

LARA WEISIGER

From: Paul Foreman <ps4man@comcast.net>
Sent: Tuesday, September 18, 2018 4:43 PM
To: ANDREW THOMAS; Trish Spencer; Malia Vella; Frank Matarrese; Marilyn Ezzy Ashcraft; Jim Oddie; Celena Chen
Cc: Janet Kern; DEBBIE POTTER; Manager Manager; LARA WEISIGER
Subject: RE: Encinal Terminals-Item 6B on Sept.18 Agenda

Dear Andrew,

I truly appreciate your openness to entering into a conversation about this. However I must continue to disagree with your conclusion.

Section 2 of the General Plan is titled land use. Section 2.2 deals with residential low and middle land use, The only densities that existed at the time. The residential uses within Specified Mixed Land use included those same low and middle residential land uses. See Section 2, Table 2-1. There is nothing in Section 2.2 that says that its language only applies to 100% residential zoning districts and not residential uses within a Specified Mixed Use area.

I read Section 2.2 as applying to residential land use permitted in any zoning district. Encinal Terminals is a prime example of where your interpretation breaks down. It is a predominately residential project, with no free-standing commercial buildings. You are arguing that because it happens to sit in a mixed use zoning district, the street acreage deduction of Section 2.2 does not apply. I assume that 2.2 was written for good reason, and there is no good reason why it should not apply in any zoning district where residential use is allowed, which I am sure is what the framers of Section 2.2 intended.

Sincerely,

Paul

From: ANDREW THOMAS [mailto:ATHOMAS@alamedaca.gov]
Sent: Tuesday, September 18, 2018 3:55 PM
To: Paul Foreman; Trish Spencer; Malia Vella; Frank Matarrese; Marilyn Ezzy Ashcraft; Jim Oddie; Celena Chen
Cc: Janet Kern; DEBBIE POTTER; Manager Manager; LARA WEISIGER
Subject: RE: Encinal Terminals-Item 6B on Sept.18 Agenda

Dear Paul:

General Plan [Section 2.2 Land Use Classifications](#) describes the eleven (11) General Plan Land Use Classifications, which include: Residential, Neighborhood Business, Community Commercial, Office, Specified Mixed Use, Open Space, etc. etc.

The sentence that you keep referring to is describing residential density in the [Residential Land Use Classification](#), not the Specified Mixed Use Classification. [The Encinal Terminals project is in the Specified Mixed Use Classification.](#)

I respectfully disagree with your belief that this language in one Classification automatically governs all other classifications.

-Andrew

From: Paul Foreman [mailto:ps4man@comcast.net]

Sent: Tuesday, September 18, 2018 2:01 PM

To: ANDREW THOMAS <ATHOMAS@alamedaca.gov>; Trish Spencer <TSpencer@alamedaca.gov>; Malia Vella <MVella@alamedaca.gov>; Frank Matarrese <FMatarrese@alamedaca.gov>; Marilyn Ezzy Ashcraft <MEzzyAshcraft@alamedaca.gov>; Jim Oddie <JOddie@alamedaca.gov>; Celena Chen <cchen@alamedacityattorney.org>

Cc: Janet Kern <JKern@alamedacityattorney.org>; DEBBIE POTTER <DPOTTER@alamedaca.gov>; Manager Manager <MANAGER@alamedaca.gov>; LARA WEISIGER <LWEISIGER@alamedaca.gov>

Subject: RE: Encinal Terminals-Item 6B on Sept.18 Agenda

Dear Mr. Thomas,

I very much appreciate receiving a direct answer to a direct question. However I do not agree with your conclusion. It is evident to me that Section 2.2 was written when Alameda was still adhering to the restrictions of Measure A, which did not allow for any higher density than medium. However, with the later adoption of the Housing Element portion of the General Plan and the establishment of the MF Zoning District, no action was taken to limit Section 2.2 to low and medium density districts. Unless the General Plan is amended to explicitly except high density zoning districts from Section 2.2, I believe that Section applies to all residential development in the City, regardless of density.

