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OAKLAND

2015 DEC -3 PM 5:48

AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Michele Byrd
Director, HCD

SUBJECT: Brooklyn Basin Affordable Housing

DATE: November 23, 2015

City Administrator Approval

Date:

12/3/15

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Approving The Financing Plan For Developing Affordable Housing At The Brooklyn Basin Project, And Authorizing Submittal Of A Petition For A Final And Conclusive Determination By The California Department Of Finance (DOF) Of The Enforceable Obligation To Fund Such Development.

EXECUTIVE SUMMARY

In June 2015, Zarsion Oakland Harbor Partners ("ZOHP"), the developer of the Brooklyn Basin project, selected MidPen Housing Corporation as the affordable housing developer for the project and the City subsequently approved the selection. MidPen has been working diligently since that time to create a plan to provide 465 affordable housing units at the Brooklyn Basin project site, as provided for under the Cooperation Agreement with the Oak to Ninth Community Benefits Coalition. The affordable housing financing plan consists of many sources of funds, including \$45 million in Real Property Tax Trust Funds (RPTTF), i.e., property tax funds that were formerly considered tax increment funds.

The obligation to use RPTTF funds to develop affordable housing at Brooklyn Basin has been listed on Oakland's Recognized Obligation Payment Schedules ("ROPS") since the dissolution of the Redevelopment Agency in 2012. Under state law, the City may petition DOF for a final and conclusive determination when an obligation is funded through RPTTF. Receipt of a final and conclusive determination would bar DOF from later determining that the ROPS item is not an enforceable obligation. Therefore, staff is requesting Council's approval to submit a petition to DOF for a final and conclusive determination that the obligation to reserve \$45 million in RPTTF funds for affordable housing development at Brooklyn Basin under the Cooperation Agreement is an enforceable obligation, and that DOF approves subsequent payments made pursuant to this enforceable obligation. A final and conclusive determination would give assurances to MidPen that RPTTF funds are available for the project and cannot be denied by DOF in a subsequent year's ROPS review. As part of the petition, staff is requesting that Council approve an affordable housing financing plan for the project.

Item: _____

Community and Economic Development Committee
December 15, 2015

BACKGROUND / LEGISLATIVE HISTORY

The Brooklyn Basin project (formerly known as the Oak to Ninth project) is a large-scale development project on a formerly-industrial site along Oakland's waterfront. When fully developed, the project will comprise approximately 3,100 housing units, over 200,000 square feet in retail space, 29.9 acres of parks and public open space, two renovated marinas and restoration of an existing wetland area. The development site straddles two redevelopment project areas, the Central District Redevelopment Project Area and the Central City East Redevelopment Project Area.

In 2006, the developer of the project (then known as Oakland Harbor Partners), the City and the Redevelopment Agency entered into a Development Agreement for the project. The City negotiated a variety of community benefits provisions into the Development Agreement, including provisions for on-site affordable housing development. The Development Agreement required the Redevelopment Agency to purchase two parcels at the development site from the developer, and to develop 465 units of housing affordable to low income households on those parcels. The affordable housing would be developed in phases as the overall project is developed over a schedule set forth in the Development Agreement. Oakland Harbor Partners agreed to sell the affordable housing parcels at a discount and to contribute \$2 million toward development of affordable housing on those parcels.

Parallel to negotiations with the developer over the Development Agreement, the Redevelopment Agency negotiated a "Cooperation Agreement" with a coalition of community groups, known as the Oak to Ninth Community Benefits Coalition¹, over the level of community benefits that would result from the project, including affordable housing development. The Cooperation Agreement was executed in 2006. Consistent with the Development Agreement, the Cooperation Agreement requires the Redevelopment Agency to purchase the affordable housing parcels and ensure that at least 465 affordable housing units are developed on the site. The Cooperation Agreement specifically provides that 25 percent of the tax increment revenue generated by the Brooklyn Basin project (the set-aside required for affordable housing under redevelopment law and Redevelopment Agency policy) be reserved for the affordable housing development.

Shortly after the Development Agreement and the Cooperation Agreement were signed, the Brooklyn Basin project was put on hold by the developer due to the economic downturn.

Upon dissolution of the Redevelopment Agency in 2012, the City retained and assumed the housing assets and functions of the Redevelopment Agency, while the Oakland Redevelopment

¹ The members of the Coalition are the Asian Pacific Environmental Network, East Bay Asian Youth Center, Oakland Community Organizations, and the Urban Strategies Council.

