

**MINUTES APPROVED AT THE DRB MEETING ON JUNE 1, 2023**

**PLANNING COMMISSION REGULAR MEETING  
COUNCIL CHAMBERS, RICHMOND CITY HALL**

Teleconference  
March 16, 2023  
6:30 p.m.

**COMMISSION MEMBERS**

David Tucker, Chair	Jen Loy	Vacant
Jonathan Harrison, Vice Chair	Masoomah Sharifi Soofiani	
Bruce Brubaker, Secretary	Alpa Agarwal	

The regular meeting was called to order by Chair Tucker at 6:30 p.m.

**ROLL CALL**

**Present:** Chair Tucker; Vice Chair Jonathan Harrison; Commissioners Bruce Brubaker, Masoomah Sharifi Soofiani and Alpa Agarwal

**Absent:** Commissioner Jen Loy

**INTRODUCTIONS**

**Staff Present:** Planning Staff: Roberta Feliciano, Lydia Elias, Director of Community Development Lina Velasco, Attorney Allen Cohen and Attorney Pam Lee

**MINUTES –**  
February 16, 2023

**ACTION: It was M/S/C (Brubaker, Harrison) to approve November 21, 2022 draft meeting minutes, which carried by the following vote: 3-0-2-1 (Ayes: Harrison, Brubaker, Soofiani; Noes: None; Abstain: Tucker, Agarwal; Absent: Loy).**

**AGENDA**

Chair Tucker said items approved by the Commission may be appealed in writing to the City Clerk by Monday, March 27, 2023, by 5:00 p.m.

**CONSENT CALENDAR –**

Chair Tucker gave a brief overview of the consent calendar’s policies and procedures.

- 1. PLN22-373: Food Mart CUP Amendment PUBLIC HEARING** to consider a Conditional Use Permit amendment which would allow the sale of distilled spirits in addition to beer and wine at 4251 Hilltop Drive (APN: 426-292-024). CM-2, Commercial Mixed-Use, Neighborhood District. Hari Kalra, owner/applicant Planner: Lydia Elias Tentative Recommendation: Conditional Approval

Chair Tucker announced that the Commission’s decision could be appealed to the City Council.

**ACTION: It was M/S/C (Brubaker, Harrison) to approve the Consent Calendar as written, which carried by the following vote: 5-01 (Ayes: Tucker, Harrison, Brubaker, Soofiani, Agarwal; Noes: None; Absent: Loy).**

### **BROWN ACT – Public Forum**

CORDELL HINDLER emphasized that all applicants must solicit feedback from their project's associated neighborhood council before presenting their project to the City.

### **NEW BUSINESS**

- 2. PLN21-444: Brickyard Cove Residential Project PUBLIC HEARING** to consider approval of a Vesting Tentative Map, Major Design Review Permit, and Density Bonus waivers to certain development standards for a 94-unit townhome project consisting of nineteen, three-story buildings and related site improvements on a 5.9-acre site. The city has prepared an environmental checklist for this project pursuant to CEQA guidelines sections 15168 and 15183. The checklist and other project related materials are available for review on the project website ( <https://www.ci.richmond.ca.us/4349/brickyard-cove-residential-project> ). The project is located at the vacant lot on northside of Brickyard Cove Road, between Seacliff Estates and Brickyard Landing (APNs: 560-340-043 and 560-340-039). RM1, Multifamily Residential, PA, Planned Area District. Pacific Gas & Electric Co, owner; Republic Brickyard LLC, applicant Planner: Hector Rojas Tentative Recommendation: Conditional Approval

Vice Chair Harrison recused himself from the item due to his home being within 500 feet of the project.

Chair Tucker explained that staff would provide their report, the applicant would then give their presentation, applicant supporters would provide their comments and then one primary speaker in opposition would provide their comment. The applicant was then allowed time to respond to comments, staff would provide a summary and then the Commission would begin their discussion.

