

From: [Trish Spencer](#)
To: [Lara Weisiger](#)
Subject: Fwd: [EXTERNAL] For Item 7-F in 7/2/24 City Council Meeting
Date: Tuesday, July 2, 2024 12:01:08 PM
Attachments: [scan 72.pdf](#)

----- Forwarded message -----

From: Dona Fisher <donafisher11@gmail.com>

Date: Jul 1, 2024 2:28 PM

Subject: [EXTERNAL] For Item 7-F in 7/2/24 City Council Meeting

To: Malia Vella <MVella@alamedaca.gov>, Trish Spencer <tspencer@alamedaca.gov>, Tony Daysog <TDaysog@alamedaca.gov>, Marilyn Ezzy Ashcraft

<MEzzyAshcraft@alamedaca.gov>, Tracy Jensen <tjensen@alamedaca.gov>

Cc: Michael Roush <mroush@alamedacityattorney.org>, Michael Fisher <mlfisher@aol.com>

City Council - in advance of tomorrow's City Council Meeting, we are sending you 3 requests to consider regarding the submerged parcel behind 3341 Fernside. Please let me know if you have any questions, thanks!!

1. We request that Alameda City Council consider holding their promise to offer the remaining 6 submerged parcels at the promised \$10,000 price:

- The City of Alameda is not honoring the promised price of \$10,000 that other parcels paid and we were promised repeatedly starting in 2016
- The other 84 submerged parcels were purchased for \$10,000 each in 2016. At that time, the remaining six were promised that the \$10,000 price would hold when our submerged parcels were finally sold. This promise was reiterated verbally at every meeting we had with City representatives on this issue over the past 8 years.
- Several supporting documents are attached (listed below).
 - Alameda City Council Minutes from 4/18/17 meeting (attached)
 - Alameda City Council Meeting Notes from 4/18/17 (attached)
 - Excerpt from Michael Roush 10/25/23 email: "In 2016, the City Council approved Final Map 8337 that created 99 submerged parcels and sold 84 of them to adjacent residential property owners for a price of \$10,000 for each parcel. (The property owners also paid for title insurance and closing costs up to \$1,000, with the City paying costs above that, roughly \$200.) The agenda report concerning the Final Map for 8570 contemplated that these six parcels would likewise be sold to the adjacent residential property owners for a price of \$10,000 per parcel, with the property owners paying for title insurance and closing costs and the City paying any additional costs above \$1000 but with a cap of \$200.
- The City's 8-year delay should not lead to a 40% price increase for our Parcel.

2. While the City has delayed what they are referring to as Phase 2 of the Submerged Parcel transfer - the Surplus Lands Act has been amended and now requires that the City register these parcels for potential sale to public entities or Affordable Housing buyers before selling them to us. **We request that the City apply for exemptions before opening our parcel up for sale to the public.**

- Exemptions are available for various things including land that is encumbered or has easements.

3. Should we not receive an exemption, **we request that the City disclose all issues that make our**

property unsaleable:

- Coastal Commission approval required for any building on the Parcel
- We will not be selling our dock/deck that were unconditionally permitted and take up most of the buildable portion of the Parcel
- Portion of parcel near the seawall cannot safely support construction),
- Parcel is accessible by water only
- Parcel contains a view corridor (**if the City removes this from the Parcel, then it needs to be removed from our Relinquishment of Rights Agreement**)

Thanks,

Dona and Michael Fisher

3341 Fernside

From page 5, 4/18/17 Alameda City Council Minutes

Mayor Spencer stated that she reviewed the project permit history which showed two inspectors made multiple approvals, but at the end the project was denied.

Vice Mayor Vella inquired whether the City has had the property surveyed, to which the Assistant City Attorney responded in the affirmative; stated as part of Phase 1, the area was surveyed as recently as last year by the RJA Firm.

Vice Mayor Vella inquired what type of survey was performed, to which the Assistant City Attorney responded RJA Firm did a public record search, pulled title reports on every single parcel, and conducted an aerial survey to get existing conditions.

Vice Mayor Vella inquired whether the firm review permits from the past as part of the survey, to which the Assistant City Attorney responded in the negative.

Councilmember Oddie inquired whether the City is planning to make the property owners pay the same price, to which the Assistant City Attorney responded the affirmative; stated even though the public access easement will be recorded on title, the property owners would have full use of the lot until the City decides to build a public dock; there is no diminution of the price.

Councilmember Ezzy Ashcraft inquired whether the pool lot is the most encroaching, to which the Assistant City Attorney responded in the affirmative; continued the presentation.

Councilmember Ezzy Ashcraft inquired when was the last conversation with homeowners, to which the Assistant City Attorney responded that he spoke with some homeowners last week and other homeowners in December.

Councilmember Ezzy Ashcraft inquired whether the Assistant City Attorney only met with one homeowner between December and tonight's Council meeting.

The Assistant City Attorney responded in the affirmative; stated that he informed property owners that he would follow up with them after getting direction from Council tonight.

Mayor Spencer inquired what is the width of the public access sidewalk with the landscaping, to which the Assistant City Attorney responded approximately five feet.

Mayor Spencer stated the Recreation and Park Commission discussed allowing small water craft access, such as a kayak; inquired about the public access points and whether the five foot width would be sufficient for kayaks.

The Assistant City Attorney responded the access points were initially put in as a view corridor; stated the City is proposing changing the use to allow water access.

From Page 3, 4/18/17 City Council Meeting Notes

so. In this instance, the City can accomplish the goals of the community without completely taking away the historic uses by the adjacent property owners that do not interfere with those goals.

As was true with Phase I, there are also long term code enforcement issues all along the Tidal Canal. The proposed real estate transaction under Phase II does not waive, forgive, approve or condone unlawful activity including code violations. The property owners will be responsible for ensuring that they have or will obtain permits necessary for their waterfront structures.

BCDC approval will likely be required in order to make the improvements contemplated under Phase II. Some in the community have suggested that the City sell the public access points to the adjacent property owners and use the money to build a public dock in a more suitable location. This proposal would be viewed by BCDC (and others) as a reduction in public access and BCDC would surely object.

Phase III Proposed Plan: While Phases I and II are real estate transactions, where the City Attorney's Office has taken the lead, staff envisions Phase III as a community driven planning process, to be facilitated by the Recreation and Parks and Community Development Departments through public meetings to best determine locations and amenity improvements for public access into the water. Once everyone in the community has had an opportunity to express their views and we have community consensus, staff can bring the matter before the City Council for their consideration and further direction.

FINANCIAL IMPACT

Phase I: Between 2013 and September 2015, the City Attorney's Office spent approximately \$150,000 on outside legal and consultant fees related to this Project, out of the General Fund allocated to the City Attorney's budget. In September 2015, the City Council authorized \$350,000 General Fund funding allocation for the Project going forward. In December 2016, the City Council authorized an additional \$75,000 General Fund funding allocation for the Project. The City will be responsible for the maintenance of the open water lots (Lots 2 and 96). As these are submerged lands and the responsibility of dredging the open water remains with the Army Corps, it is anticipated that the maintenance costs for Lots 2 and 96 will be minimal. The City received gross revenue from Phase I of the Project of approximately \$1,500,000. The net revenue to the City is just under one million dollars. Thus, Phase I had no net impact on the General Fund.

Phase II: It is difficult to estimate the fiscal impact of Phase II of the Project to the General Fund at this time. The costs of fencing and paving to clean up the encroachments on the public access points are currently unknown. If the City Council approves the disposition of the submerged property to the six (6) adjacent property owners, in conjunction with the clearing of the encroachments, then up to \$60,000 in gross sales proceeds may be available to help offset the costs of the transaction and proposed improvements.

In addition, staff plans to pursue disposition of the remaining two (2) commercial lots (Lots 5 and 6). However, the timing of when those sales may occur is unknown. In the meanwhile, the City will incur the carrying costs and liability risk for those two (2) lots until sold. As mostly submerged land, it is anticipated that the maintenance costs for Lots 5 and 6 will be minimal.

