

**Case File Number: DA06011, PUD06010-PUDF04**

**May 17, 2017**

<b>Location:</b>	Brooklyn Basin (formerly known as "Oak Street to Ninth Avenue"); specifically, parcels affected by affordable housing swap (Parcels A, F and G).
<b>Proposal:</b>	Modification to adopted Conditions of Approval to correctly reference affordable housing parcels following parcel swap.
<b>Applicant:</b>	City of Oakland and Zarsion-OHP 1, LLC (ZOHP), Patrick Van Ness (510)251-9272.
<b>Owner:</b>	Zarsion-OHP 1, Port of Oakland, City of Oakland.
<b>Case File Number(s):</b>	DA0611
<b>Planning Permits Required:</b>	None.
<b>General Plan:</b>	Planned Waterfront Development-4.
<b>Zoning:</b>	Oak-to-Ninth District Zone (D-OTN)
<b>Environmental Determination:</b>	Final EIR certified on January 20, 2009.
<b>Historic Status:</b>	9th Avenue Terminal, rated "A"
<b>City Council District:</b>	2 – Guillen
<b>Action to be Taken:</b>	Consider modification to adopted Conditions of Approval to correctly reference affordable housing parcels following parcel swap.
<b>Finality of Decision:</b>	Appealable to City Council.
<b>For further information:</b>	Contact case planner Catherine Payne at 510-238-6168 or by e-mail at <a href="mailto:cpayne@oaklandnet.com">cpayne@oaklandnet.com</a>

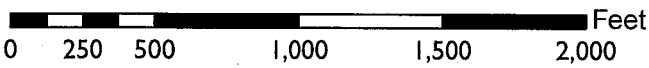
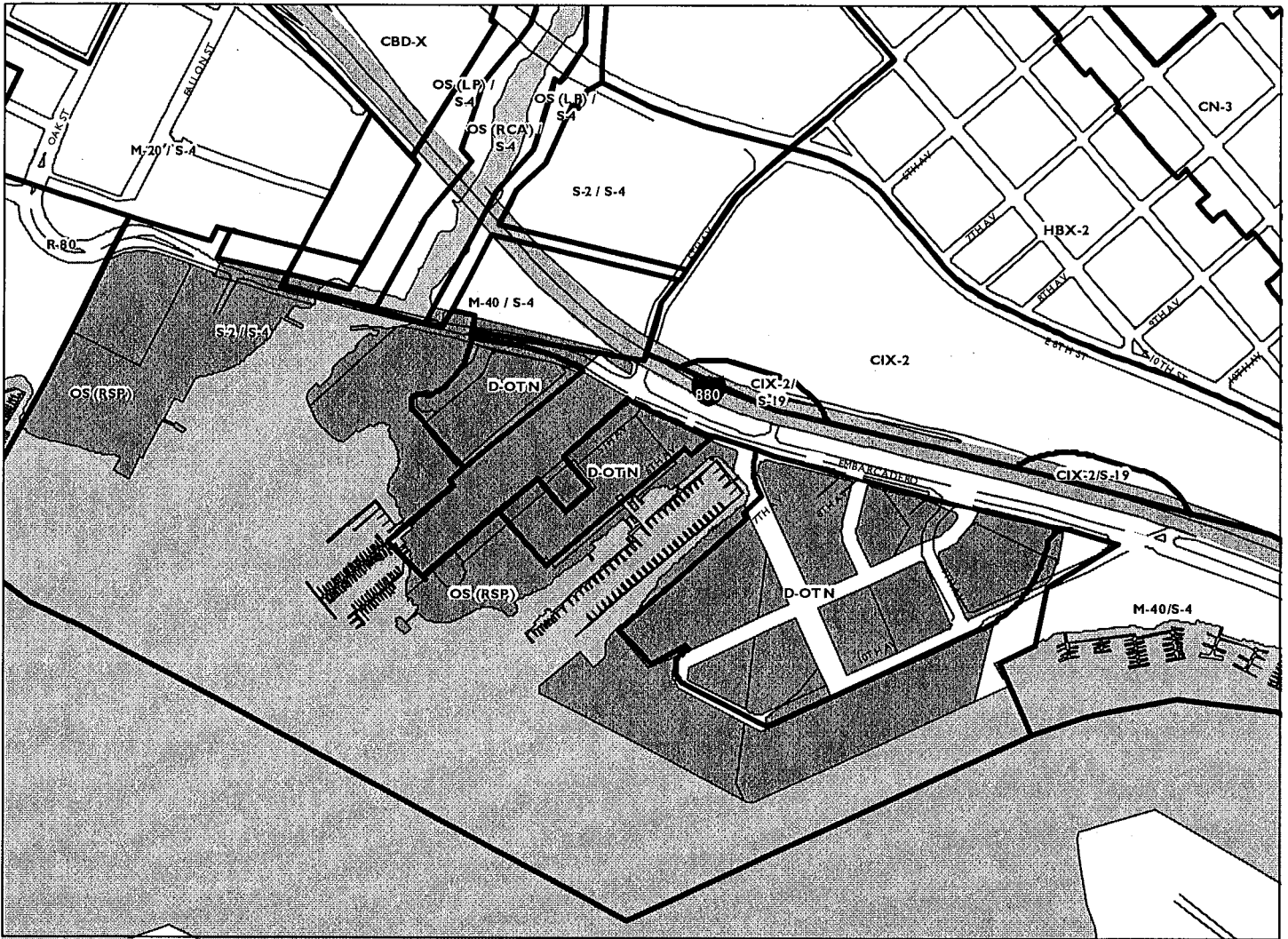
**SUMMARY**

