

NORTH WATERFRONT COVE, LLC

October 14, 2024

Jennifer Ott
City Manager, City of Alameda
2263 Santa Clara Avenue
Alameda, CA 94501

RE: Encinal Terminals Development Agreement (“DA”) and the Disposition and Development Agreement for Encinal Terminals Project (“DDA”) and the Tidelands Exchange Master Plan (“MP”), between the City of Alameda, a municipal corporation of the State of California (the "City"), and North Waterfront Cove, LLC, a California limited liability company ("Developer", or “NWC”), with an Effective Date of March 3, 2022.

Dear Ms. Ott:

The above-referenced DA and MP each contain deadlines for the Developer and City to complete certain obligations that are tied to the time of City approvals (March 2022). Due to circumstances beyond our control, specifically an economic environment that has obliterated the present residual land value of the property, we wish to propose amendments to the DA and Master Plan to allow us and the City to complete our respective obligations.

Foremost among these obligations is that the City and Developer must form an assessment district, which, if not completed, leads to termination of the DA, and as a result, termination of the DDA and State Exchange Agreement as well. Section 3 b (6) of the DA allowed NWC and the City twenty-four (24) months (by March 2024) to adopt an assessment district or equivalent funding source acceptable to both parties for the maintenance of the Public Trust Lands in perpetuity. Earlier this year the City agreed to a one-year extension to the deadline to form the CFD to March 2, 2025, pursuant to Section 11 of the DA which allows the City Manager to extend or adjust deadlines up to one year. With that extension, we and the City agreed to several interim milestones. However, given the environment, NWC has not been able to complete the interim milestones and will not be able complete formation of the CFD with the City by March 2, 2025. This forces us to respectfully request that the City implement the requested amendments to the DA and Master Plan contained herein.

Obviously, it has never been our intent to delay the project in any way. Indeed, we funded and navigated the unique, complicated and costly tidelands exchange process that is most critical to the future viability of the Encinal Terminals project, amid a terrible macroeconomic environment, marked by a languid housing market due to declining rents, high construction costs and much higher interest rates and capitalization rates (that began their rapid rise immediately after our project approval in 2022). As a result, we have now completed all of the vital steps in this project with the State, which included

- Negotiating the State Exchange Agreement: signed and recorded in February 2023;
- Securing legislation to allow the State to convey to the City all of the parcels it receives in the exchange of tidelands properties: completed in July 2023; and,
- Completing a title validation action that confirmed the validity of the State Exchange Agreement and ensures clear title for future conveyances: completed in February 2024.

Without all of these accomplishments, neither we nor the City could have implemented the conveyances contemplated by the DA, Master Plan and DDA; this process needed to be completed before it made any sense to begin the CFD process or any other permitting activities. The project's entitlement status has been bolstered significantly by these efforts that are critical to the City for the future of this property. Undoing all of that by allowing the DA to expire (and with it, the DDA and State Exchange Agreement) does not make sense.

As these steps were being completed, the NWC ownership group made the decision in late 2023 to sell the property and hired a national real estate brokerage firm with extensive Bay Area experience who implemented an extensive marketing and outreach campaign at that time. Contemporaneously, NWC requested that the City approve an extension to the CFD formation deadline, to allow NWC's successor to pursue those efforts; at the time, we anticipated an early 2024 agreement with our successor and escrow closing by mid-2024.

However, the poor current economic environment (high interest rates, high costs to build, high cap rates, soft market conditions and declining rents), makes any real estate development project virtually impossible to pencil. Adding the lengthy, complicated and costly permitting process to make this project "shovel ready", and substantial capital required to fund the massive infrastructure obligations, and Encinal Terminals' residual land value has been decimated and rendered this project infeasible to finance and build at this time. As a result, it has proven impossible to sell, despite continued efforts by our broker to date; after nine months of extensive marketing and outreach, only two written letters of intent (LOI's) were received. However, since one of the LOI's was later withdrawn and the second has since expired, we have no prospects for a sale at this time.