Ms. Velasco reported the recommended action was to hold a public hearing and then adopt the Resolution to recommend approval of the project. The project site is located between Seacliff Estates and Brickyard Landing and consisted of two vacant parcels that totaled six acres. The proposed project was to construct 94 residential units which included 10 percent of the units being affordable units to households with moderate incomes. The proposed three-story townhomes were to be housed in 19 residential buildings and ranged in size from 1,380 to 1,735 square feet (sf). The development also included a 4,600 sf residential community building that included a clubroom, fitness room, pool, spa, barbeques and gaming tables. The residential community building was to be privately owned and maintained by the development but open to the public. The landscape included a small community garden and public art elements throughout the project site. The applicant proposed to make improvements to the Bay Trail including a seating area and interpretive signs. The application included waivers that were allowed under the State Density Bonus Law and lastly, all the buildings were proposed to be electric and have rooftop photovoltaics.

Ms. Velasco summarized the site plan. The proposed driveway was to be off of Brickyard Cove Road with the clubhouse also being off of Brickyard Cove Road. The development included a central circle and a series of alleyways that accessed the unit's garages.

With respect to the architectural plans, Ms. Velasco shared that the townhomes and clubhouse featured cementitious shingle siding, horizontal siding, plaster and composition shingles on the rooves. There were four color schemes proposed that were a combination of browns, blues, greens, greys and tans. Each townhome would have its own access point on the two-story frontage and then the rear portion of the building was to be three stories.

With respect to landscaping, Ms. Velasco mentioned it included native and low-water plants with an organic design to reflect a coastal character. The lighting proposed would include post fixtures, wall-mounted lighting and bollard fixtures. At the entryway, a new monument sign was proposed as well as a retaining wall and biotreatment facilities. Any exterior common areas outside of the clubhouse would include year-round amenities for residents.

The Vesting Tentative Map was proposed for condominiums and included 20 buildings with 23 lots in total.

Ms. Velasco remarked the application included nine waivers under State Density Bonus Law. In general, the waivers addressed the increase in building height, decrease in setbacks, upward story massing, private open space and minimum private open space. The project did meet the qualifications for the State Density Bonus Law and under the law the development was entitled to an unlimited number of waivers. She noted that the concessions, waivers, parking reductions and additional densities did not result in the project being incompatible with zoning or applicable Objective Standards. No additional reports or studies could be recommended for a density bonus application with respect to waivers. The City could only deny waivers if it could make written findings that the waivers would violate state or federal law, have adverse impacts to a historic structure, or have an adverse effect on health or safety that could not be mitigated.

With respect to comments that have been raised, Ms. Velasco noted the project proposed to import 68,100 cubic yards of fill to the site. Staff calculated it would take 5,238 truck trips over the 5-month construction period to bring the fill dirt to the site. The proposed truck route was exiting Canal Boulevard via Interstate 580 and then traveling Seacliff Drive to Brickyard Cove Road. The hours of construction were to be limited to weekdays from 7:00 am to 6:00 pm per the City's Municipal Code. Based on the Environmental Checklist construction activities would not exceed Bay Area Air Quality Management District's (BAAQMD) thresholds and with mitigations would be deemed less than significant. With respect to the Geotechnical Study concerns, Cornerstone Earth Group did a geotechnical investigation in April of 2022. The report recommended that residential structures be supported by post-tension concrete mat foundations. It also recommended that retaining walls be supported by drilled, cast-in-place, straight-shaft friction piers and imported soil for fill should be inorganic with a Plasticity Index of 23 or less. With those recommendations, it was determined that there would be no significant geological impacts.

Ms. Elizabeth Johnson, Senior Project Manager with FirstCarbon Solutions, presented the California Environmental Quality Act (CEQA) document. She reported that CEQA provides a streamlined review for certain circumstances. Those circumstances applied to projects that had a prior certified Environmental Impact Report (EIR), such as a General Plan EIR. Also, when a project was consistent with the development density established by the existing zoning, community plan, or general plan policies for which the EIR was certified. The proposed project

was consistent with the Medium-Density Residential (MDR) density established in the General Plan for the project site.

The City prepared a consistency checklist to evaluate whether the project was eligible for streamlined review. Several factors were considered in making the checklist including, but not limited to, whether there would be new significant effects that were not previously evaluated in the General Plan EIR and whether there would be new significant off-site impacts that were not evaluated in the General Plan EIR. As illustrated in the checklist the proposed project was found to be in conformance with the analysis and conclusions of the General Plan EIR. The proposed project was found to be within the scope of the General Plan, General Plan EIR and no further CEQA documentation is required.

