

CITY OF ALAMEDA RESOLUTION NO. _____

AMENDING THE BAY 37 DEVELOPMENT PLAN PLN22-0401 TO
REPLACE A REQUIREMENT FOR A 5,000 SQ. FT. COMMERCIAL
RETAIL LOT WITH OTHER LAND USES AT THE NORTHERN
TERMINUS OF FIFTH STREET AT ALAMEDA LANDING

WHEREAS, the 2017 Alameda Landing Waterfront Master Plan and Bay 37 Development Plan authorize residential development along the waterfront at 2800 Fifth Street, provided that the development include 5,000-square-feet of space for commercial, retail, and/or commercial recreational uses; and

WHEREAS, on August 22, 2022, Pulte Home Company, LLC (“Pulte”) submitted Master Plan/Development Plan Amendment Application No. PLN22-0401 to amend the 2017 Alameda Landing Waterfront Master Plan and Bay 37 Development Plan to replace the requirement for 5,000 square feet of commercial space with one of the following options:

- Alternative #1. No action; keep commercial building requirement;
- Alternative #2. Two Moderate-Income single family detached units and a recreation center on a separate lot conveyed to the City at no cost;
- Alternative #3. 5,000 square feet of public open space and public access easement;
- Alternative #4. Two Low-Income single family detached units and public open space;
- Alternative #5. Five Low-Income townhomes; and

WHEREAS, the subject property is designated Medium Density Residential on the General Plan Diagram; and

WHEREAS, the subject property is located in a M-X (Mixed-Use Planned Development) Zoning District which requires a master plan for the development; and

WHEREAS, the subject property is located within the MF (Multi-Family Residential Combining Zone) Overlay District; and

WHEREAS, on December 5, 2006, the City Council adopted Resolution No. 14047 certifying the Final Supplemental Environmental Impact Report for the Alameda Landing Mixed Use Development Project (“2006 Supplemental EIR”, a Supplement to the 2000 Catellus Mixed Use Development Project EIR) in accordance with the California Environmental Quality Act (“CEQA”) (State Clearinghouse #2006012091), and the City has prepared several addenda to the 2006 Supplemental EIR in 2007, 2008, 2012 and 2017 (collectively, “Previous CEQA Documents”); and

WHEREAS, on January 2, 2007, the City Council adopted Ordinance 2957 approving the Alameda Landing/Bayport Master Plan; and

WHEREAS, on September 5, 2017, the City Council adopted Ordinance No. 3188 amending the Alameda Landing Master Plan ("2017 Master Plan") and approved an Addendum to the Supplemental EIR; and

WHEREAS, on October 14, 2019, the Planning Board approved the Bay 37 Development Plan, Density Bonus Application, and Tentative Map to construct 357 residential units, 5,000-square-feet of commercial space, internal roadways and alleys, parks and open space; and

WHEREAS, on December 9, 2019, the Planning Board adopted Resolution No. PB-19-20 and approved Design Review for the Alameda Landing Waterfront Mixed Use project to construct the 357 residential units within the approximately 17.2-acre site located at 2800 Fifth Street, which included a site for the 5,000-square-foot commercial development on Fifth Street adjacent to the waterfront park subject to conditions of approval. One condition of approval required the applicant to return to the Planning Board for design review for the commercial building; and

WHEREAS, on December 13, 2021, the Planning Board amended Resolution No. PB-19-21 to modify the timing for Design Review approval of the commercial building to avoid a delay in housing construction at the site. The Planning Board agreed with the applicant that a retail commercial use at the site would be difficult to maintain given the uncertain economic outlook for retail spaces, and noted the importance of having a community space next to the waterfront park. The Board directed the applicant to work with staff to return with a plan that included some form of community benefit; and