Current circumstances prevent us from completing a sale at this time, because it is simply not prudent for anyone to spend the vast sums required to move the project ahead when its viability is in question. As a result, we believe the best course of action for both the City of Alameda and NWC is to agree to extending the DA and Master Plan milestones. This letter represents Developer's formal request for an extension of time for completion of the milestones outlined on Exhibit 1, to allow the City and Developer more time to complete these obligations in a better economic condition.

We look forward to working with you to make this happen. Please let us know the next steps to secure this extension. Thank you.

Sincerely,



Michael S. O'Hara
Director of Forward Planning
Tim Lewis Communities,
Managing Member of North Waterfront Cove, LLC

EXHIBIT 1

PROPOSED AMENDMENTS

DEVELOPMENT AGREEMENT AMENDMENTS

Section 3 b (6) of the DA contains the following language:

Termination. *This Development Agreement shall terminate and be of no further force and effect (subject to Section 3.e) on the earliest of ... (6) failure to adopt an assessment district or equivalent funding source acceptable to both parties within 24 months of the Effective Date for the maintenance of the Public Trust Lands in perpetuity.*

PROPOSED AMENDMENT: This was extended by 12 months to March 2025; we propose to extend this deadline by 3 years, with a new deadline of March 2028.

Section 6 b of the DA contains the following language:

Permits and Approvals. *Developer shall complete all required local, regional, state and federal permitting requirements necessary to begin site clearing and grading (i.e., demolition of existing improvements, mass grading and construction of temporary Bay Trail) and begin site preparation and construction activities (“Site Preparatory Work”) consistent with the Tidelands Exchange Master Plan phasing schedule within 36 months of the Effective Date.*

PROPOSED AMENDMENT: Extend this deadline by three (3) years, with a new deadline of March 2028.

MASTER PLAN AMENDMENTS:

Because Section 6 d of the DA contains language that requires the Developer to “*commence and complete development of the project in a regular, progressive and timely manner in accordance with the provisions and conditions of this Agreement, the Project Approvals, the Tidelands Exchange Master Plan and schedule*”, we also propose to amend the following Master Plan schedule to ensure DA and Master Plan consistency.

The Phasing Milestone Schedule on Page 40 of the MP contains the following language:

Within 24 months of the date of City Council adoption of the Master Plan, Developer shall acquire:

- *Public Trust Lands Waterfront Development Plan and Design Review approval from City of Alameda*
- *Assessment district for Public Trust Lands maintenance approval from City of Alameda City Council.*

PROPOSED AMENDMENT: Extend both deadlines by three (3) years, with a new deadline of March 2028.

Within 36 months of Master Plan adoption, Developer shall acquire:

- *Public Trust Lands Waterfront Development Plan and Design Review approval from Bay Conservation and Development Commission (BCDC site wide Permit).*
- *All required local, regional, state, and federal permitting requirements necessary to begin site clearing and grading.*

PROPOSED AMENDMENT: Extend both deadlines by three (3) years, with a new deadline of March 2028.

The Construction Phasing Schedule on Page 41 of the MP also contains interim construction milestones which would need to be extended for consistency.

- **SITE WIDE PREPARATORY IMPROVEMENTS:** “Within 36 months of Master Plan adoption, Developer shall commence the site wide preparatory improvements.....”.
- **CLEMENT PUBLIC IMPROVEMENT AREA (PIA-C):** “Within 48 months of Master Plan adoption, developer shall commence construction of PIA-C....”,
- **ENTRANCE ROAD/ESTUARY PARK (PIA-EREP) AND ALASKA BASIN PARK IMPROVEMENT AREA (PIA-AB):** “Within 60 months of Master Plan adoption, Developer shall commence construction of PIA-EREP...or PIA AB, Plaza...”
- **NORTHWEST PUBLIC IMPROVEMENT AREA (PIA-NW):** “Within 108 months of Master Plan adoption, Developer shall begin construction of PIA-NW....”

PROPOSED AMENDMENT: Extend all deadlines in the Construction Phasing Schedule for commencement of site improvements for each phase by three (3) years.