To respond to concerns raised about air quality impacts during grading and construction, a Health Risk Assessment (HRA) was conducted. The HRA recommended mitigation measures that would reduce impacts to less than significant and would ensure compliance with BAAQMD's thresholds. Those recommendations addressed off-road construction equipment with engines greater than 100 horsepower, off-road construction equipment with engines equal to or less than 100 horsepower, watering twice a day to mitigate dust and limiting construction vehicle speeds to 15 miles per hour on unpaved roads.

Other community concerns pertained to the structural stability and road surface conditions. The Geotechnical Investigation determined that the project would not present any new or more impacts than those anticipated for the proposed density in the General Plan EIR. Also, the project could be constructed safely if the proposed design recommendations from Cornerstone were implemented. With respect to road surface conditions, the City required an assessment of the conditions of the roadway before and after construction. The City would then calculate the project's fair share of any required repairs and the amount must be paid before the City issued a final Certificate of Occupancy.

Ms. Johnson concluded that the Environmental Checklist and supporting information were peer-reviewed by Douglas Herring and Associates. They determined that the consistency of the checklist sufficiently supported the conclusion that the project could be streamlined through CEQA.

Ms. Velasco reported the Design Review Board (DRB) reviewed the project on February 22, 2023. The DRB had reservations regarding the housing type and believed it was driving the amount of import fill that was being proposed. They recommended the amount of fill be considered by the Planning Commission. They moved and passed a motion of recommendation to the Planning Commission to approve the Major Design Review with four additional conditions related to colors, the finish of the exposed metals as well as a reduction in imported fill materials and the removal of opaque panels on the bathroom window on the 3<sup>rd</sup> level.

Chair Tucker invited Commissioners to ask questions of staff.

Commissioner Agarwal found the presentations to be very informational. She asked staff to explain the concerns around the amount of fill that was being proposed. Ms. Velasco emphasized that the project must be considered as designed per the State Density Bonus Law and there were no prohibitions for imported fill. She noted the amount of imported fill did not violate any City, state, or federal regulations and fell under the CEQA threshold.

Commissioner Soofiani asked if the Commission could impose new conditions to reduce the amount of imported fill and she wanted to understand the rationale behind the amount of imported fill being proposed. Ms. Pam Lee, an Attorney, answered the City and the Planning Commission had the discretion to approve or deny the project so long as the denial fit within the parameters of the State Density Bonus Law as well as the Housing Accountability Act (HAA). Any new conditions must be objective, written and qualifiable standards to be implemented by the developer to move the project forward as designed.

Commissioner Agarwal invited staff to elaborate on air quality and proposed mitigation measures. Ms. Velasco restated the major mitigation was the requirement for T4 engines and that applied to most of the construction grading equipment on the site. The proposed mitigation was a standard condition applied to most major construction projects.

Chair Tucker asked when the Certified EIR was approved and Ms. Velasco answered the General Plan EIR was approved in 2012. Chair Tucker asked if there were any major changes in the area within the last 10 years. Ms. Velasco restated the project does not result in a more severe or new impact that was not identified in the General Plan EIR based on the Environmental Checklist.

Chair Tucker invited the applicant to share their presentation.

Ms. Melissa Durkin, Republic Urban Properties, applicant, reported Republic Urban Properties was based in the City of San Jose and specialized in mixed-use apartment projects. The company had been recognized as being a top Bay Area developer.

Ms. Durkin remarked that the site was previously used by PG&E to house a 379-foot tall gas tank until 1989. PG&E had removed a portion of the hillside to accommodate the tank and Republic Urban Properties proposed to restore the hillside to a more natural state. The site was currently zoned for medium-density residential which was intended to be for single-family and multi-family housing. The proposed development had a density of 15.6 dwelling units (du) per acre which was consistent with the General Plan and zoning. Per the State Density Bonus Law, 10 percent of the units were designated as affordable units for moderate-income households. The estimated sales price for the units was 60 to 70 percent of the market value. The project was not requesting additional density but had proposed waivers to be used to deviate from the RM-1 Zoning District.

