DOUBTFUL PROMISES:
A REPORT TO THE ALAMEDA COMMUNITY
ON THE SUNCAL/SHAW HEDGE FUND INITIATIVE

Renewed Hope Housing Advocates
2311 Buena Vista Ave.
Alameda, CA, 94601

prepared by
Arc Ecology
4634 Third Street
San Francisco, CA 94124

September 24, 2009

DOUBTFUL PROMISES:
A REPORT TO THE ALAMEDA COMMUNITY
ON THE SUNCAL/SHAW HEDGE FUND INITIATIVE

For the past two years, SunCal has been successful in generating a dialog in Alameda about the potential for environmentally sensitive development at Alameda Point. They have presented to Alamedans a project that mixes market and affordable housing, office, retail, and institutional uses at a range of densities, linked together with parks and a transportation system that could offset some of the traffic the project would otherwise be expected to generate. The SunCal project has demonstrated to many Alamedans that development freed from the constraints of Measure A could fit in well with local design sensibilities and community values. In their presentations SunCal spokespeople have stated that their plans would comply with the City's Settlement Agreement with Renewed Hope and Arc Ecology.

SunCal and its new partner, the Shaw Hedge Fund subsequently collected signatures on an initiative petition about Alameda Point development. Unfortunately, a vote for the Alameda Point Revitalization Initiative is not a vote for the project that SunCal has been showcasing. The relationship between the SunCal project and the SunCal/Shaw Hedge Fund initiative is tenuous at best. The initiative clearly *does not require* a project to be built that would resemble the slide show project. The SunCal project theoretically could be developed if the initiative passes, but would be unlikely since SunCal has written into the I unrealistic limits on project funding of the transportation, park, and public facilities programs that have been so prominent in their workshop presentations. The end result could be another example of low density sprawl just as easily as the smart growth concepts that SunCal has marketed to Alamedans.

The real significance of the initiative is that it would legislate new rules to govern development of Alameda Point that would replace the City's existing development laws. Its practical impact would be to turn control of critical development decisions over to the developers of Alameda Point. Although the new laws would apply only to Alameda Point directly, they would have major impact on the rest of the city, if only due to their scope.

If the initiative passes and the city conveys the property to a developer, the new laws would make it impossible for Alamedans to predict or control what Alameda will be like in 10, 20, and30 years. First, a set of extremely permissive development requirements and standards would allow an extraordinarily wide variety of projects to be built at Alameda Point; second, the city would be forced to approve any project that does not conflict with the permissive

WHO IS THE DEVELOPER?
The initiative would go into effect only if the Navy conveys the Alameda Point property to the City. In theory, the City would reconvey the property to a developer or developers, who could sell the property in whole or in part to subsequent developers, who would develop projects consistent with the community plan and the specific plan.

In reality, the city has an Exclusive Negotiating Agreement (ENA) with SunCal/Shaw which would prevent it from choosing a different developer before negotiations are concluded or the ENA expires in July 2010, unless it is extended.

However, the initiative (Initiative Petition §8 and Development Agreement. §1.2) requires the development agreement to be signed with a "any person having a legal or equitable interest in real property" within 5 days of the effective date of the Initiative." While it probably would not be possible for the City to sign the development agreement with a developer other than SunCal within five days of the effective date, it is very important to keep in mind that the initiative does not require the City to approve a developer by that date.

standards. This combination would entitle the developers to decide what, where, and when projects would be built.

SunCal/Shaw has written the initiative to give the developers a level of control over the future of Alameda Point that they would not have been able to negotiate through a normal planning process. Cities ordinarily negotiate with developers to achieve a balance between the public's interests and the developer's interests for very large projects that need special rules (typically general plans revisions, a specific plan, and a development agreement). Cities and developers both want predictability. Developers want certainty that they will be able to build out the whole project under favorable rules that won't change. Cities want to make sure that a desirable project with predictable public benefits will be completed within a specific time frame. In general, cities require greater specificity about the project and its benefits when they sign a development agreement in return for giving up their discretion to modify or reject a permit application down the line. Greater predictability for developers that permits will be approved should be offset with greater predictability for cities that the project will provide specific benefits for existing residents.

Both the developer and the city also try to maximize their flexibility: the developer, to respond to changing market conditions, the city to respond to changing public needs and conditions.

The SunCal/Shaw Hedge Fund initiative pre-empts any balance of interests that might have been struck through negotiations. It asks voters to guarantee the city will approve any project that fits within an extraordinarily loose set of standards without any commitment to deliver projects with predictable size, intensity, land use mix, timing, open space configuration, transportation program, or public facilities. The initiative maximizes developer flexibility, while limiting the city's ability to respond to changing needs by prohibiting the electorate and the city from modifying the initiative text, the community plan, the specific plan, and the development agreement unless the developer agrees to the changes.

During its workshops, SunCal did not present the new rules that the initiative would impose. Its terms are not the result of give-and-take negotiations between public officials and the developer that might have balanced SunCal/Shaw's desire for favorable rules with Alamedans' desire for a commitment to a specific level of benefit, or balanced flexibility for the developer with flexibility for the City. The initiative tips the scales to give certainty to the developer that the overly generous rules will not change but fails to provide Alamedans with a commitment to complete a project that guarantees delivery of public improvements and benefits - even those enumerated in the Initiative itself are very much in doubt.

To push through this one sided set of development laws, SunCal/Shaw has exploited the fears of many Alamedans that Alameda Point would languish forever if the initiative does not pass. Anxieties about the prospects for development of Alameda Point are heightened in the current economic climate. However, delays in the development of Alameda Point are inevitable whether the initiative passes or doesn't. Developers are waiting for a recovery of the market before undertaking new projects of this scale. From SunCal/Shaw's perspective, it makes sense for them to try to acquire Alameda Point while land values are low, but that does not mean that construction will start any time soon. The Initiative, as written, would give them complete control over timing. Whether they sell off pieces of the property sooner to raise the cash to cover company losses elsewhere or speculate on windfall profits in the future, actual development is

unlikely to proceed until the real estate market recovers and it is clear where profitable opportunities lie.

Fortunately the current crisis that would give the chosen developer an opportunity to acquire Alameda Point at a bargain price also offers Alameda the breathing room needed to adopt plans and agreements that meet the long term interests of city residents and businesses. Even the undesirable alternative of the Navy auctioning off the property directly to unknown developers could provide Alamedans with more control over the development of Alameda Point than they would have if the initiative passes.

Adoption of the initiative would leave the City with less control over the future of Alameda Point than a Navy auction. The developer, not the City, would decide how to subdivide the site, who subsequent developers would be, and the rules they would have to follow. A Navy auction would at least enable the city to retain control over its general plan, create its own specific plan (the cost of which could be passed through to the developers), and select the developers with whom it would sign development agreements.

The initiative is not the city's only opportunity to address the obstacles to financially feasible development of Alameda Point caused by Measure A. The city could also put a meaure on the ballot simply to modify Measure A. In addition,the opinion of the California Department of Housing and Community Development that Alameda must designate a portion of the city for multi-family housing to comply with California Housing Element Law suggests that the Alameda City Council could take action to set aside Measure A and zone portions of the city, including Alameda Point, for multi-family housing.