The purpose of this report is to carry out activities required to enable the Brooklyn Basin affordable housing parcel exchange, as directed by the City Council. On January 17, 2017, the Oakland City Council approved the exchange of Brooklyn Basin Parcel G (owned by the City of Oakland) for Parcel A (owned by the master developer) for the purpose of development of affordable housing by the City of Oakland. At this time, the Planning Commission is asked to consider revisions to the Brooklyn Basin Planned Unit Development (PUD) conditions of approval to update references to the affordable housing parcels to accurately reflect the parcel exchange. The proposed revisions are intended to carry out City legislation.

**PROJECT SITE AND SURROUNDING AREA**

Brooklyn Basin generally encompasses a 64-acre site that adjoins the Oakland Estuary to the south, the Embarcadero and I-880 freeway to the north, 10<sup>th</sup> Avenue to the east, and Fallon Street to the west. The Phase I Site (located in the eastern portion of Brooklyn Basin, generally between the future Main Street and 9<sup>th</sup> Avenue) is currently subject to construction of streets and infrastructure improvements. Parcels A and G are in Phase 1, in the southeastern portion of the site, close to Embarcadero and Brooklyn Basin.

# CITY OF OAKLAND PLANNING COMMISSION



Case File: DA06011

Applicant: City of Oakland and Zarsion-OHP I, LLC (ZOHP)

Address: Brooklyn Basin

Zone: D-OTN

**PROJECT BACKGROUND**

*Project History*

The planned Brooklyn Basin Project consists of a mix of residential, retail/commercial, civic, and parks and open space uses preliminarily approved by the Planning Commission on March 15, 2006, and for which a Development Agreement was executed on July 18, 2006 by the City Council. Following a legal challenge, final entitlements were granted in 2009. The planned project includes up to 3,100 residential units, 200,000 square feet of ground-floor commercial space, a minimum of 3,950 parking spaces, 29.9 acres of parks and public open space, two renovated marinas (total of 170 boat slips), and a wetlands restoration area. The existing buildings on the site will be (or have been) demolished with the exception of a portion of the Ninth Avenue Terminal shed building and the Jack London Aquatic Center. The project does not include approximately six acres of privately-held property along and east of 5th Avenue that contain a mix of commercial and industrial uses, as well as a small community of work/live facilities.

Since entitlements were granted, ZOHP has initiated development of Phase 1, and is now working toward completing milestones toward delivering Phase 2, as noted in the following table:

**Summary of Recent Brooklyn Basin Milestones Summer 2016**

Milestone	Requirement	Status
Land Use Entitlements (DA, PUD/PDP, GPA, Rezone, EIR)	Oakland Municipal Code	Complies: Initial (challenged) approval 7/18/2006; Final approval 1/2009
Phase 1 Soil remediation (grading/surcharge permits)	EIR MM H, Prior to issuance of site development building permits	Complies: Activities completed 2014
Affordable Housing Developer Selection	DA Exhibit L, Section 4: proposal to City within one year of acquisition of Sites F, T and G	Complies: MidPen selected by Master Developer and approved by City Housing Department in 2015
Phase 1 Final Map	TTM, DA	FM7621 Approved May 2015
Phase 1 Infrastructure FDP and construction permits	Zoning regulations	Completed
Embarcadero Roadway Improvements	PUD	Under construction; Completion expected 2017
Community Facilities District	Condition of Approval 38, Prior to issuance of first Final Map	Complies: Estoppel Certificate in place; CFD formation in process.
Shoreline Park FDP	DA and PUD	Complies: Approved

		December 2015, BCDC confirmation May 2016
Parcel B FDP	PUD, FM7621	Approved September 2016
Phase 2 Final Map	PUD, TTM7621	Approved April 2017