WHEREAS, on October 10, 2022, the Planning Board held a duly noticed public hearing to consider a recommendation from City staff and Pulte to amend the 2017 Master Plan and Bay 37 Development Plan to replace the 5,000 square foot commercial building with two moderate-income single-family detached units and a community building on a separate lot conveyed to the City at no cost. At the meeting several Bay 37 residents opposed the staff recommendation and the Planning Board's motion to approve failed. The Planning Board advised the applicant to seek input from the community and evaluate alternative proposals; and

WHEREAS, following the Planning Board's direction, Pulte and City staff continued to explore additional alternatives, and hosted a community meeting with the Bay 37 residents to discuss the alternatives; and

WHEREAS, on February 13, 2023, the Planning Board held a duly noticed public hearing to consider revisions to the commercial requirement and adopted Resolution No. PB-23-02 recommending that the City Council approve one market rate single family home with a maximum height of 20 feet on half of the site, and public open space on half of the site adjacent to the Bohol Circle Immigrant Park and Fifth Street. In addition, the Planning Board recommended that Pulte designate two additional units among the unsold units in the development as very-low income affordable housing units; and

WHEREAS, on April 18, 2023, the City Council conducted a duly noticed public hearing to consider amending the Bay 37 Development Plan to replace the 5,000 square foot commercial requirement; and

WHEREAS, on the same date, the City Council also considered introduction of a companion ordinance amending the 2017 Alameda Landing Waterfront Master Plan to make corresponding changes to the 5,000 square foot commercial requirement.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Alameda finds, based on substantial evidence in the record, the potential environmental effects of the proposed project were considered and disclosed pursuant to CEQA in the Previous CEQA Documents. No further environmental review is required under CEQA Guidelines Sections 15162 and 15163. The amendments to the Alameda Landing Waterfront Master Plan and Bay 37 Development Plan will not result in any new environmental impacts or cause any previously disclosed significant impacts to become more severe, and all mitigations specified in the Previous CEQA Documents are included as conditions of approval for the project as required by the Alameda Landing Master Plan; and

BE IT FURTHER RESOLVED, that the City Council hereby approves Planning File No. PLN22-0401 to amend the Bay 37 Waterfront Development Plan to replace the requirement for 5,000 square feet of commercial space located in the Residential Sub Area at the Alameda Landing waterfront with two Low-Income single family detached units and public open space on the site; and

BE IT FURTHER RESOLVED, that this Resolution, if adopted, shall not become effective until the companion ordinance amending the 2017 Alameda Landing Waterfront Master Plan has become effective, and if the companion ordinance is subsequently invalidated or repealed by judicial or voter action, this resolution shall immediately be void and have no further force or effect; and

BE IT FURTHER RESOLVED, that the City Council has made the following findings relative to the selected alternative (Development Plan, AMC Section 30-4.13, 30-4.20.g.3.):

- 1. The development is a more effective use of the site than is possible under the regulations for which the PD district is combined (AMC Section 30-4.13).** The proposed use implements the City of Alameda General Plan, the MX Mixed Use and MF Multifamily Zoning District requirements for the site, and is a more effective use of the site than the current requirement for a commercial building. Economic factors and vacancy rates of nearby retail establishments indicate that a commercial building will likely fail to attract viable business tenants and will remain vacant space. Instead, the proposed use provides other means to utilize the site consistent with the Master Plan's mixed use intent.