SUNCAL/SHAW HEDGE FUND INITIATIVE PROBLEM OUTCOMES: SUMMARY

The initiative, if approved by Alameda voters would

- give the developer the right to decide the overall project's size, mix of uses, open space plan, public facilities, transit options, and timing.
- give the developers the right to decide the size, density, mix of uses, open space plan, transit options, timing and other major characteristics of the development within each district.
- lock in a process of ministerial (i.e., no city discretion to modify or reject) approvals that prohibit the public, the Planning Board, and the City Council from reviewing or appealing permit approvals, with few exceptions
- fail to guarantee delivery of any specific public benefits or improvements, including those listed in the initiative
- divert scarce city and redevelopment resources from the rest of Alameda to the Alameda Point project and make it prohibitively expensive for the city to refuse to provide the project with redevelopment (tax increment) funds;
- allow the developer, to sell off Alameda Point piece by piece with these extremely valuable entitlements in place to developers it selects. The city would be obligated to honor the development agreement with developers falling short of the city's minimum financial, competence, and design qualifications.;
- undermine environmental review by postponing it until after the developer would already be in possession of full development rights that would hinder the city's ability to require mitigations or project alternatives; and
- prohibit amendments to correct any of the initiative's problems without the approval of the initial and subsequent developers, for at least 30 years

SUNCAL/SHAW HEDGE FUND INITIATIVE: OVERVIEW

The initiative that SunCal has circulated to Alameda voters has five parts: the text and four exhibits, (three sets of amendments to Alameda's General Plan, the Specific Plan, and the Development Agreement).

- The general plan is a state-required set of local laws needed to assure that cities and counties have a consistent set of development policies, that integrate land use, transportation/circulation , parks/open space, housing, resource conservation, and, safety.
- A specific plan is a tool that cities sometimes use (zoning is another) to implement general plan policies within a particular area where intensive development or redevelopment is expected to occur.
- A development agreement is a contract between a city and a developer designed to protect the developer from changes in development regulations partway through a project and to ensure the city that specific public facilities and public benefits will be delivered as a condition of the development. [Government Code §65864]

In the SunCal/Shaw Hedge Fund initiative, these documents have been drafted to ensure that a very wide range of options remains available over time to the developers. Limitations on developer discretion in general are included only when they are otherwise required by the state or federal government, such as specifying the maximum number of housing units, specifying height limits and density, and setting an expiration date for the development agreement. The initiative also establishes a unique process for approving permits that delegates Alameda's authority over virtually all important approvals to the planning director as non-discretionary decisions.

The initiative fails to provide any certainty whatsoever that the City of Alameda would receive any specific public benefits in return for this very generous package of development rights. The developer's conditional obligation would be limited to either fund or advance a specific amount ($200 million in 2009 dollars) to help pay for eight public improvements, but the initiative makes no findings that this amount would be adequate to deliver these public benefits. A breakdown of the initiative documents follows:

<u>COMPONENTS OF THE ALAMEDA POINT REVITALIZATION INITIAITVE</u>

INITIATIVE BODY: The initiative text nominally makes the factual findings and the political and legal rationale for the sweeping changes that the initiative would bring about. In addition, this petition incorporates the changes in the general plan amendments, specific plan, the zoning ordinance, and the development agreement into existing city laws; and amends the City Charter to exempt Alameda Point from Article 26 (Measure A).

From the outset, the "Findings and Declarations" [Section 2] suggest that adoption of the initiative would not impose substantive obligations on the chosen developer to deliver specific benefits to the Alameda community. Non-committal wording avoids promising specific outcomes; e.g., the initiative will "facilitate" [§2(c)], "pursue" [§2(d)], "improve" [§2(e)], ["promote"], [§2(f)], ["calls for"] [§2(h)],

[“stimulate §2(i)]. Section 3, Purposes and Intent, essentially downgrades the non-committal promises of the findings (the factual basis for the Initiative) to good intentions.

The text of the initiative petition also imposes severe restrictions on the electorate’s ability to amend the initiative for the following 30 years by requiring an application by the developer in addition to a majority vote. The initiative can also be amended by agreement of the City Council and the developer to bring it into compliance with state and federal law. The developer, but not the city would be able to abrogate the agreement if changes in state and federal law would require changes to the documents that the developer finds unacceptable.

EXHIBIT A ALAMEDA WEST: Amends Chapter 9 of the general plan – a previously adopted plan for Alameda Point. As amended, Chapter 9 would address only the Coast Guard Housing site and the Wildlife Refuge, areas which are not part of the area covered by the specific plan.

EXHIBIT B ALAMEDA POINT COMMUNITY PLAN (new Chapter 11 of the general plan): spells out the general plan policies and implementation measures governing development specifically within Alameda Point. The community plan overrides citywide general plan policies and standards that would otherwise apply to Alameda Point whenever they conflict with the community plan

In general, the policies and implementation measures are loose guidelines rather than strict requirements. For example, Table 11-2 defines a wide range of density standards for nine land use districts, but “the development intensity can be moved from one district to another to optimize development opportunities.” [page 5] It advises developers to “Maintain overall development in Alameda Point in accordance with Table 11-2 Land Use Summary but permits flexibility in the location and mix of development types within Alameda Point, provided that the development types are consistent with the overall goals of the Community Plan.” [page 9]
EXHIBIT C CHAPTERS 1-6: Selectively amends text and maps other chapters of the Alameda General Plan, including the Transportation, Open Space and Conservation, and Housing elements to reconcile them with the initiative.

Alameda Point Specific Plan: A tool to implement the general plan policies by translating them into criteria and permit processes for screening specific development applications at Alameda Point. Normally a specific plan requires that development of the affected area address specific public needs, including infrastructure and public facilities, often in a specific sequence (although the Alameda Point Specific Plan does not impose such requirements). A specific plan is usually different from conventional zoning which simply defines a development envelope, and then leaves it up to individual developers to decide what to fit within it.

In critical respects, the specific plan of the initiative more resembles the permissive nature of conventional zoning than the mandates of most specific plans. For examples, the land use plan, the open space framework and the street system are “proposed” rather than required.

The land use program described in the text, tables and diagrams would serve as the main “reference for all future planning decisions and implementation activities in Alameda Point.” It includes development standards for site planning and building scale [chapter 7] and identifies developments that are “permitted uses” for which the planning director must grant permits if an application is consistent with these standards. [chapter 3] In addition the specific plan also provides loose guidelines and conditional standards rather than specific standards: the “**intent**” of an open space system [chapter 4], “a

comprehensive, multi-faceted **menu** of transportation strategies” [chapter5], and **proposed** utility systems, “constructed to current standards while integrating sustainable development and green infrastructure strategies **when feasible**; [chapter 6], and sustainability **strategies** [chapter 7].

The specific plan calls for the City and the developer to agree to more detailed standards for the appearance of buildings in a “Pattern Book.” The developer would have the right to city ministerial rather than discretionary approval of applications for most significant development projects by the planning director if an application is consistent with the specific plan, the Pattern Book, and other applicable city requirements. Approval by the planning director could not be appealed, modified, or reversed by the City Council, the Planning Board, or the public. If the planning director determines that the application is inconsistent, the developer could call for a hearing in which the planning director could be reversed, or the standards of the specific plan and Pattern Book could be modified to make them more (but not less) permissive.

EXHIBIT F[1] DEVELOPMENT AGREEMENT: A contract with the City of Alameda that guarantees as the developer’s property right that the rules governing all phases of development (general plan, specific plan, and provisions of the development agreement itself) will not change without the developer’s agreement. Its purpose is “to cause all development rights which may be required to develop the Alameda Point Project in accordance with Applicable Rules and this Development Agreement to be deemed vested in Developer.” [§2.3]

For at least 25 years the developer chosen by the city and the developers to whom it sells pieces of Alameda Point would be subject only to the City Charter, general plan, specific plan, and Zoning Ordinance as amended by the initiative; other Alameda laws and obligations as currently written would apply only if the development agreement has not specifically nullified them,[Article2.2] unless city, state, or federal rules change to become more favorable to the developer. [Article2.4.4]

In return for this guarantee of insulation from any changes in city laws and regulations that do not benefit the developers, Alamedans would receive the public benefits described in Exhibit 4 Section B. That list of “benefits” is a repetition of the same vague wording of the Findings and the Purposes [Initiative text §2.2 and §2.3].

