

EXHIBIT D

Phasing Plan

1. Phasing - Generally

1.1 Phased Infrastructure Generally. Throughout development of the Project, construction of Project Infrastructure, Affordable Housing and other Development Agreement obligations will be phased in accordance with the terms and conditions of the Development Agreement, including, without limitation, this Phasing Plan, the Affordable Housing Plan, and the MMRP. Landowner will provide certain Open Space, Affordable Housing, and traffic mitigation improvements in connection with certain levels of development and/or as a pre-requisite for commencement of a subsequent Phase or a particular residential or commercial building block or project building within a Phase or sub-Phase, as described herein. Phasing of other Project Infrastructure, including access and utilities (including storm water controls) improvements necessary to accommodate development of a Phase or sub-Phase shall be provided in the basis of adjacency and as-needed, as described in Section 2 below. Approval and construction of Project Infrastructure in connection with each Phase or sub-Phase is intended to maintain a level of flexibility in determining Infrastructure requirements while providing services appropriate for development.

1.2 Local Agency Approval of Phased Infrastructure. The Subdivision Procedures attached as Exhibit I to this Agreement require Landowner to submit with each subdivision map for each Phase identified on the Phasing Plan Diagrams attached hereto as Attachment 1 (each, a “Phase”) (or if a subdivision map is submitted for less than an entire phase (each, a “sub-Phase”), for each sub-Phase), a description of the applicable Project Infrastructure and Open Space to be included within that Phase or sub-Phase (in each case, the “Phase Infrastructure”). Local Agency shall approve or disapprove the Phase Infrastructure based on consistency with the requirements and standards set forth in this Agreement (including as provided in Section 2 below) and the other Project Approvals (including, without limitation, the Development Plan and Master Map), the Subdivision Map Act and applicable Local Agency Subdivision Code and regulations as modified by the Subdivision Procedures and Development Plan, and Existing Local Agency Land Use Regulations.

1.3 Local Agency Approval of Illustrative Phasing Plan. Project Phases described herein are shown on the illustrative Phasing Plan diagrams attached hereto as Attachment 1. In the event of any discrepancy between Attachment 1 and the Agreement, including the text of this Phasing Plan, the Agreement and the text of this Phasing Plan shall control.

2. Adjacency and As-Needed

The primary principles of the Project's Infrastructure phasing are "adjacency" and "as needed", unless otherwise specifically provided in the Development Plan and this Agreement, including, without limitation, this Phasing Plan, the Affordable Housing Plan, the NPIIP and MMRP. When development of a residential or commercial project(s) occurs within a Phase or sub-Phase, "Adjacent Infrastructure" and other Project Infrastructure needed to provide for adequate access and utilities service for such project will be constructed. These include, for example, streets (and improvements therein and thereon), curbs, gutters, sidewalks, street lights and other streetscape improvements, joint utility trench, utility corridors and related facilities, storm water, wastewater, potable and other water facilities. "Adjacent Infrastructure" means Infrastructure which is near to and may share a common border or end point with a building project or sub-Phase within one of the four identified Phases. Where it is determined by Local Agency and Landowner to be feasible and sufficient to meet the needs of a project or sub-Phase, half-streets may be constructed. Project Infrastructure will be constructed in accordance with this adjacency and as needed principles unless other specific criteria is provided. In all cases, Project Infrastructure must be designed so as to connect with Project Infrastructure previously approved or installed.

3. Open Space Phasing

3.1 Open Space Development. Open Space and associated community facilities and improvements shall be designated in connection with each Phased Final Map and improvement plans approved therewith (unless earlier included in separate improvement plans) consistent with the schedule for construction of open space described in Section 3.2 below. Local Agency, in its sole discretion, may defer Open Space requirements to subsequent project maps, Phases or sub-Phases as it deems it appropriate.