Phase III. It is difficult to estimate the fiscal impact of Phase III of the Project to the General Fund at this time. The costs of providing public access into the water is highly dependent on size and location of structures, materials, soils conditions (which may include hazardous materials remediation), timing of construction and costs associated with design and permitting, among other factors. However, it is anticipated that the net proceeds from the sale of the Tidal Canal properties will be used to pay for public access improvements.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

The proposed plan to move forward with Phase II and Phase III of the Project is consistent with the City of Alameda General Plan Open Space and Land Use Policies, as well as the Alameda Municipal Code.

ENVIRONMENTAL REVIEW

A draft Initial Study/Negative Declaration ("IS/ND") for the project was published on June 1, 2016, in accordance with the California Environmental Quality Act (CEQA), which addresses all potential environmental impacts associated with the proposed dispositions under Phase I and Phase II. The IS/ND concludes that the proposed project would not cause any potentially significant environmental impacts, and accordingly, no mitigation measures would be required as part of the project. On July 11, 2016, at a noticed public hearing, the Planning Board unanimously recommended that the City Council adopt a Final Negative Declaration. On September 20, 2016, at a noticed public hearing, the City Council unanimously approved the Negative Declaration for the Project.

The fencing and paving work along the public access points as part of Phase II and any proposed new floating dock and pier along the Tidal Canal as may be contemplated under Phase III will be subject to separate environmental review and discretionary approval by the City and the appropriate regulatory agencies with jurisdiction.

RECOMMENDATION

- A) Accept Status Report on Tidal Canal Project Phase I,
- B) Provide Direction to Staff on Moving Forward with Phase II, and
- C) Provide Direction to Staff on Moving Forward with Phase III.

Respectfully submitted,
Janet C. Kern, City Attorney

By,
Andrico Q. Penick, Chief Real Estate Counsel

Financial Impact section reviewed,
Elena Adair, Finance Director

Exhibit:

1. Tentative Map dated September 7, 2016

From: [Trish Spencer](#)
To: [Lara Weisiger](#)
Subject: Fwd: [EXTERNAL] Item 7-F in 7/2/24 City Council Meeting
Date: Tuesday, July 2, 2024 12:03:44 AM

----- Forwarded message -----

From: Kevin Peterson <got2sail2@gmail.com>

Date: Jul 1, 2024 8:56 PM

Subject: [EXTERNAL] Item 7-F in 7/2/24 City Council Meeting

To: Trish Spencer <tspencer@alamedaca.gov>, Tony Daysog
<TDaysog@alamedaca.gov>, Tracy Jensen <tjensen@alamedaca.gov>, Marilyn Ezzy Ashcraft
<MEzzyAshcraft@alamedaca.gov>, Malia Vella <MVella@alamedaca.gov>

Cc:

Dear City Council,

I am Kevin Peterson and live on Fernside Blvd. and was on the executive committee of the WHOA (Waterfront Home Owners Association) that worked for more than a decade with the Army Corps. BCDC, and the City of Alameda to help facilitate the transfer of land from the Army Corp. to the City of Alameda then to the adjacent homeowners. Some of you were involved with this process back in 2016.

Unfortunately there was 6 properties that was held out of the process for the City to do more research. I am glad to see the city is completing their promised completion of this agreement.

Before the transfer this land was a problem for the Army Corps. to manage and the City of Alameda had no control over building that had an open permit from the Army Corps to build upon. The goal from all parties was to clean this up so one agency would have oversight for the building that had happened and was happening. To make this process as clean and easy as possible the decision was made to price all these lots at the same price of \$10,000 to cover the "transfer cost". Each of these lots varied in size and what was built on it or not because it was a common belief that what ever was there was already baked into the purchase price of the home. These homes were originally sold with the promise of access to the water and the ability to build wharfs.

Now that the City has done their extensive research on these six unique properties I would hope the city continues with the promise I clearly remember of completing the transaction at the same price once things was sorted out.

I appreciate your service to our community.

Sincerely,

Kevin Peterson
(510) 915-3901

From: [Michael Roush](#)
To: [Lara Weisiger](#)
Cc: [Amy Wooldridge](#); [Jennifer Ott](#)
Subject: Fw: [EXTERNAL] Re: Sale of Submerged Parcels--Update
Date: Monday, July 1, 2024 10:24:24 AM

Correspondence from one of the property owners re sale of submerged. parcels. No need to attach my email that triggered this email.

From: Rob Barics <rob.barics@gmail.com>
Sent: Sunday, June 30, 2024 12:56 PM
To: Bethany Polentz; Michael Roush
Subject: [EXTERNAL] Re: Sale of Submerged Parcels--Update

Mr. Roush,

"At long last" is an understatement, and underscores our annoyance that the process has taken so much time.

We will be present at Council this coming Tuesday to tell the Council we believe it is ridiculous to increase the cost of our mud parcel from \$10,000 to \$12,500. The agreement was ALL waterfront owners would receive the same deal, \$10k. The city has changed those terms after holding us out of the original agreement because of a land issue, instigated by one former Council member- a problem the city has thus far failed to remedy.

Nowhere in the appraisal report does information exist that justifies an increase in value. The appraisal recommends three different values per location. All mud parcels were treated the same in the original agreement. How do we have \$10k, \$12,5k, and \$14,5k values now?

We are willing to entertain the original \$10k offer the other waterfront owners received. We are not willing to accept the \$12,500 offer as-is.

We have been more than fair, patient, and measured in our relationship with the city over this matter, for years.

Regards,
Rob & Bethany - 3267 Fernside

From: [Trish Spencer](#)
To: [Lara Weisiger](#)
Subject: Fwd: Important - related to 7/2 City Council Meeting, agenda item 7-F
Date: Friday, June 28, 2024 4:51:05 AM

----- Forwarded message -----

From: Dona Fisher <perfectstormseaglass@gmail.com>
Date: Jun 27, 2024 6:38 PM
Subject: [EXTERNAL] Important - related to 7/2 City Council Meeting, agenda item 7-F
To: Trish Spencer <tspencer@alamedaca.gov>, Malia Vella <MVella@alamedaca.gov>, Marilyn Ezzy Ashcraft <MEzzyAshcraft@alamedaca.gov>, Tony Daysog <TDaysog@alamedaca.gov>, Tracy Jensen <tjensen@alamedaca.gov>
Cc: Michael Roush <mroush@alamedacityattorney.org>, Amy Wooldridge <AWooldridge@alamedaca.gov>, Michael Fisher <mlfisher@aol.com>

Dear City Council -

This is a copy of the most recent email sent to Michael Roush regarding Surplus Land Act implications, full disclosure requirement on offer for sale, and exemption request required for 3341 Fernside re: submerged parcels.

Thanks,

Dona and Michael Fisher
3341 Fernside

Hi Michael,

What adjoining property is owned by the City? The City does not own the Estuary nor our house; the Federal Government owns the Estuary. Our neighbor on one side already owns their parcel, and you are selling the other adjoining parcel. I think maybe you are referring to the 4 parcels closest to High Street; for those the City does have adjacent open space.

As a reminder, the City relinquished **ALL RIGHTS** to any adjoining land to our submerged parcel. To obtain this Relinquishment - we gave the City a View Corridor as consideration, knowing that the City had committed to WHOA (our homeowners' association) and us that the City would soon be selling our parcel to us. The City did this because our property was different, the City no longer had any ownership. Resultantly, the City promised that our Property would now be treated separately, since there was now nothing holding up the sale. In short - it makes total sense to apply for an exemption for our parcel, since there is **NO ADJACENT OPEN SPACE** held or controlled by the City.

Regarding shortest path - it is interesting that the City is now trying to hurry after delaying for over 8 years. By the way - we've been told that the City should file for an exemption - which would most likely be quicker, rather than the 5-month wait in offering this parcel for sale (2 month wait for parties to show interest, followed by 3 months of negotiating in good faith). In addition - the BCDC would almost necessarily slow down the process even further. This is in contrast to our purchasing the property which is seamless and will not require any BCDC approval.