The development agreement is clear that the developer is not required to develop eight vaguely described public improvements (Exhibit 4,Section A). Instead that the developer would fund or advance $200 million in (current dollars, no provision for loss of purchasing power over the decades of development), but only if the Community Improvement Commission (Alameda’s redevelopment authority) channels the maximum legal amount of redevelopment funding (from both redevelopment project areas that comprise Alameda Point – the Alameda Point and the Business Waterfront Improvement Areas) to the project. The initiative has made no findings of the current costs of these improvements. It is not possible to estimate what the costs would be at the time of construction since the initiative sets no timetable and specifically prohibits the city from requiring performance of any sort during the entire term of the development agreement.

[1] The Specific Plan is presumably Exhibit D, but there is no Exhibit E in the initiaitive

INITIATIVE PROBLEMS

UNDEFINED LAND USE PLAN FOR ALAMEDA POINT AS A WHOLE

The inability of the public to anticipate the initiative's outcomes is structured into its most basic requirements, beginning with an unreasonably high cap on development,[2] the absence of requirements for a minimum amount of development for either residential or non-residential development,[3] and no requirements to coordinate the timing of residential and non-residential development.[4] In combination, these provisions leave wide open the question of how much development will actually be built and what the mix of land uses will be, both for Alameda Point as a whole, and within the districts. Although SunCal has spoken at length about parks in promoting their project, the initiative also designates the location and size of neighborhood and community parks as developer decisions.

Development Agreement 2.9
No Other Requirements, Nothing in this development agreement is intended to create any affirmative development obligations to develop the Alameda Point Project at all or in any particular order or manner, or liability in developer under this development agreement if the development fails to occur, Other agreements among the ARRA and/or the CIC and the developer will establish obligations regarding development of the Alameda Point Project, and any default under those separate agreements (including failure to develop in accordance with the timing provisions of such agreements) does not constitute a default under this development agreement."

Unrealistically high cap on development + no minimum development requirements = developer control over land use mix

The limit set by SunCal/Shaw in the initiative of 4,485 housing units and 3,792,000 square feet of non-residential development[5] is not a cap that they anticipate ever coming close to reaching. Since enlarging their project after approval of the initiative would require returning to the voters, it made good business sense for SunCal/Shaw to obtain approval initially for the largest project they could conceive of, plus a generous margin of error. Furthermore, they had no incentive to restrict the size of the project to limit its environmental impacts since the initiative allows it to be fully entitled prior to environmental analysis.

The cushion provided by an unrealistically high development cap in conjunction with the absence of any requirements for a minimum amount of development would enable the developer to depart substantially from the mix suggested in SunCal presentations. If the real estate market in the next decade resembles the market of the 2000 – 2006, they could pursue development heavily weighted towards residential projects without exceeding the cap and abandon plans for the business park and other employment-generating land uses. If the market instead resembles that of 1995 – 2000, with premium prices for office and research and development space, they could take advantage of the generous cap on non-residential development and limit the amount

[2] Alameda Point Community Plan, Note to Table 11-2, page 5; Alameda Point Specific Plan

[3] Development Agreement 2.9 **See sidebar.**

[4] "The phasing of development of housing units and non-residential square footage may occur independently." *Specific Plan*, page 8-6

[5] *Specific Plan,* Table 3-1, page 3-3

of housing. Due to the rules that permit most significant development by right[6], the final mix would be the developers' choice, irrespective of Alameda's needs and desires.

The initiative's failure to obligate the developer to deliver a minimum level of development substantially increases the probability that the site will not be developed as an integrated whole that meets Alameda's desire for a phased mix of housing and employment-generating land uses. Development agreements can be useful tools to achieve a mix by in effect requiring developers to use the returns from high profit uses (such as housing) to offset losses from desired, but less- or unprofitable uses (such as light industry or offices). By specifically exempting the developer from an obligation to develop any particular land use,[7] the initiative invites development of only those uses and sites on the property that are the most lucrative at the particular time of development. Instead of development obligations reflecting agreement between the developer and the city of a reasonable mix of uses, the initiative leaves all decisions concerning mix up to the developers. It would allow the developer to develop the most profitable sites and landbank or abandon those that turn out to be financially infeasible.

The loose requirements for each district exacerbate the City's lack of control over the land use mix. The initiative explicitly provides for developers to substantially modify the specific plan Land Use map[8] by shifting land uses between districts (feasible since the cap of development within each district is unrealistically high) and by considering a change in use to be a "minor variation."[9]

PARK/OPEN SPACE	ACRES	IDENTIFIED ON LAND USE MAP	CONTROLLED/ REGULATED BY
Seaplane Lagoon Waterfront Park	23	yes	Bay Conservation and Development District
Enterprise Regional Park	24	yes	East Bay Regional Park District
Regional Sports Complex	60	yes	State Lands Commission
Community parks	17	yes	Developer
Neighborhood parks	12	no	Developer
Linear open space (road landscaping)	9	no	Developer

Undefined local parks

State law requires specific plans to "include a text and a diagram or diagrams which specify … in detail… [t]he distribution, location, and extent of the uses of land, including open space, within the area covered by the plan."[10]

---

[6] *Specific Plan*, Figure 7-1, page 7-4,5
[7] *Development Agreement* 2.9, page 8
[8] *Specific Plan* Figure 3-1, page 3-4.
[9] *Development Agreement* 9.9, pages 16-17 "Variations from the planned Land Use Program, including transfers of housing units or employment-generating density, may require mitigation of potential adverse impacts such as utility infrastructure capacity, traffic or parking. Transfer of development intensity and land uses as provided for in this section, as well as minor adjustments to the boundaries of the land use designations, are intended to provide flexibility in the implementation of the Specific Plan."
[10] Government Code §65451(a)(1)

The specific plan calls for 145 acres of parks and open space, comprised of parks subject to regulation by outside agencies (107 acres) and parks under the control of the developer (38 acres). (See sidebar).

In partial compliance with state requirements, general locations of the parks subject to outside control or regulation are determined in the specific plan[11] as shown on the required Land Use Map. The boundaries of open space areas shown in Figure 3-1 "have not yet been determined and flexibility is needed until more precise development plans are known and the land is subdivided."[12]

The Land Use Map does not show linear parks and community parks at all. It is equivocal in its representation of neighborhood parks, designating them as an adjacent land use, with a notation of "Future Park Dedication."[13] The section on parks, which does show the community, neighborhood, and linear parks, is labeled "conceptual," and "ILLUSTRATIVE ONLY."[14] Ultimately the initiative gives the developer control over the location and configuration of these parks that have been showcased by SunCal as the basis for a coherent open space system.