**PROJECT DESCRIPTION**

As noted above, staff is asking the Planning Commission to consider revisions to the Brooklyn Basin PUD conditions of approval in furtherance of Ordinance No. 13413 C.M.S. The legislation states:

Ordinance (1) authorizing the City to acquire project parcel A for affordable housing development at the Brooklyn Basin Project from Zarsion-OHP 1, LLC, in exchange for project parcel G, (2) authorizing an amendment to the Cooperation Agreement with the Oak to Ninth Community Benefits Coalition to reflect the exchange, and (3) amending Resolution No. 84349 C.M.S. to terminate the City’s Put Option providing for the optional resale of the affordable housing parcels back to Zarsion-OHP 1.

The adopted PUD conditions of approval specifically refer to Parcel G as an affordable housing parcel and tie requirements and triggers related to the delivery of affordable housing specifically to Parcel G. The proposed revisions are intended to update the references to affordable housing on Parcel G to refer to affordable housing in general (see Attachment B for complete text of revision). This approach provides accuracy and allows for flexibility in the future.

**GENERAL PLAN ANALYSIS**

The Brooklyn Basin project site is located in the Planned Waterfront Development-1 (PWD-1) Estuary Policy Plan land use designation (the Estuary Policy Plan is the General Plan for the area that includes Brooklyn Basin). The adopted intent of the PWD-1 is to “provide for the transformation of maritime and marine industrial uses into a public-oriented waterfront district that encourages significant public access and open space opportunities. Encourage unique mix of light industrial, manufacturing, artist lofts and workshops, hotel, commercial, recreation, cultural uses, and water-oriented use that complement the recreational and open space character of the waterfront.” The PWD-1 land use designation includes an allowable residential density of 50 units per gross acre and 140 units per net acre).

The proposed revisions to the adopted PUD conditions of approval do not change the approved project in any way that would affect compliance with the General Plan. The revisions would allow for flexibility regarding the location of the required affordable housing on the site, consistent with adopted regulations pertaining to the project. The proposed revisions would not affect the approved land uses or location of land uses in the project. The proposal before the

Planning Commission is consistent with the terms and intent of the regulatory framework and previous approvals for the project.

## ZONING ANALYSIS

### *Zoning District Analysis*

Brooklyn Basin is located entirely within the D-OTN zoning district of the Oakland Planning Code (formerly known as, and identified in the regulations as, PWD-4). The D-OTN zoning district is intended to facilitate the development of an integrated mixed-use development, including residential, public and private open space and commercial land uses.

The proposed revisions to the PUD conditions of approval do not change the approved project in any way that would affect compliance with the applicable zoning regulations. Relocation of the required affordable housing component within the project would not change land uses or other regulated facets of the approved project. In short, the proposals before the Planning Commission are consistent with the terms and intent of the regulatory framework and previous approvals for the project.

## CALIFORNIA ENVIRONMENTAL QUALITY ACT

The planned Brooklyn Basin Project, approved in 2009, fully evaluated the environmental impacts of the project, in accordance with all applicable requirements. Specifically, the City of Oakland prepared and certified an Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA). CEQA specifically requires the analysis of potential adverse effects of a project on the environment.

The Brooklyn Basin Project decision subject to CEQA compliance at this time is a revision to the PUD conditions of approval with regard to the location of affordable housing on the project site. The revisions would not change the permitted land uses or densities. The revisions to the conditions of approval do not change the planned land use or conceptual design of the Brooklyn Basin Project, as permitted under the PUD, VTTM, and analyzed in the certified Oak to Ninth Avenue Project Environmental Impact Report [SCH No. 2004062013]. As demonstrated throughout the staff report, since there is no substantive change to the project, there is no justification for preparing new analyses and/or studies of potential effects of or on the project (as the project is already approved).

The City Council certified the EIR for the existing project approvals on January 20, 2009. The Oak to Ninth Avenue Project Environmental Impact Report [SCH No. 2004062013] is provided under separate cover to the City Council (Attachment F: EIR) and is available to the public at the Planning Department offices and on the web at:

<http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/DOWD008409>.

Staff has determined that no new information about the site, changes to the project, or circumstances under which the project would be undertaken have occurred that would require subsequent or supplemental environmental review for the proposed project. In accordance with CEQA, the City reviewed and analyzed the proposed projects and other relevant information to determine whether circumstances requiring the preparation of a subsequent or supplemental EIR exist. Based upon available information, the City has determined that none of those circumstances are present. Because the projects are a refinement and evolution of, and not a substantive change to, the approved Brooklyn Basin Project, no further environmental review is required. None of the circumstances that require a supplemental or subsequent EIR pursuant to CEQA Guidelines Section 15162 have occurred. Specifically:

- There are no substantial changes proposed in the project which would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- There are no substantial changes with respect to project circumstances which would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and
- There is no new information of substantial importance which would result in new significant environmental effects, a substantial increase in the severity of previously identified significant effects, previously infeasible mitigation measures or alternatives now found to be feasible, or new mitigation measures or alternatives which are considerably different from previous ones that would substantially reduce environmental effects.

