Exhibit 2: Staff Analysis from November 13, 2018 Staff Report

Land Use Element Section 2.2 Residential Land Use Classification Amendments:

In 2012, the City Council adopted a comprehensive update to the General Plan Housing Element, General Plan Diagram, Zoning Map and Alameda Municipal Code (AMC) to bring the City of Alameda's General Plan and Zoning Ordinance into conformance with state law. In addition to the update to the Housing Element and General Plan Diagram, to achieve certification, the City Council adopted a Multi-family Residential Combining Zone Ordinance ("MF Overlay Zone"), which permits multifamily housing by right, and applied the new MF Overlay Zone to the appropriate housing opportunity sites identified by the Housing Element. The MF Overlay Zone established a 30 unit per acre density standard to comply with the requirements of Government Code section 65583.2(c)(3)(B)(iv). The amendments were adopted after approximately two years of public workshops and extensive negotiations with the State of California Department of Housing and Community Development (HCD), but upon final approval by the City Council in July 2012, the State of California certified the City of Alameda General Plan as being in compliance with state housing law for the first time in 25 years.

During the public hearings on the Encinal Terminals Master Plan and Density Bonus Application, Alameda resident Mr. Paul Foreman identified an inconsistency between the residential density standards described in the land use classifications section of the Land Use Element adopted in 1991 and the residential density standards adopted in the Housing Element in 2012, which brought the General Plan into conformance with state housing law. Although the inconsistencies did not impact the Encinal Terminals decisions, they should be corrected to ensure internal consistency between General Plan elements and state law.

The specific language in the 1991 Land Use Element that is at issue is in Section 2.2 "Land use Classification", which states:

> *"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 or ratio of floor area to site area."*

The description of the Medium-Density Residential Land Use classification further states:

> *"Density range for additional units: 8.8 to 21.8 units per net acre. Projects of five or more units with 20 percent of the units affordable to lower-income households earn a state-mandated density bonus permitting up to 26.1 units per net acre."*

These three sentences from the 1991 Land Use Element are inconsistent with state law and the 2014 Housing Element, and they are out of date. State housing law and State Density Bonus Law require that the amount of housing allowed on a privately owned parcel of land be determined by the *gross* acreage of land owned by the property owner. State law does not allow the City to deduct lands used for streets, alleys, or driveways on the property owner's land when calculating the total number of units allowed. For example, if a property owner owns 10 acres of land that is zoned to permit a maximum density of 30 units per acre, then the property owner is entitled to 300 units (10 acres x 30 units/acre). If the property owner constructs a street on his or her property to provide access to the 300 units, and the street occupies one acre, the City cannot require that the applicant reduce the number of units to 270 because one acre was used for a driveway or

street (9 acres x 30 units/acre); in such case, the property owner is still entitled to a maximum density of 300 units.

State Density Bonus Law was amended in 2016 to explicitly state that the law must be interpreted liberally to produce the maximum number of housing units. The law was also recently clarified to state that base density is calculated using the "otherwise maximum allowable ***gross*** residential density." Additional information about State Density Bonus Law is available in the February 8, 2018 Housing Law Memorandum presented to the Planning Board and City Council, which is available online at https://alamedaca.gov/residents/housing and incorporated by reference.

Furthermore, the language referencing a maximum density of 21.8 units per acre is inconsistent with the 2014 Housing Element and the AMC. Lands in Alameda zoned with the MF Overlay Zone allow a maximum density of 30 units per acre, not 21.8 units per acre. Finally, the sentence referencing a 20% "state-mandated density bonus", which was consistent with state law when it was adopted, is no longer accurate. Under current state law, if a project includes specified amounts of very low-, low-, or in some cases, moderate-income housing, it is entitled to up to a 35 percent increase above the otherwise-applicable maximum density for the site.

For these reasons, staff is recommending that the Planning Board and City Council amend and update the General Plan Land Use Element land use classification to conform to state law and the 2014 Housing Element as shown in the draft resolution.