Sincerely,

Paul S Foreman

From: ANDREW THOMAS [mailto:ATHOMAS@alamedaca.gov]

Sent: Tuesday, September 18, 2018 9:50 AM

To: Paul Foreman; Trish Spencer; Malia Vella; Frank Matarrese; Marilyn Ezzy Ashcraft; Jim Oddie; Celena Chen

Cc: Janet Kern; DEBBIE POTTER; Manager Manager; LARA WEISIGER

Subject: RE: Encinal Terminals-Item 6B on Sept.18 Agenda

Dear Mr. Forman: As the non-lawyer, planner, I hope the following is helpful to you:

Section 2.2 of the Land Use Element, which you reference, refers directly to the Low Density and Medium Density Land Use Classifications of the General Plan. Encinal Terminal is not designated Medium Density or Low Density in the General Plan. It is designated Mixed Use. Section 2.2 does not apply to Encinal Terminals at all. Section 2.2 only applies to lands designated Medium Density Residential or Low Density Residential in the GP.

Hope this is helpful,

- Andrew

From: Paul Foreman [mailto:ps4man@comcast.net]

Sent: Tuesday, September 18, 2018 9:02 AM

To: Trish Spencer <TSpencer@alamedaca.gov>; Malia Vella <MVella@alamedaca.gov>; Frank Matarrese <FMatarrese@alamedaca.gov>; Marilyn Ezzy Ashcraft <marilyn@marilynforalameda.org>; Jim Oddie <JOddie@alamedaca.gov>; Celena Chen <cchen@alamedacityattorney.org>

Cc: Janet Kern <JKern@alamedacityattorney.org>; DEBBIE POTTER <DPOTTER@alamedaca.gov>; ANDREW THOMAS

<ATHOMAS@alamedaca.gov>; Manager Manager <MANAGER@alamedaca.gov>; LARA WEISIGER
<LWEISIGER@alamedaca.gov>

Subject: Re: Encinal Terminals-Item 6B on Sept.18 Agenda

Dear Ms. Chen

Thank you for your response. However you continue to fail to address General Plan Section 2.2 which requires the deduction of street acreage from the calculation. None of the items you recite deal with this issue.

What is your basis for ignoring this requirement? Do you interpret this seemingly unambiguous provision differently? Do you interpret it as I do, but believe it conflicts with State law? If the latter is the case, why are you not moving to amend the General Plan to delete this provision?

As I have demonstrated in my letter, I am very open to adjusting my position in response to an argument supported by relevant law. Why not respond to my questions above now, rather than in litigation?

Sincerely,

Paul S Foreman

----- Original Message -----

From: Celena Chen
To: Paul Foreman, Trish Spencer, Malia Vella, Frank Matarrese, Marilyn Ezzy Ashcraft, Jim Oddie
Cc: Janet Kern, DEBBIE POTTER, ANDREW THOMAS, Manager Manager, LARA WEISIGER
Sent: September 18, 2018 at 8:42 AM
Subject: Re: Encinal Terminals-Item 6B on Sept.18 Agenda

Dear Mr. Foreman,

We are in receipt of your previous correspondence and provide this e-mail in response.

Staff does not agree with your interpretation of the law. As stated previously, the plain language of the statute requires that the gross residential density – not the net residential density – be used to calculate the density bonus. In addition, case law, the City's Housing Element, the City's practice of interpreting its General Plan and Density Bonus ordinance, and the Department of Housing and Community Development's letter dated March 19, 2018, support staff's interpretation of the law. Staff's density bonus calculation is consistent with State Density Bonus Law.

Celena Chen

Celena H. Chen
Assistant City Attorney
City of Alameda
2263 Santa Clara Avenue, Room #280
Alameda, CA 94501
(510) 747-4788
cchen@alamedacityattorney.org

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intended recipient, please contact the sender by reply email, delete the message and any attachments, and destroy any hard copies, if any, of the original message and its attachments. Thank you.

