ACT

Alameda Citizens Task Force

Vigilance, Truth, Civility

Dear Planning Board Members:

ACT supports residential and commercial development at Encinal Terminals, particularly affordable housing and improving our jobs to housing ratio. However we can only support a development plan/agreement that meets the following criteria:

1. A maximum housing density number that is formulated in compliance with The City General Plan, MX/MR Zoning Ordinances and California Law

2. Proper evaluation of revenue neutrality

3. A distribution between housing and commercial uses that significantly improves, rather than exacerbates our poor jobs/housing ratio

4. Provides multiple access roads for evacuation in the event of a disaster

5. Contains a sustainable funding mechanism for perpetual maintenance of the shoreline

6. Contains an element of design that integrates the development with the tidelands.

We must oppose the proposed development plan, EIR and Density Bonus Application that is before you now because it meets none of the above criteria. If this Planning Board and City Council approves the current proposal we fully intend to file for a Writ of Mandate in the Superior Court seeking to overturn the same as an abuse of discretion and a violation of both City and State law.

A detailed explanation of our opposition is set forth below. (With the exception of EIR and other issues which may be raised in separate documents)

1. ***MISCALCULATION OF MAXIMUM ALLOWABLE RESIDENTIAL DENSITY***

A. **The State Density Bonus Law does not prohibit the City from limiting the calculation formula for maximum allowable units to acreage devoted to residential use:**

At the time of developer's filing of his Application, it owned 15.48 acres of land zoned MF/MX and 1.25 acres zoned under MX at 21 units per acre. (16.73 acre total) Planning Staff then calculated the density for the two sub-parcels based on the applicable zoning plus the required 20% density bonus and set the maximum allowable residential density at 589 units. The current Staff Report attached to the July 23, 2018 Planning Board Agenda justifies this calculation by claiming that it is mandated by the State Density Bonus Law.

This conclusion is based on the City Attorney's interpretation of the Law as requiring the City to respond to a developer's density bonus application prior to the final approval of the Master Plan and to include therein a calculation of the maximum allowable units allowed. The City Attorney argues that this puts the City in a bind of having to include the entire acreage of the development in its calculation of maximum allowable units rather than limiting it to acreage dedicated to residential since the residential acreage has not been finally determined.

We agree that the Law requires a response to a density bonus application before a final Master Plan is approved. However the proposed Master Plan presented by the developer in this case and included in his density bonus application clearly quantifies the acreage dedicated to residential use to nine acres. Thus, even if the City Attorney is correct in asserting that a calculation of maximum allowable units is required by the density bonus law, this should have been calculated on 9 acres, not 16.73 acres, thus drastically reducing the maximum allowable unit count.

However the City Attorney is incorrect in maintaining that the Law requires any determination of maximum allowable units in response to the density bonus application. The relevant section of the Law is at Govt. Code. Sec. 65915 (b) and (f) below that state the required response to a density bonus application:

"(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f),…"

"(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable gross residential density as of the date of application by the applicant to the city, … The amount of density increase to which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b)."

Sub-section (f) goes on to present tables setting forth the percentages applicable to different levels of affordable housing offers made by the applicant.

The response required from the City when the application was presented was to calculate the "density bonus" over the "maximum allowable density". This was accomplished by the City when it calculated the density bonus as 20% over the maximum allowable density in place under the zoning ordinance in effect at the time of filing of the application. There is no requirement whatsoever that the City go further and calculate the actual residential unit count. (See AMC Sec. 30-17.3 (g) for the definition of maximum allowable density)

The City Attorney conflates a density determination with a determination of allowable units. While density can be determined based upon the density bonus application, the unit count cannot be determined until much later, when the actual number of acres to be credited to residential use is finally determined as required by our MX and MF zoning ordinances and General Plan. A discussion of these factors follows.

B. The MX and MF zoning ordinances mandate that the City limit the calculation formula for maximum allowable units to acreage devoted to residential use:

In the response to our written comment raising this issue with regard to the Alameda Marina EIR the City admitted that the MX Zoning Ordinance limits the calculation of maximum allowable units to acreage in residential use, but asserted that the MF overlay uses different language that mandates the use of the entire acreage and states that in the event of a conflict, the MF provision governs. However, we interpret the language of both Ordinances to be substantially the same.

