



June 30, 2014

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SENT VIA E-MAIL AND EXPRESS MAIL

Honorable Mayor Marie Gilmore and City Council
City of Alameda
2263 Santa Clara Avenue, Room 280
Alameda, CA 94501

Re: Elections Code Section 9212 Report re Initiative to amend the City's General Plan and Zoning designations for Neptune Pointe

Dear Honorable Mayor Gilmore and City Council:

The East Bay Regional Park District ("Park District") submits this letter to supplement, clarify and correct certain information contained in the Elections Code Section 9212 Report ("Report") regarding the initiative being considered by the City Council at its July 1, 2014 meeting.

In summary, the Report omits and/or contains incomplete information certain key facts of which the City and the public should be aware.¹

- In 2011, Tim Lewis Communities ("TLC") won an auction for the Neptune Pointe property with a bid of \$1.8 million. This amount was subsequently negotiated up to \$3.075 million to cover certain relocation expenses incurred by the Federal government, not due to a higher market value of the property.
- At the time that TLC and the General Services Administration entered the option agreement in October 2011, both were aware of constraints and obstacles to vehicle, utility and storm drain access at the site. The Park District had made the City aware of such constraints as well. Moreover, this agreement was entered prior to the City's general plan and zoning amendments to the Neptune Pointe property. At that time, the site was designated in the general plan as "Federal Facilities" and zoned "Administrative Professional."
- In July 2012, the City Council approved a general plan and zoning change for the Neptune Pointe property to allow for multifamily residential use. These amendments were not made pursuant to any private development application. Instead, they were made

¹ This letter is not intended to be a comprehensive response to the Report nor an endorsement of, or concession to, any statement, conclusion or opinions (both legal and non-legal) stated in the Report.

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independently by the City as part of its Housing Element update. The City has always had, and continues to have, the ability and authority (without putting the Housing Element at risk) to vacate the general plan and zoning amendment it made in 2012 to allow residential use at Neptune Pointe.

- The lawsuit brought by the Park District under the California Environmental Quality Act (“CEQA”) seeks to invalidate the City’s general plan and zoning amendments regarding Neptune Pointe that were made without proper CEQA compliance. The older CEQA documents the City purported to rely on did not include any site-specific analysis for Neptune Pointe, nor were residential uses ever considered or analyzed for the site in those earlier documents.²
- As the Report notes (p. 4-5), the City’s draft Housing Element Update proposes to remove Neptune Point from the Housing Element Inventory due to uncertainty regarding access issues. The Planning Board staff report stated that it is being removed from the Inventory because its “availability for housing is in question.” In addition, City Planner Andrew Thomas mentioned that the proposed inventory includes a near 500-unit surplus, not including any planned units at Alameda Point. These access issues existed in 2012 when the City included the property on the Inventory and adopted the amendments to allow residential use. Since the City has acknowledged the access constraints, it should return the property’s general plan and zoning designations to what they were in 2012. Doing so would resolve the Park District’s suit without further expending City resources.
- The Report (at p. 11) wrongly states that the Park District has publicly stated that it filed its suit in an attempt to depress the price of the property to force the Federal government to sell to the Park District. That is not true and the Report contains no attribution for such a statement. As noted above, the Park District’s filed suit to compel the City to vacate the general plan and zoning amendments allowing residential use made in violation of CEQA (including, but not limited to, a failure to consider potential impacts to the adjacent State Park).³ Moreover, the Park District recently spent in excess of \$5 million dollars in the restoration of Crown Beach (located adjacent to Neptune Pointe) for the benefit of the people of Alameda and the general public. This multi-million dollar capital

² Instead, the City improperly deferred site-specific environmental review even though at the time it approved the general plan and zoning amendments, it had been aware for months that TLC was intending to submit an application for a 48-unit development. These facts were not disclosed to the public, or mentioned in any staff report on the Housing Element update approved in 2012, or mentioned whatsoever in the CEQA addendum adopted by the City in connection with those approvals.

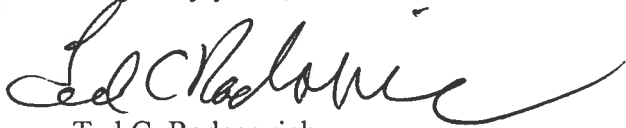
³ Last week, the Alameda County Superior Court agreed with the Park District that the City could not address the issues raised in the suit by preparing an environmental impact report in connection with a proposed housing project at the site, and the Court denied the City’s motion to stay the case.

project was undertaken to protect and improve this important resource and the residents of Alameda from sea level rise flooding – and it is being done at no cost to the City.⁴

- The statement in the Report (at p. 6) that the Park District has \$6 million in Measure WW funds to acquire the site is not entirely correct. Measure WW identified funds for both acquisition and development of the federal property for public park purposes, improvement of the Crab Cove Visitors' Center, and improving beach access and shoreline protection. The Park District's proposal was both recommended by the Alameda City Council and approved by more than 70 percent of Alameda voters."

Thank you for the opportunity to clarify the record and certain issues mentioned in the Report.

Very truly yours,



Ted C. Radosevich
District Counsel

cc: EBRPD Board of Directors
Robert Doyle, EBRPD General Manager
Carol Victor, Assistant District Counsel
John Russo, City Manager
Janet Kern, City Attorney

⁴ The Park District submitted a conceptual plan for Park expansion to the Planning Board in 2013 when the City solicited comments regarding a notice of preparation regarding TLC proposed development, including asking the Park District to propose an alternative use of the site. The Park District noted that this alternative is consistent with the vision to expand Crown Beach presented in the voter-approved Measure WW in 2008. A copy of this conceptual drawing was submitted by a member of the public to the City Council during its June 3, 2014 meeting.