From: Paul Foreman <ps4man@comcast.net>

Date: Saturday, September 15, 2018 at 10:59 AM

To: Trish Spencer <TSpencer@alamedaca.gov>, Malia Vella <MVella@alamedaca.gov>, Frank Matarrese <FMatarrese@alamedaca.gov>, Marilyn Ezzy Ashcraft <marilyn@marilynforalameda.org>, Jim Oddie <JOddie@alamedaca.gov>

Cc: Janet Kern <JKern@alamedacityattorney.org>, Celena Chen <cchen@alamedacityattorney.org>, DEBBIE POTTER <DPOTTER@alamedaca.gov>, Andrew THOMAS <ATHOMAS@alamedaca.gov>, Manager Manager <MANAGER@alamedaca.gov>, LARA WEISIGER <LWEISIGER@alamedaca.gov>

Subject: Encinal Terminals-Item 6B on Sept.18 Agenda

Dear Mayor Spencer and Council Members:

My previous email to you, dated August 30, 2018 was written in my capacity as a Board member of Alameda Citizens Task Force. This email is submitted to you in my individual capacity as a citizen and taxpayer of Alameda. I hereby adopt as my own and incorporate by reference thereto, all of the objections to the Encinal Terminals project set forth in that Aug 30, 2018 email.

At the September 4 Council meeting you were addressed by Alicia Guerra, an attorney representing the developer. She advised that your staff was correct in determining that gross acreage, rather than just residential acreage, must be used in calculating maximum allowable residential units. She based her conclusion on Wollmer v. City of Berkeley (2011) 193 Cal.App.4th 1329. You can read an on line version of it at <https://www.leagle.com/decision/incaco20110311017>

On Sept. 7 I wrote to your City Attorney with a copy to Ms. Guerra. I noted that the Court accepted Berkeley's interpretation of its General Plan that density is determined in relation to the entire acreage of the contiguous zoning district, not just the residential portions.

I then conceded that, while Encinal Terminals is not part of a contiguous zoning district, the City could interpret its MF Zoning District density limits as applying to an entire parcel rather than individual land uses within the parcel. While I think that this would be a strained construction, I am aware that a court is required to give great deference to the City's interpretation of its own zoning ordinance. **However, I pointed out that the Court's decision is based entirely on interpreting Berkeley's local law, not the State Density Bonus Law.**

I then pointed out that Alameda's General Plan explicitly requires the deletion of acreage occupied by streets from the unit calculation. Given the language of Wollmer, I see no reason why the Court of Appeals would invalidate this provision of our General Plan.

Finally, I stated that, if the City and the Developer will agree to honor this General Plan provision and subtract road acreage from the unit calculation, thereby downsizing the project by perhaps as much as 20%, we can resolve this matter and let this project go through unimpeded.

I have received no response to the above summarized email.

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 (b) states, " 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."

The Staff report and the Master Plan state that there will be a main access road, cross streets, and emergency vehicle roads throughout the property. Also, the Staff Report filed with the Planning Board indicates that the developer will need to dedicate 2.7 acres of his land for the Clement Extension. The current Staff report makes no mention of it, but an email received from Mr. Thomas confirms that this road requirement is still in place. Pursuant to the above-quoted General Plan, the acreage occupied by these roads must be deducted from the calculation formula for maximum allowable acreage before Council may approve the project.

Notwithstanding this very clear Alameda law, the developer and City Staff have completely ignored the issue. **In ignoring any explicit response to this question your staff is asking you to ignore this General Plan provision and expressly violate AMC 30-94.1 (b).**

Your City Attorney believes that applying anything less than total gross acreage to the formula that determines maximum allowable residential units would violate the State Density Bonus Law, an interpretation that has no case law to support it, and with which I strongly disagree. However, if that is her firm conclusion, there is one more step that must be taken, before this project can be approved.. That is to present to you an amendment to the General Plan that deletes the portion of Section 2.2 quoted above. At that point you will be faced with either adopting the amendment and approving the project or amending it by deleting the street acreage from the residential unit calculation formula.

If the project is approved at 589 units without the aforesaid amendment both ACT and/or myself, as an individual, have to determine whether we must challenge this project in Court. **This is not just an issue unique to Encinal Terminals or to just mixed use districts. It pervades every future residential development in the City.**

I implore you press this matter at the Sept. 18 Council Meeting until you receive a response that satisfies you that you are complying with both State and local law and prudent planning policy.

