

PLANNING BOARD
DRAFT RESOLUTION

A RESOLUTION OF THE PLANNING BOARD OF THE CITY OF ALAMEDA RECOMMENDING THAT THE CITY COUNCIL APPROVE TENTATIVE TRACT MAP NO. 8570 TO SUBDIVIDE A PORTION OF THE OAKLAND INNER HARBOR TIDAL CANAL (APN 71-289-8) TO CREATE SEVEN PARCELS

WHEREAS, the U.S. Army Corps of Engineers (the “Army Corps”) excavated, dredged, and created the Oakland Inner Harbor Tidal Canal (the “Tidal Canal”) between 1882-1905, which is a waterway approximately 1.8 miles long and 400 feet wide and connects the Oakland Estuary with the San Leandro Bay from approximately 1,800 feet northwest of the Park Street Bridge to approximately 2,300 feet south of High Street Bridge. The southern edge of the Alameda side of the Tidal Canal now includes uplands and bulkheads that have been utilized to varying degrees by adjacent private property owners; and

WHEREAS, in 1990, the U.S. Congress authorized the Army Corps to transfer the Tidal Canal at no cost to the cities of Alameda and Oakland through the Water Resources Development Act (“WRDA”) of 1990, as amended by WRDA 1996, 2007, and 2014; and

WHEREAS, on September 20, 2016, the City Council approved Tentative Map No. 8337 to divide the property into approximately 99 individual parcels, and on December 6, 2016, the City Council approved Final Map No. 8337; and

WHEREAS, the City of Alameda (City) retained the open water parcel (Parcel 2), which was preserved for open navigation through the Tidal Canal (“Open Water Parcel”). The Open Water Parcel includes the Alameda side of the canal and the water areas immediately adjacent to three existing public access pathways (“Public Access Pathways”); and

WHEREAS, during the Tidal Canal approvals in 2016, the City Council did not create parcels adjacent to the Public Access Pathways, which are narrow public pathways which provide public access from Fernside Boulevard to the shoreline. As a result, two property owners on each side of the three pathways did not have the opportunity to acquire the water areas behind their homes; and

WHEREAS, on October 1, 2019, the City Council provided final approval of the design concepts for the remaining pathways, and directed staff to implement the following and return to the City Council for approval of subdivision maps and easements, consistent with the approved designs; and

WHEREAS, pursuant to the City Council’s direction in 2019, an application was made by the City of Alameda for Tentative Tract Map No. 8570 to subdivide a portion of

the Oakland Inner Harbor Tidal Canal (APN 71-289-8) to create seven parcels, which includes one large open water parcel and six small water parcels adjacent to the three public pathways; and

WHEREAS, the subject property is located in the in the E, Estuary Zoning District; and

WHEREAS, on September 20, 2016, the City approved an Initial Study/Negative Declaration (“IS/ND”) for the parcelization and acquisition of the Alameda side of the Tidal Canal in accordance with the California Environmental Quality Act (“CEQA”). No further review is required pursuant to Public Resources Code section 21166 and CEQA Guidelines section 15162 because the environmental effects of the project were considered and disclosed in the IS/ND and there have been no changes to the project or the circumstances in which it is undertaken that would result in new significant or substantially more severe environmental effects than was identified in the previously adopted IS/ND; and

WHEREAS, the City Council, on October 1, 2019, approved a plan for the transfer of submerged lands adjacent to three Public Access Pathways to adjacent owners to allow them to maintain existing dock structures; and

WHEREAS, on September 12, 2022, the Planning Board held a duly noticed public hearing on this application and examined all pertinent materials.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board of the City of Alameda hereby makes the following findings regarding Tentative Tract Map No. 8570:

1. **The proposed subdivision, together with the provisions for its design and improvement, is in conformance with the General Plan and Zoning.** The proposed subdivision does not include any proposed construction or development. Future uses of the subject property would be consistent with the General Plan and the E, Estuary District zoning regulations, and would be restricted to water-dependent uses, subject to future discretionary review and approval by the City.
2. **The site is physically suitable for the type and density of development.** The six new proposed submerged parcels are designed to accommodate the existing docks which are owned by the adjacent property owners. The proposed subdivision does not include any proposed construction or development. Any future improvements by the future property owners would be subject to review for conformance with the General Plan and zoning ordinance.
3. **The proposed design of the subdivision and improvements, as conditioned, will not cause environmental damage or substantially and avoidably injure fish or wildlife or their habitat.** The proposed subdivision does not include any proposed construction or development. The project does not involve any ground disturbance and will not cause any environmental damage or substantially and

avoidably injure fish or wildlife or their habitat.