3.2 Schedule for Construction of Open Space. Open Space (as each is more particularly described in the Development Plan) shall be Substantially Completed consistent with the following schedule of performance:

Block P9 (Wetlands Restoration): Prior to issuance of a Certificate of Occupancy for the first residential project in Phase Two;

Pedestrian and bicycle connection to Kennedy Park: Prior to issuance of a Certificate of Occupancy for the first residential project;

Block 14 – Drydock improvements: Prior to issuance of a Certificate of Occupancy for earlier of the last residential project in Phase Two or the 350th residential unit;

Blocks P3 (Farm): Prior to issuance of a Certificate of Occupancy for the first residential project in Phase Three;

Block P5: Prior to the issuance of a Certificate of Occupancy for the ~~first~~351st residential unit in the project ~~on either Block 17, 19 or 21.~~

Block P6: Prior to Certificate of Occupancy for the first residential project on either Block 18, 20 or 22.

Block P7: Concurrent with the Substantial Completion of Block P5 and shall include a pedestrian connection across the railroad tracks connecting Block P5 to Block P7.

Block P1: Prior to issuance of a Certificate of Occupancy for the hotel on Block E, but not later than the earlier to occur of the following: (i) issuance of a Certificate of Occupancy for the last residential project on Blocks 3, 6, 9 or 12, or (ii) the date that P4, P5 and P7 have been determined to be Substantially Complete;

Block P2 and Trail: Prior to the earlier to occur of (i) issuance of a Certificate of Occupancy for the second residential project on either Block 3, 6, 9 or 12; or (ii) the date that P4, P5 and P7 have been determined to be Substantially Complete;

Block P4: Prior to issuance of a Certificate of Occupancy for the third residential project in Phase 4; and

Block P8: Prior to issuance of a Certificate of Occupancy for the first residential project on either Block 1 or 2.

4. Transportation Infrastructure

As described in the Napa Pipe Intersection Improvement Plan, in addition to Landowner's obligation to pay its fair share and other costs for transportation-related Project Infrastructure, Landowner must also construct specific Project Infrastructure improvements, regardless of adjacency, as follows:

4.1 Napa Valley Corporate Drive / Anselmo Court. Landowner shall construct a single lane round-about with a by-pass lane on the southbound and eastbound approaches to the intersection, including the bridge improvements to Anselmo Court and Anselmo Court/Corporate Drive, such that all access roads are at flood elevation of 12 feet NGVD29, as referenced in Section 3 of the Napa Pipe Zoning Code. If the right of way for a roundabout cannot be reasonably and timely obtained, then a traffic signal may be installed as an alternative prior to issuance of the Certificate of Occupancy for the Membership Warehouse Store. Landowner shall complete such improvement prior to a Certificate of Occupancy for the Membership Warehouse Store use.

4.2 Soscol Ferry Road / Devlin Road. Landowner shall install median treatment improvements on Soscol Ferry Road that essentially control all movements except for the westbound through movement on Soscol Ferry Road and widen Soscol Ferry Road to the west of its intersection with Devlin Road to allow for merging of the two lanes. The merge distance shall be in accordance with County standard roadway design criteria for lane merges. Landowner shall complete such improvement prior to a Certificate of Occupancy for the Membership Warehouse Store use.

5. Stormwater

An erosion and sediment control plan ("ESCP") shall be submitted for review and approval with the applicable map or improvement permit prior to issuance of grading permits and improvement plans for each residential or commercial development project. The ESCP shall address interim or permanent facilities or control measures, such as straw bale barriers, straw mulching, straw wattles, silt fencing, and temporary sediment ponds, needed to handle storm water overland flow and manage erosion and sediment, control and treat increased stormwater runoff associated with the increase in the amount of impervious surfaces and promote infiltration of runoff from new impervious services as project development occurs in each Phase or Sub-Phase. Streets will most often provide the drainage corridors needed for these flows, but it is also possible that temporary or permanent drainage pipes, basins or swale corridors (and provision of corresponding access) will be needed in various locations until the final or ultimate drainage systems are completed.

