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MEMORANDUM

To: Honorable Mayor and Members of the City Council

From: Andrew Thomas, Planning, Building and Transportation Director
Amy Wooldridge, Recreation & Parks Director

Date: July 3, 2019

RE: Comments received concerning Parks and Recreation Development Impact Fee

On July 2, 2019, the Council heard a presentation by staff and the City's consultant Willdan Associates proposing passage of revisions to the City's Development Impact Fee ordinance, particularly relating to the Parks and Recreation component ("Parks DIF"). The Council has received two letters commenting on the proposed ordinance and supporting nexus study, both on behalf of a company owning property in the City, Boatworks, LLC: one from Robert McGillis dated July 1, 2019, and a second from Tom Roth dated July 1, 2019 and received July 2, 2019. This memorandum provides additional information relating to those comments. The second reading of the ordinance is currently scheduled for July 16, 2019.

Inclusion of Land Remediation Costs in Calculation of the Fee

One major set of comments relates to the consideration of land remediation costs in assessing the development impact. City staff disagrees with Boatworks' various arguments that the City cannot take into account future land remediation costs in calculating the Parks DIF.

Boatworks' comments appear to assume that only land formerly owned by the Navy will be used for future parks, and that all such land will be remediated, at Navy expense, to a level consistent with the use of the land for parks. Neither assumption is correct.

First, the Parks DIF may be used for parks distributed throughout the City geographically; it will not necessarily be used exclusively within the boundaries of the former Navy land at Alameda Point. While some planned park amenities would serve new residents from across the City, such as the Alameda Point Sports Complex, other future parks would be distributed elsewhere in the City, to meet the needs of residents without requiring the residents to drive across town. For example, the City's current General Plan has, since 1979, identified the site of the former Doolittle landfill as a location for parkland. Using that site for a future park would help maintain the current standard of having parks dispersed throughout the City. Additional development of the open acreage at Jean Sweeney Park is also likely to require site remediation. The



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argument that the Navy will remediate future parkland ignores the City's interest in providing parks that are located for the convenience of its residents.

Second, the Navy does not pay for all of the remediation costs necessary to make even the Alameda Point land usable for park purposes. The City has recent experience with this at Estuary Park, where additional site remediation was necessary even after the Navy had completed its remediation work. In addition, portions of the land conveyed by the Navy are covered with a thick layer of concrete used as a runway for aircraft; the Navy did not remove the concrete, which will need to be removed, and the soil beneath it conditioned, prior to park use.

Staff believes that the comments relating to remediation costs ignore these significant realities about the cost of providing future park amenities made necessary by future development. However, in order to more fully evaluate this set of comments, staff is recommending that the City adopt the Parks DIF with a calculation that does not account for any remediation costs. As a result, the current Parks DIF will be conservatively very low. This change results in reducing the Parks DIF calculation from \$9,636 to \$8,105 for Single Family and from \$7,040 to \$5,921 for Multifamily.

Staff anticipates further evaluating the data in support of this component and bringing a further amendment of the DIF Ordinance for Council consideration this fall.

Calculation of the Value of Existing City Parks

The comments question the calculation of the existing standard of park improvements in several ways. In this section, City staff responds to the thrust of these comments, and provides further information and support for the calculation in combination with the nexus study.

The 2019 nexus study estimated the value of existing park improvements by using the City's recent actual construction costs for Estuary Park, Jean Sweeney Park, and the Cross Alameda Trail and applying that average value to all park improvements in the City, resulting in an average value of \$933,594 per acre. As addressed on page 12 of the 2019 Nexus Study, this approach is reasonable. Some parks have a level of improvements more costly than this average, while some are less. Boatworks points to the example of two dog parks included in the inventory that have fewer amenities (Main Street Dog Park and Washington Dog Park), but it ignores all of the other parks that have greater amenities. All of the parks identified are part of the City's inventory of park



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facilities available to the public, and there is a range of degree of improvement across all park facilities, from low to high.