Here, based upon available information, the City believes that none of the circumstances described above have occurred since 2009 and, therefore, no subsequent or supplemental environmental review is required under CEQA.

## **ZONING AND RELATED ISSUES**

Staff has not identified any issues related to the proposed revisions to the PUD conditions of approval in order to further the planned relocation of affordable housing within the Brooklyn Basin project site.

It should be noted that the planned exchange of parcels requires an administrative revision to the Development Agreement (DA) that, in part, governs the Brooklyn Basin project. The administrative revision to the DA was publicly noticed on April 11, 2017 and does not require

any Planning Commission or City Council action. Specifically, Section 11.2 of the DA states that, “a modification to this Agreement which does not relate to the Term, permitted uses of the Project, location, density or intensity of uses of the Project, height, design or size of improvements within the Project, provisions for Dedications, or to any conditions, terms, restrictions and requirements relating to subsequent actions of City and Agency under Article IV, or related to any uses of the Project, shall not require a noticed public hearing before the Parties execute such modification, but shall require the giving of notice pursuant to Section 65867 of the Development Agreement Legislation as specific by Section 65868 thereof.” The planned parcel exchange does not change any of the land uses and only affects ownership and location of affordable dwelling units at Brooklyn Basin. As such, the required revisions to the DA to accommodate the parcel exchange do not constitute an amendment requiring a public hearing, nor City Council approval.

**RECOMMENDATION AND CONCLUSION**

Staff requests that the Planning Commission consider the following:

- Pursuant to CEQA Guidelines Section 15162, and based on the attached findings, rely on the Oak to Ninth Avenue Project EIR as adequate under CEQA for the proposed revision of the Brooklyn Basin PUD conditions of approval in furtherance of Oakland Ordinance 13413 C.M.S.; and
- Revise the Brooklyn Basin PUD condition of approval to allow flexibility regarding the location of the required affordable housing on the project site.

Prepared by:



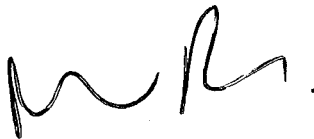
CATHERINE PAYNE  
Planner IV

Approved by:



Robert D. Merkamp  
Development Planning Manager

Approved for forwarding to the Planning Commission



Darin Ranelletti, Interim Director  
Planning and Building Department

Attachments:

- A. Oak to Ninth Avenue Redevelopment Project EIR (provided under separate cover to the Planning Commission; available to the public at 250 Frank Ogawa Plaza, Suite 3315, Oakland CA, 94612 during regular business hours, and at <http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/DOWD008409> ).
- B. Proposed Revision to Brooklyn Basin PUD Conditions of Approval
- C. City of Oakland Ordinance No. 13413 C.M.S.



## CALIFORNIA ENVIRONMENTAL QUALITY ACT

The planned Brooklyn Basin Project, approved in 2009, fully evaluated the environmental impacts of the project, in accordance with all applicable requirements. Specifically, the City of Oakland prepared and certified an Environmental Impact Report (EIR) under the California Environmental Quality Act (CEQA). CEQA specifically requires the analysis of potential adverse effects of a project on the environment.

The Brooklyn Basin Project decision subject to CEQA compliance at this time is a revision to the PUD conditions of approval with regard to the location of affordable housing on the project site. The revisions would not change the permitted land uses or densities. The revisions to the conditions of approval do not change the planned land use or conceptual design of the Brooklyn Basin Project, as permitted under the PUD, VTTM, and analyzed in the certified Oak to Ninth Avenue Project Environmental Impact Report [SCH No. 2004062013]. As demonstrated throughout the staff report, since there is no substantive change to the project, there is no justification for preparing new analyses and/or studies of potential effects of or on the project (as the project is already approved).

The City Council certified the EIR for the existing project approvals on January 20, 2009. The Oak to Ninth Avenue Project Environmental Impact Report [SCH No. 2004062013] is provided under separate cover to the City Council (Attachment F: EIR) and is available to the public at the Planning Department offices and on the web at:

<http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/DOWD008409>.

