



# ALAMEDA MARINA

June 5, 2017

Honorable Mayor Trish Spencer  
and Members of the City Council  
2263 Santa Clara Ave.  
Alameda, CA 94501

**Re: Study Session to Consider Adoption of Resolution to Establish Mixed Use (MX)  
Zoning District Guidelines  
File #: 2017-4374  
City Council Meeting on June 6, 2017**

Dear Mayor Spencer and City Council Members:

As you are aware, Pacific Shops, Inc. ("PSI") is the owner and developer of the proposed Alameda Marina Master Plan project (the "Project"). The Project is intended to fulfill PSI's obligations under the Tidelands and Marina Lease entered into on May 16, 2012, by and between the City and PSI (the "Tidelands Lease"), which called for the redevelopment and revitalization of the Alameda Marina property, including the State Tidelands parcels, with a "new, higher-value project" consisting of mixed uses. Both the City and PSI stand to benefit if the deadlines to obtain approvals for and commence construction of the Project set forth in the Tidelands Lease are met. To meet one of the first major deadlines under the Tidelands Lease, PSI submitted its draft Master Plan to the City in July 2016. That Master Plan called for the redevelopment of the property with a mix of maritime/commercial, marina, residential, dry boat storage and public open space uses, consistent with the existing MX/MF and M-2 zoning for the property. Since then, PSI has worked diligently with City staff, a subcommittee of the Planning Board, current tenants of Alameda Marina, and the community to further refine its proposal for revitalizing the property. Because we believe that these collaborative efforts are working very well at Alameda Marina (and similar efforts are apparently working well at the other City properties that are the subject of this study session, as indicated in the staff report), PSI questions the need for any changes to the MX zoning at this time for the reasons set forth below.

Over the past five months, PSI has met with City staff and a three member subcommittee of the City's Planning Board on multiple occasions to refine the draft Master Plan for Alameda Marina, which we believe has resulted in a better project for PSI and the City. The revised Master Plan involves the following proposed uses, which will be arranged compatibly on the site:

- Creation of an approximately 153,000 square foot commercial core dedicated to maritime, maker, small office and retail uses, including approximately 43,000 square feet for a boat yard building and boat yard
- Development of up to 760 dwelling units consisting of multifamily wrap buildings, eight multifamily elevator stacked flat buildings, and 25 multifamily townhome buildings
- Retention and reuse of 11 existing buildings at the project site, including three buildings that are deemed to be individually eligible for the National Register of Historic Places
- Development of multifamily residential units will support the \$70M plus infrastructure costs for the Project, including \$30M plus for shoreline improvements, the vast majority of which lie within the Tidelands Lease area
- Elimination of the Tidelands Lease lines through existing buildings, which will result in more square footage dedicated to Tidelands trust purposes, both on land and in water, and will provide the City with more rentable building space within its Upland Portion of the property under the Tidelands Lease
- Provision of more than 21 acres of public open space, including 4.25 acres of shoreline open space and approximately 17 acres of marina open space
- Accommodation of dry boat storage in the northwestern portion of the property near the marina and the adjacent City boat launch
- Retention of the existing graving dock on the eastern portion of the property as an open space, water-oriented amenity for the property

When this study session referral was first heard over one year ago, comments from the majority of the City Council indicated that the members believed that the MX zoning already provided both sufficient protections for the City to evaluate MX projects on a case-by-case basis through the Master Plan approval process and also sufficient flexibility and certainty for property owners, suggesting that there was no need to fix an unbroken system. So the obvious question is: what is the problem that this study session referral seeks to address and why is any City Council action necessary?

While it may appear at first blush that the proposed MX guidelines would not impede the Project, if adopted they would establish additional approval criteria that will be subject to interpretation by staff, the Planning Board and City Council. Accordingly, if the City Council is inclined to adopt the proposed guidelines, then PSI requests that the language in two of the proposed guidelines be modified to remove any ambiguity and to be consistent with prevailing state law regarding public trust uses.

Concerning the first proposed guideline regarding State Tidelands property, we note that over the years the public trust doctrine has evolved to include a more expansive list of permissible uses than listed in the proposed guideline, which states, “State Tidelands property within the plan area is appropriately planned to support maritime oriented commercial use and/or public open space use consistent with Tidelands Trust requirements of the State Constitution.” (Emphasis added.) In fact, both the public trust doctrine and the Tidelands Lease

allow for a broader range of uses on the Tidelands property. For example, a restaurant is a permissible public trust and Tidelands Lease use, but would not likely qualify under the proposed guideline as either a maritime oriented commercial use or a public open space use. We had previously recommended to City staff that the phrase, "maritime oriented commercial use and/or public open space use" be replaced with "public trust uses," but this proposed modification was not made. We are concerned that the proposed guideline would prohibit uses that are otherwise permitted by both the public trust doctrine and the Tidelands Lease, which creates binding contractual obligations between the City and PSI.

With respect to the second proposed guideline, PSI requested several modifications and clarifications. As a threshold matter, we question how the City will be able to monitor whether there has been any net loss of jobs in the plan area over the life of the proposed plan. Second, although it is unclear whether the 50% threshold would even apply to a property such as Alameda Marina because it contains "existing businesses," if it would, it is essential that the term "land" include submerged lands, which currently contain a large, maritime oriented commercial marina. We also question whether the 50% threshold is the appropriate way to address job retention in the MX zoning master plan process. For example, at Alameda Marina, currently buildings only occupy approximately 17% of the entire site, and approximately 250,000 square feet of commercial, industrial and maritime uses house approximately 250 full-time employees. Under the proposed Master Plan, although less acreage and square footage would be devoted to commercial and maritime commercial uses than currently exists, the number of projected full-time employees would increase by approximately 24 percent as a result of a much more efficient use of the rehabilitated and new maritime commercial space. If only the first sentence of the proposed guideline would be applicable to Alameda Marina, that should be clearly stated.

While PSI does not believe that any additional action is required with respect to MX zoning, if the City Council is inclined to take further action, then PSI respectfully requests that the City Council simply adopt the suggested guidelines for projects being developed under MX zoning, with our suggested modifications, and defer to the continuing work between staff, developers and the community to bring forward Master Plan proposals for the various MX projects, including Alameda Marina. This process has worked very well to date and we expect that it will continue to work very well in the future. The alternative of initiating a public review and hearing process for adoption of revisions to the Alameda Municipal Code would unduly delay or cause uncertainty for the Project and others currently proceeding under the MX Master Plan process. This result would be particularly vexing for Alameda Marina, as both the City and PSI will lose out if the Project does not meet the Tidelands Lease's mandatory deadline for commencing the Project.

Thank you for your consideration. PSI looks forward to bringing to the Planning Board and the City Council in the near future an exciting and desirable mixed use development project for Alameda Marina that fulfills the purposes of the Tidelands Lease and the goals of the City Council.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean Murphy", with a stylized flourish at the end.

Sean Murphy

cc: Andrew Thomas, Assistant Community Development Director  
(athomas@alamedaca.gov)  
Debbie Potter, Community Developer Director (dpotter@alamedaca.gov)  
Farimah Brown, Esq., Senior Deputy City Attorney (fbrown@alamedacityattorney.org)  
Charles R. Olson, Esq., Lubin Olson & Niewiadomski LLP (colson@lubinolson.com)