The 2019 nexus study uses the City's actual recent experience to calculate the cost of new park improvements. The comment asserts that the four recent park improvement projects are not representative of the City's existing park portfolio, asserting in particular that Jean Sweeney Park and Estuary Park are "amenity rich." Staff disagrees with this comment factually. The four recent projects represent a mix of park amenities reflective of the City's parks more generally, from quiet pathways to busy tot playgrounds to athletic fields, on over 22 acres of land. While any sample may not perfectly represent the whole, and these four parks are not a miniature version of every other park in the City, the City's most recently constructed parks do fairly represent the types of construction costs the City would need to expend to construct parks to the standard enjoyed by current residents overall. Jean Sweeney is not a peculiarly amenity rich park (i.e., a playground, walking trails, and large areas of lawn), and it includes amenities similar to a number of other parks throughout the City. While Estuary Park is an example of a more amenity rich park (i.e., sports fields and lighting), it is similar to several other parks in the City with similar levels of amenities such as Washington Park, which includes baseball fields and lighting. The calculation also includes two portions of the Cross Alameda Trail, which have a lower level of amenities (i.e., asphalt bike path and landscaping), similar to other, lower-amenity parks in the City. The overall average from these four park projects is reasonable and reflects accurately the existing standard of parks city-wide. And importantly, the use of recent park improvement costs makes the estimate of future park construction more accurate, by taking into account the most current cost of construction.

Estimates of construction costs often turn out to be inaccurate, and unfortunately, often understate the actual expense. By using the actual and most recent expenses, the 2019 nexus study provides a better measure of the expected cost attributable to new development. While the comments point out that the new numbers are higher than estimates in earlier studies, and that they are higher by more than the rate of inflation of construction costs, the 2019 numbers are based on actual construction costs that provide greater accuracy and a better basis for estimation of future costs.

The comments also argued that the 2019 Nexus Study should only use "depreciated" rather than "replacement" costs in calculating existing park improvements. This proposed alternative approach would significantly underestimate the value of the City's existing park improvements. The City spends significant amounts each year maintaining, refurbishing, and rehabilitating its existing parks. They are not depreciated or "rundown"



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assets. Moreover, depreciation is primarily a tax accounting invention, and includes arbitrary elements that do not reflect current values. A well-graded field for soccer can last far longer than twenty years when the grass is well-maintained; its value is not substantially diminished because of the passage of time. A hypothetical approach that applied “depreciation” rates would fail to accurately capture the existing standard of park improvements, and lead to a number too low to account for the incremental costs necessary to address the impact of new development.

The McGillis memo notes that the Nexus Study includes Jean Sweeney Park in its inventory of existing facilities even though it has not yet been completed. Contrary to the comment, the 2019 nexus study fully takes the degree of improvement and completion of Jean Sweeney Park into account. The City has completed the first phase of Jean Sweeney Park, which includes 10.64 acres of improvements. The total Jean Sweeney Park will consist of approximately 25 acres. While most of this total acreage is currently open to the public, the existing inventory (Table 3) conservatively only includes the 10.64 acres currently improved.

Another comment stated that the 2019 Nexus Study’s existing inventory of park facilities should not include parks that have soccer fields where access requires reservations, and incorrectly states that Lexington Fields, Hornet Field, and Main Street Soccer Park are subject to the exclusive use of the Alameda Soccer Club. All of these parks are open for use to all members of the public, but some require obtaining a permit, whether the field is operated by the Alameda Soccer Club or the City itself. A permit system for soccer fields helps avoid scheduling conflicts and overuse of the fields; it enhances, rather than prevents, the use of these parks by the public by regulating the conditions of their use and ensuring availability for scheduled games and practices. In addition, under the City’s agreement with Alameda Soccer Club, the City’s Recreation and Parks Department retains the right to use for other recreational programs. *See* 2017-4733 (consent calendar item – staff report concerning Alameda Soccer Club lease). Staff also disagrees with the comment’s analogy to the golf course; the golf course is subject to a longer term lease by a for-profit entity; the license agreement with Alameda Soccer Club provides access to the fields for soccer in exchange for maintenance and improvement obligations.