Ms. Durkin summarized the proposed project, as shared by staff during their presentation. The proposed buildings were to be approximately 38 feet in height and included two and three-bedroom units. The project met the City's current parking requirement of 182 parking stalls. Also, each unit had a two-car garage and guest parking was provided throughout the site. As simulated, the project would not impact views from the existing trail network and the proposed height and massing were compatible with the existing neighborhood.

Leading up to the DRB hearing, the applicant worked with several members of the DRB on the site plan and architecture. The DRB recommended four additional conditions which the applicant is amendable to. She presented the new color palette that was based on the DRB's comments which reduced the vertical element's appearance but provided subtle differences in the change of materials.

With respect to import fill, the fill proposed would restore the natural hillside slope in order to match the character of the adjacent hillside residential project. If the fill were not approved, the

project would lose roughly 30 units or more which would render the project financially infeasible to build. Ms. Durkin acknowledged the concern about the amount of infill and noted that the site grading has been redesigned several times to reduce the amount of infill needed. She noted as the site is lowered and fill is reduced. The retaining walls at the back of the site becomes larger. With that said, the proposal was to construct three, 11 foot retaining walls at the back of the site which allowed the site to be dropped an additional 3 feet. This equated to a decrease in the amount fill by 30 percent less than the proposal shared with the DRB.

Ms. Durkin restated the landscaping would include native plants and trees. Also, the project included tree-lined streets, pedestrian paseos and seating throughout the site. All parameter trees would not exceed the building's height. The public art program proposed for the site complied with the City's existing Public Art Ordinance. The art would reflect the historical context and bay setting, include a variety of art types and use local artists and the community to construct the artwork. Also, the project proposed to make improvements to the Bay Trail at the front of the site.

With respect to construction, Ms. Durkin acknowledged the concerns about the number of truck trips to the site. She emphasized the environmental document had demonstrated that the project will be able to mitigate potential impacts.

In conclusion, Ms. Durkin played a short video that shared the site plan and highlighted the community benefits.

Chair Tucker inquired if 48,000 cubic yards was the new amount of fill needed for the site and what was the new number for potential truck trips. Ms. Durkin confirmed that 48,000 cubic yards was the new total. Mr. Reyad Katwan, Republic Urban Properties, remarked the number of truckloads did not change with the new amount but it reduced the number of days. The amount of dirt that could be placed in a truck was regulated by the state and that was 13 yards per truck. At 2,000 yards per day, it would take 24 days to reach the required amount of 48,000 cubic yards. By reducing the fill, that reduced the number of truck delivery days by 10 days.

Chair Tucker invited members of the public in support of the project to share their comments.

Public Comment:

NELLS DELLENDER [phonetics] [microphone was not on; his comments could not be heard – 1:02:18 through 1:03:32] stated the developer has committed to the community by committing to hiring locals.

SHAWN BELLI [phonetics] acknowledged that Richmond needed more housing, the project also brought jobs to the community and he supported the project.

KYLE SWARENS, the field representative for Carpenters Local 152, stated many of the 300 carpenters in the union supported the project. The statement that many projects built in the City were union jobs was false. Many of the jobs paid low wages and did not provide health care. The project has committed to hiring union workers, to pay prevailing wages and provide healthcare. The project has heard the residents and has made changes to the project based on those comments. He strongly encouraged the Commission to recommend approval of the project.

TERAK SMITH supported the project because of the commitment the applicants have made to hire folks from the apprenticeship program.

Chair Tucker invited comments from the speakers in opposition of the project.

JEFF VINES, Brickyard Cove Alliance for Responsible Development (BCARD), remarked the site adjacent to Brickyard Landing will cause a significant impact on residents due to the project's size, massing and proposed grading. The residents believed that the retaining wall near Brickyard Landing will be at constant risk of collapse and will cause drainage issues. Other impacts caused by the size of the buildings would be a reduction in light and air to neighboring residences as well as a reduction in property values.

