

## **PLANNING BOARD DRAFT RESOLUTION**

A RESOLUTION OF THE PLANNING BOARD OF THE CITY OF ALAMEDA RECOMMENDING THAT THE CITY COUNCIL ADOPT A FINAL NEGATIVE DECLARATION, INTRODUCE AN ORDINANCE AMENDING CHAPTER 30 OF THE ALAMEDA MUNICIPAL CODE SECTION 3—4.21 E, ESTUARY DISTRICT, AND APPROVE TENTATIVE MAP #8337 (PLN16-0240) FOR A 105 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

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 Army Corps has retained fee title ownership of the Tidal Canal since its creation. 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.

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.

WHEREAS, starting in 2000, the Army Corps instituted a moratorium on issuing regulatory permits or real estate licenses for any repairs, upgrades, improvements or new construction along the Tidal Canal, with the exception of emergency repairs, (the “Permitting Moratorium”) to encourage the City of Alameda (the “City”) to accept the Alameda side of the Tidal Canal. The Permitting Moratorium has prevented repairs and improvements to existing structures along the waterfront, which has negatively affected adjacent property owners and has limited the City’s ability to enforce code requirements along the Tidal Canal.

WHEREAS, the Army Corps has agreed to take all reasonable steps necessary to effectuate the transfer, including filing a tentative map application under the Subdivision Map Act (CA Gov. Code §§66410-66413.5) to divide the Tidal Canal into approximately 105 individual parcels to facilitate the transfer to the City and the immediate subsequent sale of portions of the Alameda side of the Tidal Canal to private purchasers. The Army Corps also has agreed to lift the Permitting Moratorium on the Alameda side of the Tidal Canal once the property is transferred out of federal ownership.

WHEREAS, an application was made on June 1, 2016, by City staff on behalf of the

Army Corps requesting approval to subdivide 105 lots out of the approximately 85-acre Tidal Canal.

WHEREAS, out of the 105 lots, the Army Corps desires to transfer Parcels 2 and 4 through 102 to the City (the "Transferred Property") and to reserve and retain ownership of Parcels 1 (Oakland side of the canal), 3 (property adjacent to the federally-owned Navy Operational Support Center), and 103 through 105 (bridge footings for the High Street Bridge, the Miller-Sweeney Bridge and the Fruitvale Rail Bridge and the Park Street Bridge) as depicted in the Tentative Map included as Attachment A.

WHEREAS, the project site is currently located within the E, Estuary District.

WHEREAS, an amendment to the E, Estuary District is necessary to ensure that submerged lands removed from federal ownership are limited in use to water-dependent uses, subject to subsequent discretionary review and approval by the City, as more particularly described in the revised E, Estuary District provided as Attachment B to this Resolution.

WHEREAS, on June 1, 2016, the City published a Draft Initial Study/Negative Declaration ("IS/ND") for the OIHTC Project 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 E, Estuary District, and the proposed subdivision map application and is provided as Attachment C.

WHEREAS, the Planning Board held a public hearing on this application on July 11, 2016.

NOW THEREFORE BE IT RESOLVED that the Planning Board of the City of Alameda hereby makes the following findings concerning the Negative Declaration:

1. A Draft Negative Declaration for the OIHTC Project has been prepared and circulated for public review in accordance with the California Environmental Quality Act (CEQA).
2. The Draft Negative Declaration addresses all potential environmental impacts associated with the proposed transfer and subsequent transfers into private ownership.
3. The Planning Board has reviewed the Draft Negative Declaration and finds that the proposed project will not result in any significant impacts on the physical environment.

NOW THEREFORE BE IT FURTHER RESOLVED that the Planning Board of the City of Alameda hereby makes the following findings concerning the proposed zoning amendment:

1. **The amendments maintain the integrity of the General Plan.** The proposed amendments to the zoning ordinance related to the use of submerged lands ensure appropriate use of submerged lands consistent with the General Plan Land Use Element and Open Space and Recreation Element policies regarding public and private use of waterways and adjacent shorelines. The proposed amendments to the E-District Zoning will permit only water-related uses within the Tidal Canal (e.g. boathouses, boat docks, etc.) and will require that all future improvement projects be subject to subsequent discretionary review and approval by the City.
2. **The amendments will support the general welfare of the community.** The proposed amendments ensure that these lands are used in a manner that supports the general welfare and that all future proposals for changes to the physical environment will be subject to discretionary and environmental review.
3. **The amendments are equitable.** The proposed amendments will apply to all private and public owners of submerged lands and ensure that all the interests of the general public are considered whenever new structures or uses are proposed on these lands.

NOW THEREFORE BE IT FURTHER RESOLVED that the Planning Board of the City of Alameda hereby makes the following findings concerning the proposed subdivision map:

1. **The proposed subdivision is in conformance with the General Plan and Zoning for this site.** The proposed subdivision does not include any proposed construction or development. Future uses of the Transferred Property would be consistent with the designated uses identified in the E, Estuary District and would be restricted to water -dependent uses, subject to future discretionary review and approval by the City.
2. **Subdividing the property will facilitate subsequent transfer allowing proper City code enforcement.** The property is being subdivided into 105 parcels to facilitate future sales to private purchasers to clear title issues and to allow City code enforcement, which is currently prevented under the Permitting Moratorium.
3. **There will be no development of the site.** The proposed project does not involve any construction or development. Any future improvements proposed by the subsequent owners of the property will require a future discretionary approval from the City and will be subject to separate CEQA review.
4. **The proposed subdivision will not cause environmental damage or substantially and avoidably injure fish or wildlife or their habitat.** The project does not involve any ground disturbance and will not cause any potentially significant environmental impacts as confirmed in the IS/ND, published by the City on June 1, 2016. The public comment period for the IS/ND closed on June 30,

2016, and there were no public comments challenging the conclusions reached in the IS/ND.

**5. 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.

**6. The design of the subdivision will not cause serious public health problems.**

The project does not involve any ground disturbance and will not cause any potentially significant environmental impacts as confirmed in the IS/ND.

NOW THEREFORE BE IT FURTHER RESOLVED that the Planning Board of the City of Alameda hereby recommends that the City Council review and adopt the draft Negative Declaration; and

NOW THEREFORE BE IT FURTHER RESOLVED that the Planning Board of the City of Alameda hereby recommends that the City Council hold a public hearing to introduce an Ordinance amending Chapter 30 of the Alameda Municipal Code (Zoning Ordinance) to clarify the allowed uses in the E, Estuary District.

NOW THEREFORE BE IT FURTHER RESOLVED that the Planning Board of the City of Alameda hereby recommends that the City Council approve Tentative Map #8337 which would establish 105 lots subject to compliance with the following conditions:

1. The Final Map shall show all existing and proposed easement locations, uses and recording information. The Owner's Statement shall list all easements to be dedicated and the Certificate of City Clerk shall list all public easements 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-adjudicative 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-adjudicative 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.

I, the undersigned, hereby certify that the foregoing Resolution was duly and regularly adopted and passed by the Planning Board of the City of Alameda during the Regular Meeting of the Planning Board on the 11th day of July, 2016, by the following vote to wit:

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