

CITY OF ALAMEDA PLANNING BOARD
DRAFT RESOLUTION

DECLARING A STATEMENT OF COMPLIANCE UNDER PERIODIC REVIEW FOR A DEVELOPMENT AGREEMENT FOR THE DEL MONTE PROJECT, FOR THE PERIOD FROM APRIL 2019 THROUGH OCTOBER 2020 AND RECOMMENDING THAT THE CITY COUNCIL APPROVE A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE DEL MONTE PROJECT TO PROVIDE ONE ADDITIONAL YEAR TO COMPLETE THE CLEMENT EXTENSION IMPROVEMENTS

WHEREAS, the development of the Del Monte Warehouse project is subject to a Development Agreement by and among the City of Alameda ("City") and TL Partners I, LP and Alta Buena Vista Owner, LLC ("Developers") dated January 15, 2015, as amended by that certain First Amendment to Development Agreement dated June 8, 2017, and as further amended by that certain Second Amendment to Development Agreement dated July 18, 2018, and as further amended by that certain ministerial amendment dated October 25, 2018, and as further amended by that certain second ministerial amendment dated September 25, 2019 ("Development Agreement"); and

WHEREAS, Developers have initiated a periodic review of the Development Agreement, as required under Alameda Municipal Code ("AMC") Section 30-95.1; and

WHEREAS, Developers have informed the City that work on the Clement Extension improvements has been delayed and will not be completed before January 15, 2021 as required by the Development Agreement; and

WHEREAS, the Planning Board held a duly noticed public hearing on this request on October 26, 2020 in accordance with Government Code Section 65867 and AMC Section 30-94.3, and examined pertinent documents; and

WHEREAS, the Planning Board finds that the Developers have demonstrating good faith compliance with the terms and conditions of the Development Agreement for the period April 2019 through October 2020; and

WHEREAS, the Planning Board finds that the proposed Third Amendment to the Development Agreement is consistent with the General Plan; and

WHEREAS, the Planning Board finds that project delays caused by financial constraints, permitting by outside agencies, and COVID-19 will result in the Developers' inability to meet the January 15, 2021 deadline for completing the Clement Extension improvements as required by Section 6.b of the Development Agreement; and

WHEREAS, the Annual Review and reporting is exempt from the California Environmental Quality Act; and

WHEREAS, the proposed Third Amendment to the Development Agreement to extend the deadline for the completion of the Clement Extension improvements by one year would not result in any

changes to the physical environment that was not already anticipated in the environmental review documents for the project.

NOW, THEREFORE, BE IT RESOLVED, that the Planning Board of the City of Alameda hereby finds that Developers have demonstrated good faith compliance with the terms and conditions of the Del Monte Development Agreement; and

BE IT FURTHER RESOLVED, that the Planning Board recommends that the City Council amend Section 6.b of the Development Agreement as follows:

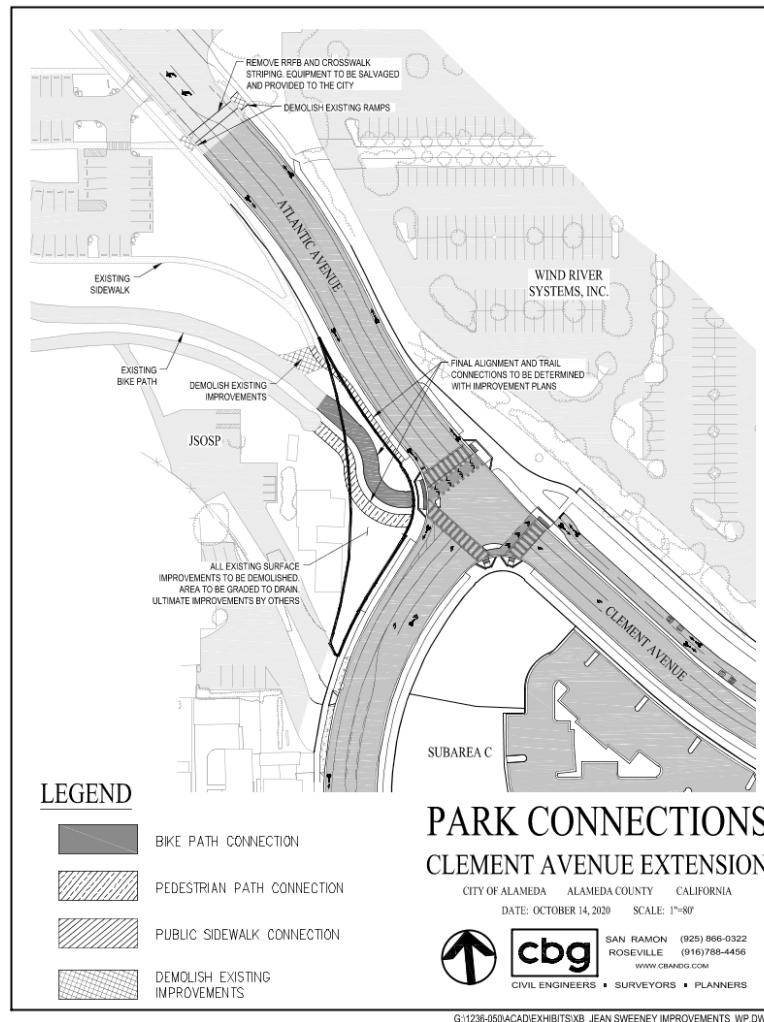
“b. Clement Extension. Construct, at no cost to the City of Alameda, the extension of Clement Avenue from Atlantic ~~Street~~ Avenue to Entrance Road including a new intersection and signal at Sherman, Clement, and Atlantic, and installation of stop signs at the following intersections: Buena Vista/Entrance Road and Clement/Entrance Road (the “Clement Extension”). The Clement Extension improvements are more specifically described in Exhibit C, attached. Developer shall obtain, or shall cause its general contractor to obtain, as applicable, payment and performance bonds in a sum being not less than one hundred percent (100%) of the total amount of the construction contract for the Clement Extension work with the City as a loss payee or named insured. The improvements shall be completed on the earlier of: (x) the issuance of the 250th certificate of occupancy for the ~~Project Del Monte Building in subarea A as shown on page 24 of the Master Plan~~ or; (y) the issuance of the first building permit for any new housing unit in subarea C shown on page 24 of the Master Plan; or (z) January 15, 2022. ~~four (4) years from the Effective Date, provided however that the completion deadline shall be extended if necessary so that under no circumstances shall the period between the commencement date and the completion date for the Clement Extension improvements be less than one (1) year.~~ Upon completion of the improvements, by quitclaim deed, Developer shall transfer fee title to the Clement Extension right of way, including the travel lanes, bike lanes, landscaping strips and sidewalks to the City of Alameda at no cost.