Staff has determined that no new information about the site, changes to the project, or circumstances under which the project would be undertaken have occurred that would require subsequent or supplemental environmental review for the proposed project. In accordance with CEQA, the City reviewed and analyzed the proposed projects and other relevant information to determine whether circumstances requiring the preparation of a subsequent or supplemental EIR exist. Based upon available information, the City has determined that none of those circumstances are present. Because the projects are a refinement and evolution of, and not a substantive change to, the approved Brooklyn Basin Project, no further environmental review is required. None of the circumstances that require a supplemental or subsequent EIR pursuant to CEQA Guidelines Section 15162 have occurred. Specifically:

- There are no substantial changes proposed in the project which would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- There are no substantial changes with respect to project circumstances which would result in new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

- There is no new information of substantial importance which would result in new significant environmental effects, a substantial increase in the severity of previously identified significant effects, previously infeasible mitigation measures or alternatives now found to be feasible, or new mitigation measures or alternatives which are considerably different from previous ones that would substantially reduce environmental effects.

Here, based upon available information, the City believes that none of the circumstances described above have occurred since 2009 and, therefore, no subsequent or supplemental environmental review is required under CEQA.

Planning Commission, May 17, 2017: Brooklyn Basin

Attachment B: Proposed edits to Condition of Approval #48

Proposed modifications shown in redline/strikeout:

48. Provisions for Affordable Housing

The ~~Developer shall with the comply with applicable Affordable Housing obligations as 's and Agency's responsibilities will be incorporated into as depicted in the project Oak to Ninth Avenue District Development Agreement, more specifically described in Exhibit L, as may be amended from time to time.~~ Following is a summary of that agreement of the Developer's remaining Affordable Housing obligations:

The Project would include a total of 465 affordable housing units to be located on Parcels F and G. These units are expected to be built in the following four phases:

Phase	Parcel	Units	Construction Type
I	F	150	Type V
II	G (portion)	132	Type I (over retail);
III	G (portion)	77	Type I (over retail)
IV	G (portion)	106	Type III (over retail)

a. Purchase of Lots

Developer will provide Lots F and G for sale to the Agency for the purpose of constructing affordable housing. The lots will be in remediated condition with all necessary utilities stubbed out at the lot line and access roads completed along the lot frontage to back of curb prior to construction ("Finished Lot"). The Agency shall close escrow on Lots F and G no later than the date that is 90 days after such lots are completed as Finish Lots (completion currently estimated at fourth quarter 2009 to first quarter of 2010; therefore, closing is estimated to occur in first quarter 2010 to second quarter of 2010.)

b. Determination of Discounted Purchased Purchase Price

Value of the lots will be determined by an appraisal in consideration of the number of market-rated residential units allowed to be built at the time the purchase transaction takes place (notwithstanding the affordability restriction contained in the Development Agreement/zoning), minus \$1 million for each lot, subject to a minimum purchase price described below. The initial purchase price for Parcel G will be based upon that portion of the land allocated to the residential component, which shall be determined by dividing the sum of the square footage of all residential units and residential parking by the total building and parking square footage for the entire Parcel G development.

c. Minimum Purchase Price

The purchase price for Parcels F and G would be subject to a possible adjustment based on the developer's actual cost of providing the Finished Lot since the project has very slim margins of profit it cannot sustain losses which might occur if a parcel is sold significantly below the developers cost. Accordingly, a minimum purchase price is established that allows the purchase price to be adjusted

upwards if the developer's cost of the finished, ready to build lot is more than the appraised value. The discounted purchase price may be adjusted up to the higher of the developer's costs (not including profit) or the fair market value at the time of completion. Or remediation, utilities, and access. However, in no event would the purchase price of the lot adjusted higher than fair market value.

d.—Early Purchase

The Agency would have the right to purchase Lots F and G prior to their completion as Finished Lots (with the Developer remaining obligated to remediate the property and install the applicable improvements) in return for a discount on the Purchase Price equal to a percentage discount rate multiplied by the number of years each lot is purchased prior to being completed as a Finished Lot. This discount would apply regardless of any adjustment made under the minimum purchase price provisions described above. The discount rate for the lots will be a blend of Developer's preferred return and Developer's cost of financing reflecting the proportions of each in Phase I. For an example, if the cost of financing is 8% and the preferred return on equity is 10% and the proportions of financing and equity are 75% financing and 25% equity, then the blended rate would be 8.5%. If the lots are then purchased two years early the discount would be 17%.

e.a. Additional Contribution

The Developer will make the Developer Contribution (defined below) an additional contribution toward affordable housing equal to \$2,000,000 with \$1,000,000 with 50% of the Developer Contribution payable on the Parcel A Contribution Date (defined below) and 50% payable on the Parcel F Contribution Date (defined below). at the time of the building permit issuance of Parcel F and \$1,000,000 payable at the time of building permit issuance on Parcel AG.