6. Community Facilities Space

Landowner shall provide the Community Facilities space described in Section IV.5 of the Development Plan and Section 15.2.5 of the Agreement prior to the issuance of the Certificate of Occupancy for the mixed-use building to be constructed on Block 21.

7. Affordable Housing

The phasing requirements associated with development of Affordable Housing are described in the Affordable Housing Plan, Exhibit B to the Agreement.

8. Site Remediation and Grading

Prior to commencement of site grading for development in Phase Two, soil remediation for the entire Property shall be completed consistent with the Remedial Design and Implementation Plan attached to the 2011 Supplemental Draft Environmental Impact Report for the Napa Pipe project. Grading and filling shall be performed as needed for development of each Phase or sub-Phase and as described in Development Plan.

9. Membership Warehouse Store and Hotel

Phase One includes a Membership Warehouse Store. Landowner shall use diligent and good faith efforts as soon as reasonably practicable after the Effective Date of this Agreement to enter into a binding agreement for purchase and sale of the Membership Warehouse Store site, as shown on the Land Use Plan, and for development of a Membership Warehouse Store by such purchaser thereon (the "Purchase Agreement"). Prior to Landowner entering into such a Purchase Agreement, Local Agency shall not be obligated to issue building permits for private residential or commercial development in Phase Two. Notwithstanding the foregoing, if despite

its diligent and good faith efforts, Landowner is unable to enter into such a Purchase Agreement within such two (2) year period, then Landowner shall continue to use such diligent and good faith efforts to enter into a Purchase Agreement but shall nonetheless be entitled to obtain building permits for development in Phase Two and any subsequent Phases in accordance with this Agreement and all applicable laws, subject to compliance with the Phase deposits described below.

9.1 Phase Two. If a Certificate of Occupancy for a Membership Warehouse Store has not been issued prior to the issuance of a Certificate of Occupancy for the first residential ~~units~~unit in Phase Two, then Landowner shall make the following annual payments and provide and maintain the following deposits or security for such annual payments until such time thereafter as either: (1) a Certificate of Occupancy for a Membership Warehouse Store has issued, or (2) Landowner's obligations under Subsection 9.2 below are triggered and Landowner provides the Phase Three Deposit as provided below, at which time any obligations of Landowner under this Subsection 9.1 shall terminate:

As a condition to the issuance of ~~a Certificate of Occupancy~~the first building permit for the first residential project or unit in Phase Two, Landowner shall provide and maintain a cash deposit or letter of credit in such form as is reasonably approved by Local Agency's counsel with the Local Agency in the total amount of Two Hundred Fourteen Thousand Dollars (\$214,000) (the "Phase Two Deposit"), as Indexed. For purposes hereof, "Indexed" means the product of the number to be Indexed multiplied by the percentage increase, if any, in the Consumer Price Index for All Urban Consumers (base years 1982-1984=100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics from the first day of the month in which the Effective Date occurred to the first day of the most recent month for which the Index is available at any given time. If requested by Landowner, Local Agency may, in its sole discretion, accept a bond, guaranty, or other form of security in favor of the Local Agency of a type and form acceptable to the Local Agency's counsel.

~~After not less than fourteen (14) days prior written notice from Local Agency~~ Landowner shall pay to the Local Agency the following amounts on an annual basis (the "Phase Two Payments"): (A) ~~After issuance of a Certificate of Occupancy for the fiftieth (50th)~~prior to the issuance of the first building permit for the first residential project or unit in Phase Two through the issuance of the building permit for the residential project that contains the 175th residential unit in Phase Two, the amount of ~~Twenty One~~ Hundred Seven Thousand ~~Four Hundred~~ Dollars (~~\$21,400~~107,000), as Indexed; and (B) ~~After each additional fifty (50) units, an additional~~ Twenty~~prior to the issuance of the building permit for the residential project that contains the 176th residential unit in Phase Two, an additional~~ One Hundred Seven Thousand ~~Four Hundred~~ Dollars (~~\$21,400~~107,000), as Indexed, up to a total maximum annual Phase Two payment total of Two Hundred Fourteen Thousand Dollars (\$214,000), as Indexed.

