

Albany Shoreline Protection Initiative

The people of the City of Albany, California do ordain as follows:

SECTION 1. TITLE

This initiative shall be known as and may be cited as the "Albany Shoreline Protection Initiative."

SECTION 2. PURPOSE

The first purpose of this initiative is to protect and plan for preserving the entire Albany Waterfront to the maximum extent possible as an open-space resource for all to enjoy, with development to replace the revenues that the City of Albany (hereinafter referred to as the "City"), the Albany Library (hereinafter referred to as the "Library"), and the Albany Unified School District (hereinafter referred to as the "School District") now receive from this property. This initiative specifies guiding policies, processes, and procedures for future Waterfront planning to ensure that the community's desires for open space and Bay access at the Waterfront are incorporated in any plan for the future of the privately held property at the Albany Waterfront.

For purposes of this initiative, the "Albany Waterfront" is defined as all lands within the territorial boundaries of the City of Albany, California that lie west of the I80/580 Freeway. The mandates and restrictions of this initiative apply to those lands on the Albany Waterfront other than those owned by the City of Albany as of the date this initiative is submitted to the City, and other than those owned by the State of California or the East Bay Regional Park District. For purposes of this initiative, all lands on the Albany Waterfront that are not owned by the City of Albany as of February 27, 2006, and all lands on the Albany Waterfront that are not owned by the State of California or the East Bay Regional Park District are defined as and are referred to as "the privately held property at the Albany Waterfront."

The second purpose of this initiative is to inform present and future owners of the privately held property at the Albany Waterfront that the community's vision for this property is primarily open space and that no significant increases in intensity of present commercial, industrial, institutional, or residential (hereinafter collectively referred to as "commercial development") uses of those lands are acceptable.

SECTION 3. FINDINGS

The people of the City of Albany do deliberately find and declare the following:

- a. The privately held property at the Albany Waterfront comprises the largest and most significant remaining tract of land in the City suitable for development or as open space. The shoreline itself and associated open space are important resources both for the public as a whole and as amenities that would increase the value of any private development of the privately held property at the Albany Waterfront. Commercial development in close proximity to the shoreline can adversely affect the shoreline's value. Because of the large size, unique setting, and environmental significance of the Albany Waterfront, any change in its use may irreversibly alter the character and composition of the City.
- b. Because the Albany Waterfront is such a precious resource to the community and given that 1) the Albany community has, in previous public planning forums and processes, expressed the desire to protect the Albany shoreline as open space; and 2) this desire has not been adequately incorporated into the Albany General Plan, this initiative is necessary to ensure that the shoreline is protected in accord with the will of the citizens.
- c. There are 102 acres of privately held property at the Albany Waterfront. A map of this area is attached hereto as Exhibit A and incorporated herein by this reference. These 102 acres include the Golden Gate Fields Race Track (hereinafter referred to as the "Race Track"). According to the best information available, Magna Entertainment Corp. ("Magna") currently owns, controls, or operates those 102 acres, including the Race Track. This initiative applies to those 102 acres of property.
- d. Magna, with a Southern California developer, Caruso Affiliated, has proposed its own development on a portion of the privately held property at the Albany Waterfront.
- e. At racetrack sites that Magna owns in the state of California, Magna has proposed large-scale commercial developments. The scale of these developments is out of character with the City of Albany.
- f. Magna has also sought to establish casino gambling at its racetrack sites in the state of California. Magna was the sponsor of and largest

campaign contributor to the 2004 statewide ballot measure known as Proposition 68, which would have legalized Las Vegas-style Casino gambling and authorized the placement of up to 3,000 slot machines at the privately held property at the Albany Waterfront. Proposition 68 would have barred the City of Albany from prohibiting or regulating the placement of those slot machines at the site. The voters of Albany resoundingly rejected Proposition 68. These facts suggest that Magna intends to propose development for the privately held property at the Albany Waterfront that would be contrary to the expressed interests and desires of the people of Albany and contrary to Albany's General Plan and zoning laws.

- g. Magna has a documented history of selling off racing facilities at the other tracks it has owned. This raises questions about whether Magna intends to continue to operate racing at the Race Track.
- h. Any potential change in the use of the privately held property at the Albany Waterfront, particularly the closure of the Race Track, could affect the City's revenue and ability to meet its financial obligations. Planning for future uses on the privately held property at the Albany Waterfront must therefore take into account the potential fiscal impacts of any change in use. Planning for future uses now will ensure that the City will be prepared with updated planning policies for the area that would reduce the impact of revenue losses that would accompany a future closure of the Race Track.
- i. The citizens of Albany wish to plan the future development of the privately held property at the Albany Waterfront in order to protect Albany citizens' use and enjoyment of that property. Albany citizens also wish to make sure that, should the Race Track close, there is a comprehensive plan in place for ecologically sensitive development of all of the privately held property at the Albany Waterfront. This plan should protect the shoreline and the privately held property at the Albany Waterfront as an open-space resource for the enjoyment of all, as well as protecting the City's revenues and ability to meet its fiscal obligations.
- j. The establishment of additional forms of gambling beyond those already in operation on the privately held property at the Albany Waterfront as of February 27, 2006, including but not limited to gambling activities that would be associated with a Casino, would be incompatible with the ecologically sensitive future planned

development of the privately held property at the Albany Waterfront under this initiative.