As used herein, the term "Developer Contribution" means \$2,000,000, less any reduction pursuant to Section 4.6 of the First Administrative Amendment to the Development Agreement.

As used herein, the term "Parcel A Contribution Date" shall mean the earlier to occur of (a) the date the City or its successor-in-interest obtains a building permit for the development of affordable housing on Parcel A or (b) if Parcel A has been sold for a use other than the development of affordable housing, the date the City or its successor-in-interest obtains a building permit for the alternate property designated for development of affordable housing pursuant to Section 4.6 of the First Administrative Amendment to the Development Agreement.

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As used herein, the term "Parcel F Contribution Date" shall mean the earlier to occur of (a) the date the City or its successor-in-interest obtains a building permit for the development of affordable housing on Parcel F or (b) in the event Parcel G has been sold for a use other than the development of affordable housing, the date the City or its successor-in-interest obtains a building permit for the alternate property designated for development of affordable housing pursuant to Section 4.6 of the First Administrative Amendment to the Development Agreement.

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f.—Commercial Shell and Parking Purchase Provision

Upon completion of the commercial shell and parking for Parcel G, the Developer will purchase the commercial shell and parking at the cost of construction to the Agency or the affordable housing developer, including financing and equity costs and developer overhead.

g.b. Development Rights Transfer

The developer may propose to purchase the right to build market rate units from the pool of affordable units allocated to Parcel G, along with the land value then associated with the units to be sold. Such a purchase would not affect any other contribution toward affordable housing to which the developer would still be bound. The developer may transfer the development rights to any other area within the development and use the rights for development of market rate units.

h. Construction of Affordable Housing

The Agency will warrant that it will cause to be constructed affordable housing units when it is economically feasible for the Agency to do so, subject to bonding constraints, Oak to Ninth project build out schedule, anticipated State funding to cover part of the needed subsidy as such program exists in 2006, and anticipated growth in tax increment from the Central City East Redevelopment Area and other areas contributing to the city-wide housing tax increment pool. It is anticipated that the Agency will fund the construction of units based on the following schedule:

- (1) Parcel F (Phase I): No later than July 2013 and when 1000 market rate units have been completed and are on the tax roll.
- (2) Parcel G (Phase II): No later than July 2016 and when 1800 market rate units have been completed and are on the tax roll.
- (3) Parcel G (Phase III): No later than July 2017 and when 2100 market rate units have been completed and are on the tax roll.
- (4) Parcel G (Phase IV): No later than July 1, 2018 and when 2300 market rate units have been completed and are on the tax roll.

The Agency may elect to construct sooner provided sufficient funding is available. Further, the Agency shall covenant to limit the use of the Oak to Ninth project set aside funds to the acquisition and development of Lots F and G until the completion thereof.

i. Affordability Level

Units will be affordable to households at between 30% and 60% of Adjusted Median Income

j. Unit Types

Up to 25 percent of all units may be configured for seniors. At least 30 percent of all non-senior units will be three bedroom units and at least 20 of all non-senior units will be two bedroom units.

k. Environmental Remediation of Estuary Park

To the extent that the City Council may decide to provide funds for environmental remediation of Estuary Park, the developer has agreed to provide additional subsidy for affordable housing equal to the amount of any remediation the Council funds. This will cause the park to be built earlier than would otherwise be feasible. Additionally, this will cause two of the four phases of the affordable housing to be funded one year earlier than would otherwise be feasible and would result

in citywide affordable housing funds being available for use elsewhere in the City. The developer proposes to pay interest on any funding provided by the City for environmental remediation equal to the rate the Redevelopment Agency would otherwise get, until such time as the first phase of Oak to Ninth affordable housing is built, at which time the developer would provide funding equal to the environmental remediation contribution plus interest to the Agency for use in funding affordable housing within the Oak to Ninth Mixed Use Development Project

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APPROVED AS TO FORM AND LEGALITY

  
DEPUTY CITY ATTORNEY

## OAKLAND CITY COUNCIL

ORDINANCE NO. ~~84349~~ 13413 C.M.S.

