Council, having heard, considered and weighed all the evidence in the record presented on behalf of all parties and being fully informed of the application and the Project, the Planning Commission's decision, and the appeal, finds that the Appellant has not shown, by reliance on evidence already contained in the record before the City Planning Commission, that the Commission's decision on March 3, 2021 was made in error, that there was an abuse of discretion by the Planning Commission or that the Commission's decision was not supported by substantial evidence in the record, based on the March 3, 2021 Staff Report to the City Planning Commission and the September 21, 2021, April 19, 2022, and July 19, 2022 City Council Agenda Reports hereby incorporated by reference as if fully set forth herein. Accordingly, the Appeal is denied, the Planning & Building Department's CEQA Determination is upheld, based upon the March 3, 2021 Staff Report to the City Planning Commission and the September 21, 2021, April 19, 2022, and July 19, 2022 City Council Agenda Reports, each of which is hereby separately and independently adopted by this Council in full; and be it

FURTHER RESOLVED: That, in support of the Planning Commission's decision to approve the Project, the City Council affirms and adopts the March 3, 2021 Staff Report to the City Planning Commission (including without limitation the discussion, findings, conclusions and conditions of approval each of which is hereby separately and independently adopted by this Council in full), as well as the September 21, 2021, April 19, 2022, and July 19, 2022 City Council Agenda Reports (including without limitation the discussion, findings, conclusions and conditions of approval, 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: that the Project shall incorporate the following additional conditions to further reduce operational air pollution related health risks:

- In addition to any other air quality mitigation measures that may be implemented as a result of any required Health Risk Assessment, the Project shall install air filter devices rated **MERV-16** or higher for, at a minimum, all residential units which face the freeway, all residential units which have operable windows that are within 1,000 feet of the freeway, and all residential units which are within 500 feet of a loading dock or zone where trucks concentrate to deliver goods on-site.

- The Project shall, upon request, provide high quality **electrostatic air purifiers** for all the below market rate (BMR) residential units. This requirement shall be included in the recorded Regulatory Agreement for the BMR units.

- The Project—and successor owners—shall maintain, repair and replace all installed health risk reduction devices/measures, including but not limited to the HVAC/MERV filtration devices on an as-needed basis throughout the life of the Project; and be it

FURTHER RESOLVED: That, 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 Exemption and Notice of Determination with the appropriate agencies; and be it

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

1. the application, including all accompanying maps and papers;
2. all plans submitted by the Applicant and 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 including the CEQA Analysis prepared for the Project and attached to the staff reports, and all final notices relating to the application and attendant hearings;
5. all oral and written evidence received by the City Planning Commission and City Council during the public hearings on the appeal; and all written evidence received by relevant City Staff before and during the public hearings on the application and appeal;
6. all matters of common knowledge and all official enactments and acts of the City, including, without limitation: (a) the General Plan; (b) Oakland Municipal Code (c) 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 respectively: (a) Department of Planning & Building, Bureau of Planning, 250 Frank H. Ogawa Plaza, 2114, Oakland CA.; and (b) Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st floor, Oakland, CA; 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,

PASSED BY THE FOLLOWING VOTE:

JUL 19 2022


AYES - ~~REID~~, GALLO, KALB, ~~REID~~, REID, TAYLOR, THAO AND - 6
PRESIDENT FORTUNATO BAS

NOES - 0

ABSENT - ~~REID~~ - 0

ABSTENTION -

Excused - File, Kaplan - 2

ATTEST: 
ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California