- k. Unless carefully planned, large-scale commercial development of the privately held property at the Albany Waterfront would create serious and irremediable traffic impacts; would threaten the economic vitality of Albany's existing commercial main streets (Solano and San Pablo Avenues); and would pose immediate threats to public health, safety, and welfare. The traffic associated with the proposed development would have a significant impact on local and regional air quality and congestion on freeways and City streets, and would significantly increase the danger to pedestrians, including children walking to and from school, and bicyclists in the community. For these reasons, a moratorium on both development approvals and rezoning is necessary while the people of Albany plan, as specified in this initiative, for the future development of the privately held property at the Albany Waterfront.

SECTION 4. PROTECTION OF LEGAL RIGHTS

Notwithstanding their literal terms, the provisions of this initiative do not apply to the extent that the courts determine that if they were to be applied they would deprive any person of constitutional or statutory rights or privileges, or otherwise would be contrary to the United States or State of California Constitutions or laws. The purpose of this limitation is to make certain that this initiative does not infringe on any person's constitutional or legal rights or violate the law in any way, or subject the City of Albany to any legal liability.

SECTION 5. ADDITIONS TO THE GENERAL PLAN

The following Policy CROS 7.7 is hereby added to the Conservation, Recreation, & Open Space Element of the Albany General Plan:

CROS 7.7. Any future development or redevelopment of the privately held property at the Albany Waterfront shall only occur pursuant to a Specific Plan adopted in accordance with the process, procedures, goals, and policies enacted by the Albany Shoreline Protection Initiative.

ALBANY WATERFRONT PLANNING GOAL AND POLICIES

The following Goal and Policies are hereby incorporated into the Land Use Element of the Albany General Plan:

Goal LU 10: Ensure that the community's desires to protect open space and Bay access at the Waterfront are incorporated in any plan for the future of the privately held property at the Albany Waterfront.

Policies:

LU 10.1 To protect the shoreline and its resource value and to provide, to the maximum extent possible, full and open access to the shoreline, and to preserve the existing open-space character of the shoreline, all approved commercial development on the privately held property at the Albany Waterfront shall be set back from the water's edge. This setback shall be a minimum of 500 feet from the San Francisco Bay Conservation and Development Commission ("BCDC") 100-foot shoreline jurisdictional limit. This setback shall run along the entire west shoreline northward from the Berkeley border to Buchanan Street or to the area in

the Eastshore State Park commonly known as the Plateau, whichever is farthest north. This 500-foot setback shall govern all the privately held property at the Albany Waterfront but shall not apply to the northern or eastern border of the privately held property on the Albany Waterfront. A small nature interpretive center that may include a café or restaurant, and recreational facilities for kayaking and other small watercraft (consistent with BCDC policies), shall be allowed to be located within the 500-foot setback.

LU 10.2 Any zoning or Specific Plan for the privately held property at the Albany Waterfront shall make provisions for maximizing the Waterfront as an open-space resource and maximizing public access to the extent feasible. Any such zoning or Specific Plan shall designate a large portion of the privately held property at the Albany Waterfront as open space, to preserve as much as possible the existing open space of the Race Track and the privately held property at the Albany Waterfront. Furthermore, any zoning or Specific Plan should also minimize visual impacts of any commercial development.

LU 10.3 The total amount of square footage and nature of uses for commercial development within the privately held property at the Albany Waterfront shall be minimized, consistent with allowing the property owner to obtain a return on its investment that meets statutory and constitutional mandates on the protection of private property rights, but at the same time consistent with the purpose and intent of the Albany Shoreline Protection Initiative.

LU 10.4 The purpose of any approved commercial development within the privately held property at the Albany Waterfront is to provide sufficient revenues to at least replace the annual revenues that the City, School District, and Library are receiving as of November 7, 2006 from the uses of the privately held property at the Albany Waterfront.

LU 10.5 All forms of gambling shall be prohibited at the Albany Waterfront with the exception of pari-mutuel betting on horse races and the operation of related satellite wagering facilities for pari-mutuel betting on horse races. This prohibition includes, but is not limited to, the following specific types of games: slot machines, poker (all forms), blackjack, video poker, Pai Gow (poker and tiles), other forms of sports betting, baccarat, craps, roulette, keno, pachinko, and any kind of bingo.