Other Arguments

Boatworks argues that the 2019 Nexus Study fails to consider that the City’s separate DIF for Alameda Point includes nearly \$80 million for development of new parks in Alameda Point. This comment ignores the purpose of imposing development impact fees. The development impact fees for new development at Alameda Point are to mitigate the



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impact resulting from new development there; the Parks DIF being proposed here is to mitigate the impact resulting from new development elsewhere in the City. The fact that new development at Alameda Point will pay for its own impacts does not mitigate or reduce the need for a fee to pay for costs attributable to impacts by development elsewhere.

Boatworks argues that the 2% administrative charge included in the fee calculation is not reasonable. The City and its staff and consultants disagree and stand by the discussion on page 19 of the Nexus Study. The comment does not provide any further information or data that would show that the City's estimate is inaccurate.

Boatworks devotes several pages to arguing that the 2019 Nexus Study "continues to illegally purport to authorize pre-existing deficiencies." These arguments appear to repeat arguments that the trial and appellate courts rejected in the recent litigation. To the extent that existing parks are insufficient to fully meet the needs of existing residents, this "deficiency" is fully accounted for under the analytical approach used in the 2019 nexus study. Any "existing deficiency" in park facilities does not impact the calculation of the Parks DIF, because it is being set only at a level sufficient to require new development in the City to match/maintain the City's existing standard – whether that standard is "deficient" or adequate – and not to remedy any deficiency. The "existing standard" methodology ensures that the fee will not improperly fund "existing deficiencies," because the fee is calculated to be at an amount no greater than is necessary to fund improvements needed to meet the City's actual existing level of service, independent of whether that existing level is considered "deficient" or capable of being improved upon. New development will pay the amount necessary to meet the existing standard, nothing more.

Boatwork's various arguments relating to the Alameda Point Sports Complex are not relevant to the 2019 Nexus Study, as the Parks DIF is not calculated with reference to the future cost of that facility. Table 11 merely indicates that the City intends to use a portion of the proceeds from the Parks DIF to contribute towards the cost of that future improvement. City staff disagrees with virtually all of Boatworks' discussion of this topic. Addressing one comment in particular, City staff notes that the current estimate of the cost of the Alameda Point Sports Complex included in the study is based on the memo dated September 13, 2017, which updated the costs to a more current date, and was based on an earlier detailed estimate from December 2008. Other rough estimates are not viewed as being as reliable as the December 2008 estimate as adjusted to 2017 dollars, because they did not engage in the same degree of analysis of the likely expenses.



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The Roth letter requests that the City Council delay passage of the ordinance to allow Boatworks to study and comment further. Staff recommends that the City Council not delay adoption of the ordinance. The issues have been thoroughly studied in the 2019 nexus study. Boatworks has had the same opportunity to review and comment as the rest of the public, and is not entitled to special treatment or notice. Boatworks has had adequate notice and opportunity to respond, as shown by the 13 page letter of comments from Tom Roth, a 16 page memo from Robert McGillis, and a 9 page memo from consultant Greg Angelo.

Given the volume of comments submitted, there are undoubtedly points that we have not individually responded to. Some comments appear to reflect an almost willful disregard of the contents of the 2019 nexus study. The Angelo report, for example, notes that the 2019 study uses different numbers for the population and per residence occupancy numbers, and asserts without analysis that there is “little support” provided for the change. This ignores that the 2019 nexus study specifically provided citations for the sources of the numbers; the difference between 2017 and 2019 numbers is explained completely by the fact that the government agencies that provide these statistics have updated their numbers. Boatworks provides no data or argument to show that these statistics are incorrect or should not be used, and the 2019 nexus study is well-researched and thorough. Similarly, a number of comments merely express disagreement with the rationale given in the 2019 study for making changes from earlier approaches, for example in the decision not to distinguish between “active” and “passive” parks in the 2019 study; the reasons for the change have been explained in the study itself. City staff has attempted to address the major thrust of the Boatworks comments here, and note that the remainder of the comments are adequately and reasonably addressed by the 2019 nexus study.

Both the Alameda County Superior Court and the Court of Appeal have identified deficiencies in the 2014 Nexus Study and provided clear direction to the City on how those deficiencies can be cured. In response to that direction, City staff has worked closely with its consultants on the 2019 Nexus Study and resolved the issues. Staff recommends that the City Council approve final passage of the ordinance amending 27-3 of the Alameda Municipal Code.