Regarding the cost of any private improvements being included in the sale - **are you implying that the City would intend to eminent domain our property?** I will remind you that we have no intention of selling our dock or deck, or entertaining the idea; the selling of these would reduce the value of our property measurably. Please cite the law are you referring to that would allow the City to sell our deck and dock out from under us? (Please remember - our dock was fully permitted with unconditional permits during the time that this was allowed. We were told that we were one of the few that got in during this window.) If the City does not apply for exemption, and therefore offers this up for purchase - the City would be required to disclose in advance that the sale **DOES NOT INCLUDE** the dock and deck. Based on the Relinquishment of Rights, it should also be noted that there can be no access via land to this parcel. Further - you should disclose that the people who own the property have full rights to use the deck and dock that they rightfully own, as well as the water leading up to it. In short - this submerged parcel is pretty much unsellable.

Otherwise, you would be required to Eminent Domain the whole house and property - we are not only seniors, but I was assaulted last July 17th, and am under medical care suffering with PTSD. Having someone living in your yard would be impossible for me.

We have been told our home is worth in excess of \$3million, and have just finished spending \$40,000 to install Air Conditioning and 35,000 to redo the driveway and make repairs that the City neglected to do for years when they believed they owned it.

We should discuss - because it appears you have decided not to apply for the exemption based on misinformation.

Thanks,

Dona and Michael Fisher

PS - We find it impossible to understand why the City keeps changing the rules and going back on their commitments.

From: [Trish Spencer](#)
To: [Lara Weisiger](#)
Subject: Fwd: Revised: Important - related to 7/2 City Council Meeting, agenda item 7-F
Date: Friday, June 28, 2024 4:50:38 AM

----- Forwarded message -----

From: Dona Fisher <perfectstormseaglass@gmail.com>
Date: Jun 27, 2024 6:57 PM
Subject: [EXTERNAL] Revised: Important - related to 7/2 City Council Meeting, agenda item 7-F
To: Trish Spencer <tspencer@alamedaca.gov>, Malia Vella <MVella@alamedaca.gov>, Marilyn Ezzy Ashcraft <MEzzyAshcraft@alamedaca.gov>, Tony Daysog <TDaysog@alamedaca.gov>, Tracy Jensen <tjensen@alamedaca.gov>
Cc: Michael Roush <mroush@alamedacityattorney.org>, Amy Wooldridge <AWooldridge@alamedaca.gov>, Michael Fisher <mlfisher@aol.com>

Re-sending to add 2 more items for context - here are 2 excerpts from an email from Michale Roush to my husband and myself earlier today:

Excerpt 1:

From Michael Roush:

"Dona and Michael, Thank you for your email. We recognize the exemption for parcels less than half an acre but that exemption applies only when it "is not contiguous to land owned by a...local agency that is used for open space..." Gov Code, section 54221(f)(1) (B). Open space purposes means the use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources. Section 54221 (e). Local agency includes the a charter city. Section 54221 (a)(1). The property that adjoins the submerged parcels is owned by the City and certainly qualifies as open space, as defined. "

From us:

As you will not below - there seems to be some confusion - however the submerged parcel abutting our property is **not contiguous to land owned by a local agency that is used for open space..."**

Excerpt 2:

From Michale Roush:

"And as indicated to you previously, in the unlikely event the City were to receive serious inquiries about third parties' purchasing these parcels, the cost of any private improvements on the property would necessarily need to be part of such sales. "

From us:

It appears that City is seeking Eminent Domain, since they cannot offer our property for sale without eminent domain or an Agreement with us.

On Jun 27, 2024, at 3:38 PM, Dona Fisher <perfectstormseaglass@gmail.com> wrote:

Dear City Council -

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Thanks,

Dona and Michael Fisher
3341 Fernside

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Regarding shortest path - it is interesting that the City is now trying to hurry after delaying for over 8 years. By the way - we've been told that the City should file for an exemption - which would most likely be quicker, rather than the 5-month wait in offering this parcel for sale (2 month wait for parties to show interest, followed by 3 months of negotiating in good faith). In addition - the BCDC would almost necessarily slow down the process even further. This is in contrast to our purchasing the property which is seamless and will not require any BCDC approval.

Regarding the cost of any private improvements being included in the sale - **are you implying that the City would intend to eminent domain our property?** I will remind you that we have no intention of selling our dock or deck, or entertaining the idea; the selling of these would reduce the value of our property measurably. Please cite the law are you referring to that would allow the City to

sell our deck and dock out from under us? (Please remember - our dock was fully permitted with unconditional permits during the time that this was allowed. We were told that we were one of the few that got in during this window.) If the City does not apply for exemption, and therefore offers this up for purchase - the City would be required to disclose in advance that the sale **DOES NOT INCLUDE** the dock and deck. Based on the Relinquishment of Rights, it should also be noted that there can be no access via land to this parcel. Further - you should disclose that the people who own the property have full rights to use the deck and dock that they rightfully own, as well as the water leading up to it. In short - this submerged parcel is pretty much unsellable.

Otherwise, you would be required to Eminent Domain the whole house and property - we are not only seniors, but I was assaulted last July 17th, and am under medical care suffering with PTSD. Having someone living in your yard would be impossible for me.

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We should discuss - because it appears you have decided not to apply for the exemption based on misinformation.

Thanks,

Dona and Michael Fisher

PS - We find it impossible to understand why the City keeps changing the rules and going back on their commitments.

From: [Michael Roush](#)
To: [Lara Weisiger](#); [Amy Wooldridge](#)
Cc: [Dona Fisher](#)
Subject: Fw: [EXTERNAL] For tomorrow's meeting
Date: Thursday, June 20, 2024 12:20:02 PM
Attachments: [Submerged Parcel - 7.2.24 .dotx](#)
[scan-2.pdf](#)

Lara, At the request of the Fishers, owners of property adjacent to one of the submerged parcels, please include these two documents as correspondence concerning the agenda report for the sale of the submerged parcels. thanks Michael

From: Dona Fisher <donafisher11@gmail.com>
Sent: Wednesday, June 19, 2024 2:58 PM
To: Michael Roush
Cc: Michael Fisher
Subject: Re: [EXTERNAL] For tomorrow's meeting

Hi Michael - thanks for the update. I have attached a 3-page outline of comments for City Council, and also a 7-page PDF of excerpts from City Council Agenda Notes. Please forward these materials to the City Council in advance of the 7/2 meeting. Let me know if you have any questions, thanks!

Dona Fisher
3341 Fernside

On Jun 19, 2024, at 10:33 AM, Michael Roush <mroush@alamedacityattorney.org> wrote:

Dona and Michael, The proposed sale of the submerged parcels is scheduled for CC consideration of July 2. After discussion with other City staff, staff's recommendation will be that the parcels be sold at the appraised value. Concerning the materials that you sent to me in support of your reasons why the parcel adjacent to your property should be sold for \$10,000 rather than \$14,000, do you want me to include some or all of that with the agenda materials that will be published or would you prefer that I just forward the materials to the CC (or neither). If materials are to be included with the agenda, let me know what documents I should include. Thanks Michael

From: Dona Fisher <donafisher11@gmail.com>
Sent: Monday, May 27, 2024 1:43:38 PM
To: Michael Roush

Cc: Michael Fisher

Subject: [EXTERNAL] For tomorrow's meeting

Hi Michael,

The following are attached in preparation for our meeting tomorrow, 5/28, at 10AM via Zoom:

- Submerged Parcel PDF - detailed outline for discussion
- Scan-1 PDF - copies of documents, City Council Minutes,... to support points made on the outline
- Executed Relinquishment PDF - a copy of the Relinquishment of Rights filed by City of Alameda
- Photos of our driveway and City-maintained view corridor between Lots 4 and 5

Feel free to email any questions in advance.

Both Michael and I are looking forward to our meeting tomorrow.

Thanks,

Dona Fisher
3341 Fernside Blvd.