Sincerely,

Paul S Foreman

LARA WEISIGER

From: Paul Foreman <ps4man@comcast.net>
Sent: Saturday, September 15, 2018 10:59 AM
To: Trish Spencer; Malia Vella; Frank Matarrese; Marilyn Ezzy Ashcraft; Jim Oddie
Cc: Janet Kern; Celena Chen; DEBBIE POTTER; ANDREW THOMAS; Manager Manager; LARA WEISIGER
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I implore you press this matter at the Sept. 18 Council Meeting until you receive a response that satisfies you that you are complying with both State and local law and prudent planning policy.

Sincerely,

Paul S Foreman

LARA WEISIGER

From: Shirley Dean <shirley.dean@sbcglobal.net>
Sent: Tuesday, September 04, 2018 12:09 PM
To: LARA WEISIGER
Subject: Item 6-C, Encinal Terminals, Public Hearing, September 4, 2018

Importance: High

Dear Ms. Weisiger,

I sent this e-mail yesterday with a copy to you. The one addressed to you bounced back because of a typing error, so I am trying again.

Shirley Dean

September 3, 2018

To: City of Alameda Mayor Spencer, Vice Mayor Vella and Councilmembers Ashcraft, Matarrese and Oddie
From: Robert Cheasty, Executive Director, and Shirley Dean, Board President, Citizens for East Shore Parks (CESP)

Via: E-mail

Re: Item 6-C, September 4, 2018 City Council Agenda:
Approval of: The 2018 Encinal Terminals Master Plan; Density Bonus Application for the redevelopment of the Encinal Terminals properties located at 1521 Buena Vista Avenue; and an addendum to a previously certified Focused Supplemental Environmental Impact Report for the project

Dear Mayor Spencer, Vice Mayor Vella and Councilmembers Ashcraft, Matarrese and Oddie:

It is our understanding that the approvals for the Encinal Terminals project that are before you on September 4, 2018 involve the construction of 589 housing units, 13% of which are to be affordable, up to 50,000 square feet of commercial and retail space and three acres of public open space along the perimeter of the property. These are stated to be basically the same as what was included in the original Master Plan with the important differences being that the Tidelands Trust lands are no longer included in the proposed project, the perimeter's public open space has been reduced by about 50%, and the height limit of 45 feet can be exceeded.

Citizens for East Shore Parks (CESP) continues to be concerned with the construction of residential units and businesses along shorelines in the East Bay. There is no evidence in the reports that are before you of any consideration and specific project analysis of such documents as the 2017 updated Rising Seas in California, published by the Working Group of the California Ocean Protection Council and accepted by the State of California Natural Resources Department in March 2018 as a guide for local decision-makers.

There is no consideration and specific analysis of the report published in Science Advances, March 7, 2018 that found "Maps estimating 100-year cumulation hazards solely based on the projections of sea level rise from various emission scenarios underestimates the area at risk of flooding 3.7 to 90.9% compared with revised maps that account for the contribution of local land subsidence." (Emphasis added.)

There is no consideration or project specific analysis of the report Underwater: Rising Seas, Chronic Floods and the Implications for U.S.

Coastal Real Estate, published by the Union of Concerned Scientists. This report defines "at risk" as being flooded at least 26 times per year, and indicates by zip code 94501 (1521 Buena Vista) an impact on only 3 homes, value \$1,739,746, property tax \$24,248, but the 2030 high impact scenario paints an extremely different and substantial picture of the staggering loss of homes and subsequent revenue to the City in the future. We hesitate to quote those numbers here because they are so large, but instead urge you to undertake the analysis based on numbers of homes that you insert regarding your cumulative numbers for full build out in this zip code area.

Of course, any one of these reports could be in error in some way, but there is no denying the basic conclusion and scientific consensus that sea level rise is trending upward and that California will be hit hard. You can rely on 2 feet, 3 feet or 4 feet (numbers that we have heard have been used by the city of Alameda regarding past and present projects), but you should be considering, per State approved guidelines (Rising Seas in California), 2 meters (6.6 feet). The reports before you make only a small reflection of that by requiring that buildings in the project must have flood insurance and that future owners be warned of hazards. But why not undertake the impact analysis now before you are faced with the problems that will come with sea level rise, flooding, and land subsidence?