- i. ~~Intentionally Omitted~~~~The Parties acknowledge that Wind River Systems currently owns a portion of the land that will be needed to complete the extension of Clement Avenue from Entrance Road to Atlantic Street, “Wind River Property”. City further acknowledges that Developer has made and continues to make all commercially reasonable efforts to acquire the Wind River Property. In addition, City has used and shall continue to use commercially reasonable efforts to assist Developer in acquiring the Wind River Property.~~
- ii. ~~Intentionally Omitted~~~~Developer shall pay when due the Acquisition Expenses (as described in Section 7.b. below) reasonably incurred by City in assisting Developer in acquiring the Wind River Property.~~
- iii. ~~Intentionally Omitted.~~~~Developer is entitled to a fair share contribution from the Encinal Terminals developer for its proportional share of the cost of the Clement Extension improvements. The Developer will negotiate directly with the Encinal developer as to the amount of such contribution and timing of payment. The City will not be a party to that agreement. However, the City will collect the Signal Contribution from the adjacent Marina Cove II developer pursuant to Section 7.a. below.~~
- iv. Developer acknowledges and agrees that the construction of the Clement Extension is subject to the requirements of California Labor Code Section 1770 et seq. and Section 2-67 of

the Alameda Municipal Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements.

- v. Commencing on January 1, 2021, Developer shall submit monthly construction status reports to the City describing work completed, anticipated completion date, and any delays that might be expected as the result of actions by any of the parties or outside agencies that may cause completion of the Clement Extension improvements to be delayed beyond January 15, 2022. In the event that any monthly report indicates that the completion of the Clement Extension improvements will be delayed beyond January 15, 2022, the City shall immediately schedule public hearings to consider the causes of the delays and any appropriate actions necessary to complete the extension. The Parties acknowledge and agree that Developer shall establish a funding mechanism reasonably acceptable to the City's Public Works Director, in both form and revenue generating capacity (such as a Community Facilities District), to provide funding to the City for the maintenance of the Clement Extension. Developer is entitled to a fair share contribution from the Encinal Terminals developer for its proportional share of the cost of the Clement Extension maintenance. The Developer will negotiate directly with the Encinal developer as to the amount of such contribution and timing of payment. The City will not be a party to that agreement. It is understood and agreed that Developer will be responsible for the entire maintenance cost of the Clement Extension until such time as Developer enters into a binding agreement with the Encinal Terminal developer for its fair share contribution; and

BE IT FURTHER RESOLVED that the Planning Board recommends that the City Council amend Exhibit C to the Development Agreement to include additional Exhibit C-1 shown below.



NOTICE. No judicial proceedings subject to review pursuant to California Code of Civil Procedure Section 1094.5 may be prosecuted more than ninety (90) days following the date of this decision or decision on any appeal plus extensions authorized by California Code of Civil Procedure Section 1094.6.

The decision of the Planning Board shall be final unless appealed to the City Council, in writing and within ten (10) days of the decision, by filing with the Planning and Building Department a written notice of appeal stating the basis of appeal and paying the required fees.