The MX density provision states, "Residential development within the entire M-X shall not exceed one (1) dwelling unit per two thousand (2,000) square feet of lot area for land designated on the Master Plan for residential use." The MF Ordinance states, "Within the MF Combining District, the maximum permitted residential density shall be thirty (30) units per acre."

The City sees the omission of the phrase, “for land designated on the Master Plan for residential use" from the MF Ordinance as making a meaningful difference. We see it as related solely to the fact that an MX ordinance, by virtue of its mixed nature requires explicit language whereas MF does not. In any event the MF refers to residential density and thus clearly limits the calculation of maximum allowable units based on said density to residential acreage.

Can the framers of the MF ordinance or the State Density Bonus Law possibly have intended that 30 units per acre should sometimes be interpreted as allowing 65 units per acre (589/9acres), or if the main access road is moved to the center of the plot 81 units per acre (598/7.3acres-a figure given to me by Mike O’Hara representing the developer)?

C. The General Plan requires the subtraction of public and private roads from the calculation of maximum allowable units.

The Staff Report states that 2.7 acres of “applicants land” will be required for the Clement Avenue extension. In addition, Mr. O’Hara confirms that 1.6 acres of developers land will be needed if the main access road remains on the west side of the peninsula. If the road is moved to the center of the development as recommended by City Staff 1.4 acres of developer’s land will be needed. In addition there will be emergency access roads, plus secondary roads throughout the project (Master Plan P. 24).

Section 2.2 of the Alameda General Plan states in part, “Residential densities are expressed in housing units per net acre, exclusive of land used or to be used for public or private streets. Where new streets will be needed, the land area to be occupied by streets is to be subtracted before calculating density…”

AMC 30-94.1 - Decision by City Council states”

“a. The City Council shall hold a public hearing, after which it may accept, modify or disapprove the recommendation of the Planning Board. b. The City Council may not approve the development agreement unless it finds that the provisions of the agreement are consistent with the General Plan and other regulations prescribed for the use of land.,”

Notwithstanding this very clear Alameda law mandating the subtraction of public and private streets before determining the maximum allowable residential units, the developer and City Staff have completely ignored the issue.

It logically follows from the above that maximum allowable residential density cannot be calculated at the time of the initial application, but only after a final Master Plan is presented that specifically calculates the portion of the parcel dedicated to residential use, excluding all other uses.

2. *LACK OF DOCUMENTATION TO SUPPORT THE CITY STAFF CONCLUSION THAT THE DEVELOPMENT WILL BE REVENUE NEUTRAL.*

The Northern Waterfront Amendments to the General Plan, section 10.1 state, "Financially Sound Development. The General Plan policies and land use designations are designed to ensure that new development will fund the public facilities and services that are needed to serve the new development and that redevelopment of the area does not result in a negative financial impact on the City's ability to provide services to the rest of the City."

The Staff Report states, "An independent analysis of the proposed project estimates that the increase in property taxes and property transfer taxes received as a result of the project will increase significantly due to redevelopment of the property. The new residents and businesses will require an increase in Police and Fire services, but those increased costs are more than off-set by the larger increase in revenue generated by the project."

However the "independent analysis" is not an exhibit attached to the report. Surely, the Board and the public should have had that report available for inspection seven days before the Board meeting **and the failure to attach it invalidates any Planning Board action with regard to the development.**

Notwithstanding the above, we will assume that it is the same "independent analysis" by EPS provided to City Council at the December 19, 2017 meeting of City Council as Exhibit. #4 (which was never shared with the Planning Board).

This is a report that was not generated by the City, but by the developer. This is in contrast to the financial impact analysis done for Site A at Alameda Point, where the report from Willdan was generated by the City. This is a critical distinction. A short non-fiction book, Confessions of an Economic Hit Man, was a best seller in 2004 and remains popular today. One of the strong lessons in the book is that a financial analyst can produce reports that support any conclusion his client wishes, because these reports are not based upon facts, but on predictions of what will occur in the future and the analyst is never held responsible for predictions that fail.

