



November 18, 2009

Mr. Pat Keliher, Vice President Operations
SunCal Companies
300 Frank H. Ogawa Plaza, #342
Oakland, CA 94512

Re: SunCal Letter of October 19, 2009

Dear Mr. Keliher:

I have received your written comments regarding the City of Alameda's Alameda Point Development Initiative Election Report Executive Summary, Part I, included in your letter dated October 19, 2009. City staff and I have reviewed your comments and provide the following response.

1. Scope of Election Report

SunCal states that by narrowly focusing on what is in the Initiative, and setting up a firewall as to other actions that have been taken by the City, CIC and the ARRA in development of the Alameda Point plan or future actions available to these agencies, the Election Report does not provide a broader context that describes why certain information is contained in the Initiative and other information is not.

City staff drafted the Election Report, Part I based on the *contents* of the Alameda Point Development Initiative (Initiative), as written and submitted. This Initiative is the only document that will be placed before the voters. The City has reviewed and provided comments to SunCal on numerous documents submitted by SunCal as part of its performance obligations under the Exclusive Negotiation Agreement (ENA). However, these documents are not fully negotiated nor approved at this time. The City refrained from including any information that was contained within documents that SunCal requested to remain confidential (i.e., Business Plan, Infrastructure Plan, etc.). The negotiations, including the documents upon which the negotiations are based, should remain confidential by both parties, as is customary in real property negotiations.

2. Regulatory Framework

SunCal states that the Initiative does not constrain all future governmental approvals, but rather, sets up a framework in which future project approvals, such as subdivision approvals, conditional use permits and historic reuse approvals will take place.

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City staff agrees the Initiative establishes a framework of processes and procedures for the review of future project approvals. Although the Initiative's processes and procedures are in compliance with State law requirements, they do not conform to existing City processes and procedures for review of development projects in Alameda. The procedures and processes established by the Initiative, in fact, reduce the standard community review of future proposals to subdivide and develop land at Alameda Point, as presently required under City ordinances.

3. Subsequent DDA Approval.

SunCal states that the Initiative is restricted by law to address only legislative matters and that the City, CIC and ARRA have required in the ENA that conditions such as the purchase price and the additional terms by which the developer will acquire the property, such as fiscal neutrality, phasing and timing of development restrictions, affordable housing, environmental remediation and the like be included in the DDA.

As specified in the ENA, SunCal, the Community Improvement Commission of the City of Alameda (CIC) and the Alameda Reuse and Redevelopment Authority (ARRA) are negotiating a Disposition and Development Agreement (DDA) that would set forth the terms and conditions of the transfer of land at Alameda Point from the CIC and ARRA to SunCal. The DDA would include provisions regarding phasing of transfer and development, fiscal neutrality, affordable housing, and other issues raised in the Election Report.

While the DDA negotiation process does provide the CIC and ARRA with an opportunity to address certain financial and land use control issues raised in the City's Election Report, the City cannot, at this point, assure voters of the extent to which these issues would be subsequently and satisfactorily addressed as a result of the negotiation process. Additionally, some of the City's fiscal concerns with the Development Agreement (DA) contained in the Initiative, such as fee exemptions, may be difficult to resolve through the DDA. For example, since the City is not a party to the DDA and the Initiative does not expressly provide either the ARRA or the CIC with the ability to negotiate terms in the DDA that conflict with the DA, the mechanism for resolving differences between the voter approved Initiative and the ARRA/CIC is unclear.

Further, as is typical and originally expected by the City, a DA granting land use entitlements to develop property at Alameda Point would be negotiated and executed at the same time as a DDA, with complementary and consistent provisions (e.g., duration, default, etc.), with appropriate cross-references between documents to ensure consistency. In this case, a DA was included in the Initiative for voter approval without prior negotiation or approval by the City. The DA in the Initiative includes financial terms and conditions that are conventionally negotiated and included in the DDA. The Initiative extends beyond what was contemplated in the ENA for the scope of the DA, such as a public benefit contingency linked to the CIC's tax increment financing. Absent clear authority in the Initiative to amend these terms, inclusion in the DA limits control and flexibility by the CIC and ARRA in negotiating a financial agreement with SunCal in the DDA.

4. Failure of Initiative and Effect on Maintenance of Base

SunCal states that if the Initiative fails to win a majority vote of the Alameda electorate, Alameda Point will not be developed until the Navy determines an alternative course of action. The buildings and infrastructure that currently exist will remain and will continue to deteriorate and the cost of maintenance to the City and its residents will escalate.