Zoom Meeting Log-On Instructions:

Topic: Submerged Parcel, Lot 7

Time: May 28, 2024 10:00 AM Pacific Time (US and Canada)

Join Zoom Meeting

[https://us06web.zoom.us/j/6859279618?](https://us06web.zoom.us/j/6859279618?pwd=d205ZXM4N3B6VzRPdFITSHhnSjJUQT09&omn=83831867013)

[pwd=d205ZXM4N3B6VzRPdFITSHhnSjJUQT09&omn=83831867013](https://us06web.zoom.us/j/6859279618?pwd=d205ZXM4N3B6VzRPdFITSHhnSjJUQT09&omn=83831867013)

Meeting ID: 685 927 9618

Passcode: 0000

One tap mobile

+16694449171,,6859279618#,,,,*0000# US

+13462487799,,6859279618#,,,,*0000# US (Houston)

Dial by your location

- +1 669 444 9171 US
- +1 346 248 7799 US (Houston)
- +1 719 359 4580 US
- +1 720 707 2699 US (Denver)
- +1 253 205 0468 US
- +1 253 215 8782 US (Tacoma)
- +1 564 217 2000 US
- +1 646 558 8656 US (New York)
- +1 646 931 3860 US
- +1 689 278 1000 US
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- +1 312 626 6799 US (Chicago)
- +1 360 209 5623 US
- +1 386 347 5053 US

• +1 507 473 4847 US

Meeting ID: 685 927 9618

Passcode: 0000

City Maintained View Corridor, no water view

Our View Corridor - 3341 Fernside

- Introduction
 - We purchased and moved into house in March 2010 (3341 Fernside)
 - We agreed to 7-figure purchase price which was comparable to other Alameda Estuary properties at the time and reflected Estuary view and dock (we were aware there was an active Association (WHOA) working for homeowners to purchase the submerged parcels).
 - Researched all documents and recordings prior to purchase to ensure dock was fully permitted and legal
- History
 - 6 Parcels, including ours, were excluded from the 2016/2017 sale, pending determination/confirmation of ownership.
 - At that time, a \$10K per-parcel value/price was established based on an Appraisal-determined Fair Market Value for all 90 parcels (includes the 6 submerged parcels being held back) (page 3 in the attachment, from the 9/20/16 City Council Agenda notes).
 - We were promised by both City Council and City Attorneys that this \$10K per-parcel price would hold (one such example is page 7 of the attachment, from the City Council 4/8/17 Agenda Notes).
 - Also – as recently as 10/5/23, an email from the City Attorney stated: “The agenda report concerning the Final Map for 8570 contemplated that **these six parcels would likewise be sold to the adjacent residential property owners for a price of \$10,000 per parcel**, with the property owners paying for title insurance and closing costs and the City paying any additional costs above \$1000 but with a cap of \$200. “
 - Throughout this process, we were also strongly supported by our Fernside neighbors who did get to buy their parcels.
 - Subsequently, in 2018 - two years after the submerged parcel sale to 84 homeowners - the City of Alameda confirmed that they did not own the “pathway.”
 - The City did a title search in 2018, and found that as we had been saying, the “pathway” bordering our house had never been owned by the City.
 - The City filed a Relinquishment of Rights for our property, recorded on 6/22/21; we agreed to a View Corridor in lieu of incurring additional legal costs to re-prove our ownership.

Comments pertinent to 7/2 City Council Meeting discussion on Submerged Parcels

Prepared by: Dona and Michael Fisher, 3341 Fernside

- This submerged parcel sale for the 6 properties held out of the 2016 transfer, continued to not be a priority for Alameda, and was delayed 6 additional years to 2024.
- Through this 8-year tedious process – we worked with 4 or 5 different City Attorneys; it appears that this continual handoff most likely contributed to City of Alameda not remembering the well-documented \$10K promise.
- This 8-year delay was through no fault of any of the 6 homeowners held out of the 2016 transaction, and we should not now be punished with a 40% price increase as a result.
- The City's 8- year delay should, in no way, lead to us paying thousands more for submerged parcels that the City never wanted in the first place and only purchased as a passthrough from the Army Corp of Engineers to the Homeowners.
- Further – based on this delay and the moratorium on our doing repairs on the City's seawall, it has continued to deteriorate and requires costly repairs (this was not considered on the recent Appraisal).
- Prior to the City releasing rights, the whole driveway deteriorated and was dangerous to both us and trespassers. Due to the City's lack of maintenance and a small child falling on his bike in one of the sinkholes, our insurance broker warned us that we may lose our insurance.
- Once we received the 2021 Relinquishment of Rights, we were finally able to move forward with the needed repairs, maintenance and beautification – spending \$30,000+ (the City, paid for this work to be done for the remaining Parcels).
- Financial Impact on City
 - Based on City Council agenda notes from 9/20/16 – assuming all of the commercial submerged parcels were sold – the City “...would recognize positive cash flow in the range of \$7 - \$900,000.” (page 4 of Attachment)
- 2024 Appraisal
 - Watts, Cohn and Partners prepared both the 2016 and 2024 Appraisals; different instructions were given, and different comp methodologies were used.
 - The August 2016 methodology “valued the FMV of fee simple interest of 90 lots, as a single entity...” To this end, the one overall FMV was evenly divided by number of parcels (the 6 holdouts **were included** as part of this calculation).

- WHOA homeowners agreed to everyone being charged the same price – regardless of size, location, ...
- The “revised” April 2024 Appraisal came up with a per parcel FMV using a methodology that assumed 1)**original purchase price did not reflect property being view property on the water**, and 2)**parcels in an upscale yacht club on the San Francisco Bay with amenities, were comparable**. They valued the subject parcels “at their highest and best use.”
- Based on this flawed 2024 methodology – we would, in essence, be paying twice for our water location and view.
- Summary
 - Lot 7 (and maybe others) was (were) held out of the original 2016 sale due to the City’s ownership questions that were resolved in 2018. It is now 6 years later, and we/our property are still hitting needless roadblocks.
 - The City is now requesting \$14,000 for our parcel, rather than honoring the previously agreed \$10,000 price.
 - We would like to resolve this and complete the transaction before yet another City Council is put in place.
 - We request your assistance in correcting and expediting this situation.

Reports Meetings Boards/Commissions Live Streaming

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Details

File #: 2016-3266 (60 minutes)

Type: Regular Agenda Item

Body: [City Council](#)

On agenda: 9/20/2016

Title: Summary Title: Public Hearing to Consider Parcelization and Acquisition of Oakland Inner Harbor Tidal Canal From the Army Corps of Engineers and Disposition of 94 Parcels to Individual Property Owners and Related Environmental and Zoning Amendment Actions. Public Hearing to Consider: (A) Introduction of Ordinance Amending the Alameda Municipal Code by Amending Chapter 30, Section 30-4.21 E, Estuary District (Requires 3 affirmative votes); (B) Adoption of Resolution Approving a Negative Declaration and Tentative Map #8337 for a 99 Lot Subdivision Located Along the Oakland Inner Harbor Tidal Canal from Approximately 1,800 Feet Northwest of the Park Street Bridge to Approximately 2,300 Feet South of High Street (Requires 3 affirmative votes); and (C) Introduction of Ordinance Authorizing the City Manager to: (1) Execute a Memorandum of Understanding, Quitclaim Deed and All Other Necessary Documents Between the City of Alameda and the United States of America Acting By and Through the ...

Attachments: 1. [Exhibit 1 - Negative Declaration](#), 2. [Exhibit 2 - Zoning Amendments](#), 3. [Exhibit 3 - Tentative Map](#), 4. [Exhibit 3 - Tentative Map - REVISED](#), 5. [Exhibit 4 - Tidal Canal Parcel PSA Examples](#), 6. [Ordinance - Zoning](#), 7. [Resolution - Tentative Map](#), 8. [Ordinance - Purchase and Sale](#), 9. [Presentation](#), 10. [Presentation - Maps](#), 11. [Correspondence](#)

Text

Summary Title: Public Hearing to Consider Parcelization and Acquisition of Oakland Inner Harbor Tidal Canal From the Army Corps of Engineers and Disposition of 94 Parcels to Individual Property Owners and Related Environmental and Zoning Amendment Actions.