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**ORDINANCE (1) AUTHORIZING THE CITY TO ACQUIRE PROJECT PARCEL A FOR AFFORDABLE HOUSING DEVELOPMENT AT THE BROOKLYN BASIN PROJECT FROM ZARSION-OHP I, LLC, IN EXCHANGE FOR PROJECT PARCEL G, (2) AUTHORIZING AN AMENDMENT TO THE COOPERATION AGREEMENT WITH THE OAK TO NINTH COMMUNITY BENEFITS COALITION TO REFLECT THE EXCHANGE, AND (3) AMENDING RESOLUTION NO. 84349 C.M.S. TO TERMINATE THE CITY'S PUT OPTION PROVIDING FOR THE OPTIONAL RESALE OF THE AFFORDABLE HOUSING PARCELS BACK TO ZARSION-OHP I**

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**WHEREAS**, under the Development Agreement ("DA") for the Brooklyn Basin development project (formerly the Oak to 9<sup>th</sup> project) with the Zarsion-OHP I, LLC ("ZOHP") (formerly Oakland Harbor Partners, LLC) approved by the City and the Redevelopment Agency of the City of Oakland (the "Redevelopment Agency") in 2006, ZOHP agreed to set aside and sell Project Parcels F and G to the Redevelopment Agency at a discount for affordable housing development, after ZOHP performed site work and environmental remediation on those parcels; and

**WHEREAS**, the DA required that the affordable housing developer selected by the Redevelopment Agency develop a certain amount of commercial space and associated parking on Project Parcel G, along with affordable housing; 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 Redevelopment Agency to purchase Project Parcels F and G for affordable housing development and to ensure the development of at least 465 affordable housing units on those parcels; and

**WHEREAS**, the City is the housing successor to the Redevelopment Agency under Health and Safety Code Section 34176, including the Redevelopment Agency's housing obligations and functions with respect to the DA, the Cooperation Agreement, and the Project Parcels designated for affordable housing development; and

**Attachment C**

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**WHEREAS**, Resolution No. 84349 C.M.S. adopted on May 7, 2013, authorized the City to exercise the early purchase option in the DA to purchase Project Parcels F and G prior to the completion of site work and environmental remediation, subject to the condition that ZOHP grant the City an option to sell back these parcels to ZOHP for the original purchase price at any time from December 31, 2015, through December 31, 2018 (the "Put Option"); and

**WHEREAS**, the City purchased Project Parcels F and G from ZOHP in 2014 pursuant to the DA, the Cooperation Agreement, and Resolution No. 84349 C.M.S., and entered into a Put Option Agreement with ZOHP that granted the Put Option to the City and required ZOHP to set aside funds in escrow to secure its Put Option obligations; and

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**WHEREAS**, ZOHP has proposed exchanging Project Parcel G for Project Parcel A, with Project Parcel A to be used for affordable housing development instead of Project Parcel G; and

**WHEREAS**, Parcel A is suitable for the development of affordable housing; and

**WHEREAS**, the proposed exchange would have certain benefits to the City and the affordable housing developer, in that (1) the affordable housing developer would be relieved from the obligation to develop commercial space on Project Parcel G as required under the DA, and (2) development of affordable housing on Project Parcel A would be less costly and more feasible than development on Project Parcel G; and

**WHEREAS**, the Oak to Ninth Community Benefits Coalition supports the proposed exchange; and

**WHEREAS**, a condition of the exchange is that the City agree to terminate the Put Option and release the escrowed Put Option security funds to ZOHP; and

**WHEREAS**, Section 2.41.020, et seq., of the Oakland Municipal Code authorizes the City to purchase real property by ordinance; and

**WHEREAS**, Section 2.42.050.C, et seq., of the Oakland Municipal Code authorizes the City to sell real property by ordinance; and

**WHEREAS**, the City Administrator and ZOHP will be addressing these changes pursuant to Section 11.2 of the DA (which specifies that certain project-related City actions do not constitute an amendment to the DA that requires a noticed public hearing) to provide for the exchange under the negotiated conditions; and

**WHEREAS**, the Environmental Impact Report for the Oak to Ninth Mixed Use Development Project prepared under the California Environmental Quality Act ("CEQA") and certified by the City Council in 2006 and recertified in 2009 (the "EIR") provides a project-level analysis of the environmental impacts of the Brooklyn Basin development project and supports all levels of approval necessary to implement the project; and



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**WHEREAS**, the proposed exchange would not result in any significant effect that has not already been analyzed in the EIR, and there will be no significant environmental effects caused by the exchange that have not already been analyzed in the EIR; now, therefore

The Council of the City of Oakland does ordain as follows:

**SECTION 1.** The City Council hereby authorizes the City to acquire Project Parcel A from ZOHP, and to convey Project Parcel G to ZOHP in exchange for Project Parcel A. Upon the exchange, Project Parcel A shall then become one of the "affordable housing parcels" under the DA and the Cooperation Agreement.