Should the Initiative fail and the ENA with SunCal expire, the City would continue to work closely with the Navy to develop an alternative course of action for maintaining and developing the Alameda Point property. Depending upon mutual agreement by the Navy and the City on property disposition, the City will consider feasible scenarios, including entering into long-term leases of existing buildings, if the market indicates such strategies would yield revenue to support maintenance of the base consistent with long term redevelopment priorities. A comparatively long lease term might assist potential tenants in obtaining financing for significant building upgrades. Since the City assumed control of base management, it has primarily entered into short-term leases, which provides for greater control and flexibility in redeveloping the property. However, these short-term leases also result in less improvement to the physical appearance of the base. It is also important to note that maintenance of Alameda Point is currently paid through lease revenues generated by on-site tenants, *not* by Alameda residents. Long-term lease revenues, as you are aware, can be leveraged to generate capital improvement dollars for major infrastructure repairs, if ever necessary.

5. Impact Fee Exactions and Exemptions

SunCal states that only certain fees are exempted and that cost analyses and infrastructure studies confirm that the project will be building infrastructure or providing improvements in an amount equivalent to or, in most cases, in excess of City fees that otherwise would have been collected.

The Alameda Point development proposed in the Initiative will be constructing improvements that are subject to development impact fee credits. The City remains concerned that in exempting the project from all development fees, the Initiative results in substantially more credits than what the City would otherwise allow for similar development projects.

For example, the City-wide Development Fee (CDF) identifies more than 50 individual City capital projects and then allocates the pro rata share of each capital project attributable to existing and new development. The CDF includes only the pro rata share of new development. The portion attributed to existing development is paid by the City through various other funding sources, but not the CDF. The CDF has five fee components. A Nexus Study was completed which provides the basis for the CDF. The ordinance imposing the fee requires the money to be deposited in separate component accounts to ensure that all projects identified within each component will be funded. Credits are granted by applicable fee component to the maximum amount identified for new development's pro rata share (escalated by CPI) on a project-by-project basis. Providing credits that exceed new development's pro rata share for individual projects (which would be the case with the Initiative) would result in insufficient funds to construct all the projects included in the fee, as required by the City's ordinance.

Based on the development totals contained in the Initiative, the Alameda Point project would be required to pay approximately \$34 million in CDF fees under the ordinance.

By comparison, the improvements proposed to be constructed by the Alameda Point development with the list of projects included in the Nexus Study and the associated escalated project cost, would result in allowance of only approximately \$11 million in credits, \$20 million less than the fees required under the CDF:

FEE COMPONENT	AMOUNT DUE	ALLOWABLE CREDITS	SHORTFALL
Park & Recreation	\$ 3,924,950	\$ 2,237,439	\$ 1,687,511
Traffic Safety/Transportation	\$ 26,041,191	\$ 8,645,944	\$ 17,395,247
Public Facility	\$ 1,877,150	\$ 0	\$ 1,877,150
Public Safety	\$ 1,296,940	\$ 0	\$ 1,296,940
Administration	\$ 989,770	\$ 0	\$ 989,770
Total	\$ 34,130,000	\$ 10,883,383	\$ 23,246,618

While the proposed development includes constructing the Sports Complex, the CDF program does not allow for a credit of the full amount of the Sports Complex estimated at \$20-\$30 million in the CDF. As clearly identified in the Nexus Study, existing development is responsible for the majority of this improvement and the CDF is set-up to collect approximately \$2.2 million from new development for the Sports Complex. This \$2.2 million is the maximum credit that may be provided to the Alameda Point development for this improvement. It may be appropriate for the development to receive reimbursement for the remaining costs of this improvement through other sources, but full exemption of the CDF is not allowable.

The Initiative also fully exempts the project from payment of the Construction Improvement Tax, which the City estimates would be approximately \$30 million. This fee is used to fund the City's on-going deferred maintenance backlog of existing infrastructure including streets, sidewalks, park facilities, street tree pruning, street tree planting, etc. Exempting the Alameda Point development from this fee will significantly affect the City's ability to provide the existing maintenance service level to its infrastructure.

The Initiative also exempts the project from other fees. For example, the project is exempted from the hauling fee, which pays for repairs to streets outside the project area that are damaged by the hauling of construction material to the site, based upon tonnage hauled to and from the site. This fee is conservatively estimated at \$650,000, based on the assumption that only 320,000 tons of material will be delivered to the site. Since it is likely more material will be hauled to the site, the fee exemption mandated by the Initiative is likely to be much higher.