Public Hearing to Consider: (A) Introduction of Ordinance Amending the Alameda Municipal Code by Amending Chapter 30, Section 30-4.21 E, Estuary District (Requires 3 affirmative votes);

(B) Adoption of Resolution Approving a Negative Declaration and Tentative Map #8337 for a 99 Lot Subdivision Located Along the Oakland Inner Harbor Tidal Canal from Approximately 1,800 Feet Northwest of the Park Street Bridge to Approximately 2,300 Feet South of High Street (Requires 3 affirmative votes); and

(C) Introduction of Ordinance Authorizing the City Manager to: (1) Execute a Memorandum of Understanding, Quitclaim Deed and All Other Necessary Documents Between the City of Alameda and the United States of America Acting By and Through the U.S. Army Corps of Engineers to Acquire 94 Parcels of Semi-Submerged and Submerged Land On the Alameda Side of the Oakland Inner Harbor Tidal Canal ("Tidal Canal"); (2) Execute Purchase and Sale Agreements, Quitclaim Deeds and All Other Necessary Documents Between the City of Alameda and Various Purchasers to Sell Approximately 92 Parcels on the Tidal Canal at Fair Market Value. A Draft Negative Declaration has been prepared for the proposed actions consistent with the California Environmental Quality Act (CEQA). (Requires 4 affirmative votes) (Community Development 481005)

To: Honorable Mayor and Members of the City Council

From: Jill Keimach, City Manager

Re: Public Hearing to Consider: (A) Introduction of Ordinance Amending the Alameda Municipal Code by Amending Chapter 30, Section 30-4.21 E, Estuary District (Requires 3 affirmative votes);

(B) Adoption of Resolution Approving a Negative Declaration and Tentative Map #8337 for a 99 Lot Subdivision Located Along the Oakland Inner Harbor Tidal Canal from Approximately 1,800 Feet Northwest of the Park Street Bridge to Approximately 2,300 Feet South of High Street (Requires 3 affirmative votes); and

(C) Introduction of Ordinance Authorizing the City Manager to: (1) Execute a Memorandum of Understanding, Quitclaim Deed and All Other Necessary Documents Between the City of Alameda and the United States of America Acting By and Through the U.S. Army Corps of Engineers to Acquire 94 Parcels of Semi-Submerged and Submerged Land On the Alameda Side of the Oakland Inner Harbor Tidal Canal ("Tidal Canal"); (2) Execute Purchase and Sale Agreements, Quitclaim Deeds and All Other Necessary Documents Between the City of Alameda and Various Purchasers to Sell Approximately 92 Parcels on the Tidal Canal at Fair Market Value. A Draft Negative Declaration has been prepared for the proposed actions consistent with the California Environmental Quality Act (CEQA). (Requires 4 affirmative votes)

BACKGROUND

Overview of the Problem: The U.S. Army Corps of Engineers ("Army Corps") has been trying to relieve itself of ownership for the past 25 years. To encourage the City of Alameda ("City") to accept the transfer of the Alameda side of the Oakland Inner Harbor Tidal Canal ("Tidal Canal"), the Army Corps instituted a permitting moratorium in 2000, which has prohibited any

construction, maintenance, repair or improvement of the waterfront along the OIHTC, except for emergency repairs. The Army Corps will not lift the permitting moratorium until the property has been transferred. As a result, regulating agencies with jurisdiction over the area, including the City, BCDC and the SF Regional Water Quality Control Board ("RWQCB"), have been unable to enforce regulations for code enforcement due to federal supremacy. Likewise property owners have been unable to legally make waterfront improvements and repairs (except emergency repairs) because they can't get permission from the Army Corps. In addition, the Army Corps' ownership and moratorium have created a cloud on title for the adjacent property owners. They own the improvements but the Army Corps owns the land upon which those improvements sit. In at least one instance, an Alameda realtor was sued over title confusion related to Tidal Canal ownership.

Approximately 90 residential and 8 commercial properties have been directly affected by the situation. Residential owners on the Alameda side have formed a voluntary homeowner's association to lobby the City and the Corps to complete the transfer in order to remove the permitting moratorium. In March 2015, the City Council acknowledged this as a problem and authorized City staff to work with the property owners and the Corps to identify a transfer strategy.

On September 15, 2015, the City Council by unanimous vote directed the City Attorney to pursue a real estate transaction whereby the Army Corps would transfer the Alameda side of the Tidal Canal to the City and the City would then immediately sell some of the property to adjacent private property owners or other purchasers. To minimize the City's potential liability and costs, the City Attorney determined that the best way to fulfill the conditions set by the City Council was to structure the transaction so that the City is in the chain of title for the shortest period possible. Thus, staff proposes to subdivide the Tidal Canal into 99 parcels while it is still in Army Corps ownership. 94 of the 99 parcels will be transferred from the Army Corps to the City. Once transferred, the plan is to immediately transfer most of the 94 new parcels to the adjacent property owners or other purchasers, at fair market value.

On July 11, 2016, the Planning Board held a noticed public hearing and unanimously approved resolutions, with added conditions, recommending that the City Council approve a Negative Declaration, approve an Estuary District zoning text amendment, and approve Tentative Map #8337 to implement the City Council's September 15, 2015 direction.

discussion

The City Council is being asked to consider approval of the following items:

1. Negative Declaration.

In June 2016, staff circulated the following documents: A draft Negative Declaration (Exhibit 1), evaluates the potential environmental impacts of the proposed zoning amendments, tentative map, and land conveyance on the environment as required by the California Environmental Quality Act (CEQA). The Negative Declaration finds that the proposed actions will not cause environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The proposal results in the simple transfer of land from a federal agency to a combination of public and private entities. No new development of the land is being proposed or contemplated as part of the project, and the project is not being pursued to facilitate new development of the primarily submerged lands. Further, any future development proposed on any of the proposed parcels will be subject to a discretionary decision by the City, which will require a review of potential environmental impacts. The Negative Declaration and other key documents can be found at <https://alamedaca.gov/tidal-canal-projects>.

2. Estuary Zoning District Amendments.

Draft amendments to the Estuary Zoning District designed to ensure that the submerged lands can only be used for maritime structures and uses, such as docks, piers, and boathouses, and that all future proposals will be subject to discretionary review by the City and the Bay Conservation and Development Commission (BCDC).

3. Tentative Map #8337.

A draft Tentative Map #8337, which depicts a proposed subdivision of the Army Corp land into 99 individual lots. As proposed, the Army Corps will retain five lots: the Oakland side of the canal (Unsurveyed Remainder Area 1), property adjacent to the federally owned Navy Operational Support Center (Parcel 3) bridge footings for the High Street Bridge (Parcel 97), the Miller-Sweeney Bridge and the Fruitvale Rail Bridge (Parcel 98), and the Park Street Bridge (Parcel 99). The City will retain the two open water lots (Lots 2 and 96), which will be preserved for open navigation through the Tidal Canal. The City will offer at fair market value the remaining 92 lots (Lots 4 through 96) to the adjacent property owners. These 92 lots have historically been used by the adjacent property owners through leases, license agreements or other approvals with the Army Corps to support their docks, piers, boathouses and/or commercial activities. The proposed Tentative Map is attached as Exhibit 3.

The Tentative Map retains all known and recorded easements, including a pedestrian easement on Parcel 10 behind the Nob Hill shopping center. The proposed subdivision will not conflict with easements acquired by the public at large for access through or use of property within the subdivisions. All existing public access easements are to be retained. As described above, the City will retain the open water lots along the Oakland/Alameda city line to ensure that the navigable portion of the Tidal Canal remains open to recreational and commercial traffic. The Army Corps plans to convey the Oakland portion of the Tidal Canal to the East Bay Regional Parks District in a separate transaction.

In addition to the adoption of the above documents, the community and the Planning Board have raised questions about how this project effects existing public access.

