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**By Email**

September 14, 2020

City Council c/o  
Lara Weisiger, City Clerk  
City of Alameda  
2263 Santa Clara Avenue  
Alameda, CA 94501

**Re: Boatworks LLC's Comments and Objections Concerning  
September 15, 2020 City Council Agenda Item 5-K - Final  
Passage of Ordinance Amending the Alameda Municipal  
Code by Amending Chapter XXVII (Development Fees) by  
Repealing Section 27-4 (Alameda Point Development  
Impact Fees) in Its Entirety. (Community Development)**

Dear City of Alameda Officials:

This firm represents Boatworks, LLC ("Boatworks"), and on Boatworks' behalf files comments and objections on the above-referenced agenda item.

Boatworks objects to the proposed action on the basis that the City simultaneously seeks to fund the proposed sports complex with a new fee system without amending the Citywide DIF to delete funding from that source. In light of the new fee system, the City no longer has a basis for collecting a Citywide DIF to pay for the sports complex, or any part thereof.

The Mitigation Fee Act "was passed by the Legislature 'in response to concerns among developers that local agencies were imposing development fees for purposes unrelated to development projects.'" (*Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854, 864.)

Section 66001 requires the agency to "[i]dentify the purpose of the fee," "[i]dentify the use to which the fee is to be put," "[d]etermine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed," and "[d]etermine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed." (§ 66001, subd. (a).) In light of the City's

new funding mechanism, there is no need for Citywide DIF funding for the sports complex. Yet, the City has made no adjustment or amendment to that Citywide DIF program.

As such, the City's actions and inaction violate the Mitigation Fee Act with respect to the sports complex.

I have included with this submission a more detailed analysis prepared by DFA.

Sincerely,

/s/

Tom Roth

cc: DFA Analysis

## **REVIEW OF CITY OF ALAMEDA MASTER INFRASTRUCTURE PLAN AMENDMENT (MIP) & RECOMMENDATIONS REGARDING ALAMEDA POINT SPORTS COMPLEX**

To: Boatworks LLC, Tom Roth, Law Offices of Thomas D. Roth  
From: Greg Angelo, Development & Financial Advisory  
Date: September 14, 2020  
Re: Review of City of Alameda MIP & Sports Complex Financing Actions

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The City of Alameda ("City") has proposed the follow actions: (i) the Recommendation to Adopt a 2020 Alameda Point Master Infrastructure Plan (MIP) Amendment and Direct Staff to Work with the Recreation and Park Commission on Recommendations Regarding the Alameda Point Sports Complex, (ii) Introduction of Ordinance Amending the Alameda Municipal Code by Amending Chapter XXVII (Development Fees) by Repealing Section 27-4 (Alameda Point Development Impact Fees) in Its Entirety; and (iii) Adoption of a Resolution Amending Master Fee Resolution No. 12191 to Revise Fee.

Development & Financial Advisory ("DFA") conducted a review to provide an opinion on the impact these actions might have on the "Outside of Alameda Point" (or "Citywide") Development Impact Fees (DIF Program), particularly as it pertains to City recommendations regarding the Alameda Point Sports Complex.

The following documents were reviewed by DFA:

- Draft MIP 2020 Amendment prepared by CBG, dated August 2020
- Draft MIP 2020 Amendment – Technical Updates, prepared by CBG
- Alameda Point MIP 2020 Amendment presentation by CBG
- Draft City of Alameda Ordinance, repealing Alameda Point Development Impact Fee Program
- Draft City of Alameda Resolution, amending the Master Fee Resolution No. 12191

### **City Staff Recommendation to Repeal and Replace the AP DIF Program**

City staff has concluded that “because Alameda Point property, with few exceptions, is City-owned land, it is more appropriate to link the cost of required infrastructure and community benefits to a ‘minimum land purchase price’ rather than a DIF.” As a result, staff is recommending that the ordinance establishing the Alameda Point DIF be repealed and a resolution be adopted removing the fee from the City’s Master Fee Schedule.

Based on DFA’s review, upon removal of capital improvements from the AP DIF program, it is unclear how the “minimum land purchase price” is a lawful mechanism for the collection and spending of monies to fund public infrastructure.

The Alameda Point Sports Complex is identified in the Citywide DIF nexus study as a planned facility. It is also identified in the MIP Amendment at a cost of \$52.2 million to derive the proposed new “minimum land purchase price” of \$1.68 million/ acre. (pages 4-5 of Draft MIP 2020 Amendment – Technical Updates, prepared by CBG). Unless the Citywide DIF is amended, the City will be double-charging for the Sports Complex in violation of the Mitigation Fee Act. Thus, to be consistent with the Mitigation Fee Act, the City must simultaneously amend the Citywide DIF to eliminate those DIF funds from paying for the Sports Complex which will now be funded by a separate mechanism.

### **MIP Amendment & Sports Complex Funding**

The purpose of the proposed MIP Amendment is to “provide a summary of the current backbone infrastructure implementation and update requirements that have evolved in the past five years and update the cost estimates accordingly.”

The DFA review focuses largely on how the underlying changes to the MIP impact the sports complex facility and if these modifications impact the existing development impact fee program (outside Alameda Point, or “Citywide”) (DIF Program). The sports complex continues to be included in the MIP Amendment. However, staff recommends that the City Council direct the Recreation and Park Commission to revisit the sports complex and whether or not the sports complex is still the recreation amenity that best meets the community’s needs. **DFA concludes that because the entirety of the sports complex cost is proposed to be collected via the proposed Alameda Point Minimum Land Purchase Price funding program, the Citywide DIF may not fund the sports complex without running afoul of the Mitigation Fee Act.**

As indicated by the City, “the estimated cost of the sports complex continues to grow and now stands at \$52 million. It is unclear whether, or when, sufficient funds will be generated in a manner that will feasibly allow construction of the complex.” As a result, City staff believes that “the community would benefit from an updated process led by the Recreation and Park staff and its Commission to study the concept and make a recommendation to City Council regarding next steps.”

Based on the existing Citywide DIF Program, modifications to the sports complex, including future revisions to scope and costs, must ensure that the City does not double fund the sports complex. Presently, there are no mechanism's in the City's plan to prevent that from happening.

The City's repeal of the AP DIF brings to attention how funds are being used. In other words, the Mitigation Fee Act mandates that the City not use money from the Citywide DIF Program to pay for any facilities that are fully funded via the proposed minimum land purchase price program, including the sports complex.

The City's proposal does not ensure this and thus violates the Mitigation Fee Act.