In estimating increased fire and police staffing needs, EPS uses a formula that requires only 1.87 new police officers and 1.39 new firefighters. This is number is calculated by dividing the daytime population of the City by the current staffing of both departments and then using the result to project the service need for the projected 1414 residents and 69 on site workers. This ignores several factors unique to Encinal Terminals; 1) extremely high density (589 units squeezed into 7.3 to 9 acres.; 2) mid to high rise

buildings; and 3) a narrow peninsula that will clearly require water based intervention for public safety. Amazingly, the report contains no documentation from either the Police or Fire Chief regarding staffing needs.

Perhaps the clearest evidence of how much "fluff" is in the financial analysis is this statement from page 16 of the report:

"**Reduce Commuter Traffic** By locating residential, retail, and office on one site, this project hopes to generate jobs and services while reducing long commute trips for Alameda residents and workers. Bringing more jobs to Alameda should reduce overall citywide traffic."

This project is predominately residential. The commercial usage is even smaller when one understands that all of the commercial sq. footage will be on the ground floor of residential buildings. There is no way that the traffic demands of placing close to 1200 adult residents at Encinal Terminals with very little commercial space and including a public recreational site will do anything but **increase** overall City traffic.

The Board should adhere to the wise admonition that "you get what you pay for". The developer is getting exactly what it paid for, while the City is also getting what it paid for, namely nothing! **In the face all of the above, how can the City fail to commission its own Financial Impact Analysis to insure against a drastic drain of City revenues.**

3. ***FAILURE TO IMPROVE THE JOBS TO HOUSING RATIO IS INCONSISTENT WITH THE GENERAL PLAN.***

The Northern Waterfront Amendments to the General Plan, section 10.1 state, "Facilitating a Jobs/Housing Balance. With an emphasis on mixed use development, the General Plan policies for the area are intended to facilitate a jobs housing balance in the area and in the City for the purpose of reducing citywide traffic and the associated environmental, economic and social impacts of long commute trips."

Consistent with the above, the current City Housing Element states the reasonable residential capacity for Encinal Terminals at 234 units, based on the projection that 40% of the acreage will be dedicated to commercial use. More recently Planning Staff submitted a proposed Resolution to City Council that set a standard of 50% commercial and open space use for all of the MX zoned parcels and publically stated that this was already in place as informal policy in the Planning Department.

Notwithstanding all of the above, Planning Staff not only ignores the General Plan, The Housing Element, and their own internal policy, but exacerbates the poor housing/jobs ratio by supporting a project that provides for minimal job expansion and major housing expansion. However the Staff Report attached to the July 23 agenda does not even discuss the issue! It instead limits its discussion of commercial development to the jobs that the tidelands may grow for which the developer makes no contribution other than access that he also needs to support the estuary end of his development.

4. ***Public Safety-Evacuation Routes:***

Encinal Terminals has a very unique issue with regard to fire and/or earthquake in that it is a narrow peninsula that has only one access road to a City street combined with high density, high verticality buildings surrounded on three sides by water, and situate in a liquefaction zone . Objections were expressed to 2100 Clement having a similar issue and an additional access road was provided. The much more serious risks involved with the ET's unique features are inarguable. Yet the Specific Plan for ET appended to our General Plan does not deal with this at all, nor does the Master Plan.

The Ca Govt. Code addresses this issue:

65302. The general plan shall consist of a statement of development policies and shall include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. The plan shall include the following elements: (boldface italics mine)

(g) (1) A safety element for the protection of the community from any unreasonable risks associated with the effects of seismically induced surface rupture, ground shaking, ground failure, tsunami, seiche, and dam failure; slope instability leading to mudslides and landslides; subsidence; liquefaction; and other seismic hazards identified pursuant to Chapter 7.8 (commencing with Section 2690) of Division 2 of the Public Resources Code, and other geologic hazards known to the legislative body; flooding; and wildland and urban fires. The safety element shall include mapping of known seismic and other geologic hazards. ***It shall also address evacuation routes, military installations, peak load water supply requirements, and minimum road widths and clearances around structures, as those items relate to identified fire and geologic hazards.***

We have not studied the General Plan closely enough to determine if it addresses water supply, road widths and clearances around structures, **but we do know that the Specific Plan for ET does not address the very obvious evacuation issues raised by its unique location and design**.

