

**OAKLAND CITY COUNCIL**

**RESOLUTION NO. \_\_\_\_\_ C. M. S.**

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**RESOLUTION DENYING THE APPEAL FILED BY ARTHUR D. LEVY AND SUSTAINING THE MARCH 15, 2006 PLANNING COMMISSION ACTIONS IN CONNECTION WITH THE APPROVALS, AND CERTIFICATION OF THE ENVIRONMENTAL IMPACT REPORT, FOR THE OAK TO NINTH AVENUE MIXED USE DEVELOPMENT PROJECT**

**WHEREAS**, on May 28, 2004, in accordance with the California Environmental Quality Act ("CEQA"), City staff issued a Notice of Preparation stating the City's intent to prepare an Environmental Impact Report ("EIR") for the Oak to Ninth Avenue Mixed Use Development Project ("Project"); and

**WHEREAS**, as part of the proposed Project, the applicant requested approval of amendments to the Estuary Policy Plan, amendments to the City's Zoning Code to rezone the Project site and adopt the Planned Waterfront Zoning District (PWD-4), amendments to the Central City East Redevelopment Plan and the Central District Urban Renewal Plan, a Development Agreement, a Vesting Tentative Tract Map, a Preliminary Development Plan, a Tree Removal Permit, and a Conditional Use Permit for activities in the Open Space-Region Serving Park zone; and

**WHEREAS**, on September 1, 2005, the Draft EIR for the Project, SCH #2004062013, was released by the City for a 54-day public review and comment period, and on September 28, 2005, October 12, 2005, and October 17, 2005, respectively, the Planning Commission, the Parks and Recreation Advisory Commission, and the Landmarks Preservation Advisory Board held public hearings to provide the public with additional opportunities to comment on the DEIR; and

**WHEREAS**, on December 3, 2005, the Planning Commission conducted a site visit to the Project site; and

**WHEREAS**, on February 1, 2006, the City released the Final EIR for the Project and on June 9, 2006 the City published an addendum to the Final EIR; and

**WHEREAS**, on February 8, 2006, the Parks and Recreation Advisory Commission, and, on January 9, 2006 and February 27, 2006, the Landmarks Preservation Advisory Board, held public hearings on the Project, and

**WHEREAS**, on December 14, 2005 and January 25, 2006, the Design Review Committee of the Planning Commission held public hearings on the Project; and

**WHEREAS**, on January 25, 2006, the Planning Commission held a public hearing to discuss the major environmental and policy issues pertaining to the Project; and

**WHEREAS**, on March 15, 2006, the Planning Commission held a public hearing on the Project and certified the EIR, adopted CEQA Findings and a Statement of Overriding Considerations, adopted a Mitigation Monitoring and Reporting Program, adopted General Findings, recommended adoption of General Plan Amendments, recommended adoption of amendments to two Redevelopment Plans, recommended adoption of an ordinance rezoning the Project site from M-40 and S-2/S-4 to Planned Waterfront Zoning District-4, Open Space-Region Serving Park, and S-2/S-4, recommended adoption of an ordinance adopting the Planned Waterfront District-4 zoning district, recommended adoption of a Development Agreement ordinance, approved a Preliminary Development Plan, approved Design Guidelines, approved a Vesting Tentative Subdivision Map, and adopted Conditions of Approval; and

**WHEREAS**, an appeal of the Planning Commission actions was filed on March 24, 2006 by Arthur D. Levy on behalf of Oakland Heritage Alliance, Rajiv Bhatia, John Sutter, East Bay Bicycle Coalition, League of Women Voters of Oakland, Waterfront Action, Coalition of Advocates for Lake Merritt, and Sierra Club Northern Alameda County Regional Group; and

**WHEREAS**, on March 28, 2006 the City Council and the Oakland Redevelopment Agency held a public Informational Workshop on the Project and the Project approvals; and

**WHEREAS**, the City Council and Oakland Redevelopment Agency held a public hearing on June 20, 2006, which was noticed in accordance with legal requirements; and

**WHEREAS**, the appellants and all other interested parties were given the opportunity to participate in the public hearing through oral testimony and the submittal of written comments; and

**WHEREAS**, on June 20, 2006, the City Council fully reviewed, considered, and evaluated the Project EIR, all of the staff reports prepared for the Project including the attachments to the staff reports, public testimony, and all other documents and evidence in the public record on the Project and the appeal;

**NOW, THEREFORE, BE IT RESOLVED** that the appellants have not shown, based on evidence in the record, that the Planning Commission's decisions were made in error, that there was an abuse of discretion by the Planning Commission, that the Planning Commission's decision was otherwise improper, or that the City's notices, agendas, and appeal procedures were unlawful in any manner. This determination is based, in part, on the EIR, the staff reports and attachments prepared for the Planning Commission hearings on the Project and the staff report and attachments prepared for the City Council on the Project and this appeal, each of which is incorporated herein by reference. Accordingly, the appeal is denied and the Planning Commission's March 15, 2006 actions are upheld as modified by the City Council; and be it

**FURTHER RESOLVED** that the City Council affirms and adopts the CEQA Findings attached to this Resolution as Exhibit A, the Mitigation, Monitoring and Reporting Program attached as Exhibit B, the Conditions of Approval attached as Exhibit C, and the General Findings attached as Exhibit D, each of which is incorporated herein by reference; and be it

**FURTHER RESOLVED** that City staff is directed to undertake the clerical task of amending Exhibits A, B, C, and D, if necessary to conform to this Resolution.

IN COUNCIL, OAKLAND, CALIFORNIA, June 20, 2006

**PASSED BY THE FOLLOWING VOTE:**

AYES

NOES

ABSENT

ABSTENTION

ATTEST: \_\_\_\_\_

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