4. **The design of the subdivision and its improvements will not conflict with easements acquired by the public at large for access through or use of property within the subdivision.** The proposed subdivision does not include any proposed construction or development. All existing public access easements are to be retained.
5. **The design of the subdivision and its improvements will not cause serious public health problems.** The proposed subdivision does not include any proposed construction or development, and the design of the subdivision is not likely to cause serious public health problems. The review process of the subdivision has taken these concerns into consideration and has found the proposal in conformance with City standards.
6. **The subdivision does not unreasonably restrict public access to the shoreline in the vicinity of the subject parcels.** Public access to the shoreline is provided at the High Street Bridge and at the foot of Liberty Avenue, which are located within a reasonable walking distance of the subject parcels.

BE IT FURTHER RESOLVED, in accordance with Government Code section 65402(a), the Planning Board finds that the location, purpose, and extent of the disposition of real property of a portion of the Alameda side of the Oakland Inner Harbor Tidal Canal is in conformity with the Alameda General Plan; and

BE IT FURTHER RESOLVED, that the Planning Board hereby recommends that the City Council approve Tentative Tract Map No. 8570, subject to compliance with the following conditions of approval:

General

1. All maps filed pursuant to this approval shall be in substantial compliance with the map titled, "Tentative Tract Map 8570 – (Portion) Oakland Inner Harbor Tidal Canal" prepared by Ruggeri Jensen Azar dated July 12, 2022, and on file in the office of the Alameda Planning, Building and Transportation Department.
2. The Final Map shall be in substantial compliance with the Tentative Map. Prior to the approval of the Final Map, all applicable conditions of approval of the approved Tentative Map, as revised or amended, shall be satisfied.
3. The subdivider shall record the Final Map within twenty-four (24) months of approval, or conditional approval of the Tentative Map by the City Council. The City may, upon the subdivider's application filed before the Tentative Map's expiration date, extend its life for an additional period or periods not to exceed six (6) years in accordance with state law.

4. Prior to the City Council approval of the Final Map, the Applicant shall submit a Mylar copy and a CAD file of the Final Map.
5. Prior to approval of Final Map, the following shall be required: a refundable cashier's check in the amount of \$400 to guarantee a Mylar copy of the recorded Final Map; payment for all reasonable office and engineering costs, including overhead, in conjunction with reviewing the Final Map and associated improvement plans and easements; three copies of the approved on-site/off-site civil improvement plans and landscape plans, along with a velum or other reproducible set (plans only); and a CD or DVD digital copy acceptable to the City Engineer.

Special Conditions

6. Public Access Easements. The Final Map shall include and show:
 - a. A 35' scenic easement and emergency vehicle access easement over the water parcel adjacent to Pathway A in favor of the City;
 - b. An 18' scenic easement and emergency vehicle access easement over the water parcel adjacent to Pathway B in favor of the City; and
 - c. A 10' scenic easement and emergency vehicle access easement over the water parcel adjacent to Pathway C in favor of the City.
 - d. A written statement that reasonable public access to the shoreline is available within a reasonable distance of the six proposed new lots as required by AMC 30-84.11.

Public Works General Conditions

7. The Final Map shall show all existing and proposed easement locations, uses and recording information. The Owner's Statement shall list all public right-of-way and easements to be dedicated, if any, and the Certificate of City Clerk shall list all public easements and right-of-way to be abandoned, if any, with recording information as part of the Final Map.

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.

NOTICE: The time limit within which to commence any lawsuit or legal challenge to any quasi-judicative decision made by the City of Alameda is governed by Section 1094.6 of the Code of Civil Procedure, unless a shorter limitation period is specified by any other provision, including without limitation Government Code section 65009 applicable to many land use and zoning decisions, Government Code section 66499.37 applicable to the Subdivision Map Act, and Public Resources Code section 21167 applicable to the California Environmental Quality Act (CEQA). Under Section 1094.6, any lawsuit or legal challenge to any quasi-judicative decision made by the City must be filed no later than

the 90th day following the date on which such decision becomes final. Any lawsuit or legal challenge, which is not filed within that 90-day period, will be barred. Government Code section 65009 and 66499.37, and Public Resources Code section 21167, impose shorter limitations periods and requirements, including timely service in addition to filing. If a person wishes to challenge the above actions in court, they may be limited to raising only those issues they or someone else raised at the meeting described in this notice, or in written correspondence delivered to the City of Alameda, at or prior to the meeting. In addition, judicial challenge may be limited or barred where the interested party has not sought and exhausted all available administrative remedies.

NOTICE. The conditions of project approval set forth herein include certain fees and other exactions. Pursuant to Government Code section 66020(d)(1), these Conditions constitute written notice of a statement of the amount of such fees, and a description of the dedications, reservations and exactions. The applicant is hereby further notified that the 90-day appeal period, in which the applicant may protect these fees and other exactions, pursuant to Government Code section 66020(a) has begun. If the applicant fails to file a protest within this 90-day period complying with all requirements of section 66020, the applicant will be legally barred from later challenging such fees or exactions.

The decision of the Planning Board shall be final unless appealed to the City Council, in writing and within ten (10) days of the decision, by filing with the Planning, Building & Transportation Department a written notice of appeal stating the basis of appeal and paying the required fees.

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