TIM KNOWLES, BCARD, stated the developer requested waivers for the height of the buildings to be increased. The staff report was incorrect that fill would create a buffer from residential contamination but the RWQB (Regional Water Quality Control Board) says no fill is required. The City can deny a waiver if it would create a specific adverse impact on public health or safety if there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Though it had been decreased again, the fill amount proposed for the site would have tremendous impacts on public health and safety. Those impacts included truck trips, dust, emergency ingress and egress, noise, hydrocompression, settlement and slope stability and many others. He noted another way the City could deny the waivers was to demonstrate that the project could be built without the request for waivers. He emphasized in the Density Bonus Law statute there was no phrase "as designed" as emphasized by staff. He shared a design that did not need imported fill and resulted in 103 units instead of 94. The alternative project was less impactful on the community and was more aligned with the General Plan's goals, policies and actions. He stated the community supported the project if it did not include an egregious amount of fill.

ROBERT KISH, BCARD, shared he submitted to the City a six page analysis that highlighted the impacts in more detail. The CEQA review for the project was inappropriate and inadequate in its findings. A Project EIR should have been done because it would have considered the environmental impacts of the specific project. The EIR did not consider the amount of dust that will be spread by the wind and it did not consider cumulative effects.

Mr. Vines concluded that BCARD recommends denial of the waiver and application as well as require a full Project-Specific EIR and that the applicant considers a project that does not include fill.

Chair Tucker invited Commissioners to ask questions of folks in opposition to the project.

Commissioner Agarwal inquired if the members of the public in the audience wearing orange vests were in support of the project and they responded yes.

Chair Tucker invited members of the public in opposition to the project to share their comments.

BRIAN LEWIS requested the Commission deny the application and required a full Project-Specific EIR. He noted the 3-foot reduction in height was only a 5 percent reduction in the other all heights. With the fill and buildings, the project will be roughly 83 feet in height. The proposed alternative presented resulted in no fill, less massing and fit more into the surrounding community. If approved, the residents request that no more than 25 percent of the units be rentals and no short-term rentals.

LEISA JOHNSON agreed the project should be denied and undergo a Project-Specific EIR. Richmond has a reputation of not considering projects through the lens of a Project-Specific EIR and has failed to protect its residents for over a decade. The City has failed to track emissions and air quality from several major projects in the City and has jeopardized residents' health and safety for years.

C. MICHAEL LETTERER [phonetics], a resident of Brickyard Cove, stated his optimism that the project could be constructed due to the amount of support from residents to see the site develop into housing. The main hurdle was the amount of fill proposed and he encouraged the Commission to deny the application and seek a project that did not require large amounts of fill.

AMY HENDERSHOT greatly supported developing the land but not a development that towered above adjacent properties. She shared the concern that the trucks coming to and from the site will block ingress and egress for emergencies.

STEVE [no last name], a resident of Brickyard Landing, could not support the project due to the lack of accessibility for disabled folks. He asked what assurance did the City have that the affordable units will remain affordable. He requested the Commission to deny the project as submitted.

JONATHAN LIVINGSTON, resident of Brickyard Cove, remarked many residents of the Brickyard Cove community provided input to the 2012 General Plan and a large section of the plan covered sustainability. The staff report did not mention any of those goals and policies and they were not considered against the proposed project. The proposed project was the worst possible example of a project that meets those goals and policies.

JOHN GULLICK [phonetics], a resident of Brickyard Landing, understood from the presentation that only the trucks on site would be T4 compliant, not the trucks delivering soil. He believed an engineer could not properly assess the safety of a project if there was no project and a proper EIR must be drafted. The Brickyard Landing community was currently in the process of restoring the historically Brickyard buildings and those were not considered. Last point he shared was that Richmond must live up to their commitment and fix the train blockages and road maintenance.

IDA ABLESON shared a quote from the Governor's Office of Planning and Research regarding CEQA and its intention to inform the government and public about environmental impacts. She believed the Planning Department had actively worked to stop the public from receiving environmental information. The public was only given access to the 3,000 plus page documents five days before the meeting and the Planning Department denied a request that the documents be released earlier. She requested the meeting be continued to allow the public time to digest the documents and provide thorough comments.

AMANDA BRUMM, a resident of Point Richmond, echoed the previous speaker's concerns about air quality and the concern that only trucks on site would be required to be T4 compliant. Also, the area's constrained ingress and egress as well as the comments regarding the amount of fill proposed. She recommended the Commission deny the application as proposed.