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~~**SECTION 2.** The City Council hereby amends Resolution No. 84349 C.M.S. to authorize as a condition of the exchange the termination of the Put Option and the release of any Put Option security funds to ZOHP.~~

**SECTION 3.** The City Council hereby authorizes the City Administrator or her designee to negotiate and execute agreements and grant deeds with ZOHP for the property exchange, including the termination of the Put Option, consistent with the terms of this Ordinance, as well as negotiate and execute any other agreements or documents as necessary to effectuate the property exchange and the Put Option termination. This includes without limitation an amendment to the Cooperation Agreement with the Oak to Ninth Community Benefits Coalition to reflect the property exchange.

**SECTION 4.** The City Council, pursuant to Oakland Municipal Code Section 2.42.050.B., hereby waives a competitive process for disposition of Project Parcel G to ZOHP pursuant to the exchange, and finds and determines that disposition of this property without a competitive process is in the best interest of the City because of the benefits to the City and the affordable housing developer from the exchange as set forth in this Ordinance and the staff report accompanying this Ordinance.

**SECTION 5.** The City Council hereby finds and determines on the basis of substantial evidence in the record that none of the circumstances necessitating preparation of additional environmental review, as specified in CEQA and the CEQA Guidelines, including, without limitation, Public Resources Code Section 21166 and CEQA Guidelines Sections 15162 or 15163, are present because of the exchange, in that (1) there are no substantial changes proposed in the project or the circumstances under which the project is undertaken that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (2) there is no "new information of substantial importance," as defined in CEQA Guidelines Section 15162(a)(3). The City Council further finds and determines, each as a separate and independent basis, that this action is exempt from CEQA pursuant to CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning), 15378(b)(5) (the exchange will not independently result in a physical change in the environment) and 15061(b)(3) (no significant effect on the environment). The City Administrator or her designee is hereby authorized to file a notice of determination with the Office of the Alameda County Recorder and the State Office of Planning and Research.

**SECTION 6.** The City Administrator or her designee is hereby authorized to take any other action necessary in furtherance of the exchange and termination of the Put Option consistent with this Ordinance and its basic purposes.

**SECTION 7.** This Ordinance shall be in full force and effect immediately upon its passage as provided by Section 216 of the City Charter if adopted by at least six members of Council, or upon the seventh day after final adoption if adopted by fewer votes.

IN COUNCIL, OAKLAND, CALIFORNIA, JAN 17 2017, 2016

**PASSED BY THE FOLLOWING VOTE:**

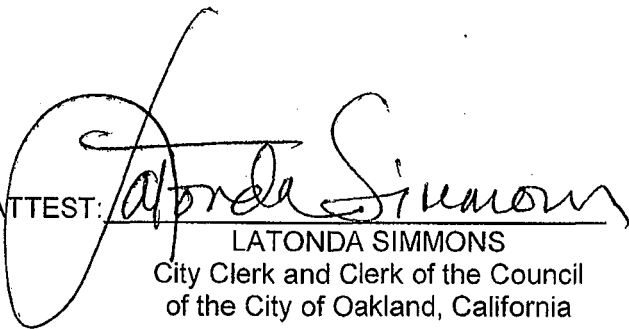
AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, KALB, KAPLAN, REID  
AND PRESIDENT GIBSON MCELHANEY - 7

NOES- 0

*Excused - Gruiken - 1*

ABSTENTION- 0

Introduction Date  
DEC 13 2016

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

*Date of Attestation*

1-23-17

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**ORDINANCE (1) AUTHORIZING THE CITY TO ACQUIRE PROJECT PARCEL A FOR AFFORDABLE HOUSING DEVELOPMENT AT THE BROOKLYN BASIN PROJECT FROM ZARSION-OHP I, LLC, IN EXCHANGE FOR PROJECT PARCEL G, (2) AUTHORIZING AN AMENDMENT TO THE COOPERATION AGREEMENT WITH THE OAK TO NINTH COMMUNITY BENEFITS COALITION TO REFLECT THE EXCHANGE, AND (3) AMENDING RESOLUTION NO. 84349 C.M.S. TO TERMINATE THE CITY'S PUT OPTION PROVIDING FOR THE OPTIONAL RESALE OF THE AFFORDABLE HOUSING PARCELS BACK TO ZARSION-OHP I**

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**NOTICE AND DIGEST**

This Ordinance authorizes the exchange of Project Parcel G, one of the affordable housing parcels at the Brooklyn Basin development project, with Zarsion-OHP I, LLC, for Project Parcel A. This Ordinance also authorizes an amendment to the Cooperation Agreement with the Oak to Ninth Community Benefits Coalition to reflect the exchange, and the termination of a Put Option held by the City providing for the optional resale of the affordable housing parcels back to Zarsion-OHP I, LLC. This Ordinance also makes associated findings with respect to the California Environmental Quality Act (CEQA).