It appears that once again with this project that you are relying on the public open space around the perimeter of the project to be somehow available to address the issue and protect the people living there. How do you even know that will be adequate? How do you know that the SF Bay Conservation and Development Commission (BCDC) will approve a future loss of public shoreline access within its 100-foot jurisdiction? BCDC requires that public shoreline access be protected in perpetuity, regardless of sea level rise. You are also relying on the mechanism of a Community Facilities District (CFD) to pay the cost of a future sea wall if needed. The City Council can indeed form such a district, but when such a district is initially formed, the developer as the major owner of the property will say yes with the expectation that the sale of future bonds will pay those costs. However, down the road a few years, when all the property owners are in place and the bonds are to be sold, they get to vote and what if they say No? What is your plan for these future expenses, particularly as they fall on the owners and occupants of any affordable units? While we do not advocate for this approach, you should at the very least require any such future needed construction be the responsibility of the developer for the life of the project which is at least 50 years.

We also share the concern of many Alameda residents regarding increased traffic. The mitigation measures being considered are all about intersections, roads and other types of traffic improvements. Since the project projects a population of 1,549 residents and 50 employees, it is clear the project is primarily residential and that the majority of residents will either drive or use public transportation to get to work, take their children to school, shop or run errands in their daily lives.

Your analysis of traffic concerns is inadequate because you have not considered the impact of sea level rise within the essential fact of life that ingress and egress to the city of Alameda is limited. The cost of on-going maintenance and improvements to protect the Posey Tunnel and bridges in and out of Alameda should become a factor in how much population and where that population will be housed in any of your land-use decisions.

We fully appreciate and applaud your desire to ensure a vibrant and economically-sound City. However, every city must move forward under the constraints of climate change. Sea level rise is happening now and the decisions made under your watch will be your legacy to the future. The 2018 Master Plan and related documents should not be approved in their current form. CESP stands ready to pull together all the East Bay cities to develop a concerted approach that will guide all shoreline project decision making.

CESP requests that this letter be made a part of the record concerning this project and we sincerely thank you for your consideration of these views.

cc: City Clerk

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name=3DGenerator content=3D"Microsoft Word 15 = (filtered medium)"><style><!--
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@font-face
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@font-face
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font-family:"Calibri",sans-serif;}
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text-decoration:underline;}
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```
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```