JEFF SHOOKISS [phonetics] agreed the City needs more housing and the site in question was a great site for housing. The proposed project was less than sufficient in the eyes of neighbors

and the City's guidance to the Commission regarding the Density Bonus Law was incorrect. He wanted to see a project that was legal and properly built which required a proper EIR.

CLARK VALMAN, a resident of Brickyard Landing, mentioned that residents in the neighborhood often experience petroleum odors at their homes, odors from the gypsum site and sewer gas from the nearby sewage treatment plant. That impact should be considered along with the amount of fill proposed for the site.

DON SMITH remarked the EIR used was 10 years old and 10 years ago there was no landslide hovering above the Seacliff community. He argued if the plan was to restore the hillside to a more natural state then retaining walls would not be needed along Brickyard Cove. He found the argument that watering the site twice a day will mitigate the hazard of dust. He supported the proposal that the applicant will hold a bond for 30 years to cover possible problems.

PAT ARMER, a resident of Brickyard Landing, stated the main objection to the project was the large amount of fill needed for the project and how that will affect the health and livability of nearby residents. She encouraged the City to consider the design presented by the residents that do not require fill.

DAVE LUCKINGER echoed the comments regarding the amount of fill, the impacts it will have on the community and the increased height. He mentioned he submitted a plan to the developer that did not require fill and provided fire truck access.

CHRIS COOK, a resident of Seacliff, urged the Commission to evaluate the information presented to them and continue the meeting. He found the process disappointing and expressed his disappointment in the City's staff.

CATHERINE DEENST [phonetics], a resident of Seacliff, recommended the Commission reject the project due to a lack of proper ingress and egress. With respect to imported fill, she echoed the safety concerns regarding fill settlement. She concluded with the additional trucks, the park associated with the Seacliff community will be unusable.

RICHARD ROSENTHAL stressed that currently, the land elevation was continuous along the boundary fence between Brickyard Landing and the development site. The developer was proposing to level the site and leave a cliff along the Brickyard Landing border. He found it hard to believe that the General Plan EIR considered the amount of earth movement being proposed. Also, even with continued requests, the developer had failed to erect story poles and had failed to provide any imagery of how the project would visually appear to the surrounding residents. Lastly, a long conversation at the DRB meeting between the Board and developer took place without any input from the community attending the meeting.

JACK LEEPSTER believed the CEQA Environmental Checklist findings for the project should be rejected due to them being incomplete and inconsistent with the facts. The existing General Plan EIR did not adequately consider the amount of cut and fill dirt required for the project. By law, a supplemental EIR was warranted before the Commission could take any action on the project.

KASEY STILL, a resident of Brickyard Landing and a union member, was very happy to hear that the applicant had committed to hiring union laborers. She requested that the meeting be continued to allow the public more time to digest the documents in the staff report. She supported having a project-specific EIR due to the age of the existing EIR the project was being

based on. She echoed the comments regarding the air pollutants that the residents of Brickyard Landing had to endure every day.

RITA GARDNER, a resident of Brickyard Landing, was shocked to hear that the trucks carrying the dirt to the site would be diesel trucks. She encouraged the Commission to not approve the project as designed.

HUGH KALEY, a resident of Seacliff, believed a proper and up to date EIR should be done before a decision is made. As stated by many speakers, everyone wanted to see the site developed but was not supportive of the extra fill. Also, having diesel trucks coming in for months on end was unacceptable.

HELEN BABOLIS, a resident of Brickyard Cove, [phonetics] asked the Commission not to approve the project as designed. The many impacts highlighted by the previous speakers will greatly disrupt the resident's quality of life.

DASH KETHLY [phonetics], a resident of Brickyard Landing, believed that City staff and the City's environmental consultant improperly allowed the General Plan EIR to bypass a Project-Specific EIR. The 2012 General Plan EIR did not consider more than 48,000 cubic yards of fill being trucked to the site. He believed City staff wanted to streamline approvals for developers rather than protect the residents of Richmond. He strongly requested that the Commission apply additional Conditions of Approvals to reduce the amount of imported fill, limit the months the fill could be imported, that all units be for sale units and not allow import or earthwork during August through October.