It is very important to note that the main emergency vehicle access route shown on the Master Plan is not owned by the developer, but by Fortman Marina and used as a parking area for marina customers. On page 24 of the Master Plan developer states that there will be an EVA along the Fortman line, but there is no indication on any maps as to whether developer intends to squeeze it in adjacent to Fortman or reach some agreement with Fortman. In a development as sensitive to disaster as this one emergency routes need to be clearly committed, especially if developer intends to use land he does not own!

5. ***INAPPROPRIATE FUNDING MECHANISM FOR PERPETUAL MAINTENANCE OF SHORELINE:***

The developer suggests that the funding mechanism for perpetual maintenance of the shoreline could be through a Community Facilities District (CFD) and / or a Geologic Hazards Abatement District (GHAD.

The legal problem for the CFD option stems from the passage of Proposition 218 in 1996, termed the Right to Vote on Taxes Act. This is a constitutional provision which allows California voters to use initiative power to reduce or repeal any local tax. This provides local voters in a CFD with a remedy if

they believe that a CFD parcel places a disproportionate tax burden on them compared to others in the community.

Therefore, after the CFD is approved in an election where only the developers, as sole owners of the property vote, the subsequent unit owners can repeal or reduce the tax through the initiative process which will only require the vote of the residents of the CFD.

The CFD proposed here is arguably disproportionate on its face. CFDs are normally designed to cover excess costs of services or infrastructure that specifically benefits the taxing district. This CFD is of primary benefit to the public at large and to the trendy shops on the shoreline. In fact, unit owners could argue that it was not a benefit at all to have public recreational facilities outside of their front doors!

The practical problem is that this approach is inappropriate when applied to perpetual maintenance of a shoreline because, while future police and fire funding is reasonably predicable, perpetual maintenance of a shore line is impacted by the variable costs of construction, sea level rise, natural disaster, etc., thus making it very unpredictable.

The initial CFD election is a baked in win for the tax because it is held before any units are sold while the only eligible voters are the developers who have previously agreed to the same in a Development Agreement. However, after all of the units are sold and any unforeseen events cause that tax to be insufficient, there must be another election where you are asking hundreds of property owners to approve an additional tax to maintain property that they don't even own and is a public asset. Fat chance of that happening! You are then left with the City holding the bag.

We are not fully conversant with the GHAD funding mechanism but it is likely that it would have the same issues as the CFD

Even if the CFD GHAD option could work, the Master Plan simply identifies the option, but contains no expression of the formulation required for a financial analysis to provide the required funding. Obviously this formulation impacts both the finances of the City and the marketability of these housing units. Without these numbers these funding devices are purely speculative and neither the Planning Board nor City Council should approve this development until this issue is securely tied down.

6. <u>THE NEED TO PROVIDE AN ELEMENT THAT INTEGRATES THE DEVELOPMENT WITH THETIDELANDS</u>

The Staff Report partially addresses this issue by stating that one of the reasons it wants to relocate the main entrance road to the center of the peninsula is, " It would provide automobile access to the Tidelands District equidistant between the Alaska Basin and Fortman Marina. Under the applicant's alignment, future maritime and marina uses will be required to cross the major entry road on the wharf to access the water in the Alaska basin."

One of the proposed uses for the tidelands is to use it to replace the dry boat storage capacity that will be lost by the new development at Alameda Marina. Those boats will have to be brought into and out of the tidelands by vehicle and trailer haul or by direct water access with the use of a hoist. This certainly

supports the relocation of the main access road to the center of the peninsula particularly through the use of a hoist which would not be feasible if the main access road remains as planned on the western shoreline, which is the only feasible location for a hoist.

Also, since the tidelands are landlocked, the hoist would need to be constructed on the developers land. SAWW has been discussing this with Andrew Thomas but there is no mention of this issue in the Master Plan. I would seem that at least a tentative commitment from the developer is warranted.

Sincerely,

Paul S Foreman (Authorized Correspondent for Alameda Citizens Task Force)