The specific plan's failure to make a firm commitment to the configuration of parks (and public facilities as well) provides the developer with additional layers of control over the final land use plan and the character of each of the districts. The specific plan would allow the developer to change the dimensions and location of community and linear parks and transfer them to other

SELECTED LAND USES	DISTRICTS WHERE USE IS PERMITTED BY RIGHT
multi-family rowhouse, duplex, triplex	• Historic Mixed Use, • Mixed Use, • Medium Density Residential, • Medium High Residential, • High Density Residential,
Condos, multi-family flats, apartments, townhouses	• Historic Mixed Use, • Mixed Use, • Medium Density Residential, • Medium High Residential, • High Density Residential,
Single family housing	• Historic Mixed Use, • Medium Density Residential,
General Office	• Historic Mixed Use, • Mixed Use • Commercial • Business Park
Research and Development	• Historic Mixed Use, • Mixed Use • Commercial • Business Park
Hotels	• Historic Mixed Use, • Mixed Use • Commercial • Business Park • Public Trust
Restaurants	• Historic Mixed Use, • Mixed Use • Medium High Residential, • High Density Residential • Commercial • Business Park • Public Trust

[11] *Specific Plan*, Figure 3-1, page 3-4, 5
[12] *Specific Plan* page 3-5
[13] *Specific Plan*, Figure 3-1
[14] *Specific Plan*, Figure 4-1, page 4-2

districts, so long as total park acreage would remain at 145 acres.

Sites for public buildings and facilities are open questions. "A fire station, branch library and the existing western branch of the city's administrative offices will be accommodated within the Plan Area."[15] In addition to determining where these uses will be located, the developer would also be firmly in control of the timing of the construction. Under the initiative, they would have the right to postpone development of these public benefits indefinitely, since they are not obligated to actually deliver them.

DEVELOPMENT STANDARDS FOR DISTRICTS

The specific plan paints a word picture of eight distinct, complementary districts of varying densities that together comprise a comprehensive walkable community. However, a closer reading clarifies that "new urbanism" features of the mixed use districts that were so appealing in the Sun Cal slide shows are permissive rather than mandated, and that many restrictions are obviated by loopholes and easily approved exceptions. And of course, the developer would not be obligated to actually develop any or all features of the specific plan.

At the other end of the spectrum, the low density residential districts (called residential medium), which account for about 65 percent of residentially zoned acreage in the Land Use Plan, evoke suburban tract development more than walkable neighborhoods.[16]

Mixed Use District

The AP-MU Mixed Use District, the district "at the heart of the Plan Area,"[17] illustrates the gap between SunCal prose and the binding requirements of the specific plan. One major source of misunderstanding is that the specific plan in general gives the developer permission rather than setting obligations. In this respect, SunCal's specific plan resembles traditional zoning, which establishes a development envelope for permit applications that the city then has the discretion to approve, modify, or reject. In the case of the specific plan, however, the developer would have the right to build whatever fits within the envelope.

The description of the Mixed Use District would allow development of a vibrant, walkable town center, but clearly does not require it.

> "This district **permits** the integration of residential, public, institutional and commercial uses and a new ferry terminal and transit hub. A mix of high density housing, local-serving retail such as a grocery store, and workplaces **are permitted** here to create a vibrant environment. Uses **may be** vertically or horizontally integrated. The **preferred location** of a grocery store is at the corner of Main and West Atlantic avenues (see Figure 1-2: Plan Area), to be convenient for residents of Alameda Point and adjoining neighborhoods. In both residential and commercial buildings, retail, restaurants and/or services for locals and transit users **may** occupy a portion of the ground floor frontage. Within the AP-PMU district, Figure 3-1: Land Use shows where ground floor retail uses **are permitted** on West Atlantic Avenue or across from the transit terminal. Along West Atlantic Avenue, once ground floor retail uses are established in a building, retail **may**

---

[15] *Specific Plan*, Figure 3-1
[16] *Specific Plan*, Table 3-1, page 3-3
[17] *Specific Plan*, pages 3-1

expand in the upper floors. Day-to-day shopping and service needs of residents **could be met** with an array of retail and service commercial uses, such as pharmacies, cleaners, books stores, sporting goods stores, electronic appliance stores and hardware stores within ground floor space or in commercial bloacks. Home repairs, garden and furnishing needs **could be met** at large formal retail stores. Neighborhood parks **are permitted** in this approximately 29-acre district. AP-MU dwelling units will range from a minimum of 30.1 to a maximum of 70.0 dwelling units per acre."[18]

At first glance, the specific plan appears to require AP-MU densities ranging from 30 to 70 units per acre – urban densities consistent with financially feasible transit and affordable housing. This density standard appears to be bolstered by the apparent restrictions on non-multifamily housing in the district.[19].[20] However, there are provisions for exceptions that suggest that a much wider variety of residential uses could be approved:

- The seemingly straightforward density standard requirement does not restrict density for each development project, but rather the "*average* density per net acre within that district at build-out shall be within that range;"[21] i.e. projects with housing with densities lower than 30 units/acre would be permitted so long as the average density is between 30 and 70 units/acre.
- There appears to be a wholesale expansion of the limits on building types suggested by Table 7-2: "Additional residential prototypes are allowed and may be incorporated into any zone that allows matching building standards of Table 7-1."[22] This unclear statement seems to allow any type of housing in any district so long as it is consistent with the development standards for any of the housing types shown for Alameda Point as a whole. The nine housing types in Table 7-1 range from two story single family detached to five-story multi-family housing
- Transfers of residential and non residential density and land use designations among districts, adjustments of boundaries, modifications of park and public space designs, streets, and transfers of parking rights are allowable on application of the developer, potentially with the approval solely of the planning director at his/her discretion.[23]

Residential Medium Districts

The specific plan designates three large areas for low density, ranging from 4 – 17 units per acre, i.e., from houses on quarter acre lots to approximately the highest density currently allowed in Alameda under Measure A. Unlike the Mixed Use District that is broadly permissive, these districts envision neighborhoods comprised almost exclusively of housing at densities that are not transit friendly and without the basic commercial services that support walkability.

---

[18] *Specific Plan*, pages 3-5,6
[19] *Specific Plan*, Table 3-2, page 3-11
[20] *Specific Plan*, Table 7-2, page 7-5
[21] *Specific Plan* page 3-3
[22] *Specific Plan*, page 7-3
[23] *Specific Plan*, pages 9-16 --- 9-18

Uses permitted by right in
AP-RM: Residential Medium

- Active recreation
- Community gardens
- Neighborhood/Community parks
- Tot lots and playgrounds
- Accessory (carriage house) units
- Family day care
- Home occupations
- Multi-family rowhouse, duplexes, triplexes
- Multiple-family dwellings (condos, multit-family flats, apartments, townhouses)
- Private recreations facilities
- Residential sales offices
- Single-family dwellings
- Car sharing lots lots/garages Public schools, trade/vocational schools
- Sustainable technologies businesses
- Recycling facilities (small collections)

Conditional uses in
AP-RM: Residential Medium

- Bed and breakfast inns
- Residential care facilities
- Supportive housing, group residential facilities
- Places of worship

OPAQUE PERMIT APPROVAL PROCESS

The problems with the specific plan's development standards and requirements would be less severe for Alamedans if the initiative's project approval process provided an opportunity for Alamedans and their elected representatives to review, modify, and reject ill-conceived applications. To the contrary, the permitting process mandated by the specific plan goes to extraordinary lengths to insulate decision making from the public, the Planning Board, and the City Council. It would impose new procedures and rules that that conflict with the normal practices of Alameda and other local government. The special rules of the specific plan provide for

