

**BOARD OF PORT COMMISSIONERS
CITY OF OAKLAND**

7/23/2020
Item No.: 6.5
MCR/msr



RESOLUTION NO. 20-64

RESOLUTION APPROVING AND AUTHORIZING THE RELINQUISHMENT OF CONTROL OF A PORTION OF THE PORT AREA TO THE CITY COUNCIL TO FACILITATE THE TRANSFER OF OWNERSHIP OF OPEN SPACE PROPERTIES DEVELOPED AS PART OF THE OAK TO NINTH DISTRICT PROJECT FROM THE PORT OF OAKLAND TO THE CITY OF OAKLAND.

WHEREAS, the Board of Port Commissioners ("Board") has reviewed and evaluated Agenda Report Item No. 6.5 dated July 23, 2020, and related agenda materials ("Agenda Report"), has received the expert testimony of Port of Oakland ("Port") staff, and has provided opportunities for and taken public comment; and

WHEREAS, Section 706 of the Charter ("Charter") of the City of Oakland ("City") vests in the Board, for and on behalf of the City of Oakland, exclusive power and jurisdiction over development approvals in the Port Area; and

WHEREAS, Sections 706(4) and 725 of the Charter authorize the City Council ("Council") of the City, upon the request and recommendation of the Board, to alter the Port Area; and

WHEREAS, the City (as successor to the Oakland Redevelopment Agency of the City) and Zarsion-OHP I, LLC, a California limited liability company (the "Developer") (as assignee of Oakland Harbor Partners, LLC), are parties to that certain Development Agreement, dated August 24, 2006, recorded in the Official Records of Alameda County (the "Official Records") on August 30, 2006, as Instrument No. 2006331819, as amended by (1) that certain First Administrative Amendment to Development Agreement (Oak to Ninth/Brooklyn Basin) dated as of August 28, 2014, recorded in the Official Records on August 28, 2014, as Instrument No. 201411182, and (2) that certain Second Administrative Amendment to Development Agreement (Oak to Ninth/Brooklyn Basin) dated as of June 28, 2017, recorded in the Official Records on June 28, 2017, as Instrument No. 2017141021 (collectively, the "Development Agreement"); and

WHEREAS, on March 2, 2010, the Board adopted Port Ordinance No. 4119 approving and authorizing the execution for and on behalf of the Board an Exchange Agreement, a Purchase and Sale Agreement, and an Open Space Ground Lease, among other instruments, which specifically contemplated the ultimate transfer of fee title to certain open space lands to the City upon completion of development within Brooklyn Basin; and

WHEREAS, the State of California, acting by and through the State Lands Commissioner, the Port, and Developer (as assignee of original developer) are parties to that certain Oak Street to 9th Avenue District Boundary Line and Exchange Agreement, dated as of August 23, 2010, recorded in the Official Records on June 10, 2013, as Instrument No. 2013-203229 ("Exchange Agreement"); and

WHEREAS, the Port and Developer (as assignee of original developer) entered into that certain unrecorded Agreement for Purchase and Sale and Ground Lease of Real Property and Escrow Instructions, dated as of September 15, 2011, as amended by: (1) that certain First Amendment to Agreement for Purchase and Sale and Ground Lease of Real Property and Escrow Instructions, dated as of January 31, 2012; (2) that certain Second Amendment to Agreement for Purchase and Sale and Ground Lease of Real Property and Escrow Instructions, dated as of January 25, 2013; (3) that certain Third Amendment to Agreement for Purchase and Sale and Ground Lease of Real Property and Escrow Instructions, dated as of April 30, 2013; and (4) that certain Omnibus Amendment to Brooklyn Basin Purchase Agreement and Phase 1 Transaction Documents, dated as of March 31, 2014 (collectively, the "Purchase and Sale Agreement"); and

WHEREAS, the Port and Developer (as assignee of original developer) entered into that certain Open Space Ground Lease, dated as of June 5, 2013, recorded in the Official Records on June 10, 2013, as Instrument No. 2013-203246, as amended by that certain Omnibus Amendment to Brooklyn Basin Purchase Agreement and Phase 1 Transaction Documents, dated as of March 31, 2014 (collectively, the "Open Space Ground Lease"); and

WHEREAS, pursuant to the Development Agreement, Developer agreed, among other things, to develop certain Public Open Space (as defined in the Development Agreement) into waterfront parks in Brooklyn Basin (collectively, and together with Estuary Park to be developed by the City, the "Waterfront Parks") and to renovate the Ninth Avenue Terminal Shed (as defined in the Development Agreement) located within the area of the Waterfront Parks, and to transfer the Waterfront Parks and improvements thereon to the City as all required conditions for such transfer provided in the Development Agreement are met; and

WHEREAS, pursuant to the Exchange Agreement, the Final Public Trust Parcels (Uplands), the Public Trust Easement (Granted Lands), and the Public Trust Easement (After-Acquired Lands) (as such terms are defined in the Exchange Agreement) will be transferred to the City by the Port; and