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```

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@page WordSection1
{size:8.5in 11.0in;
margin:1.0in 1.0in 1.0in 1.0in;}
```

{page:WordSection1;}

[illegible]

being that the Tidelands = Trust lands are no longer included in the proposed project, the = perimeter's public open space has been reduced by about 50%, and = the height limit of 45 feet can be exceeded.

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NextPart 000 0011 01D443B8.5D26BBD0--

LARA WEISIGER

From: Dorothy Freeman <dfreeman@pacbell.net>
Sent: Tuesday, September 04, 2018 9:37 AM
To: Trish Spencer; Frank Matarrese; Marilyn Ezzy Ashcraft; Jim Oddie; Malia Vella; LARA WEISIGER
Subject: Sept. 4th City Council Item 6C Encinal Terminals Master Plan and Density Bonus Application

September 4, 2018

Mayor Spencer
Vice Mayor Vella
Councilmember Matarrese
Councilmember Ashcraft
Councilmember Oddie

Dear Mayor Spencer and Council Members,

The Encinal Terminals project before the City Council on September 4th is premature for City Council consideration. This configuration of the Encinal Terminals project is not the previous project that was before the Planning Board and the City Council. The Planning Board and staff were remiss in assuming this configuration was so similar to the previous project they chose not to put the time and effort into reviewing the Master Plan as required. The Planning Board decision was a disservice to the citizens of Alameda. Some Planning Board members are recent appointees and were not present during the initial reviews of the previous Master Plan that was not passed by unanimous vote of the City Council. This current master plan is considerably different and deserves a more extensive review by the Planning Board as was recommended by Planning Board President David Mitchell.

The new configuration leaves the Tide Land Trust land as it is presently configured. This configuration leaves the Tide Lands landlocked without access to the water front on any side. The Staff report does address the need for water access and facilities for the Tide Lands in the following statement, ".....Master Plan provides access easements across the applicant's land to the Alaska Basin to ensure access from the Tidelands property to the nearby Alaska Basin and future Alaska Basin marina for maritime uses on the Tidelands property."

Reference Attachment 1: Included map.

The new configuration has divided the lands owned by Time Lewis Communities into several sections. The revised Master Plan places the entrance road to the Northern Waterfront District traveling along the Western edge of the Encinal Terminals peninsula. The section of land owned by Time Lewis Communities along the Western edge is quite narrow so the entrance road would take up most of the waterfront edge of land. The remaining land at the Western edge would accommodate access to the planned marina in the Alaska Basin. There would be very little land left for the enjoyment of people visiting the water's edge in this section of land.

Another major problem with placing the road along the Western waterfront edge is how to provide access from the Tide Lands to the water in the Alaska Basin. The City planners have proposed using the Tide Lands for dry boat storage to replace the storage lost from the Alameda Marina development. In order to provide water access

for the dry boat storage, a 3-ton hoist would be required. Access to the water at the East edge of the peninsula is blocked by the Fortman Marina's existing road and parking for the Fortman Marina. Providing a hoist on the East edge would be extremely expensive requiring dredging to remove concrete poured to secure a bed for the road at the water's edge. The dredging would be necessary to provide a deep water location for the hoist to drop the boats into the Estuary. The logical placement for the hoist would be on the West side of the peninsula where deep water is available adjacent to the wharf. If the road is placed at the Western edge where the logical location for a hoist is, the access road to the Northern edge homes would be blocked during times when boats are lined up to use the hoist, usually early weekend mornings/evenings and on days when races are scheduled in the San Francisco Bay.

The staff report recommends placing the access road to the Northern Waterfront district units through the center of the Tide Land Trust. Having the road through the center of the Tide Lands would leave the Western deep water wharf available to provide proper water access for all the Tide Lands, be it a hoist for the dry boat storage or other maritime businesses. The road, so placed, would also free up the land along the Western edge making that available for a proper promenade for public access to the waterfront. The straight road through the Tide Land's would provide a direct access to the Waterfront District and provide easier access for boats and future maritime business to access the Tide Land's and the water's edge. The staff report also cites other extensive reasons for moving the road to the center of the Tide Lands.