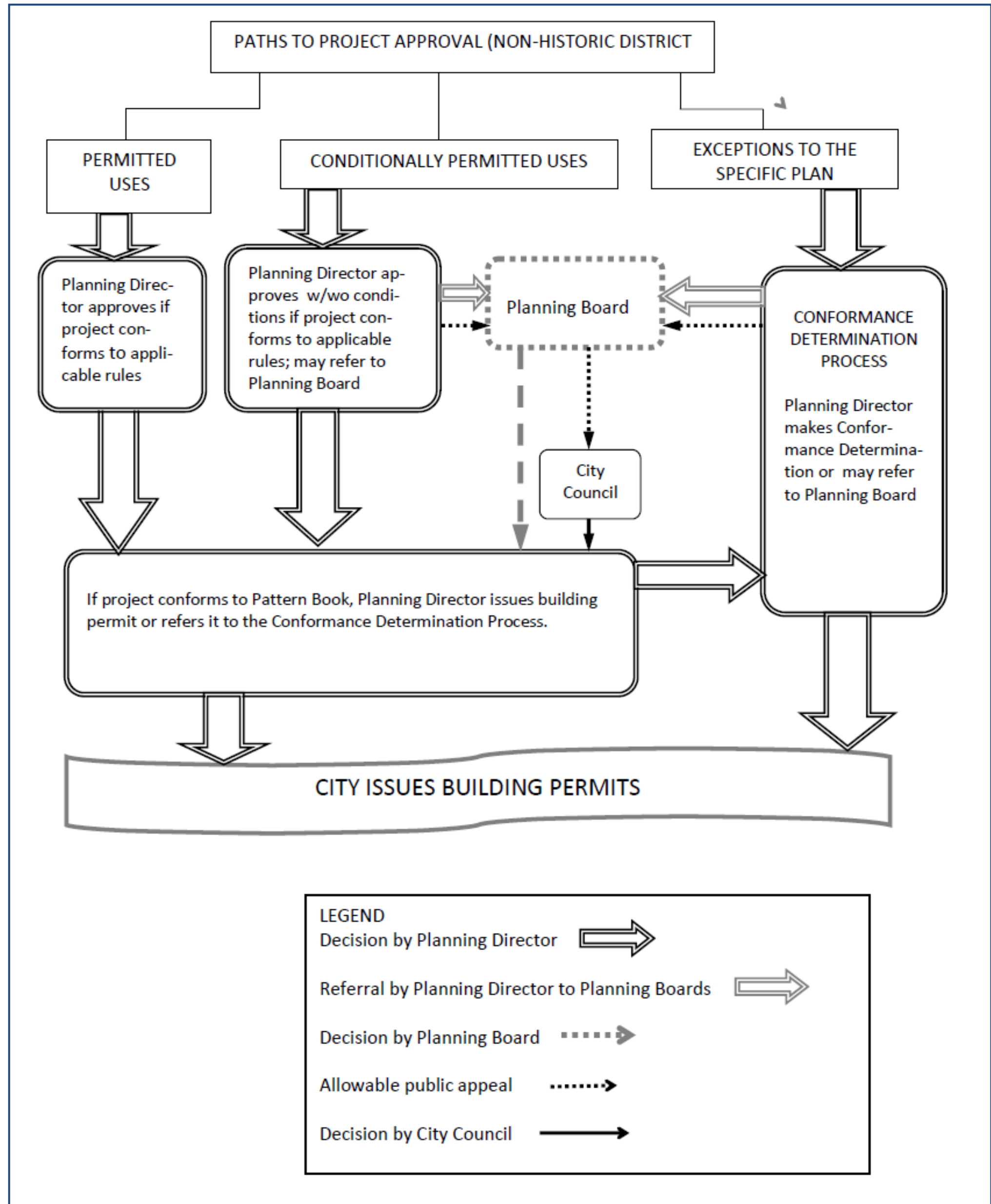
- Extensive "by right" approvals that do not allow the public, Planning Board, or City Council to participate in the permit review process or to appeal permit approvals;
- Discretionary use permits that may be granted solely at the discretion of the Planning Director, with high fees for appeals;
- Concentration of decision making authority in the planning director

By right approvals

Together the specific plan and the development agreement vests the right of the developer to City approval of projects comprised of "permitted uses." The list of permitted uses accounts for most Alameda Point development: housing, office, research and development, hotels and restaurants.

When the developer submits an application for these uses, the planning director would be responsible for determining whether they conform to City rules: the General Plan, the Specific

Plan, , and other city applicable rules[24] If in the judgment of the planning director they do, he/she must approve the project. There would be no opportunity for members of the public, the Planning Board, or the City Council to contribute their perspectives to the approval process: no requirements to notify the public when an application is under consideration or when a decision has been made. The only party who may appeal the decision of the planning director is the applicant (i.e.,developer). [25] (See flow chart.)



The city must then issue building permits if the project is consistent with the Alameda Point Pattern Book, a set of detailed site and building design standards agreed upon by the developer and either the Planning Board or the planning director.[26] It would dictate the appearance and quality of Alameda Point development for the next three decades.

---

[24] *Specific Plan*, page 9-6, Development Agreement 2.4.2, page 5

[25] In this section, the Specific Plan wastes no words in describing by-right project approvals, limiting the rules for the ministerial approvals to the following terse sentence: "Outside the AP-PMU, applications for New Construction require design review and approval in accordance with the Pattern Book…" *Specific Plan* 9.6.5.3.2, page 9-15

[26] *Specific Plan* Section 9.5 appears to contain an inconsistency that obfuscates whether the Planning Board or the planning director is responsible for approving the Pattern Book submitted by the developer. Paragraph 2 on page 9-6 states, "the Planning Board will adopt, or adopt with changes, or deny the final Pattern Book…" but the next paragraph states, "The applicant, a member of the public, or a member of the City Council may appeal the decision

Discretionary Approvals

In addition to uses that the developer is entitled to build by right, Table 3-2 lists a number of uses that are permitted on the ground floor only or are conditionally permitted with a use permit.[27] The other major category of discretionary approvals is the Conformance Determination – approvals of more than 14 types of exceptions to the specific plan for particular projects.[28] The exception range from the trivial (e.g., variations in signage requirements) to substantial (e.g., transfer of building densities among districts and modification of land use district boundaries).[29] The planning director is responsible for making both determinations, but has the option of referring the decision to the Planning Board. These decisions are appealable by the public as well as the applicant. (See diagram.)

Inflated Authority of Planning Director

The specific plan invests an inappropriately high level of authority in the Alameda planning director. He/she would be solely responsible for assessing whether an application for a permitted use conforms to city requirements, unless the developer disagrees with the decision. Since the specific plan does not require notice to the public when an application is under consideration and only the developer would have the right to appeal, planning director judgments would not be informed by the knowledge and perspectives of the public or their representatives. To correct an error in judgment by the planning director, the only remedy open to the public would be to sue the city, with potentially costly consequences.

The planning director also would exercise nearly complete control over discretionary decisions (use permits and exceptions to the specific plan). It would be the planning director's call whether to make the decision him/herself, or to refer it to the Planning Board. These decisions would be subject to appeal, with appellant fees to cover the city's full costs.[30]

These closed processes limit the arguments and feedback that the planning director is obliged to consider to those of the developer. They are, therefore, necessarily skewed towards accommodation of developer interests. The creative tension between a city's roles regulating developing and its role in promoting it would be embedded in a single person who, under the city manager form of government, would not accountable to the elected representatives of the public.

ELUSIVE PUBLIC BENEFITS

Alameda voters have no way to know what benefits the city would realize if they approve the Initiative. The language that purportedly makes a commitment to include public benefits in the project is found in Exhibit 4 of the development agreement, comprised of Part A "public improvements" and part B "public benefits." "Public improvements" are comprised of eight facilities. Public benefits refer to 28 generally positive outcomes that SunCal has been claiming for the project. These public benefits are also articulated in the initiative as findings,

---

of the planning director by filing a notice of appeal with the planning director within ten (10) days after the decision of the Planning Board."

[27] *Specific Plan* 3.6, page 3-9

[28] *Specific Plan* Section 9.9, pages 9-16 --- p-20.

[29] *Specific Plan* Section 9.9.1, pages 9-16 --- 17.