The City of Alameda currently owns three small public properties along Fenside Boulevard between High Street and Fairview Avenue that are designed to provide public access from Fenside Boulevard to the water's edge. The public access lands are 10 feet wide at Fenside Boulevard and then "bulb out" to approximately 35 feet at the water's edge. At its July 2016 public hearing, the Planning Board recommended that the City Council add three (3), 35-foot wide public access easements across six of the new submerged lots created by

Tentative Map #8337 to preserve opportunities for the Alameda community to build future public water access facilities, such as a floating dock for public use, at the foot of three existing public access points located along Fernside Boulevard. Although it is outside of the project area, this project has renewed interest in the community for resolving the encroachment issues on the City-owned properties landside and in increased public access to and into the water.

In response to stakeholder input, staff revised the Tentative Map presented to the Planning Board in order to retain as part of the open water parcel (Parcel 2) those submerged areas adjacent to the public access lands extending to the next nearest adjacent property line.

The portions of Parcel 2 in question include:

- A 108-foot long segment behind the existing City owned waterfront land extending behind 3227 and 3229 Fernside. This area is between Parcels 64 and 65 on the Tentative Map.
- A 100-foot long segment behind the existing City owned waterfront land extending between 3267 and 3301 Fernside. This area is between Parcels 75 and 76 on the Tentative Map.
- An 89-foot long segment behind the existing City owned waterfront land extending behind 3335 and 3341 Fernside. This area is between Parcels 85 and 86 on the Tentative Map.

Staff made the changes in light of the following considerations:

- Staff agrees that the City should preserve opportunities for future public improvements to improve public water access where feasible for all Alameda residents.
- It is not in the City's long-term interest to retain ownership of the submerged areas in question along Fernside because these areas have existing docks associated with the adjacent properties. However, staff believes that in light of the community's renewed interest in resolving the encroachment issues on City-owned property and the City's interest in increasing public access, staff needed more information and time to discuss these issues in more detail with the affected adjacent homeowners and the community. Once staff has more information, staff can return to the City Council with a proposal for increased public access, resolution of the encroachment issues and disposition (whether through sale, license or lease) of the remaining property, if any, not needed for public access.
- At the three Fernside locations, staff believes that an 18-foot wide easement is adequate to accommodate a 14-foot wide floating dock with 2 feet of open water on each side to step into a kayak or canoe or onto a paddle board. Furthermore, the 10-foot width of the land-side public lands limits the use of the floating docks to watercraft that can be carried or rolled down to the future floating docks. These docks will not have automobile access for launching large boats.
- By retaining the entire area in question at the foot of the three public access easements, the City Council is giving staff sufficient time to craft a fair and equitable solution for all concerned instead of the City Council having to make a decision on those areas without exploring all of the possibilities and hearing from the citizens on both sides of the issue.
- Although the City Council has not budgeted any funds at this time to make any physical improvements that could include floating docks and access ramps from the City-owned land into the water, it is within the City Council's purview to reserve some of the proceeds of this transaction for this purpose should the remainder of the Project move forward.

In addition to the issue of creating new public access to the water, there is also the issue of long term code enforcement issues all along the Tidal Canal. The proposed real estate transaction does not waive, forgive, approve or condone unlawful activity including code violations. The property owners will be responsible for ensuring that they have or will obtain permits necessary for their waterfront structure.

Transactional Agreements

In addition to approving the Negative Declaration, Zoning Amendments, and Tentative Map, staff is requesting that the City Council authorize the City Manager to execute: 1) a Memorandum of Understanding between the City of Alameda and U.S. Army Corps of Engineers for the City's acquisition of 94 lots of semi-submerged and submerged land along the Alameda side of the Oakland Inner Harbor Tidal Canal (collectively the "Subject Property"); 2) Purchase and Sale Agreements with various purchasers for the disposition of the Subject Property at fair market value; and 3) any and all documents necessary and convenient to consummate these transactions. These and other documents will be placed into escrow until all of the conditions for closing have been met. The City Manager would have the authority to determine if the conditions precedent to close have been met, to waive minor defects in compliance with the conditions precedent and to postpone the entire transaction if conditions precedent (except minor defects) have not occurred.

With this authorization, staff will be able to continue to work with the Army Corps and the adjacent property owners to ensure that all of the necessary land transfers are able to occur. Staff will return to the City Council at a noticed public hearing for approving a Final Map (creating the necessary parcels).

Major Terms of the Real Estate Transaction

The parcels will be sold by the City at fair market value based upon an independent appraisal report dated August 2016 and prepared by Watts, Cohn and Partners, Inc. (The appraisal was based on 90 residential parcels not 84. However, since the appraisal value was on a per parcel basis the value does not change.) The 84 residential parcels will be sold for \$10,000 per parcel plus normal closing costs up to \$1,000. The City will cover any normal closing costs in excess of \$1,000. It is anticipated that these additional costs will not exceed \$42,000. The 8 commercial parcels will be priced as follows (plus closing costs):

1. Lot 4	\$280,000
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2. Lot 5	\$20,000
3. Lot 6	\$90,000
4. Lot 7	\$180,000
5. Lot 8	\$25,000
6. Lot 9	\$50,000
7. Lot 10	\$110,000
8. Lot 11	\$70,000

As a condition of sale, the City requires that there be 100% participation for the residential parcels. The residential owners have formed a voluntary homeowners' association which has pledged to purchase any "holdout" residential parcels. The parcels (residential and commercial) will be sold "AS IS" and "With All Faults" via quitclaim deed. An exemplar purchase and sale agreement with the terms of transaction is attached as Exhibit 4. Transactional and Environmental documents related to this transaction can be found on the City's website at <https://alamedaca.gov/tidal-canal-project>.

FINANCIAL IMPACT

In September 2015, the City Council authorized \$350,000 General Fund funding allocation for the Tidal Canal project. It is anticipated that the City will recoup the project costs as well as internal staff time costs when properties are sold to the individual property owners as discussed above. It is anticipated that if all parcels are sold that the City would recognize positive cash flow in the range of \$7-900,000. However, if not all of the commercial parcels are sold immediately, then the City will incur the carrying costs and liability risk for those parcels until sold which will further reduce this amount. It is anticipated that a portion of these proceeds would be available for public access improvement and maintenance projects along the Tidal Canal.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

The proposed conveyance and Tentative Map is consistent with the City of Alameda General Plan Open Space and Land Use Policies, as well as the Alameda Municipal Code.

ENVIRONMENTAL REVIEW

A Draft Initial Study/Negative Declaration ("IS/ND") for the Project was published on June 1, 2016, in accordance with the California Environmental Quality Act (CEQA), which addresses all potential environmental impacts associated with the proposed transfer and subsequent transfers into private ownership, amendments to the Estuary District Zoning, and the proposed subdivision map. The IS/ND concludes that the proposed project would not cause any potentially significant environmental impacts, and accordingly, no mitigation measures would be required as part of the Project. Any proposed future improvements along the Tidal Canal will be subject to separate review and discretionary approval by the City.

RECOMMENDATION

Hold a Public Hearing and

- A) Adopt the First Reading to introduce an Ordinance Amending Chapter 30 of the Alameda Municipal Code Section 3-4.21 E, Estuary District
- B) Approve Tentative Map #8337 (PLN16-0240) for a 99 lot subdivision Located along the Oakland Inner Harbor Tidal Canal from approximately 1,800 Feet Northwest of the Park Street Bridge to approximately 2,300 Feet South of High Street Bridge, and
- C) Authorize the City Manager to: (i) execute a Memorandum of Understanding and Quitclaim Deed between the City of Alameda (City) and U.S. Army Corps of Engineers (Corps) for the City's acquisition of 94 parcels of semi-submerged and submerged land along the Alameda side of the Oakland Inner Harbor Tidal Canal (collectively the "Subject Property"); (ii) execute Purchase and Sale Agreements and Quitclaim Deeds with various purchasers for the disposition of the Subject Property at fair market value; and (iii) execute any and all ancillary documents necessary and convenient to consummate these transactions.