Successor Agency ("ORSA") assumed the enforceable obligations of the Redevelopment Agency, including the obligation to fund the purchase and development of the affordable housing parcels. ORSA's obligation to develop 465 units of affordable housing on the affordable housing parcels, as well as the obligation to fund the purchase of the affordable housing parcels, has been listed as enforceable obligations on all of ORSA's ROPS since dissolution. Such funding was intended to come from a combination of housing bond funds and RPTTF money.

In recent years, the project has been revived by the current developer, Zarsion Oakland Harbor Partners ("ZOHP"). Pursuant to the Development Agreement and the Cooperation Agreement, the City purchased the affordable housing parcels from ZOHP on August 28, 2014, for a purchase price of \$21,508,462 plus closing costs, with ZOHP obligated to conduct extensive environmental remediation, as well as infrastructure work on the property. The purchase price represented the appraised fair market value of the parcels, discounted by a little over \$3 million. To fund the purchase, the City used proceeds from a housing bond issued by the Redevelopment Agency in 2011. (Approximately \$2.5 million in project funds from this bond remain with ORSA after the purchase. These funds are located in Fund 1885.)

ZOHP has begun site preparation work on the first phase of the project. In June 2015, ZOHP selected MidPen Housing Corporation, a nonprofit affordable housing developer with extensive development experience in the Bay Area, to be the developer for the affordable housing project, and the City approved this selection. The City has been working closely with MidPen and the Coalition since June as MidPen develops and refines its affordable housing development scenarios and financing plan.

ANALYSIS AND POLICY ALTERNATIVES

Section 34177.5 of the California Health and Safety Code permits a successor agency to petition DOF to provide written confirmation that a DOF determination in an approved ROPS that an item is an enforceable obligation is final and conclusive. Such a determination is available for enforceable obligations that provide for an irrevocable commitment of property tax revenues, where allocation of such revenues is expected to occur over time. Should Council approve this resolution, the City will petition DOF in January 2016 for a final and conclusive determination that the obligation to reserve funds for affordable housing development at Brooklyn Basin under the Cooperation Agreement is an enforceable obligation and that DOF approves subsequent payments made pursuant to this enforceable obligation. DOF will have 100 days to perform its review of the petition and make a determination.

Due to the large amount of RPTTF being requested for the Brooklyn Basin affordable housing project, City staff, in collaboration with the City Attorney's Office, outside legal counsel, MidPen, MidPen's legal counsel and the Coalition, believes requesting a final and conclusive determination from DOF is necessary to make the project economically viable. The affordable

housing developer needs a definitive commitment of RPTTF funds in order to leverage additional funding sources for the development of the affordable housing units over the planned phases of the project.

Attachment A, the Brooklyn Basin Affordable Housing Financing Plan, shows the current affordable housing development and financing plan for the project. MidPen proposes to build the required 465 units through five separate phases over a six-year time frame. In accordance with the parameters of the Cooperation Agreement, 110 units will target seniors and the remaining 365 will target families. All units will be affordable to households earning 25 percent to 60 percent of Area Median Income. Furthermore, at least 30 percent of the units will be three-bedroom units and at least 20 percent of the units will be two-bedroom units.

The proposed funding sources include a variety of public and private sources, including the following:

- \$45 million of RPPTF funds,
- \$2.5 million of City 2011 Housing Bond funds,
- \$2 million contribution from ZOHP,
- \$10 million in capital funds from the Oakland Housing Authority,
- approximately \$36 million in private debt funds, leveraged by a commitment from the Oakland Housing Authority to provide Project Based Section 8 vouchers to the project,
- approximately \$108 million in tax credit equity from low income housing tax credit awards, and
- approximately \$20 million from Affordable Housing and Sustainable Communities (i.e., cap and trade) awards.

If approved, the RPTTF funding would be transferred from ORSA to the City, and would be provided by the City to the project, along with the bond funding, in the form of a standard development loan. Approval of the financing plan will not commit the City to provide the listed funding, but will evidence the City Council's support for the project and the use of RPTTF funding to assist the project. This will be helpful for the final and conclusive determination petition. Should the final and conclusive petition be granted, staff will return to Council seeking specific authorization for project financing from the City and needed property transactions.