[30] *Specific Plan* Section 9.9.7, page 18.

declarations, intentions, and purposes. The initiative distinguishes between the terms "Public Benefits," "public improvements," and "public benefits."

Public improvements

One of SunCal's main selling points about its project has been their implied promise that it would include eight public improvements. For soccer moms, SunCal emphasized the regional sports complex; for transit advocates, the draw has been transit improvements, a ferry terminal, and transit hub; for open space advocates, parks; the Seaplane Lagoon, and extension of the Bay Trail for open space advocates; and to reassure current residents that the significant population increase at Alameda Point would not overtax City facilities, a branch library and fire station.

> **Exhibit F: Development Agreement**
>
> **Exhibit 4**
> **Public Benefits**
>
> The Public Benefits of the Alameda Point Project are as follows:
>
> **A. Developer shall fund, or advance the funding for, in an amount not to exceed $200 million, construction of the following public improvements, each in accordance with the Specific Plan:**
>
> - Regional Alameda Point Sports Complex. **(Phase 1, 2, 3)**
> - Parks, publicly-accessible open space and public art within the Alameda Point Project to serve the residents of Alameda Point and surrounding neighborhoods. **(All Phases)**
> - Improvements to Seaplane Lagoon frontage. **(All Phases)**
> - Bay Trail extension within the Plan Area. **(Phase 3)**
> - On-site and off-site traffic and transit improvements. **(All Phases)**
> - Ferry terminal and transit hub. **(Phases 2 & 3)**
> - Improvements to the existing Fire Station. **(Phase 3)**
> - Branch library. **(Phase 3)**

What SunCal has omitted from their presentations is the very limited and conditional nature of the initiative's commitment to these public benefits. It does not obligate the developer to deliver them. Instead the developer would only be required to "fund or advance the funding for, in an amount not to exceed $200 million, construction of the following public improvements, each in accordance with the specific plan;"[31] This obligation would be contingent on the Community Improvement Commission (Alameda's redevelopment agency) allocating "the maximum amount of the total non-housing fund redevelopment tax increment allocated and received by the CIC for improvements in, on or under the Property that are of benefit to the Project…" and the city establishing a community facilities district.[32]

These conditions raise substantial doubts about the nature of the public improvements that will actually be realized from the development of Alameda Point:

- Funding versus advancing funding: The Alameda Point Project is not required to contribute to the costs of these improvements, since the obligation can be met simply with an *advance*, or loan of funds. An advance (or loan) of funds by the developer for the construction of the eight public improvements is consistent with the initiative's general approach to funding public facilities and infrastructure construction. "It is anticipated that the developer will fund the initial costs of infrastructure improvements and will then be reimbursed through designated public and private financing mechanisms."[33] The development agreement corroborates: "The City acknowledges that City shall credit Developer the sum of all costs associated with constructing, acquiring, and/or installing

---

[31] *Development Agreement*, Exhibit 4, page 1.
[32] *Development Agreement 3.1*, page 10
[33] *Specific Plan* 8.3, page 8-3.

public infrastructure, including, without limitation, costs of design, engineering, surveying, permits, fees, taxes, bonds, labor, materials, land and construction administration. The right to the foregoing credits or reimbursements shall survive the termination of the Development Agreement."[34]

- No standards for public improvements: The initiative does not set any standards for these improvements. For example, one public improvement commitment in the development agreement simply calls for "on-site and off-site traffic and transit improvements without specifying what they would be or more importantly, the traffic standards they would achieve"[35] The chapter of the specific plan that describes the transportation program (which is permissive rather than mandatory) does not fill in the gaps. For instance, it describes a shuttle "strategy" but provides no information about routes, headways, hours of operation, nor a performance standard (e.g., shifting a percentage of trips from the automobile to transit).[36]

- No cost estimates and consequences: SunCal/Shaw has not provided the public with any information about the projected costs of the improvements, and the extent to which they believe $200 million would cover these costs, either at current or future prices.

- Consequences of inadequate funding? The initiative does not address the issue of insufficient funding. Since the developer has no obligation to develop the project in whole or in part, and if the $200 million is too little to cover costs, the developer would not be obligated to deliver the eight public improvements.

- No provision for inflation: The developer's obligation to fund or advance funding for these improvements would continue over the full life of the development agreement – a quarter of a century or more. Expected cost increases that will take place during this time suggest the $200 million will buy much less over time. The more than doubling in the costs of goods over the past 25 years provides a rough indication of the increases that can be expected over the next 25 years. For example, the price of goods costing $104 in 1984 was $149 ten years later in 1994, and $215 twenty-five years later in 2009. A rough projection of the loss in purchasing power of the $200 million developer obligation is based on this past experience of inflation. In 25 years, the purchasing power of $200 million would be $97 million.

LOSS IN VALUE OF $200 MILLION
OVER TERM OF THE DEVELOPMENT AGREEMENT

year	Cost of goods	loss of purchasing power	purchasing power of $200 million in year	
Jul-84	104.1	over 25 years: 52%	2034	$ 96.7 million
Jul-89	124.6	over 20 years: 42%	2029	$115.7 million
Jul-94	149.0	over15 years: 31%	2024	$138.3 million
Jul-99	167.1	over 10 years: 22%	2019	$155.2 million
Jul-05	189.5	over 5 years: 12%	2015	$176.0 million
Jul-09	215.4		2009	$200.0 million

Source: US Bureau of Labor Statistics, Consumer Price Index, All Urban Consumers

[34] *Development Agreement 2.11.3a, page 9*
[35] *Development Agreement*, Exhibit 4, page 1
[36] *Specific Plan* 5.3, page 5-11

- Meaningless references to phasing: The failure of the initiative to include adjustments for inflation provides a strong financial incentive for the developer to delay the funding of the public improvements. References to phasing in the specific plan do not solve this problem. First, the Phasing Plan is proposed, rather than required.[37] Second, residential and non-residential construction phases are independent of each other,[38] potentially covering two separate time periods and making it impossible to determine when a phase would begin and end. Third, since the number of residential units and square footage of non-residential development exceeds reasonable expectations, it is unlikely that the project would ever complete all five phases. Finally, the development agreement clarifies that the development rights given to the developer do not include obligations to produce public improvements at any particular time: "Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its business judgment."[39] And further, "Nothing in this Development Agreement is intended to create any affirmative development obligations to develop the Alameda Point Project at all or in any particular order or manner, or liability in Developer under this Development Agreement if the development fails to occur."[40] Default by the developer on phasing obligations that the DDA may establish would not cause the developer to be in default of the development agreement.

- Double-counting costs of fire station improvements: The development agreement further compromises the promise of the developer's $200 million by providing that any expenses associated with the development of the fire station would be credited against police and fire fee obligations. It could be a substantial cost to the city. (See discussion of fiscal impact for more detail.)[41]

Public benefits

The 28 public benefits listed for the Alameda Point Project in Exhibit 4 Section B of the development agreement should more properly be characterized as project goals and objectives. Nonetheless these vague and uncertain outcomes are the consideration, or value that the development agreement gives to the city in return for the immensely valuable development rights given to the developer: "In consideration of, and in reliance on, City agreeing to the provisions of this Development Agreement, Developer will provide the public benefits ('Public Benefits') described in Exhibit 4."[42]

The benefits that the development agreement provides to the developer are not comparable to those provided the city, especially with respect to accountability. The developer's benefits are clearly spelled out in the development agreement – Articles 1 and 2 in particular. "The intent of this Section 2.3 is to cause all development rights which may be required to develop the Alameda Point Project in accordance with the Applicable Rules and this Development Agreement to be deemed vested in Developer."