The land along the Western water's edge is owned by Tim Lewis Communities. The Tide Land is under control of the City of Alameda. A land swap for the road easement through the center of the Tide Lands and the land necessary for the Tide Lands to have access for the hoist and maritime business to the wharf at Alaska Basin would be beneficial to both Time Lewis Communities, the City of Alameda, and the Citizens of Alameda.

The Planning Board addressed the non-compliance of the Western access from Clement Street. That entrance is not in compliance with the Northern Waterfront Amendment. The Planning Board recommends moving the entrance to the 4-way intersection at Entrance Road and Clement. Moving the entrance would require a new road access around the Southern District building. A road easement through the Tide Lands would eliminate the need to build a road on the Northern side of the Southern District building and would move the Encinal Terminals peninsula entrance to the compliant intersection at Entrance Road and Clement.

On another note: The Encinal Terminals peninsula is water-locked on three sides. The land is subject to liquefaction and sea level rise, among other stability problems. Rebuilding the wharf is a major problem requiring extensive knowledge in such specialized work. These issues, among others, makes it paramount that the very best construction possible be employed. Robert Sullwold reports that Tim Lewis Communities has not previously build multi-family homes. The knowledge of multi-family construction and quality of work at this site is of paramount importance for safety reasons. The peninsula sits on East Bay Mud, and will be the site of a high density development with higher units than in the rest of Alameda. It's well know that union workers are better trained than non-union workers. Construction companies who hire only union workers have better safety records. To date Time Lewis Communities has not agreed to a Project Labor Agreement (PLA) with the construction workers. As a safety issue, Tim Lewis Communities should be encouraged to enter into a PLA with the necessary unions so the very best trained workers are used on this project.

Reference: Deadly Skyline - An Annual Report on Construction Fatalities in New York State.

Non-union job sites are especially dangerous for workers. NYCOSH analyzed OSHA's 36 investigated construction fatality citations in 2016 and found that in New York State, 94.7% of workers who died on private worksites were non-union. In New York City, 93.8% of construction workers who died on private worksites in 2016 were non-union. http://nycosh.org/wp-content/uploads/2018/02/DeadlySkyline-2018_Online_Final.pdf

Reference Attachment 2: Apprenticeships and Occupational Training in

Construction <https://www.cpwr.com/sites/default/files/publications/CB%20page%2031.pdf>

Respectfully,

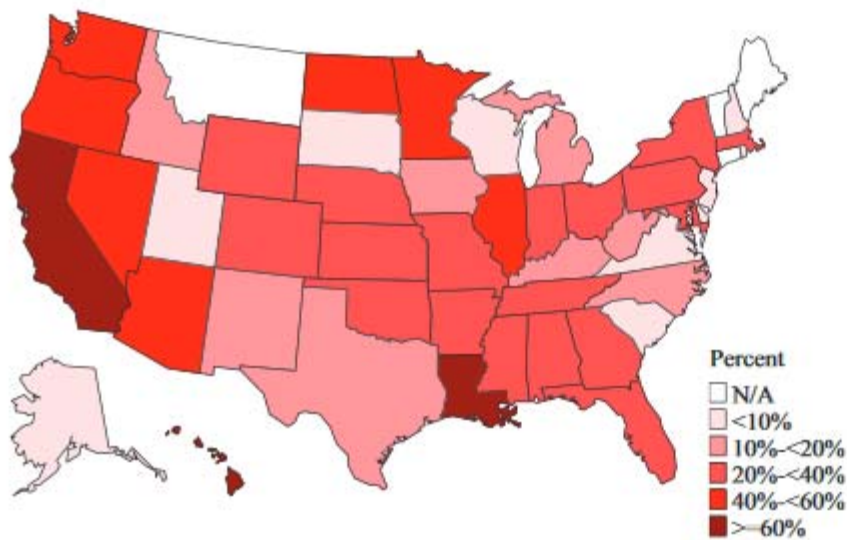
Dorothy Freeman

Attachment 1

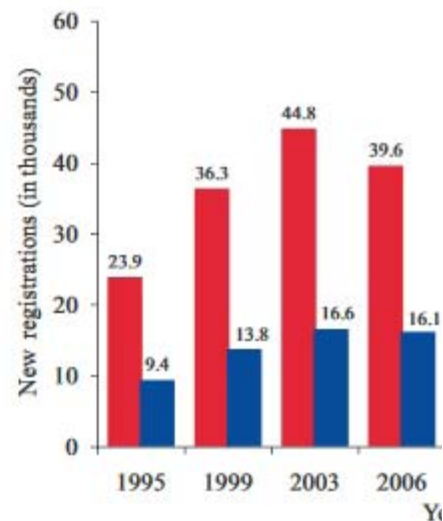


Attachment 2

31a. Joint labor-management apprenticeship programs by state, 2011 (Share of all active programs)



31b. New registrations in cons programs, union vs. non-union 1995-2010



cc: City Clerk Lara Weisiger

LARA WEISIGER

From: Paul Foreman <ps4man@comcast.net>
Sent: Thursday, August 30, 2018 11:43 AM
To: Trish Spencer; Malia Vella; f.j.matarrese@gmail.com; Marilyn Ezzy Ashcraft; Jim Oddie
Cc: LARA WEISIGER; Manager Manager; ANDREW THOMAS; DEBBIE POTTER; Janet Kern
Subject: Objections to Encinal Terminals Project-Item 6 C on Sept. 4 2018 City Council Agenda

ACT

Alameda Citizens Task Force

Vigilance, Truth, Civility

Dear Mayor Spencer and Councilmembers Vella, Mataresse, Ashcraft and Oddie:

Our significant concerns about the proposed development at Encinal Terminals follow:

1. MISCALCULATION OF MAXIMUM ALLOWABLE UNITS

A. The State law does not require the City to limit the calculation formula for maximum allowable units to acreage devoted to residential use, and, in fact our MX/MF Zoning Districts provisions mandate that maximum allowable units only be calculated from residential acreage.

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 maximum allowable units 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 justifies this calculation by claiming that it is mandated by various State laws and the City Density Bonus Ordinance.