FISCAL IMPACT

If the final and conclusive determination is granted, this would enable the City (through ORSA) to receive \$45 million in RPTTF to provide funding for the Brooklyn Basin affordable housing development over the course of the project's development. If DOF denies the request, those funds would be split amongst the Alameda County taxing entities, of which the City would receive 29 percent.

Approval by DOF of the final and conclusive determination petition will provide a significant portion of the financing to build the 465 units of affordable housing as required by the Cooperation Agreement and outlined in the Brooklyn Basin Affordable Housing Financing Program prepared by MidPen.

Overall the fiscal impact of the Brooklyn Basin project (market and affordable developments) is positive. Based on current estimated timelines and projections, funding the affordable units through RPTTF is projected to reduce the residual amount for taxing entities, including the City, for the next four years compared to what the residual would be without the Brooklyn Basin development due to funding the affordable units through RPTTF. However, beginning in FY 2019-20 the residual RPTTF becomes positive with the value of the Brooklyn Basin market rate units growing beyond the cost of the affordable units. Over the next eight year period, the growth in RPTTF residual that would be shared to all taxing entities resulting from the Brooklyn Basin development is estimated to be more than \$55 million with the City receiving 29 percent or approximately \$16 million.

PUBLIC OUTREACH / INTEREST

The Coalition continues to be involved with this project since it negotiated the Cooperation Agreement with the City in 2006. The members of the Coalition are the Asian Pacific Environmental Network, East Bay Asian Youth Center, Oakland Community Organizations, and the Urban Strategies Council. City staff, the Coalition, and MidPen have been meeting bimonthly since June 2015 to discuss the affordable housing program and financing plan and the Coalition is an active participant in those discussions.

COORDINATION

Housing and Community Development staff coordinated with the City Attorney's Office, Controller's Office, the City Administrator's Office and MidPen Housing in preparation of this report.

SUSTAINABLE OPPORTUNITIES

Economic: The development of affordable housing at Brooklyn Basin will create economic opportunities through the provision of construction and property management employment opportunities.

Environmental: Environmental remediation of the affordable housing parcels has been completed and monitoring is occurring.

Social Equity: The development of affordable housing at Brooklyn Basin will create 465 affordable housing units for low and very low income residents, which is a means of achieving greater social equity. Oakland's neighborhood-level environment will be improved by replacing vacant and underused lots with new homes and residents.

CEQA

The City of Oakland Planning Commission certified the Oak to Ninth Avenue Project Environmental Impact Report on March 15, 2006. Under the California Environmental Quality Act (CEQA) Section 15162, no subsequent environmental review is required unless the project has changed substantially, the circumstances under which the project would occur have changed substantially, or new information demonstrates that any potential environmental impacts would be substantially more severe than previously demonstrated. In reviewing the preliminary affordable housing development and financing plan, staff has determined that none of the circumstances necessitating further environmental review are present. The reasons for this determination include, among others, the following: (1) the preliminary affordable housing development and financing plan does not affect development envelope previously reviewed in the EIR and is not a change in the project that involves any new significant effects or a substantial increase in the severity of previously identified significant effects; (2) circumstances under which the project is undertaken have not occurred that will involve new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (3) no new information has come to light that would involve new or substantially more severe effects or feasible alternatives or mitigation measures. Accordingly, no further environmental review is required for this project at this time. The EIR identifies impacts and requires mitigation measures, and the proposed project will continue to be required to incorporate the mitigation measures. The EIR is available for review at 250 Frank Ogawa Plaza, Suite 3315, Oakland, CA 94612 during normal business hours.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that City Council approve a resolution approving the financing plan for developing affordable housing at the Brooklyn Basin project, and authorizing submittal of a petition for a Final and Conclusive Determination by the California Department of Finance (DOF) of the enforceable obligation to fund such development.

For questions regarding this report, please contact me at 510-238-3714.