Respectfully submitted,
Janet C. Kern, City Attorney

By,
Andrico Q. Penick, Assistant City Attorney

Financial Impact section reviewed,
Elena Adair, Finance Director

Exhibits:

1. Negative Declaration
2. Zoning Text Amendment
3. Tentative Map dated September 7, 2016.

Reports Meetings Boards/Commissions Live Streaming

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Details

File #: 2017-4086 (30 minutes)

Type: Regular Agenda Item

Body: City Council

On agenda: 4/18/2017

Title: Recommendation to Accept Status Report on Tidal Canal Project Phase I and Provide Direction to Staff on Moving Forward with Phase II and Phase III. (City Attorney 91624)

Attachments: 1. Exhibit 1 - Tentative Map, 2. Correspondence

Text

Recommendation to Accept Status Report on Tidal Canal Project Phase I and Provide Direction to Staff on Moving Forward with Phase II and Phase III. (City Attorney 91624)

To: Honorable Mayor and Members of the City Council

From: Jill Keirnach, City Manager

Re: Recommendation to Accept Status Report on Tidal Canal Project Phase I and Provide Direction to Staff on Moving Forward with Phase II and Phase III

BACKGROUND

Phase I Status Report: The Oakland Inner Harbor Tidal Canal ("Tidal Canal") is a 1.8 mile long, 400 feet wide portion of the waterway between Oakland and Alameda that was dredged between 1882 - 1904 by the US Army Corps of Engineers ("Army Corps") to create a tidal effect throughout the Oakland Estuary. The Tidal Canal covers 85 acres and until recently was owned by the Army Corps. The United States of America, through the Army Corps offered to convey half of the Tidal Canal (split down the middle) to the City of Oakland and the other half to the City of Alameda.

On September 15, 2015, the City Council unanimously directed the City Attorney to pursue a real estate transaction whereby the Army Corps would transfer, at no cost (except transaction costs), the Alameda side of the Tidal Canal to the City (the "Project"). In order to minimize the City's potential liability and costs, the City Attorney determined that the best way to fulfill the conditions set by the City Council was to: (i) structure the transaction so that the City is in the chain of title for the shortest period possible; and (ii) require 100% participation of the residential lots in the subsequent transfer. The City Attorney gathered a multi-discipline team consisting of City staff and outside consultants to begin negotiations with the Army Corps and to reach out to the regulating agencies with jurisdiction over the area, including Bay Conservation and Development Commission ("BCDC"), the SF Regional Water Quality Control Board ("RWQCB") and State Lands. The major tasks associated with Phase I of the Project included:

- An amendment to the Estuary Zoning District;
- Environmental review under both the California Environmental Quality Act ("CEQA") by the City and National Environmental Policy Act ("NEPA") by the Army Corps;
- Negotiating a Memorandum of Understanding with the Army Corps and lifting of the Army Corps' permitting moratorium which had been in effect since 2000;
- Negotiating a Quitclaim Deed from the Army Corps to the City acceptable to both parties;
- Preparing a Tentative and Final Map to subdivide the Tidal Canal;
- Preparing Purchase and Sale Agreements and Quitclaim Deeds for ninety (90) individual buyers; and
- Coordinating the simultaneous closing of 91 transactions with the title company, Alameda County Recorder and Alameda County Assessor.

The City Attorney staff provided a status update on negotiations to the City Council in open sessions on April 7, 2015, September 15, 2015, September 20, 2016 and December 6, 2016. At those meetings, the City Council gave further direction to staff and heard public comment regarding the Project. Throughout the course of Phase I, the City Council expressed its full support and provided needed additional funding for the Project.

The Final Map #8337 approved by the City Council on December 6, 2016 subdivided the Army Corps land into ninety-nine (99) individual lots. The Army Corps retained five (5) lots: the Oakland side of the Tidal Canal (Unsurveyed Remainder Area 1), property adjacent to the federally owned Navy Operational Support Center (Lot 3) bridge footings for the High Street Bridge (Lot 97), the Miller-Sweeney Bridge and the Fruitvale Rail Bridge (Lot 98), and the Park Street Bridge (Lot 99). The City retained the open water on the Alameda side (Lots 2 and 96) which will be preserved for open navigation through the Tidal Canal. The City offered at fair market value, as determined by independent appraisal, the remaining 92 lots (Lots 4 through 96) consisting of eight (8) commercial lots and eighty-four (84) residential lots to the adjacent property owners. (As explained in the Discussion Section below, the eighty-four (84) residential lots do not include six (6) additional residential lots which were removed from the Final Map at the direction of the City Council to be addressed at a later date under Phase II.)

Phase I of the Project closed escrow on February 15, 2017. Six (6) of the eight (8) commercial lots and all eighty-four (84) residential lots sold. The purchase price for the residential lots was \$10,000 per lot plus normal closing costs up to \$1,000, with the City covering normal closing costs in excess of \$1,000. The purchase price for the commercial lots were based on their fair market value and ranged from \$20,000 - \$280,000, with the commercial buyers paying all closing costs. Overall, the City incurred and paid third-party out of pockets expenses of approximately \$530,000 and received gross revenue of approximately \$1,500,000. The net revenue to the City is just under one million dollars. (This figure does not include internal staff time costs.)

This is a significant accomplishment. The federal government offered this property to the City 26 years ago. It fell to the City Attorney's Office to untangle this Gordian Knot. Thanks to the strong support from the City Council and the community (especially the Waterfront Homeowners Association), we were able to complete this phase of the Project. Together we can do great things.

discussion

The City Council is now being asked to provide direction to staff on the plan to move forward with Phases II and III of the Project. Phase II of the Project attempts to address a number of long standing issues: (i) cleaning up the encroachments on the three (3) public access points; (ii) disposition of the submerged property (now owned by the City) adjacent to those public access points; (iii) keeping open reasonable and feasible options for increasing public access into the water at one or more of these points; and (iv) clearing title to the docks and piers that have been built and used by the adjacent property owners, consistent with the previously stated goals.

Phase II Proposed Plan: The City of Alameda currently owns three small public properties along Fernside Boulevard between High Street and Fairview Avenue that are designed to provide public access from Fernside Boulevard to the water's edge. The public access points (dry land) are 10 feet wide at Fernside Boulevard, run approximately 100 feet from the sidewalk to the bulkhead and "bulb out" to approximately 60 feet at the water's edge. (See the Tentative Map attached as Exhibit A for an aerial view of the public access points.) The portions of Lot 2 at issue (submerged land) include:

- A 108-foot long segment behind the existing City owned public access point extending behind 3227 and 3229 Fernside. This area is between Parcels 64 and 65 on the Tentative Map.
- A 100-foot long segment behind the existing City owned public access point extending between 3267 and 3301 Fernside. This area is between Parcels 75 and 76 on the Tentative Map.
- An 89-foot long segment behind the existing City owned public access point extending behind 3335 and 3341 Fernside. This area is between Parcels 85 and 86 on the Tentative Map.

On July 11, 2016, the Planning Board held a noticed public hearing and unanimously recommended that the City Council approve the Army Corps transfer of the Alameda side of the Tidal Canal to the City. However at that same meeting, community members and the Planning Board raised questions about how the Project would affect the existing public access points and the potential to increase public access into the Tidal Canal such as by building a new public floating dock and pier (or other public access into the water). In light of these concerns, the Planning Board recommended that the Tentative Map be amended to reflect a 35-foot wide public access easement (17.5 feet on either side of the property line) over the submerged lands adjacent to each of the three (3) public access points in order to preserve the opportunity for increased public access into the water in the future.

Staff agreed that preserving the City's options for future expansion of public access into the Tidal Canal was a good idea. However, at that time, City staff suggested to the Planning Board and recommended to the City Council (at its September 20, 2016 meeting) that an 18-foot wide public access easement (9 feet on either side of the property line) was more than sufficient for this purpose given that the path to the water's edge is only 10 feet wide. It became evident to the City Council that this Project had renewed community interest in resolving the long standing encroachment issues along the public access points and generated new interest in increased public access into the water. City Council determined that staff needed more time to research the issue of cleaning up the encroachments and preserving options for increasing public access into the Tidal Canal at some future date. Thus, at City Council's direction, the six (6) lots adjacent to the public access points were removed from the Tentative Map and this aspect of the Project was deferred to Phase II.