The Local Agency shall be entitled to draw on such Phase Two Deposit at any time if Landowner fails to Make the Phase Two Payments as described above.

Upon termination of Landowner's obligations under this Subsection 9.1 to provide and maintain the Phase Two Deposit and to make the Phase Two Payments all remaining Phase Two Deposit

amounts and/or security shall be released and returned to Landowner, and no further Phase Two Payments shall be required.

9.2 Phase Three. If neither a Certificate of Occupancy for a Membership Warehouse Store, as described above, or for development of a hotel as described in the Agreement on Block E, has been issued prior to issuance of ~~a Certificate of Occupancy~~the first building permit for the ~~fiftieth (50th)~~first residential project or unit in Phase Three, then Landowner shall make the following annual payments and provide and maintain the following deposits or security until such time thereafter as either: (1) a Certificate of Occupancy for a Membership Retail Store or for a hotel are issued, or (2) Landowner's obligations are triggered and Landowner provides the Phase Four Deposit as described in Subsection 9.3 below, at which time any Landowner obligations under this Subsection 9.2 shall terminate:

~~As a condition~~Prior to the issuance of ~~a Certificate of Occupancy~~the first building permit for the first residential project or unit in Phase Three, Landowner shall provide and maintain a cash deposit or letter of credit in such form as is reasonably approved by Local Agency's counsel in the total amount of Four Hundred One Thousand Eight Hundred Dollars (\$401,800), as Indexed (the "Phase Three Deposit"). If requested by Landowner, Local Agency may, in its sole discretion, accept a bond, guaranty, or other form of security in favor of the Local Agency of a type and form acceptable to the Local Agency's counsel.

~~After not less than fourteen (14) days prior written notice from Local Agency~~ Landowner shall pay to the Local Agency the following amounts on an annual basis (the "Phase Three Payments"): (A) ~~After issuance of a Certificate of Occupancy for the fiftieth (50th)~~prior to the issuance of the first building permit for the first residential project or unit in Phase Three through the issuance of the building permit for the residential project that includes the 175th residential unit in Phase Three, the amount of Fifty Seven Two Hundred Thousand Four Nine Hundred Dollars (~~\$57,400~~), as Indexed, and (B) ~~After each additional fifty (50) units, an additional Fifty Seven Thousand Four~~200,900, as Indexed; and (B) prior to the issuance of the building permit for the residential project that includes the 176th residential building permit in Phase Three, an additional Two Hundred Thousand Nine Hundred Dollars (~~\$57,400~~200,900), as Indexed, up to a total maximum annual Phase Three payment ~~total~~ of Four Hundred One Thousand Eight Hundred Dollars (\$401,800), as Indexed. Deposits and payments to Local Agency under this Section shall be in lieu of any further Phase Two Deposits or Phase Two Payments.

The Local Agency shall be entitled to draw on such Phase Three Deposit at any time if Landowner fails to Make the Phase Three Payments as described above.

Upon termination of Landowner's obligations under this Subsection 9.2 to provide and maintain the Phase Three Deposit and to make the Phase Three Payments, all remaining Phase Three Deposit amounts and/or security shall be released and returned to Landowner, and no further Phase Three Payments shall be required.

9.3 Phase Four. If neither a Certificate of Occupancy for a Membership Warehouse Store, as described above, or for development of a hotel as described in the Agreement on Block E, has been issued prior to issuance of ~~a Certificate of Occupancy~~the first building permit for the ~~fiftieth (50th)~~first residential project or unit in Phase Four, then, in place of the deposits and

obligations under Subsection 9.1 and 9.2 above, Landowner shall make the following deposits and payments until a Certificate of Occupancy for a Membership Retail Store or for a hotel are issued, at which time any Landowner obligation under this section shall terminate:

As a condition to the issuance of ~~a Certificate of Occupancy~~the first building permit for the first residential project or unit in Phase Four, Landowner shall provide and maintain a cash deposit or letter of credit in such form as is reasonably approved by Local Agency's counsel in the total amount of Three Hundred Fifteen Thousand Seven Hundred Dollars (\$315,700), as Indexed (the "Phase Four Deposit"). If requested by Landowner, Local Agency may, in its sole discretion, accept a bond, guaranty, or other form of security in favor of the Local Agency of a type and form acceptable to the Local Agency's counsel.