Respectfully submitted,



MICHELE BYRD
Director, Housing and Community
Development Department

Reviewed by:
Norma Thompson, Housing Development
Manager

Prepared by:
Meghan Horl, Housing and Community
Development Coordinator, Housing
Development Unit

- Attachments (1):
A. Brooklyn Basin Affordable Housing Financing Plan

Attachment A

BROOKLYN BASIN AFFORDABLE HOUSING FINANCING SUMMARY
11/13/2015

\$10M OHA capital contribution; 50% Section 8 on Family Phases and 100% on Senior																
	Units	1BR	2BR	3BR	Parking	Funding	RPTCF Funds Needed	City Housing Bond Funds	ZOHP Contribution (Market Rate Developer)	OHA capital to purchase land City contributes back into deal	Cap/Trade (AHSC)	Section 8 (S8) Project based Vouchers	Affordability Mix			
													AMI	1BR	2BR	3BR
Parcel 1 - Family	101	36	17	48	160	4% only	\$ 10,516,578	\$ 2,500,000	\$ 1,000,000	\$ 5,000,000	\$ -	50	30%	3	2	5
													(S8) 30%	0	0	0
													40%	6	4	10
													(S8) 40%	0	0	0
													50%	9	2	9
													(S8) 50%	6	4	10
													60%	0	0	0
(S8) 60%	12	4	14													
Parcel 1 - Senior	110	107	3	0	95	9% only	\$ -	\$ -	\$ -	\$ 5,000,000	\$ -	109	30%	0	0	0
													(S8) 30%	10	1	0
													40%	0	0	0
													(S8) 40%	22	0	0
													50%	0	0	0
													(S8) 50%	43	1	0
													60%	0	0	0
(S8) 60%	32	0	0													
Parcel 2- Phase 1 Family	106	14	52	40	160	4% with AHSC	\$ 10,195,296	\$ -	\$ 1,000,000	\$ -	\$ 13,115,899	52	30%	1	6	4
													(S8) 30%	0	0	0
													40%	2	11	8
													(S8) 40%	0	0	0
													50%	5	8	8
													(S8) 50%	3	14	4
													60%	0	0	0
(S8) 60%	3	12	16													
Parcel 2- Phase 2 Family	77	31	17	29	100	4% with AHSC	\$ 9,722,186	\$ -	\$ -	\$ -	\$ 7,207,875	38	30%	3	2	3
													(S8) 30%	0	0	0
													40%	6	4	6
													(S8) 40%	0	0	0
													50%	7	2	5
													(S8) 50%	6	6	5
													60%	0	0	0
(S8) 60%	9	2	10													
Parcel 2- Phase 3 Family	71	35	14	22	90	4% with AHSC	\$ 14,565,652	\$ -	\$ -	\$ -	\$ -	35	30%	2	2	3
													(S8) 30%	0	0	0
													40%	6	3	5
													(S8) 40%	0	0	0
													50%	6	1	3
													(S8) 50%	12	3	3
													60%	4	0	0
(S8) 60%	5	4	8													
Total	465	223	103	139			\$ 44,999,712	\$ 2,500,000	\$ 2,000,000	\$ 10,000,000	\$ 20,323,774	284				

**RESOLUTION APPROVING THE FINANCING PLAN FOR DEVELOPING
AFFORDABLE HOUSING AT THE BROOKLYN BASIN PROJECT, AND
APPROVING SUBMITTAL OF A PETITION FOR A FINAL AND
CONCLUSIVE DETERMINATION BY THE CALIFORNIA DEPARTMENT
OF FINANCE (DOF) OF THE ENFORCEABLE OBLIGATION TO FUND
SUCH DEVELOPMENT**

EXHIBIT A

**BROOKLYN BASIN AFFORDABLE HOUSING
FINANCING PLAN**

(attached)

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OAKLAND CITY COUNCIL

Approved as to Form and Legality


City Attorney

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RESOLUTION No. _____ C.M.S.

RESOLUTION APPROVING THE FINANCING PLAN FOR DEVELOPING AFFORDABLE HOUSING AT THE BROOKLYN BASIN PROJECT, AND APPROVING SUBMITTAL OF A PETITION FOR A FINAL AND CONCLUSIVE DETERMINATION BY THE CALIFORNIA DEPARTMENT OF FINANCE (DOF) OF THE ENFORCEABLE OBLIGATION TO FUND SUCH DEVELOPMENT

WHEREAS, the Brooklyn Basin project, formerly the Oak to 9th project, proposed by developer Zarsion Oakland Harbor Partners (“ZOHP”) and approved by the City in 2006 is projected to comprise approximately 3,100 housing units, along with over 200,000 square feet in retail space, 29.9 acres of parks and public open space, two renovated marinas and restoration of an existing wetland area; and