6. Public Benefits and Financing

SunCal states that the DA requires that the City commit redevelopment funds generated by the redevelopment of Alameda Point Project Area, as encouraged by State redevelopment law, to assist in the redevelopment effort.

Redevelopment tax increment financing falls within the purview of the CIC not the City. The financing is addressed in the DA with the City, which is not typical for this type of project, nor within the purview of a DA. A DDA with the CIC governs business terms including tax increment financing. As discussed above, under the Initiative, the CIC is more limited as a result of the Initiative in its ability to negotiate a financial agreement with SunCal in the DDA, given the financial requisites defined within the Initiative.

7. \$200 Million Public Benefit Cap

SunCal states that the \$200 million cap on public benefits was not arbitrarily determined and was derived from detailed cost analyses performed by consultants as part of the ENA process.

While a \$200 million cost estimate for *certain* public benefits has developed based on independent cost estimates, none of these estimates had been fully negotiated or approved. Indeed, the City and SunCal agreed that the City had not approved SunCal's pro forma when the Initiative was prepared, and it has not been approved yet as part of the DDA negotiations. Additionally, the City was prohibited from relying upon much of the information in preparing its Election Report because SunCal had deemed them confidential. More importantly, the City is concerned that the public benefits subject to the \$200 million cap included a much broader category of improvements than those normally discussed during negotiations. Based upon independent industry analysis, the cost estimate for the public benefits in Exhibit 4 of the DA in the Initiative is estimated to be in the range of \$300 to \$375 million, primarily because staff has included all component improvements that might be included in the phrase "on-site and off-site traffic and transit improvements," including a higher design contingency factor, which is typical when evaluating planning cost estimates.

8. Fiscal Neutrality

SunCal states that the DA commits the developer to cooperate in good faith to "achieve" fiscal neutrality and that the Election Report should have referenced all of the other documents prepared and studied as part of the economic modeling for the project as part of the ENA process to assure voters that fiscal neutrality will be achieved and any adverse impacts mitigated.

While the DA in the Initiative and the ENA commit the developer to "cooperate in good faith to achieve" fiscal neutrality, the financial obligations between the City and SunCal are still under negotiation. The City's Election Report discusses the manner by which any fiscal impacts could be mitigated, including taxes, assessments, and private funding sources, but states that the Initiative does not contain sufficient information to determine whether there will be the tax rate capacity necessary to fully mitigate the City's estimated adverse impacts given the two percent property tax rate cap in the Initiative. While SunCal's and the City's confidential financial analysis on the project did model fiscal neutrality, the financial assumptions were not grounded in a negotiated and approved agreement with SunCal.

9. Transfer of Rights

SunCal states that the DA provides transfer rights only to parties that take ownership of all or a portion of the property and that this is consistent with state law that requires that the agreement be recorded and that it run with the land.

As described in the Phase I Report, the DA provides the developer with the right to transfer in whole or in part its entitlement rights under the DA without the City's consent. The City agrees that the DA's requirement that such transfers occur only upon transfer of the developer's interest in the property is consistent with State law. However, the DA's transfer provisions are *not* consistent with most development agreements of a comparable scope, which typically provide the City with an opportunity to consent to the transfer of the developer's rights and obligations under the DA to a third party, and to withhold such consent based upon specified deficiencies in the qualifications and experience of a proposed transferee/developer.

10. Environmental Impact Report

SunCal states that the \$200 million cap is for public amenities, not CEQA mitigation measures. CEQA review will be required as a pre-condition to approval of the DDA and, in accordance with State law, Alameda retains rights throughout the CEQA process to impose mitigation measures upon the project.

The City remains concerned that the \$200 million allocated for public benefits is not *in addition* to the mitigation measures that will be required under the California Environmental Quality Act (CEQA), but rather that it will be used to fund the mitigation measures already required by State law. For example, it is likely that the environmental review process will identify on and off-site transportation improvements that will be required to reduce transportation impacts caused by the project. These likely will be some of the most expensive mitigation measures required. The Initiative (Exhibit 4 to the DA) states that the developer's obligation to fund "on and off-site" transportation measures, as well as the other public improvements, such as the regional sports complex, the Seaplane Lagoon park, and the Ferry Terminal, is capped at \$200 million. Thus, if these same on- and off-site transportation improvements are required to mitigate significant transportation impacts under CEQA, SunCal may argue it is required only to provide \$200 million toward public benefits, even if more costly mitigation is required by CEQA. Such a limitation may result in little, if any, funding available beyond CEQA requirements for the full range of public amenities described in the Initiative and now being discussed by the City during its ENA and DDA negotiations.