We believe that the staff conclusions are in error. The cited laws only deal with density. We have no quarrel with the calculation of a 20% density bonus. None of these cited laws speak to the issue of calculating maximum allowable units. It is the clear intent of both our MX and MF Zoning Ordinances to apply the calculation only to residential use acreage. 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."

Note that our Housing Element is consistent with our interpretation. It calculates "reasonable capacity" for all of our MX/MF parcels by only applying the density calculation to 60% of each parcel, on the assumption that the remaining 40% will be commercial or open space, thus resulting in a much lower unit count for Encinal Terminals than that being presently proposed. Staff argues that this is only an approximation required by the State, but the fact remains that it indicates that the State interprets the law as only applying the density calculation to residential use parcels.

The developer is entitled to a density of 36 units per acre. the current Master Plan dedicates 9 acres to residential use. $589 \text{ units} / 9 = 65.5 \text{ units per acre}$! If the Staff recommendation for moving the main entrance road is adopted another 1.4 acres is removed from residential use. $589 \text{ units} / 7.6 = 77.5 \text{ units per acre}$!

Unfortunately, with the City Attorney supporting the Planning Staff's incorrect interpretation of State and local law, this issue may only be resolvable by litigation, unless Council deems it wise to seek an independent second opinion.

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

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.,"

It is obvious from the Staff report and the Master Plan that there will be a main access road, cross streets, and emergency vehicle roads throughout the property. Also, the Staff Report filed with the Planning Board indicates that the developer will need to dedicate 2.7 acres of his land for the Clement Extension. The current Staff report makes no mention of it, but an email received from Mr. Thomas this morning confirms that this road requirement is still in place. The acreage occupied by these roads must be deducted from the calculation formula for maximum allowable acreage before Council may approve the project.

Notwithstanding this very clear Alameda law mandating the subtraction of public and private streets before calculating the maximum allowable residential units, the developer and City Staff have completely ignored the issue. In fact, at last month's Planning Board meeting, a Board member's question to Staff as to how this restriction was being applied was not answered.

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 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 predictable, 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. THE CITY HAS NOT ASSURED THAT THIS PROJECT WILL BE PROPERLY COMPLETED.

This is a much larger project than Del Monte and has the unique features of being built on a fragile man-made peninsula with a very narrow access to the mainland and significant shoreline access. With this in mind, we are left with the following questions:

- a. With no development agreement how does the City assure developer cooperation in CFD's, a Municipal Service District or a Geologic Hazards Abatement District and provide for a strictly monitored financing and completion schedule. (note the very slow progress of Tim Lewis's Del Monte project)
- b. Due to the unique features of this project noted above, what vetting has been done to assure that the developer has any experience in building a project of this nature?
- c. Considering the uniqueness of this project why is the City not attempting to negotiate with the developer to have this project built by union tradesmen pursuant to a PLA so as to assure that only fully qualified tradesmen will be employed on the project?

7. THE NEED TO PROVIDE AN ELEMENT THAT INTEGRATES THE DEVELOPMENT WITH THE TIDELANDS

The Staff Report speaks to the importance of the tidelands as a major source of maritime related business, somewhat ameliorating the project's lack of significant job growth for the City. Yet, as noted by Irene Dieter in her article in today's Alameda Sun, the issue of integration of the tidelands into this project is left blank! Just one of the many issues that need to be resolved is integrating a boatyard into the project.

The Staff Report to the Planning Board 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 related to the use of a hoist which would not be feasible if the main access road remains as planned on the western shoreline. Also, since the tidelands are landlocked, the hoist would need to be constructed on the developers land.

Without a significant commitment from the developer (who holds the lease for the tidelands) that provides a framework for integration with the development, this entire project is incomplete.

Sincerely,

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