

Lara Weisiger - Fwd: SunCal response to City of Alameda's NOD and Press Release

From: Beverly Johnson
To: Christina Baines
Date: 2/8/2010 9:22 AM
Subject: Fwd: SunCal response to City of Alameda's NOD and Press Release

>>> Pat Keliher <pkeliher@suncal.com> 2/6/2010 10:17 PM >>>

Dear Mayor and City Council members,

We were shocked that we received a notice of default on February 4, 2010 for the Optional Entitlement Application (OEA) that we submitted on January 14, 2010 with the full knowledge of the Interim City Manager. The notice is littered with inaccurate and misleading statements. Moreover, the legal argument for determining the default is specious and relies on alleged requirements that simply do not exist in the ENA. For example, there is no requirement in the ENA that SunCal submit a Measure A compliant plan as is alleged in the NOD. In fact, that would be counter to the master plan and business plan accepted by the City, which has been the basis of our negotiations for two years. On numerous occasions, the Interim City Manager maintains that a Measure A compliant plan is not financially feasible. At several of our meetings, she has frequently sought additional residential and commercial densities in excess of the OEA plan, rather than a reduction in density. The Notice of Default alleges obligations that do not exist in the ENA when it states that a density bonus application was a required submittal to meet a Mandatory Milestone, nor is it true when it states the plan submitted in the OEA cannot conform to a density bonus approach, when the City Council can make appropriate findings during the normal entitlement process.

Moreover, we were even more surprised and disturbed to see that these specious legal claims used to determine the non-existent default, were the subject of a City-issued press release. It is simply bad form to deliver this notice of default as a press strategy and we do not understand why the City desires to create public controversy at every step of this process, rather than in working together in a mutually beneficial manner to implement a financial and environmentally viable plan for Alameda Point. While we are preparing a more thorough response to the Notice of Default, we are compelled to respond immediately because of the City's erroneous press release.

Following Tuesday's February 2, 2010 election, SunCal has become acutely aware that the community's desire for a better future for Alameda Point must follow a more traditional development process. We want to respect the community's desire, and will take our lead from the City Council. In accordance with the ENA, we are actively pursuing that vision and are eager to work with the City Council and the community of Alameda in good faith to ensure the future of Alameda Point and the City is secured.

As clearly noted in the OEA submittal, the Plan can be entitled either by City Council decision to place a charter amendment on the ballot or by use of a density bonus. Rather than pre-determine the course the City would choose to take, we assumed that the City would work with us in good faith to craft the plan in a manner that met the City's preferred goals. In the absence of an ulterior motive, the proper way to handle this matter would have been to advise us through the planning department of the City's preferences and to advise us of additional submittals that might be required to conform to the newly adopted density bonus ordinance, if that were the City's preference.

While we remain committed to working with the City Council and the community of Alameda in good faith, the City's actions over the last two days raise questions about whether it shares this commitment. As a result, we must begin to doubt the City's desire to ensure that the vision for Alameda Point is realized in a manner consistent with the City's responsibilities under the ENA, despite the numerous public statements to the contrary.

SunCal has, and is, currently expending significant financial and staff resources on the preparation of an Environmental

Impact Report, which was approved by the City Council last October by a unanimous vote. We are continuing to perform under the terms of the ENA.

Unfortunately, the use of City press releases for damaging unsubstantiated claims is becoming a major distraction and obstacle to the success of our mutual Alameda Point effort.

We respectfully request that you withdraw this notice of default and that we work collaboratively on a plan that is best for the City of Alameda.

Sincerely,

Pat Keliher