WHEREAS, under affordable housing production requirements in California redevelopment law, development of the project would require the production of 465 affordable housing units within the Central City East Redevelopment Project Area; and

WHEREAS, the Redevelopment Agency in 2006 entered into a Cooperation Agreement with the Oak to Ninth Community Benefits Coalition, a consortium of four community organizations, requiring the Agency to purchase Project Parcels F and G (the "affordable housing parcels") for affordable housing development and to ensure the development of at least 465 affordable housing units; and

WHEREAS, the City of Oakland is the successor to the housing functions and obligations of the dissolved Redevelopment Agency per Health and Safety Code Section 34176, including Agency housing obligations and functions with respect to the Oak to Ninth Development Agreement, while the Oakland Redevelopment Successor Agency (“ORSA”) has assumed the enforceable obligations of the Redevelopment Agency under Health and Safety Code Section 34173, including the obligation to fund the purchase and development of the affordable housing parcels; and

WHEREAS, the Cooperation Agreement required the Redevelopment Agency to use available funds to ensure the development of affordable housing on the affordable housing parcels, including 25 percent of the tax increment revenue generated by the Brooklyn Basin project; and

WHEREAS, in June 2015, ZOHP selected MidPen Housing Corporation to be the affordable housing developer for the project, and the City approved this selection; and

WHEREAS, the City has been working closely with MidPen Housing Corporation and the Community Benefits Coalition to develop and refine the affordable housing development scenarios and financing plan; and

WHEREAS, the affordable housing financing plan developed by MidPen consists of many sources including \$45 million in Real Property Tax Trust Funds (“RPTTF”); and

WHEREAS, the obligation under the Cooperation Agreement to support vertical development of 465 affordable housing units has been recognized as an enforceable obligation by the California Department of Finance (“DOF”) and included on ORSA’s Recognized Payment Obligation Schedules (“ROPS”) since the dissolution of redevelopment in 2012; and

WHEREAS, Section 34177.5 of the California Health and Safety Code permits a successor agency to petition DOF to provide written confirmation that a DOF determination in an approved ROPS that an item is an enforceable obligation is final and conclusive, if the enforceable obligation provides for an irrevocable commitment of property tax revenues and if allocation of such revenues is expected to occur over time; and

WHEREAS, it will be beneficial to the affordable housing development at Brooklyn Basin for the project to receive a final and conclusive determination from DOF, so that MidPen will have a definitive commitment of RPTTF funds in order to leverage additional development funds over the planned phases of the project; and

WHEREAS, Council approval of the affordable housing financing plan will demonstrate the City’s commitment to and support of the development of affordable housing at Brooklyn Basin as required by the Cooperation Agreement, and

WHEREAS, an Environmental Impact Report (EIR) was prepared and approved under the California Environmental Quality Act (CEQA) for the Brooklyn Basin project; and

WHEREAS, under CEQA Guidelines Section 15162, no subsequent environmental review is required unless the project has changed substantially, the circumstances under which the project would occur have changed substantially, or new information demonstrates that any potential environmental impacts would be substantially more severe than previously demonstrated; and

WHEREAS, none of the circumstances necessitating further environmental review under CEQA Guidelines Section 15162 are present, since the affordable housing financing plan does not affect the development envelope previously reviewed in the EIR, is not a change in the project that involves any new significant effects or a substantial increase in the severity of previously identified significant effects of under which the project is undertaken have not occurred that will involve new significant environmental effects of a substantial increase in the severity of previously identified significant effects, and no new information has come to light that would involve new or substantially more severe effects of feasible alternatives or mitigation measures; now, therefore, be it

RESOLVED: That the City Council hereby supports and approves the financing plan for developing affordable housing at the Brooklyn Basin project attached to this Resolution as Exhibit A; and be it

FURTHER RESOLVED: That the City Council hereby supports and approves submittal of a petition for a final and conclusive determination to the California Department of Finance (DOF) requesting written confirmation that DOF's determination in the approved ROPS, namely that the obligation to fund the development of affordable housing at Brooklyn Basin is an enforceable obligation, is final and conclusive; and be it

FURTHER RESOLVED: That the City Council, having independently heard, considered and weighed all the evidence in the record, hereby finds that, in accordance with CEQA Section 15162, none of the circumstances requiring preparation of a subsequent or supplemental EIR are present for this action.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

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

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California