SECTION 6. PLANNING PROCESS

Effective upon passage of this initiative, the City shall immediately initiate a Shoreline Protection Planning Process, as defined below, for the purpose of creating a Specific Plan and, if necessary, corresponding General Plan amendment(s) and Zoning Ordinance amendment(s) for the privately held property at the Albany Waterfront. Upon completion of the Shoreline Protection Planning Process and adoption, Subject to Measure C, of the resulting Specific Plan and, if necessary, General Plan Amendment(s), the zoning for the privately held property at the Albany Waterfront shall be amended to be consistent with the Specific Plan and General Plan amendment(s).

SECTION 7. GUARANTEED VOTE OF THE PEOPLE ON THE RESULTS OF THE SHORELINE PROTECTION PLANNING PROCESS AS REQUIRED UNDER MEASURE C

Nothing in this initiative abrogates Measure C, the Citizens Waterfront Approval Initiative. The Specific Plan and any necessary amendment(s) to the General Plan and City's Zoning Ordinance shall be placed on the ballot as a single measure and put to a vote of the people as required by Measure C. This vote shall take place at the next regularly scheduled City municipal election following the completion of the Shoreline Protection Planning Process and the approval by the Albany City Council for placement on the ballot of the Specific Plan and any necessary amendment(s) to the General Plan and City's Zoning Ordinance. Measure C shall apply to any adopted Specific Plan in order to ensure that the voters retain the right to vote on any future changes to the Specific Plan for the privately held property at the Albany Waterfront.

SECTION 8. SHORELINE PROTECTION PLANNING PROCESS

a. Purpose

The purpose of the Shoreline Protection Planning Process is to prepare a Specific Plan for the privately held property at the Albany Waterfront. This advance planning for the property's future development is intended to allow sufficient time for a comprehensive planning process that maximizes public participation and balances the community's desire for sustainable development and preservation of publicly accessible open space with the desire to ensure the protection of the City's revenues and ability to meet its fiscal obligations.

b. Composition of Citizens' Task Force to Guide the Shoreline Protection Planning Process

Upon passage of this initiative, the City's Planning Agency shall immediately begin a planning process for the privately held property at the Albany Waterfront. The planning process shall be facilitated by a Citizens' Task Force under the auspices of the City's Planning Agency. The roles of the Task Force are: 1) to manage the process of retaining a consultant with experience in sustainable development, community outreach, and open-space planning who will facilitate a community planning process for the privately held property at the Albany Waterfront; and 2) to preside over the preparation of the Specific Plan.

The Task Force's duties include: preparing the written solicitation (Request for Proposals) for the consultant, selecting the consultant, and overseeing the preparation of the Specific Plan. The Task Force has final approval of the language of the Specific Plan that is to be delivered to the City for placement on the ballot under Measure C. The Task Force shall serve as the Lead Agency under the California Environmental Quality Act (CEQA). Pursuant to CEQA, an Environmental Impact Report shall be prepared for the Specific Plan and any associated General Plan or Zoning Ordinance amendment(s).

The consultant's duties are: to facilitate the public process for the Task Force and to prepare the Specific Plan and its associated environmental review documents, all of which are subject to final approval by the Task Force. The consultant will also carry out or arrange to have carried out a competent economic feasibility study or studies to determine: 1) the minimum amount of development on the privately held property at the Albany Waterfront that is necessary to avoid a taking of the property owner's constitutional rights, and 2) the amount and most appropriate type of development to replace the revenues that the City, Library, and School District receive from the property as of the effective date of this initiative.

The Citizens' Task Force shall be made up of nine (9) Albany voters: one appointed by each member of the City Council, and one appointed by each of the following environmental groups: Citizens for the Albany Shoreline, Sustainable Albany, Citizens for East Shore Parks, and the Sierra Club. It is not necessary that the representative appointed by each organization be a member of that organization.

The City shall supply appropriate staff and legal counsel to the Citizens' Task Force.

c. Appointment of Task Force Members

All members of the Task Force shall be appointed within 30 days of the effective date of this initiative. The Task Force shall begin its work upon appointment of a sufficient number of members to constitute a quorum as defined below.