Land Use Element Section 2.2 Business Park Land Use Classification Amendments:
The Harbor Bay Industrial Park Development Plan, approved by Planning Board Resolution No. 1203 in 1981, and amended by Planning Board Resolution No. 1533 in 1985, establishes the development standards for the Harbor Bay Business Park. Planned Development No. PD-81-2, as amended in 1985 by PDA-85-4, established a "special" maximum FAR of 0.5 for the portion of the business park fronting Bay Edge Road located between the lagoon and the bay. This portion of Bay Edge Road is now the portion of Harbor Bay Parkway immediately located along the bay frontage. PD-81-2 and PDA-85-4 contain the following language:

> 46. Special criteria for the area between the lagoon and bay shall be as follows:
>
> b. Floor area ratio (FAR) shall not exceed a ratio of 0.5:1 with increases in gross floor area permitted proportional to the amount of required parking provided within a structure or structure(s) up to a maximum FAR of 2:1 where all required parking is enclosed in a structure.

The resolution findings for both PD-81-2 and PD-85-4 make reference to the special FAR for the waterfront properties and state that it is necessary to "retain control of sensitive aesthetic environment in the area between the lagoon and the bay."

In 1989, the Harbor Bay development standards and entitlements were vested by the City Council when they approved the 1989 Development Agreement, which specifically references Resolution Nos. 1203 and 1533. When entitlements are "vested" by a development agreement, future development standards adopted by the City which are more restrictive do not apply to the vested development. (PD-81-2, PD-85-4, and the Development Agreement are attached as Exhibit 2, 3, and 4.)

In 1991, the City Council approved the new citywide General Plan update. The new Land Use Element included Land Use Element Policy 2.8.a which states: “Support development of Harbor Bay Business Park consistent with existing approvals and agreements.”

The 1991 Land Use Element also included a new Business Park Land Use classification, which states:

> “Harbor Bay Business Park and portions of Marina Village consist primarily of offices, but also may include research and development space, manufacturing, and distribution. Harbor Bay plans include a small amount of retail space and a conference-oriented hotel. Maximum FAR is .5, with increases up to a maximum of 2 permitted, proportional to the amount of required parking enclosed in a structure.”

The General Plan land use classification states that the 0.5 FAR standard applies to the ***entire*** Harbor Bay Business Park and Marina Village Business Park, which is in conflict with Policy 2.8.a and the “existing approvals and agreements.” However, close examination of the FAR limit in the development standards of PD-81-2 and PDA-85-4 demonstrate that the 0.5 FAR limit is only applicable to the portion of the Business Park along the edge of the Bay.

Between 1991 and 2017, City staff and Planning Board interpreted these policies to mean that the 0.5 FAR only applies to the portion of Harbor Bay Business Park along the waterfront, consistent with the existing 1981, 1985, and 1989 entitlements.

However, in 2017, during consideration of a parcel map for a hotel at 1700 Harbor Bay Parkway, which is not located on the waterfront, Unite Here (the hotel workers union) argued that the parcel map should not be approved because the proposed FAR was greater than 0.5 and therefore not consistent with the General Plan land use classification. The Council stated that since the language in the General Plan was not clear, they would be unable to make the findings for the parcel map. The property owner withdrew their application for the parcel map, but was able to proceed with their hotel expansion.

In 2018, the City received another application for a new hotel at 1051 Harbor Bay Parkway, which is not located on the waterfront. The proposal has a proposed FAR of 0.8.

Staff is recommending that the General Plan land use classification be amended to clarify that the 0.5 FAR only applies to the land between the lagoon and the bay. With this clarification, the current hotel proposal with an FAR of 0.8 would be able to proceed. If the Planning Board and City Council wish to impose the 0.5 FAR on the entire Business Park, the hotel application will need to be amended, and Policy 2.8.a should be stricken from the Land Use Element.

Consistent with the prior practice and the sequence of events described above, staff recommends that the Planning Board and City Council clarify the General Plan Land Use Element classification to read as shown in the attached resolution.