---

[37] *Specific Plan*, Table 8-2, page 8-6
[38] *Specific Plan* 8-5, page 8-6
[39] *Development Agreement 2.8, page 7*
[40] *Development Agreement* 2.9, page 8
[41] *Development Agreement* 2.11.3a, page 9
[42] *Development Agreement* 3.1, page 10

It is telling that Article 4, entitled "City Rights and Obligations" includes five obligations (to accept infrastructure, establish a community facilities district, geologic hazard abatement district, landscaping and lighting assessment district, and cap the overall tax rate), but no rights.[43]

The language of the development agreement that spells out developer benefits is precise and specific, enabling the developer to hold the city accountable for following specific rules that would impinge on developer discretion. In contrast, the city would not be able to hold the developer accountable for delivering the nebulous public benefits.

- Some of the public benefits promise only that developers will make an effort, not that they will be successful: e.g., "Encouraging reuse of buildings and landscapes with historic significance."[44]
- Others are meaningless without quantification or standards: e.g., "Stimulating job creation and economic growth through installation of needed site improvements to stimulate new commercial expansion."[45]
- Virtually all of them are constrained by provisions of the development agreement that limit funding[46] and prohibit the city from requiring the developer to "create any affirmative development obligations to develop the Alameda Point Project at all or in any particular order or manner, or liability in Developer under this Development Agreement if the development fails to occur."[47]

DRAIN ON CITY RESOURCES

City Budget

From the beginning of its planning for reuse of the Naval Air Station, the city has insisted that it not have a negative impact on the City's budget. The initiative refers to this goal but makes no commitment to honor it. Instead it talks about generating revenues, but does not analyze whether it would cover the new costs that the project would generate; e.g., police, fire, maintenance and operations of infrastructure and parks.[48]

SunCal/Shaw has provided the public no analysis of fiscal impacts. The city has published its conclusions that the project would have a negative impact on the budget for City operations: a shortfall of $17.7 million if a 15-year buildout is assumed, $4.8 annual deficit thereafter.[49] To the extent that calculation of this deficit assumed reasonable phasing of the full buildout of an unrealistically high development program (4,845 housing units and 3.8 million square feet of non-residential development), the deficit could actually be substantially higher if buildout of higher revenue generating uses (e.g., hotel) turns out to be less than what is permitted.

---

[43] *Development Agreement 4,* pages 11-12
[44] *Development Agreement,* Exhibit F, Section B, page 3
[45] *Development Agreement,* Exhibit F, Section B, page 2
[46] *Development Agreement 4.6, page 12*
[47] *Development Agreement* 2.9, page 8
[48] Notice of Intent to Circulate Petition, page 1; Initiative Petition, Section 2, page 2; Development Agreement 11.1.2, page 22; Development Agreement Exhibit 4 Section B, page 1.
[49] City of Alameda *Alameda Point Development Initiative Election Report Executive Summary Part I,* page 16May 29,2009

Furthermore, the ability of the project to pay its own way would be severely compromised by exemptions from city fees that would be charged, but for the favorable terms of the initiative. According to the city, the foregone revenue could be as high as $82.4 million.[50] The initiative would limit the city to charging local fees only for sewer connections, public art, and police and fire services. The developer would have to pay state fees (for the strong motion instrumentation program, building standards, and school impacts). However the development agreement calls for the developer's costs for fire station improvements and school facilities to be credited against the fee obligations for police and fire and for school impacts respectively. These exemptions could reduce fee revenue generated by the project from $29.6 million to $1 million.

The initiative anticipates that the city would establish a community facilities district (CFD), which could conceivably be applied to City operating costs. However the initiative clearly expects these proceeds, as well as tax increment funds, to pay for infrastructure costs, which the city must reimburse to the developer.[51] State law also restricts the use of CFD revenues for operating costs. Finally, the fund raising potential of this mechanism would be sharply limited by the cap that the development agreement would impose on property based taxes and fees of 2 percent of fair market value.[52]

The development agreement also contemplates establishing a special assessment district for landscaping and lighting or for landscape and lighting maintenance.[53] Although they have described these districts as lasting "in perpetuity", such permanence would qualify them as special taxes under state law, requiring a 2/3 vote of property owners in the district. Otherwise, the district must be renewed annually by a majority of property owners.

Redevelopment Resources

SunCal and the Community Improvement Commission have been negotiating the terms of a Disposition and Development Agreement DDA (DDA) for more than two years. Although the initiative cannot directly determine the terms of the DDA, it has taken strong measures to pressure the CIC to contribute the legal maximum amount of tax increment funds to the project.

The development agreement makes the $200 million funding for public improvements contingent on getting that maximum amount.

> "Public Benefits Contingency. In order to ensure the financial feasibility of the Project, the Developer s obligations to provide the Public Benefits set forth in Section A of Exhibit 4 are contingent upon (i) the CIC programming the maximum amount of the total nonhousing fund redevelopment tax increment allocated and received by the CIC for improvements , on or under the Property that are of benefit to the Project and conform to the requirements of California redevelopment law, less administrative costs, reserves and Educational Revenue Augmentation Fund ("ERAF") costs, and amounts required to be paid to the State of California pursuant to State Law..". [54]

---

[50] *Election Report, page 19*
[51] *Development Agreement 4.3, page 11*
[52] *Development Agreement 4.6, page 12*
[53] *Development Agreement 4.5, page 121*
[54] *Development Agreement* 3.2, page10

Complying with this provision would require the CIC to allocate tax increment funds from all of the redevelopment areas that underlie the project. The redevelopment area that accounts for most of Alameda Point is the Alameda Point Improvement Project (APIP). Since a small corner of the Business and Waterfront Improvement Project (BWIP) also extends into Alameda Point, all of the tax increment funds from this very large redevelopment area would also have to be allocated to the project in order to hold the developer to its conditional commitment of $200 million.

The more compelling pressure on the CIC to channel the maximum amount of tax increment funds to the project is embedded in terms of the development agreement that requires reimbursement of the developer for infrastructure costs It would create a clear financial hardship for the city if the Community Improvement Commission (CIC) were to refuse to provide the project with tax increment financing. In contrast, the developer's bottom line would not suffer appreciablyfrom a lack of tax increment funds, due to relief from the $200 million obligation and the continuing availability of community facilities district financing . The difference between the dire consequences for the city and the more manageable consequences for the developer would necessarily influence negotiations over the terms of the DDA, making it extremely difficult, if not impossible, for the CIC to negotiate terms of the DDA that would reverse the many inequities of the initiative.

PASS-THROUGH OF ENTITLEMENTS TO UNACCEPTABLE DEVELOPERS

When the city selected SunCal as the potential master developer of Alameda Point, it understood that SunCal planned to prepare and entitle the site for construction and then sell off the entitled parcels to builders. It was probably also understood that the initial developer's development rights would be conveyed with the land. It is unlikely, however, that the city expected to be prohibited from rejecting the transfer of its development agreement to under-financed or incompetent builders with poor work records. Unfortunately the development agreement includes such a prohibition:

> "Right to Assign. Developer shall have the right to sell, assign or transfer in whole or in part its rights, duties and obligations under this Development Agreement, to any person or entity at any time during the term of this Development Agreement **without the consent of City**; provided, however, in no event shall the rights, duties and obligations conferred upon Developer pursuant to this Development Agreement be at any time so transferred or assigned except through a transfer of any interest therein, including Developer s legal or equitable interest in the Property, In the event of a transfer of a portion of the Property, Developer shall have the right to transfer its rights, duties and obligations, under this Development Agreement which are applicable to the transferred portion, and to retain all rights, duties and obligations applicable to the retained portions of the Property."[55]

COMPROMISED ENVIRONMENTAL REVIEW

Since the planning documents and entitlements for development of Alameda Point would be adopted by initiative rather than by City Council action, they are exempt from CEQA review.