Now staff is proposing a 35 foot wide easement (17.5 feet on either side of the property line) over the submerged lots which is what the Planning Board and the community originally recommended. Upon further investigation staff determined that the public access opening is approximately 60 feet wide. This has not changed staff's recommendation to open all of the public access points, with the exception of the area that currently contains a private pool (see discussion below for more details) and to propose a disposition of the submerged lots with the 35 foot wide easement. As part of the plan to reopen the public access points, the repaving and fencing would be installed concurrent with the close of escrow of the submerged lots. Obviously this cannot occur simultaneously. However, staff wants the City Council to be in a position to consider and approve the Final Map, the real estate transaction and the construction work at the same City Council meeting. In this way, both the buyers and the public can see that the encroachments on the public access points are being resolved at the same time as the real estate transaction.

Staff is now presenting the following recommendations and seeking the City Council direction on Phase II:

- Proceed with the mapping process to add back onto the Final Map the six (6) submerged residential lots that are adjacent to the public access points. (This would entail going back to the Planning Board and the City Council and would occur at public meetings.)
- The six (6) submerged residential lots would be subject to a 35-foot wide public access easement (that is 17.5 feet on either side of the new property line) which would remain on each lot in perpetuity, except that the City would allow private docks and piers owned by the subsequent buyer to remain (including routine maintenance and repair) until such time as the City has accepted a bid for the construction of a new public floating dock and pier (or other public access into the water) at that location, at which time the owner would have to remove their encroaching private dock at no cost to the City.
- The City, at its expense would commence construction to put up fencing concurrently with the close of escrow on the submerged lots to clearly separate the City-owned public access point property from private property. The City would also repave or patch the pathway, as determined by City staff, to improve safety and to help identify the area as a public path. City staff would gather cost estimates for this work.
- Negotiate with the six (6) affected adjacent property owners to explain the terms of the City's proposal which would tie the disposition of the submerged land to the clearing of the encroachments on the public access points.
- One of the six homeowners has significant physical improvements that encroach into the public access point, as well as significant improvements that extend into the water. Thus, City staff is also prepared to discuss a leasing option for the area encroaching on the public access point given the high cost of demolishing the pool.
- Another one of the six homeowners has added landscaping to the public path which is a significant improvement over the bare concrete. Staff proposes a license agreement wherein the homeowner would continue to maintain the landscaping as opposed to removing it.
- Hold the two (2) remaining commercial lots (Lots 5 and 6) until a suitable buyer comes along (either the current or a future adjacent property owner).

At its March 21, 2017 meeting, the City Council considered and approved a request from the Finance Director to allocate net proceeds of approximately \$1.1 million to Phase II and Phase III of the Project. Staff's goal for Phase II is to craft a fair and equitable transaction where the interests and concerns on both sides are fairly addressed. On the one hand, the public rightfully regains its access to the public access points and retains the option to build a new public floating dock and pier (or other public access into the water). On the other hand, the adjacent property owners who either built their docks and piers on federal property (or bought their homes with existing docks and piers) have the ability to clear title to at least a part of their docks (similar to their neighbors in Phase I) and have a promise that the City will allow them to continue to use their docks until such time as the City actually needs their dock space for a public dock.

It is not a perfect solution but we are not starting from a blank slate. The adjacent property owners are still left with some uncertainty at least as to that part of their dock that will be within the public access easement, while that portion which is outside the easement is clear. However this risk is similar to what they have been living with when the Army Corps had the right to order them to remove their docks at any time. It also acknowledges that although the City could have asked the Army Corps for access into the water at any time in the past in order to build a new public floating dock and pier, it never did.

so. In this instance, the City can accomplish the goals of the community without completely taking away the historic uses by the adjacent property owners that do not interfere with those goals.

As was true with Phase I, there are also long term code enforcement issues all along the Tidal Canal. The proposed real estate transaction under Phase II does not waive, forgive, approve or condone unlawful activity including code violations. The property owners will be responsible for ensuring that they have or will obtain permits necessary for their waterfront structures.

BCDC approval will likely be required in order to make the improvements contemplated under Phase II. Some in the community have suggested that the City sell the public access points to the adjacent property owners and use the money to build a public dock in a more suitable location. This proposal would be viewed by BCDC (and others) as a reduction in public access and BCDC would surely object.

Phase III Proposed Plan: While Phases I and II are real estate transactions, where the City Attorney's Office has taken the lead, staff envisions Phase III as a community driven planning process, to be facilitated by the Recreation and Parks and Community Development Departments through public meetings to best determine locations and amenity improvements for public access into the water. Once everyone in the community has had an opportunity to express their views and we have community consensus, staff can bring the matter before the City Council for their consideration and further direction.

FINANCIAL IMPACT

Phase I: Between 2013 and September 2015, the City Attorney's Office spent approximately \$150,000 on outside legal and consultant fees related to this Project, out of the General Fund allocated to the City Attorney's budget. In September 2015, the City Council authorized \$350,000 General Fund funding allocation for the Project going forward. In December 2016, the City Council authorized an additional \$75,000 General Fund funding allocation for the Project. The City will be responsible for the maintenance of the open water lots (Lots 2 and 96). As these are submerged lands and the responsibility of dredging the open water remains with the Army Corps, it is anticipated that the maintenance costs for Lots 2 and 96 will be minimal. The City received gross revenue from Phase I of the Project of approximately \$1,500,000. The net revenue to the City is just under one million dollars. Thus, Phase I had no net impact on the General Fund.

Phase II: It is difficult to estimate the fiscal impact of Phase II of the Project to the General Fund at this time. The costs of fencing and paving to clean up the encroachments on the public access points are currently unknown. If the City Council approves the disposition of the submerged property to the six (6) adjacent property owners, in conjunction with the clearing of the encroachments, then up to \$60,000 in gross sales proceeds may be available to help offset the costs of the transaction and proposed improvements.

In addition, staff plans to pursue disposition of the remaining two (2) commercial lots (Lots 5 and 6). However, the timing of when those sales may occur is unknown. In the meanwhile, the City will incur the carrying costs and liability risk for those two (2) lots until sold. As mostly submerged land, it is anticipated that the maintenance costs for Lots 5 and 6 will be minimal.

Phase III: It is difficult to estimate the fiscal impact of Phase III of the Project to the General Fund at this time. The costs of providing public access into the water is highly dependent on size and location of structures, materials, soils conditions (which may include hazardous materials remediation), timing of construction and costs associated with design and permitting, among other factors. However, it is anticipated that the net proceeds from the sale of the Tidal Canal properties will be used to pay for public access improvements.

MUNICIPAL CODE/POLICY DOCUMENT CROSS REFERENCE

The proposed plan to move forward with Phase II and Phase III of the Project is consistent with the City of Alameda General Plan Open Space and Land Use Policies, as well as the Alameda Municipal Code.

ENVIRONMENTAL REVIEW

A draft Initial Study/Negative Declaration ("IS/ND") for the project was published on June 1, 2016, in accordance with the California Environmental Quality Act (CEQA), which addresses all potential environmental impacts associated with the proposed dispositions under Phase I and Phase II. The IS/ND concludes that the proposed project would not cause any potentially significant environmental impacts, and accordingly, no mitigation measures would be required as part of the project. On July 11, 2016, at a noticed public hearing, the Planning Board unanimously recommended that the City Council adopt a Final Negative Declaration. On September 20, 2016, at a noticed public hearing, the City Council unanimously approved the Negative Declaration for the Project.

The fencing and paving work along the public access points as part of Phase II and any proposed new floating dock and pier along the Tidal Canal as may be contemplated under Phase III will be subject to separate environmental review and discretionary approval by the City and the appropriate regulatory agencies with jurisdiction.

RECOMMENDATION

- A) Accept Status Report on Tidal Canal Project Phase I,
- B) Provide Direction to Staff on Moving Forward with Phase II, and
- C) Provide Direction to Staff on Moving Forward with Phase III.

Respectfully submitted,
Janet C. Kern, City Attorney

By,
Andrico Q. Penick, Chief Real Estate Counsel

Financial Impact section reviewed,
Elena Adair, Finance Director

Exhibit:

- 1. Tentative Map dated September 7, 2016