2. **The location of the proposed use is compatible with other land uses in the general neighborhood area, and the project design and size is architecturally, aesthetically, and operationally harmonious with the community and surrounding development (AMC Section 30-21.3).** The proposed use consists of minor changes that qualify as a mixed-use development pursuant to the MX, Mixed-Use Planned Development Zoning District, and satisfies the purposes of the MX district and MF Multifamily Overlay District regulations. The proposed use conforms to the General Plan Waterfront Mixed Use and Medium Density Residential land use policy objectives and requirements adopted to ensure that the project would be compatible with adjacent residential neighborhoods, the recently completed residential developments on adjacent sites and other existing and future waterfront uses.
3. **The proposed use will be served by adequate transportation and service facilities including pedestrian, bicycle, and transit facilities (AMC Section 30-21.3).** The proposed use consists of minor changes designed to be compatible with pedestrian, bicycle, and transit facilities approved for the Alameda Landing Waterfront Mixed Use Development and ensures that the development of the property is compatible with existing and potential contiguous uses.
4. **The proposed use, if it complies with all conditions upon which approval is made contingent, will not adversely affect other property in the vicinity and will not have substantial deleterious effects on existing business districts or the local economy (AMC Section 30-21.3).** The proposed use consists of minor changes that will implement the General Plan and provides for a mixed-use development pursuant to the MX Mixed Use Planned Development Zoning District. The proposed use is consistent with the General Plan and MX District. In-lieu of a commercial building, the selected alternative provides other means to utilize the site consistent with the Master Plan's mixed use intent.
5. **The proposed use relates favorably to the General Plan (AMC Section 30-21.3).** As documented in the April 18, 2023 City Council staff report and associated materials, the proposed use is minor relative to the overall Alameda Landing Waterfront Mixed Use Project. The Master Plan is in substantial conformance with, and implements, the City of Alameda General Plan, Housing Element, and Zoning Ordinance policies and standards for the site.
6. **The Development Plan qualifies for approval under the Alameda Landing Master Plan and satisfies the purpose of the Mixed Use zoning regulations (AMC Section 30-4.20.g.3.).** The proposed use consists of minor changes that are consistent with the Alameda Landing Master Plan, as amended by the companion ordinance. The proposed use satisfies the purpose of the regulations to facilitate mixed use development by providing a mix of uses.
7. **The Development Plan is designed in a manner compatible with existing and potential contiguous uses. The Development Plan also provides a sufficient**

vehicular and non-vehicular circulation system within the project with the least amount of duplication, and the Plan provides the best interface with other systems (AMC Section 30-4.20.g.3.). The proposed use is designed in a manner compatible with existing and potential contiguous uses. The project integrates into the approved pedestrian network, bicycle access, and street network that complement and support the planned surrounding uses within the Alameda Landing Waterfront Mixed Use project. The development contributes to the completion of the development to serve the final phases of the Alameda Landing Master Plan.

8. **The Development Plan provides and maintains adequate landscaping using, where appropriate, native plants and taking maximum advantage of the screening capabilities of landscaping (AMC Section 30-4.20.g.3.).** The proposed use integrates into the approved open space comprised of native plants and landscaping that are consistent with Bay Friendly standards and comply with state water efficient landscape requirements. The ground level landscaping provides a good transition between the public sidewalks, interior site circulation, and open space within the development.
9. **The amount of land proposed for any particular use can be marketed for that use within a reasonable time after development is complete (AMC Section 30-4.20.g.3.).** The proposed use is a more effective use of the site than the current requirement for a commercial building. Economic factors and vacancy rates of nearby retail establishments indicate that a commercial building will likely fail to attract viable business tenants and will remain vacant space. Instead, the proposed use provides other means to utilize the site consistent with the Master Plan's mixed use intent and will be marketed for that use within a reasonable time after development is complete.
10. **The Development Plan provides sufficient area, and encourages adequate public accessibility and usage of the water/land interface (AMC Section 30-4.20.g.3.).** The proposed use integrates into the approved pedestrian corridor provides public access between Mitchell Avenue, Fifth Street, and the waterfront and Bay Trail through the development. The development plan provides a variety of outdoor spaces such as paseos, bike paths, pedestrian pathways, pocket parks, and other common open space facilitate harmonious transitions between the surrounding uses and the waterfront park.
11. **The Development Plan provides a comprehensive, coordinated, controlled system of informational and directional graphic signage throughout the development (AMC Section 30-4.20.g.3.).** The proposed use consists of multiple clear points of entry along Fifth Street, the western greenway, and the pedestrian paseos, which will provide signage for public access to the waterfront park and the pocket parks in the development.
12. **The Development Plan demonstrates progressive techniques for the conservation of, and decreased consumption of, nonrenewable energy (AMC**

