



Oakland Inner Harbor  
Tidal Canal  
City Council Presentation  
September 2016

# Oakland Inner Harbor Tidal Canal

## Tidal Canal Staff Presentation

- Introductions

- City Council is being asked to Consider Three Actions:**

- Approve a Negative Declaration and Tentative Map (3 votes)

- Introduce an Ordinance to Amend the Estuary Zoning District (3 votes)

- Authorize the City Manager to (i) acquire the Alameda half of the Tidal Canal from the Army Corps; (ii) dispose of most of the shoreline parcels to adjacent property owners at fair market value; and (iii) execute any and all documents necessary to consummate the transaction (4 votes)

# Project's Effect on Public Access Points

- Although not part of the action that the City Council is being asked to consider tonight, this Project has renewed interest in how the City is managing three public access points that are adjacent to the Tidal Canal along Fernside.
- During the presentation on the Tentative Map and real estate transaction, I will touch upon the public access points and the direction the Council has given staff on resolving the encroachment issues

# Brief History of the Project

- In 1884 the U.S. Army Corps of Engineers (“Army Corps”) began dredging the area which is now the Oakland Inner Harbor Tidal Canal (“Tidal Canal”).
- The Tidal Canal is 400 feet wide and 1.8 miles long and starts approximately 1,800 feet Northwest of the Park Street Bridge and ends approximately 2,300 feet South of the High Street Bridge
- It has remained in Army Corps ownership since its creation.
- In 1990, Congress passed the Water Resources Development Act directing the Army Corps to transfer the Alameda side of the Tidal Canal to the City of Alameda.

# Brief History of the Project

- The City of Alameda declined the offer
- In 2000 the Army Corps instituted a permitting moratorium:
  - Prohibited any legal construction, repairs or improvements to the waterfront except in emergencies or pursuant to lease
  - Prevented the City and other regulatory agencies from doing code enforcement or issuing permits
  - Army Corps ownership and the moratorium created a cloud on title for the adjacent residential property owners who had built docks and piers on federal property but couldn't repair their docks and had no path to owning the property in their backyards. At least one realtor was sued.

# City Council Directs Staff

- Residential owners along Marina Drive and Fernside formed a voluntary homeowners association and asks the City Council for help in resolving these issues.
- In March 2015 the City Council acknowledged this a problem and directed the City Attorney to work with the Army Corps and property owners to develop a transfer strategy
- In September 2015 the City Council by unanimous vote directed the City Attorney to pursue a real estate transaction whereby the Army Corps would transfer the Alameda side of the Tidal Canal to the City and the City would then immediately sell the shoreline parcels to the adjacent property owners

# Negative Declaration

- In June 2016, Douglas Herring & Associates prepared an Initial Study and Negative Declaration in conformance with the California Environmental Quality Act (“CEQA”)
- The Neg Dec noticed, published and circulated as required by CEQA and was considered by the Planning Board at its meeting
- Its main finding was that the proposed actions, namely the zoning amendments, tentative map approval and the proposed real estate transactions will not cause environmental damage or substantially and avoidably injure fish or wildlife or their habitat.



# Estuary Zoning Amendment

- Draft amendments to the Estuary Zoning District designed to ensure that the submerged lands can only be used for maritime structures and uses, such as docks, piers, and boathouses.
- All future proposals will be subject to discretionary review by the City and the Bay Conservation and Development Commission (BCDC).
- Staff is requesting that the City Council approve the Estuary Zoning Amendment



# Tentative Map

- First the numbers:
  - 99 Parcels
  - 5 to be retained by the Army Corps
    - Area 1 - Unsurveyed remainder on the Oakland side
    - Navy Operational Support Center (Parcel 3)
    - High Street Bridge footing (Parcel 97)
    - Miller-Sweeney Bridge/Fruitvale Rail Bridge footing (Parcel 98)
    - and the Park Street Bridge footing (Parcel 99)
  - 2 to be retained by the City
    - Open Water lot (Parcel 2)
    - State Lands restricted lot (Parcel 96)

# Tentative Map

- That leaves 92 parcels for disposition
- 8 are adjacent to commercial owners
- 84 are adjacent to residential owners
- These numbers doesn't include 6 residential property owners who are adjacent to the three public access points. I'll discuss their situation in a minute.

# Tentative Map

- Why do the map this way?
- Create the map while still in Army Corps ownership
- Minimize City's exposure to environmental liability
  - City only in the chain of title for a nanosecond.
- No one else was in a position to create the map and move the project forward
- Straight lines, avoid obstructions, capture private improvements on a single parcel.

# Public Access Points

- City of Alameda owns 3 public access points along Fernside that are outside the Project Area
- These areas are 10 feet wide, 100 feet long and bulb out into a semi-circle that is 35 feet wide.
- They have existed for a long time and over time there have been encroachments onto the City's property
- At the July 11<sup>th</sup> Planning Board Meeting, the Board recommended approval of the project but also recommended that there be a 35 foot wide easement over water adjacent to the public access points to allow for future floating docks.