~~After not less than fourteen (14) days prior written notice from Local Agency~~ Landowner shall pay to the Local Agency the following amounts on an annual basis (the "Phase Four Payments"):

(A) ~~After issuance of a Certificate of Occupancy for the fiftieth (50th)~~prior to the issuance of the first building permit for the first residential project or unit in Phase Four through the issuance of the building permit for the residential project that includes the 122nd residential unit in Phase Four, the amount of ~~Forty Five Thousand One Hundred Fifty Seven Thousand Eight Hundred Fifty~~ Dollars (~~\$45,100~~), as Indexed, and (B) ~~Thereafter, after each additional fifty (50) units have obtained certificates of occupancy, an additional Forty Five Thousand~~157,850, as Indexed; and (B) prior to the issuance of the building permit for the residential project that includes the 123rd residential unit in Phase Four, an additional of One Hundred Fifty Seven Thousand Eight Hundred Fifty Dollars (~~\$45,100~~157,850), as Indexed, up to a total maximum annual ~~total~~Phase Four payment of Three Hundred Fifteen Thousand Seven Hundred Dollars (\$315,700), as Indexed. Deposits and payments to Local Agency under this ~~Subsection~~Section shall be in lieu of any further Phase ~~Two Deposits or Phase Two Payments or Phase~~ Three Deposits or Phase Three Payments.

The Local Agency shall be entitled to draw on such Phase Four Deposit at any time if Landowner fails to Make the Phase Four Payments as described above.

Upon termination of Landowner's obligations (upon issuance of a Certificate of Occupancy for a Membership Warehouse Store or a hotel) under this Subsection to provide and maintain the Phase Four Deposit and to make the Phase Four Payments all remaining Phase Four Deposit amounts and/or security shall be released and returned to Landowner, and no further Phase Four Payments shall be required.

9.4 Hotel Development. Although the Parties anticipate that a hotel should be developed and open for business as part of Phase Three, Landowner may develop the hotel in any of Phases Two, Three or Four.

10. Floodgates.

Two floodgates shall be constructed as shown in the Development Plan, one located at the north end of the Property and the other located south of the most southerly railroad crossing. The floodgates shall be dedicated to and operated and maintained by the Flood Control District.

The floodgates shall be installed prior to issuance of a Certificate of Occupancy for the first project that includes a residential unit.

11. Kaiser Road Landscape Median Improvements.

Landowner shall complete at its sole cost and expense improvements to Kaiser Road [insert description of improvements] (the “Kaiser Road Improvements”) prior to the issuance of the first building permit for any residential unit or structure in Phase Three. The Development Plan shall include a condition of approval that will require Landowner to obtain Local Agency approval of Improvement Plans for the Kaiser Road Improvements before construction of such improvements may begin, and shall require Local Agency inspection and approval of the Kaiser Road Improvements.

12. ~~11.~~ Phases – Generally

12.1 ~~11.1~~ Phase One. Membership Warehouse Store, Wetlands Restoration and Site Remediation and Fill Activities. The elements of Phase One, including the development of a Membership Warehouse Store use on Land Use Block F, associated gas station and a wetlands restoration area, are described Figure 1 of the Phasing Plan diagram, Attachment 1, to this Exhibit. Soil remediation and site grading shall be completed for development of the warehouse retail site. Wetlands restoration is contemplated within Phase One but must be completed no later than issuance of a Certificate of Occupancy for the first residential project in Phase Two.