WHEREAS, pursuant to the Purchase and Sale Agreement, the Port, among other things (1) agreed to transfer the upland portions of the Waterfront Parks to the City, including the upland portion underlying Township Commons (formerly a portion of Shoreline Park) and the Ninth Avenue Terminal Shed, and (2) conveyed certain improvements, including the Ninth Avenue Terminal Shed pursuant to that certain Grant Deed [Open Space Ground Lease] dated as of June 5, 2013, and recorded in the Official Records as Instrument No. 2013-203247; and

WHEREAS, the City agreed, upon the satisfaction of certain conditions precedent, to accept title to portions of, and ultimately all of, the Premises (as such term is defined in the Open Space Ground Lease) and the

instrument conveying portions of the Premises to the City shall reserve a right of entry and access for the City to maintain the portion of the Premises that remain in the Port's jurisdiction and control, specifically the deck area sitting atop the Port-owned submerged lands; and

WHEREAS, the Developer has phased its construction and completion of the Park Improvements and, as such, the City plans to take title ownership to the Park Improvements in phases, as described and depicted in the Phasing Plan attached hereto as Exhibit A ("Phasing Plan"); and

WHEREAS, the Port and the City desire to authorize and effectuate for each phase as set forth in the Phasing Plan: (1) the permanent removal of the Port Area from the Waterfront Parks and any structures within such parks, including structures that extend over submerged lands, such as the deck and piles of Township Commons and the Ninth Avenue Terminal Shed building (collectively, the "Park Improvements"); and (2) relinquishment of the Port's existing ownership and landlord powers and authority derived therefrom with respect to the Waterfront Parks and the Park Improvements, to facilitate uniform management of the Waterfront Parks by the City; and

WHEREAS, the Board's request and recommendation to permanently alter the Port Area with respect to the Waterfront Parks and the Park Improvements are made to the Council subject to the Board's understanding and express condition that if the Council alters the Port Area as hereby requested and recommended, the Board shall: retain all of the Board's existing ownership and landlord powers and authority derived therefrom with respect to all other Port-owned properties within the Port Area, including the submerged lands over which the Park Improvements extend; and

WHEREAS, that in acting upon this matter, the Board has exercised its independent judgment based on substantial evidence in the record and adopts and relies upon the facts, data, analysis, and findings set forth in the Agenda Report, and in related agenda materials and in testimony received;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

SECTION 1. Based upon the information contained in the Agenda Report, and testimony received, the Board hereby finds and determines that this action was reviewed in accordance with the requirements of the California Environmental Quality Act ("CEQA"). The CEQA Guidelines, Section 15061(b)(3) ("common sense exemption") states that CEQA applies only to projects that have the potential for causing a significant effect on the environment. Relinquishing control of a portion of the Port Area to the City Council will not have a significant effect on the environment and therefore is not a project under CEQA. No further environmental review is required.

SECTION 2. The Board hereby authorizes:

- A.** The permanent removal of the Port Area from the Open Space Ground Lease Areas, in phases, as depicted in the attached Phasing Plan in the language of the Open Space Ground Lease, and relinquishment of the Port's existing ownership and landlord powers and authority derived therefrom with respect to the Open Space Ground Lease Areas, in phases, to facilitate uniform management of said Open Space Ground Lease areas by

the City; the Open Space Ground Lease areas are described and depicted on the Phasing Plan illustrative diagram attached hereto as Exhibit A which is incorporated herein; and

- B. The Executive Director to effectuate such removal and relinquishment upon a showing that the parcel area to be relinquished is the same or substantially the same as that described and depicted in the Phasing Plan attached hereto as Exhibit A. The Executive Director is authorized to effectuate the relinquishment in one or more transactions.

SECTION 3. The Executive Director, or his designee, is hereby authorized to approve and execute such agreements and such documents as may be necessary to carry out and effectuate this Resolution, provided that such documents are approved by the Port Attorney as to form and legality.

SECTION 4. This resolution is not evidence of and does not create or constitute (a) a contract, or the grant of any right, entitlement or property interest, or (b) any obligation or liability on the part of the Board or any officer or employee of the Board. Unless and until a separate written agreement is duly executed on behalf of the Board as authorized by this resolution, is signed as approved as to form and legality by the Port Attorney, and is delivered to other contracting party, there shall be no valid or effective agreement.

SECTION 5. This Resolution shall be effective immediately upon adoption by the Board.

At the regular meeting held on July 23, 2020
Passed by the following vote:

Ayes: Commissioners Butner, Colbruno, Leslie, Martinez, Story and
President Cluver – 6
Recused: Commissioner Lee – 1
Noes: – 0



Parks Phases

- Phase 1
- Phase 2
- Phase 3
- Phase 4
- Phase 1A

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