Section 30-4.20.g.3.). The proposed use will be 100% electric powered without any gas infrastructure serving the homes or the commercial development as recommended by the City of Alameda Climate Action and Resiliency Plan. All residential units will include solar panels on the roof; and

BE IT FURTHER RESOLVED, that the City Council includes the following conditions of approval:

1. Resolution Effective Date: This Resolution shall not become effective until the companion ordinance amending the 2017 Alameda Landing Waterfront Master Plan to allow the developer to proceed with the selected Alternative in lieu of the current requirement to provide 5,000 square feet of space for commercial, retail, and/or commercial recreational uses has become effective. If the companion ordinance is subsequently invalidated or repealed by judicial or voter action, this resolution shall immediately be void and have no further force or effect. In the event that the City Council maintains the existing 5,000 square foot commercial space requirement, the Applicant shall redesign the project for Planning Board review consistent with the minimum commercial space requirement.
2. Deadline for Delivering the Alternative: Any building, grading or other construction permits associated with the selected Alternative shall be eligible for the “Ready to Issue” status in the City’s permit system prior to the issuance of the 343rd building permit. The permits for the alternative shall be in “Issued” status prior to the final inspection for the building permit of the 350th unit. The Planning Director may extend the deadline by up to 90 days to accommodate any unforeseen circumstances.
3. Director’s Approval: The applicant shall obtain Planning Director’s approval for the building design as part of Building Permit review process for any alternative that includes a recreation building or other building not previously approved with the Bay 37 Development Plan and Design Review.
4. Affordable Housing Agreement Amendment: The applicant shall amend the Affordable Housing Agreement to include two additional Low-Income single family residential units prior to the issuance of the 343rd building permit. As amended, the Affordable Housing Agreement will require, in part, construction of 41 on-site residential units affordable to very low-, low- and moderate-income households. The project will provide at least 21 moderate-income units, 9 low-income and 11 very low-income units.
5. Public Access Easement for Public Open Space Area: The public open space shall be owned and maintained in perpetuity by the homeowners association with a public access easement to allow public access. Prior to the issuance of a Certificate of Occupancy for the 357th residential dwelling unit, the applicant shall provide a recorded public access easement for the public open space area.

6. Indemnification. To the maximum extent permitted by law, the applicant (or its successor in interest) shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Alameda, its City Council, City Planning Board, officials, employees, agents and volunteers (collectively, "Indemnitees") from and against any and all claims, actions, or proceedings against Indemnitees to attack, set aside, void or annul an approval by Indemnitees relating to this project. This indemnification shall include, but is not limited to, all damages, losses, and expenses (including, without limitation, legal costs and attorney's fees) that may be awarded to the prevailing party arising out of or in connection with an approval by the Indemnitees relating to this project. The City shall promptly notify the applicant of any claim, action or proceeding and the City shall cooperate in the defense. The City may elect, in its sole discretion, to participate in the defense of said claim, action, or proceeding and the applicant (or its successor in interest) shall reimburse the City for its reasonable legal costs and attorneys' fees.

NOTICE. No judicial proceedings subject to review pursuant to California Code of Civil Procedure Section 1094.5 may be prosecuted more than ninety (90) days following the date of this decision plus extensions authorized by California Code of Civil Procedure Section 1094.6.

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I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Council of the City of Alameda in a regular meeting assembled on the 18th day of April 2023, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

IN WITNESS, WHEREOF, I have hereunto set my hand and affixed the official seal of the said City this 19th day of April 2023.

Lara Weisiger, City Clerk
City of Alameda

APPROVED AS TO FORM:

Yibin Shen, City Attorney
City of Alameda