12.2 ~~11.2~~ Phase Two. Residential and Commercial Development, Continuing Care Retirement Center, Open Space, including connection to Kennedy Park, and Drydocks. The elements of Phase Two are described in Figure 2 of the Phasing Plan diagram, Attachment 1 to this Exhibit. Development in Phase Two includes approximately 40,000 s.f. of neighborhood retail and restaurants, up to a total of 350 residential units on Blocks 11-13, Blocks 16-18, and a continuing care retirement complex on Block 10.

Prior to commencement of site grading for development in Phase Two, soil remediation for the entire Property shall be completed consistent with the Remedial Design and Implementation Plan attached to the 2011 Supplemental Draft Environmental Impact Report. Grading and filling shall be performed as needed for development of each Phase or sub-Phase and as described in Development Plan.

Phase Two Project Infrastructure includes the Kaiser Road segment from the Property entrance to Route 221. The two railroad crossings shown in the Phase Two Phasing Plan Diagram, and as further described in the Development Plan, shall be completed prior to issuance of a Certificate of Occupancy for the first residential project in Phase Two. Approvals for a third crossing should also be obtained at this time. The third crossing shall be installed in connection with the improvement of Block P5.

The pedestrian/bicycle connection to Kennedy Park and improvements to the drydocks (Block 14) should be provided as described in Section 3, above. Other improvements to associated Open Space shall be provided as described in Section 3, above.

12.3 ~~11.3~~ Phase Three. Residential and Commercial Development, Hotel, Third Railroad Crossing and Open Space. The elements of Phase Three are described in Figure 3 of the Phasing Plan diagram, Attachment 1 to this Exhibit.

Development in Phase Three includes a hotel, up to a total of 350 residential units on Blocks 3, 6, 9 and 19-~~22 and up to ninety thousand (90,000) gsf of office space and seventy-five thousand (75,000) gsf of warehouse/R&D development within the Industrial Zoning District on the Eastern Parcel, subject to all applicable zoning requirements for the applicable I:AC zone.~~22.

The improvements in Phase Three include a third railroad crossing and associated fencing and flood gates for pedestrian and bicycle use, as shown on the Phasing Plan Diagram and as described in the Development Plan. Such facilities shall be constructed in conjunction with the construction of Block P5 and P7.

Improvements to associated Open Space shall be provided as described in Section 3, above.

Concurrent with Phase Three or Phase Four, or subsequently, development may occur within the Industrial Zoning District on the Eastern Parcel, subject to all applicable Local Agency requirements for the I:AC zone, of up to ninety thousand (90,000) gsf of office space and seventy-five thousand (75,000) gsf of warehouse/R&D development. Development within the Industrial Zoning District is not tied to any Phase, and is subject to completion of applicable soil remediation and site grading.

12.4 ~~11.4~~ Phase Four. Residential and Commercial Development and Open Space. The elements of Phase Four are described in Figure 4 of the Phasing Plan diagram, Attachment 1 to this Exhibit, and in the Development Plan. Development in Phase Four includes the completion of commercial development on Blocks C & D immediately north of the hotel site, and up to a total of 245 residential units on Blocks 1, 2, 4, 5, 7, 8 and the balance of Block 15.

Open Space improvements shall be provided as described in Section 3, above. Notwithstanding the foregoing, development of the hotel may occur in any of Phases Two through Four and shall not be a prerequisite for commencement of any Phase.

12.5 ~~11.5~~ Phasing Flexibility. Subject to the pre-requisites for development of each Phase as identified in this Phasing Plan and Attachment 1 hereto, Development in another Phase may proceed prior to completion of the Project Infrastructure and Open Space identified for a prior Phase, provided that development of Project Infrastructure and Open Space remains consistent with the principles outlined herein, and that for each building project or sub-Phase previously initiated Landowner has committed in an associated Improvement Agreement to provide the as-needed or Adjacent Infrastructure and required Open Space and is otherwise proceeding in compliance with the requirements of the Affordable Housing Plan.

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