11. Impacts on Capital Budgets

SunCal states that the funding sources available to mitigate any negative impacts to the City's general fund have been identified in the project proforma and that the adverse fiscal impacts would be paid for by the project, thus creating fiscal neutrality.

The fiscal impact analysis in the Election Report related to the City's ongoing operations and maintenance expenses, not impacts to the City's capital budgets resulting from the project,

including impact fee and exaction exemptions contemplated in the DA in the Initiative. The City's Election Report found that while SunCal would be eligible for some impact fee and exaction waivers and credits, the exemptions included in the DA would result in an overall adverse impact to the City's capital budgets.

12. Community Facilities District (CFD)

SunCal states that a CFD results in no taxes or assessments of property outside of the project area and that omitting this important information may imply that the public benefits will not be constructed or that it will impose costs on the City or citizens outside the project area, which is not true.

The City did include this information. On page 18, the Election Report states that, "The CFD would fund the construction of public infrastructure through a special tax on plan area property owners . . ."

13. Infrastructure Studies

SunCal states that the Election Report ignores all studies that have been undertaken in support of the infrastructure discussion, and contrary to the comments in the Election Report, the Specific Plan does not require that new infrastructure be constructed according to the standards shown in the Specific Plan rather than City standards.

While SunCal provided the City with several infrastructure studies that guided the design process, the information was conceptual, requiring further development before the City could determine whether the proposed designs generated impacts, and if so, what the required mitigations would need to be. The documents submitted to the City were labeled conceptual and preliminary, as were the technical memoranda from the City's peer review team. Also, the City did not support all of the conceptual infrastructure designs included in the Specific Plan, even if the designs were in compliance with City standards. In several cases, there were long-term maintenance concerns, as well as unresolved utility capacity questions.

Typically, a development, such as that in the Initiative, is proposed and then environmental review is conducted to identify potential mitigation measures before the project is entitled and a Tentative Map is prepared in order to specify the mitigations before improvements are vested. This development is different in that the entitlements are proposed to be vested based on the improvements in the voter based Initiative before environmental review or Tentative Maps are approved. And, although the Specific Plan does not require infrastructure be constructed to the standards in the Specific Plan, the decision whether or not to use standards other than those in the Specific Plan is given to the developer not the City per the DA, Section 6.3.

14. City Review of Safety, Accessibility and Regulatory Mandates before Accepting Public Improvements

SunCal states that nothing in the Initiative precludes review by the City of issues pertaining to safety, accessibility, flooding, sewer surcharging, capacity, interface with adjacent development,

boundary controls, compliance with regulatory mandates, and long-term maintenance demands and that such review is contemplated as part of the subdivision approval, which will require as a pre-condition to approval, formal CEQA review.

It is correct that per the DA, Section 2.5, subsequent review and subdivision approvals are anticipated. But, per Section 2.6 in the DA, those subsequent approvals are limited to review for conformity with the vested elements from the Initiative. If there is conformity then the City shall not deny the application for approval, even if the subsequent CEQA review identifies solutions preferred by the City. In addition, per the DA, Section 2.12.1 no conditions shall be imposed beyond those required by the DA or Specific Plan. As a result, if in the process of review the City identifies additional improvements that would enhance the infrastructure, the City, through its discretionary and entitlement process, could not impose those conditions.

15. Use of Initiative as Place to Address Mitigation Measures

SunCal states the Initiative is not the proper or appropriate place to address specific safety measures for grading operations, and that the subdivision process in which conditions of approval will be developed is where such matters will appropriately be addressed.

Again, per the Specific Plan, in Section 9.3.1 a provision is made for applications for subsequent approval but only in terms of completeness with the Initiative. Since the design proposals in the Initiative are only conceptual, a finding of completeness will be limited in scope. The issue is that a further refined design may result in an improvement that generates additional long-term concerns, such as cost, for the City. However, through the subdivision approval or environmental review process the City could not deny the improvement based on these issues, per the Initiative.

16. Geotechnical

SunCal states that the Specific Plan evaluates the overall geotechnical feasibility of the project and identifies specific matters that may require further environmental review during the CEQA and subdivision processes of the project. Realignment of utilities, specific locations for shoreline stability options, existing retaining wall stability and associated potential mitigation measures will be addressed in subsequent documents, as set forth in the Specific Plan.

The Specific Plan is not deficient in that environmental review has not yet been conducted, but as noted above, the Specific Plan is vested prior to environmental review.