[55] Development Agreement 9.1, page 19

Most subsequent permit approvals would be ministerial, therefore exempt as well. Discretionary approvals would be the responsibility of the planning director. “Consistent with the Initiative, unless agreed to by Developer, the City shall not require any further legislative level entitlements to enable Developer to build out the Project.”[56]

The action that would trigger CEQA review of the project would be approval of the DDA or other conveyance contract. The environmental impact report (EIR) that would be required would be severely compromised however, since the developer would already have a vested right to develop any project that fits the specific plan.

The fundamental purpose of an EIR is to inform decision makers and the public of the potentially significant environmental impacts of a project, and to propose mitigation measures and alternative projects that could alleviate or eliminate those impacts. The entitlements given to the developer seriously limit mitigations or alternatives that can be adopted, primarily because the maximum amount of development, open space acreage, public improvements are established as vested rights. Even if the EIR were to analyze a range of projects consistent with the entitlement that could be built, the city would not be able to certify the one with the lowest level of impacts if it were inconsistent with the developer’s entitlements. The city would not have the authority to adopt mitigations that avoid impacts by modifying critical features of the project – e.g., size, density, parking ratios. The city’s only mitigation options would be measures retrofitted to the project; e.g., traffic control devices and public transit services that can be helpful, but are known to be extremely limited in their ability to prevent impacts on air quality and traffic.

The ability of CEQA to prevent the environmental impacts of a project is ultimately based on the city’s ability to reject a project that has unacceptable impacts. Alameda would not have that option. If the city learns that development permitted by the initiative would have intolerable impacts that cannot be brought to acceptable levels with mitigation measures, the city would only be able to withhold approval of the DDA, not of the project itself. SunCal/Shaw has written the initiative so that from their perspective, it could proceed without redevelopment financing. If the initiative passes, the city’s only practical power to avoid environmental impacts would be to refuse to convey the property to a developer on a timeline required by the development agreement.

INABILITY TO CORRECT THE INITIATIVE’S PROBLEMS

The greatest single danger posed by the initiative is that for three decades it would be impossible to modify without the approval of the developer. If Alamedans approve the initiative and learn subsequently that the transit they hoped for does not materialize, that the regional sports facility costs too much to join, that Alameda Point is a drain on the city’s budget, or that any of the other inducements disappoint, they will have lost their ability to return to the ballot to make adjustments to the initiative. Freezing whole chapters of the general plan and the specific plan in an ever-changing world runs counter to the basic concepts of planning law and practice.

[56] Development Agreement 2.6, page 7

Alamedans would only be able to vote on amendments submitted by the developer or significant landowner.[57] . Although the wording of the initiative suggests that the developer would not be able to propose amendments that increase the size of the project or reduce public benefits, these restrictions have no practical meaning.

SECTION 14. Amendment.

a) This Initiative may only be amended or repealed in the following circumstances:

(1) By a majority vote of the voters at a subsequent City election;

(2) Upon written application to the City Council by the Developer or Significant Landowner, so long as such proposed amendment or other change:

A. Does not eliminate or reduce the Developer s obligation to fund, or cause to be funded, the public benefits described in Exhibit 4 of the Development Agreement, pursuant to the terms thereof; and

B. Does not increase the maximum number of residential units or the maximum amount of non-residential building square footage permitted by the Alameda Point Specific Plan;

(3) If federal, state, or regional laws, regulations, policies, orders or decisions including, without limitation, those actions of the United States Government, the Department of the Navy, the United States Environmental Protection Agency, United States Fish and Wildlife Service, the California Department of Toxic Substances Control, the San Francisco Bay Regional Water Quality Control Board, California State Lands Commission, and California s State Historic Preservation Officer, operate to frustrate the purposes and intent of this Initiative regardless of whether the City is the implementing entity, the Developer or the Significant Landowner may submit, notwithstanding Section 14(a)(2) of this Initiative, and the City shall consider, an amendment or other change to this Initiative to achieve, as much as is reasonably feasible, the original purposes and intent of the Initiative;

(4) On and after the thirtieth (30) anniversary of the effective date of this Initiative this Initiative may be amended or repealed by any procedure authorized by state and local law subject to the terms of any applicable development agreement entered pursuant to Government Code Section 65864 et. seq,

First, the project size allowed by the Initiative is greater than the site can accommodate.

Second, the meaning is unclear, of the restriction on eliminating or reducing the developer's obligation to fund public benefits described in Exhibit 4. As explained earlier, "public benefits" in Exhibit 4 refer to the 28 general goals of the project, which the developer has no specific obligation to fund. The funding obligation is associated with the eight "public improvements" listed in Exhibit 4.

Conflict between the terms of the initiative and federal, state, or regional law is the other situation in which amendments would be permitted. In such a case, the City Council could approve an amendment submitted by the developer or significant landowner. These amendments would only have to be consistent with the very general purposes of the Initiative.

CITY OPTIONS

Alameda has been grappling with the reuse of the former Naval Air Station for almost two decades. As in other polluted military installations throughout the country, the slow pace of environmental remediation has been a primary cause of delay. Like other closed bases, the property has physical and accessibility challenges. In addition Measure A has posed a unique obstacle, contributing in no small part to the departure of an earlier master developer.

---

[57] Any question whether initiative Section 14 a includes (1) and (2) versus (1) or (2) is answered by (4), which says that after 30 years, the right of a majority of voters to amend would be restored so long as the amendments did not impinge on the Development Agreement (which has a 30 year term, extendable due to delays).

SunCal approached this problem head on with presentations to Alamedans that made the case for relaxing Measure A restrictions at Alameda Point. Their efforts initiated a dialog about transit-oriented, pedestrian friendly new development.

Unfortunately, SunCal/Shaw went too far when they prepared a ballot measure, necessary to modify Measure A at Alameda Point to achieve the Project they were showcasing. The initiative would give immensely valuable entitlements to the developer without guaranteeing Alamedans any benefits in return. SunCal/Shaw's efforts to leverage the need to modify Measure A became a set of development standards and rules that exclude the public from critical decisions about Alameda's future.

Given the serious problems that would result from the initiative's adoption and implementation, the difficult question facing Alameda voters concerns the reasonable alternatives to the initiative.

Alameda's experience over the last decade strongly suggests that part of the answer lies in the City's ability to take the reins of the development process into its own hands. Adopting a community plan and a specific plan that captures the emerging consensus over mixed density, transit-friendly development would provide the City with the standards and rules it would need to guide development of Alameda Point, whether by a developer chosen by the city, or through a Navy auction. With plans in place for Alameda Point, the city would be able to negotiate entitlements with SunCal, with another master developer, or with developers of specific sites.

Moving ahead without the SunCal/Shaw Hedge Fund initiative would not require Alameda to endure the constraints of Measure A forever. A simpler initiative measure could focus just on needed modifications. Another approach would be for the City Council to set Measure A aside to allow rezoning portions of the city for multi-family housing – rezoning that is necessary, in the view of the California Department of Housing and Community Development, if Alameda is to comply with state housing element law.

Although delays in the reuse of the Naval Air Station have been frustrating for Alamedans, they are not unusual. The process of developing a closed, polluted military base is inherently complex. The wild swings of the real estate market over the past decade and a half have compounded the problems and will further delay construction, with or without the initiative.

It would be a grave error for Alamedans to allow their short term frustrations to lock themselves into development rules that take away their control over the future of Alameda Point.