Except for the City Council, which shall appoint its members pursuant to its rules, each of the other organizations shall appoint a person as its representative on the Citizens' Task Force. The Planning Agency must accept the person that each respective organization appoints unless that person is not a registered voter in the City of Albany. Each person so appointed shall serve through the life of the Citizens' Task Force and so long as he or she remains a registered Albany voter or until he or she resigns or is incapacitated and can no longer function on the Task Force. An organization may elect not to appoint anyone or may be unable to appoint a person who qualifies as a Task Force member, in which case that position shall remain vacant until such time as that organization appoints a qualified person. Vacancies during the term of the Task Force shall be filled through the same process and criteria as set forth above. Upon voter approval of the Specific Plan and any accompanying General Plan amendment(s) and amendment(s) to the City Zoning Ordinance(s) governing future development of the privately held property at the Albany Waterfront in accordance with the provisions of this initiative, the Task Force shall be dissolved.

d. Guiding Principles for Specific Plan

In addition to the public comment presented at the open hearings held as part of the planning process, the following principles shall guide the Task Force in preparing the Specific Plan so that the Plan protects and restores wildlife habitat and provides for recreational enjoyment of the waterfront. To the maximum extent feasible, the Plan should provide for the following: reopening and restoration of creeks, restoration of wetlands and other habitats, natural expansion of existing beach and dunes, location of a small nature interpretive center that may include a restaurant or café within the 500-foot setback, location of recreational facilities for kayaks and other small watercraft (consistent with BCDC policies) at the water's edge, public art, public restroom facilities, and completion of the San Francisco Bay Trail. The Task Force should also address needs for ballfields, hiking and bicycling opportunities, off-leash dog areas, and play areas within the privately held property at the Albany Waterfront.

All development approved on the privately held property at the Albany Waterfront should adhere to ecologically sensitive, sustainable principles in building, landscaping, and transportation, including use of renewable energy and employment of recycling, reuse, and conservation practices, and should, at a minimum, qualify for Silver Leadership in Energy and Environmental Design (LEED) certification and, whenever feasible, Platinum LEED certification. Simple buildings, such as restrooms, that are not typically assessed for LEED certification, do not have to meet the LEED requirement but should be designed consistent with LEED principles to the degree feasible.

e. Meetings

The Citizens' Task Force shall determine the number and nature of all meetings, but it shall be required to have a minimum of five open community meetings to collect public comment for use in preparing the Specific Plan and two public hearings on the draft Specific Plan prior to the Task Force's approval of the Specific Plan. The Task Force shall also accept public comment in writing. The Citizens' Task Force shall comply with California's Open Meeting Law known as the Brown Act. Five members will constitute a quorum of the Task Force.

f. Approval Process

After the completion of the Shoreline Protection Planning Process and approval by a majority vote of the Citizens' Task Force, the Specific Plan, any accompanying General Plan Amendment(s) and amendment(s) to the City Zoning Ordinance(s), and their environmental review documentation, shall be forwarded to the City Council for consideration following the appropriate City and State procedures for such plans. The Albany City Council shall hold at least one public hearing on the Specific Plan and any accompanying General Plan amendment(s) and amendment(s) to the City Zoning Ordinance(s) and shall review the Specific Plan and any accompanying General Plan amendment(s) and amendment(s) to the City Zoning Ordinance(s) for compliance with the requirements of State planning law and this initiative. Upon determining that the Specific Plan and any accompanying General Plan amendment(s) and amendment(s) to the City Zoning Ordinance(s) meet legal requirements, the Albany City Council shall order the Specific Plan and any accompanying General Plan and Zoning Ordinance amendment(s) placed on the ballot for consideration by the voters of Albany at the next regularly scheduled City municipal election following the submission of the Specific Plan to the Albany City Council.

Neither the Albany Planning and Zoning Commission nor Albany City Council may approve any amendments or changes to the proposed Specific Plan or any associated amendment(s) to the General Plan or the City's Zoning Ordinance before placing them on the ballot, except upon a four-fifths vote by each body.

SECTION 9. MORATORIUM ON APPROVALS AND REZONING DURING PLANNING PROCESS

In order to give the Citizens' Task Force the time and opportunity to develop the plan for the future of the privately held property at the Albany Waterfront, immediately upon passage of this initiative, there shall be a moratorium on any approvals for any development of the privately held property at the Albany Waterfront, including any that are then pending. In addition, immediately upon passage of this initiative, there shall be a moratorium on consideration of any rezoning of the privately held property at the Albany Waterfront. These moratoria on development approvals and rezoning for the privately held property at the Albany Waterfront shall be effective for a period of two years or until the Specific Plan for the privately held property at the Albany Waterfront is approved by the people of Albany pursuant to Measure C, whichever occurs first.

SECTION 10. SEVERABILITY

If any section, subsection, part, subpart, paragraph, subparagraph, clause, or phrase of this ordinance or any revision of this ordinance is for any reason held to be invalid, it is the intent of the People of Albany that the remaining portions shall not be affected, but remain in full force and effect.

SECTION 11. EFFECTIVE DATE

If adopted, this ordinance shall become effective on the earliest possible date mandated by State law.