Since the project is only at the conceptual design level, further design efforts may reveal there are off-site improvements, such as stabilizing the shoreline, which could be extremely costly. The DA, Section 2.11.3 states that although mitigation measures imposed by a local agency to mitigate impacts to the environment caused by the Project pursuant to environmental review are not exactions, the public benefits and other features of the Project shall be considered in the evaluation of mitigation measure feasibility. Also, it further states that the City understands that long-term assurances by the City concerning Exactions are a material consideration for Developer agreeing to develop the Alameda Point Project. As a result, it seems prudent that

before elements are vested the impact of those elements be fully evaluated to determine whether there are material cost concerns.

17. Climate Change

SunCal states that discussing mitigation measures is beyond the scope of the Initiative.

See responses to previous questions.

18. Storm Drainage and Water Quality

SunCal states the Initiative clearly provides subsequent processes to further evaluate any potential deficiencies, provide proper measures for mitigation and monitoring for compliance associated with storm drainage and water quality, which are commonly addressed through engineering at the subdivision approval stage.

Although the Specific Plan notes that improvements will comply with City standards for all infrastructure but streets, in some cases the City does not have standards for the proposed improvements, such as bioswales. So, there are no guidelines to follow.

Given that the City is an island built on bay mud, many designs that are successful elsewhere do not work in Alameda. The environmental review process would only identify whether there is a need for mitigation, but does not dictate the means of implementing, or the technical feasibility of, potential mitigations. Also, a Tentative Map would follow environmental review and include conditions of approval, but could only be reviewed in terms of conformity and completeness with the Specific Plan, not in terms of long-term costs or whether an infrastructure solution is really feasible. A building permit would be approved if the design of the infrastructure was prepared in conformance with the Initiative and any existing standards, regardless of whether or not the proposed design is the best solution for mitigating the concern.

There are design proposals in the Initiative that have not been fully evaluated by the City and by vesting them through the Initiative, it removes flexibility. In addition, per the DA Section 4.1, upon completion of any and all infrastructure to be completed by developer for the City, developer shall offer for dedication to City from time to time as such future public infrastructure is completed, and City shall promptly accept from developer the completed infrastructure. So, the improvements would then become the responsibility of the City without the upfront opportunity for the City to evaluate their feasibility.

19. Sanitary Sewer

SunCal states that the Election Report falsely states the Initiative sets a cap of \$200 million on public benefits and CEQA mitigations.

See response to #10 above.

20. Streets

SunCal states that the as part of future CEQA review all proposed street widths will be analyzed in terms of capacity and traffic flow as well as fire and life-safety concerns.

Subsequent CEQA review will include traffic and circulation studies, which may identify a need for improvements that would result in a change to the land use plan. The question would be how to handle all the vested improvements within that portion of the plan.

For example, the Initiative shows Ralph Appezzatto Memorial Parkway (RAMP) as a four-lane street that narrows down to two lanes west of Main Street. Such a plan would work, if the internal grid network from the project extended to Main Street, where traffic from RAMP could be distributed. However, the design in the Initiative shows the internal street grid channeling the traffic to two-lane collector streets. The result on RAMP could be a buildup of westbound cars as the four lanes narrow down to two lanes, creating additional congestion and queuing for existing residents. To provide more lanes or extend the grid network within the project could result in a redesign of the land use footprint.

21. Master Demolition, Infrastructure and Grading Plan

SunCal states that the ability of the City Public Works Director to weigh in on matters of engineering, health and safety has not been diminished by the Initiative.

The City recognizes that there is precedent for the process identified in the Initiative for evaluating the Master Demolition, Infrastructure and Grading Plan. Again, the concern is not with the process, but rather that approval is limited to compliance and completeness of the vested elements.

For example, the Specific Plan notes that the site grading would not include raising the profiles and reconstructing the roadways north of Midway, unless they are adjacent to new construction areas, because it was considered infeasible. In the event sea level rise becomes a reality, these streets would be flooded. Consequently, the majority of the streets in the project's historic district and truck route as well as the project's main sewer pump station would be flooded. Since these improvements would be vested per the Initiative, the City would not have the authority to require the profile of these streets be raised to the base flood elevation.

In the Specific Plan 9.3.1, a first tier advisory agency may be created to weigh in on the matter, but they only have a right to review for substantial conformity with the vested elements and applicable rules in the Initiative and compliance with CEQA, which may include a mitigation measure that would flood-proof the pump station and provide alternate access in the event of flooding. This would not be the City's preferred solution. Also, if there is a conflict between the AMC and the Specific Plan, the Specific Plan shall take precedence per Section 9.11. So, even the actions of the Planning Director, who has the quasi-adjudicative approval authority to decide upon applications of Conformance Determination, would be limited.