# Public Access Points

- At the September 8<sup>th</sup> meeting of the Recreation and Park Commission this question was presented as an asset that might one day fall within their jurisdiction. The Commission was in support of an 18 foot easement.
- Although Staff supports the idea of preserving an option for increased access into the water, staff believes that 35 feet easement is larger than is required to achieve the stated goal and has a detrimental and unnecessary impact on the affected adjacent property owners.
- However, in response to stakeholder input, staff revised the Tentative Map presented to the Planning Board in order to retain as part of the Open Water Parcel (Parcel 2) those submerged areas adjacent to the public access lands extending to the next nearest adjacent property line.

# Public Access Points

- This temporary solution allows staff time to talk to the affected property owners about solutions to the encroachment issues on the City owned public access points as well as possible disposition of submerged lands not needed for public access into the water.
- It also allows time for the City to hire consultants experienced in designing and constructing public docks and piers to produce drawings that can then be shared with stakeholders and the Council.
- Lastly, excess revenue from this Project can help provide funding for the construction and maintenance obligations for not only the public access but the floating docks.

# Public Access Points

- I have already spoken to each of the affected property owners and have met with 4 of the 6 with another meeting scheduled for later this week.
- They know that they will not be able to buy the property in their backyards at this time but that I will be working with them to craft a solution for both the public access encroachments, floating docks and the submerged property disposition.
- They are disappointed but are willing to consider creative ideas and to working with the City staff on a solution. You may hear from some of them tonight.



# Real Estate Transaction

## No Gift of Public Funds

- This Project involves numerous real estate transactions that are designed to close in escrow simultaneously but they fall in 3 groups – Residential, Commercial and Open Water
- City Cannot Provide a Gift of Public Funds
  - Cal. Const., Art XVI § 6 – Public agency cannot authorize gift of money or value to private individual. The use of public funds for a public benefit not prohibited; incidental benefit to individuals allowed.
- This prohibition applies to all 3 groups
- As a result, the City had the property appraised and the parcels are being offered at their fair market value based upon appraisal.

# Real Estate Transaction

## Residential Price

- Residential – 84 Parcels available for private purchase
- 100% residential parcel participation required
- Purchase Price is \$10,000 per parcel
- Sold on a per parcel basis at the request of the HOA
- Normal closing costs capped at \$1,000
- Closing costs to City is approximately \$42,000 for residential

# Real Estate Transaction

## Residential Closing Cost Estimate

### 1. Closing Costs (No Lender) Typical Residential Lot @ 10K Policy Amount:

|   |              |                     |
|---|--------------|---------------------|
| • | \$ 450.00    | Escrow Fee          |
| • | \$ 400.00    | CLTA Policy         |
| • | \$ 11.00     | County Transfer Tax |
| • | \$ 120.00    | City Transfer Tax   |
| • | \$ 50.00     | Estimated Recording |
| • | \$ 100.00    | Signing Buyer       |
| • | \$ 15.00     | Courier             |
| • | <b>Total</b> | <b>\$1,146.00</b>   |

### 1. Closing Costs (With Lender)

|   |              |                        |
|---|--------------|------------------------|
| • | \$1,146.00   | Total from above plus: |
| • | \$ 75.00     | Deed of Trust          |
| • | \$ 125.00    | Signing                |
| • | \$ 15.00     | Courier                |
| • | \$ 100.00    | CLTA Lender Policy     |
| • | N/A          | Loan Tie In Fee        |
| • | <b>Total</b> | <b>\$1,461.00</b>      |

# Real Estate Transaction

## Commercial Price

- Commercial – 8 Parcels available for private purchase
- Lot 4            \$280,000
- Lot 5            \$20,000
- Lot 6            \$90,000
- Lot 7            \$160,000
- Lot 8            \$25,000
- Lot 9            \$50,000
- Lot 10           \$110,000
- Lot 11           \$70,000

# Real Estate Transaction

## Commercial Closing Costs

- Estimated Closing Costs ranges from \$2,200 - \$6,600
- City seeking to dispose of all of the commercial parcels but may consider holding some for disposition later so long as there is no excess environmental risk.

# Open Water Parcel

- Open Water – 2 Parcels - not for sale
- City will retain Parcels 2 and 96 for open navigation though the Tidal Canal.

# Additional Information

- Who is responsible for dredging the Open Water portion of the Tidal Canal if the Project is approved?
- Is the purchase price based on transaction costs or fair market value?
- If I buy the adjacent parcel, am I required to merge them? If I don't will I get 2 tax bills?
- I know it is not before the City Council tonight for decision but will the community get an opportunity to comment on the new public access docks and piers before they are approved?



# Additional Information

- Will the permitting moratorium be lifted by the Army Corps if this Project closes?
- Will I still need to get permits from the City, BCDC and/or the Army Corps for my docks and piers if I don't already have them?
- If I already have permits, will I have to get new ones?

# Next Move

- The Army Corps has completed or is in the process of completing everything it needs to do in order to transfer the property.
- We have conditional approvals for the Quitclaim Deed and the Memorandum of Understanding which acts like the purchase and sale agreement between the City and the Army Corps.
- The Army Corps has reviewed the Tentative Map and simply needs to see the Final Map before it can sign off.

# Next Move

- The Army Corps has done their part.
- The ball is now in the City Council's court. If the Council moves this Project forward, then its up to the residential homeowners to participate in the transaction.
- The homeowners and the realtors urged the City Council to get staff involved and to help solve this problem.
- This Project won't solve every problem along the Tidal Canal, but it is big milestone.

# Discussion