MARY LOU CLARK remarked the proposed truck traffic will not allow her to stay in her home due to her asthma and recovering from lung cancer surgery. She urged the Commission to consider the safety and lives of the nearby residents and deny the project.

MIRA SELMEN echoed Ms. Clark's comments regarding the consideration of the safety and livability of the nearby residents. She stated profit should never be valued over people's well-being.

LESLEY HICKS expressed concerns about the truck traffic and the traffic jams that will happen when the train is blocking the roadway. Once blocked, many diesel trucks will be omitting emissions to the nearby residents as they wait for the road to become unblocked. She advised the applicants to design culverts that direct the water that comes down the hill and encouraged them to require a project that did not require large amounts of fill.

BETH CONKLIN, a Brickyard Landing resident, shared that her kitchen and bedroom window open onto the development site. She strongly requested that the Commission deny the waiver regarding imported fill. The applicant made no effort to take into account the specific requirements of the site or the neighborhood. Other designs did not require large amounts of fill, did not have to be 86 feet in height and did not block the light of the neighboring residents.

ALLEN SULLIVAN, a resident of Brickyard Landing, found the process to be very sad and how the lack of trust created by the developer has tainted the process. He echoed the comments about the fill becoming unstable, massive buildings and having no satisfactory answer as to why so much imported fill was needed.

JOHN REESE supported the project because it would bring more housing to Richmond and provide family-friendly units. The project would bring more jobs to the community and allow folks to work closer to home. He found the color and architectural elements attractive, tasteful and flowed with the surrounding neighborhood.

[No audio - 2:21:33 to 2:22:17]

Chair Tucker invited the application to provide their rebuttal comments.

Ms. Durkin [No audio - 2:22:39 to 2:23:09] explained there were numerous reasons why bringing in clean soil will provide a buffer as a preferred alternative as opposed to trying to grade with contaminated soil.

Mr. Katwan explained in order to achieve the 94 units, to maintain a certain grade level on the roads and to do the recommended encapsulation. That required clean soil to be brought to the site.

Chair Tucker invited the representative for the opponents to share their comments.

Mr. Lewis mentioned he spent 38 years cleaning up hazardous waste sites in California. He reached out to the Regional Board [he didn't say which Board] about the site. They explained the project could take soil from the higher portion of the site that was not contaminated and move it down over the contaminated soil. That action would require zero imported fill and the applicant was providing a misrepresentation of how the site could be encapsulated.

Mr. Vines acknowledged that the site would have to import fill to bring up the level of the current grade.

Chair Tucker invited the Commission to ask questions of the applicant, staff and attorneys. He asked staff to explain the parameters of the Commission's role in the project. Ms. Lee restated that the City and the environmental consultant agree that the obligations of approving the project under the Program EIR had been met. With respect to Density Bonus Standards and the waivers, staff believed the waivers are necessary for the project to move forward as designed. The term "as designed" had come from a court ruling in 2022 that ruled a city would be wrong to deny a project and its waivers unless there was a specific finding found that there was an adverse impact, that could not be mitigated, on health or safety. Staff believed that the project met the requirements for approval of all nine waivers of the Development Standards.

Commissioner Soofiani asked why the Commission was holding a public hearing if the Commission was not allowed to opine on the design of the project. Ms. Velasco acknowledged that there were a significant amount of housing regulations being placed on cities in response to the housing crisis. It was becoming more challenging to respond to public comments. Staff understands that there will be impacts but through mitigations, those had been reduced to less than significant levels. She encouraged the Commission to provide any thoughts they had and those could be discussed with the applicant. Commissioner Soofiani inquired who would be responsible if a landslide were to occur in the future and was the project inconsistent with the Hillside Ordinance. Ms. Velasco answered the Hillside Ordinance did not apply to the property due to the property being zoned RM-1. With respect to landside and legal risk, Mr. Katwan remarked as the developer there are insurance policies obtained that covered the property and the workmanship. Also, professional liability was obtained from all hired professionals. Per state

law, any malfunctions related to the structural components were the responsibility of the developer for the first 10 years.

Commissioner Brubaker acknowledged that technical studies were done and a peer review was done for both the studies and the checklist. Ms. Johnson confirmed that is correct. With respect to the HRA, Commissioner Brubaker asked if the model used was the most recent and Ms. Johnson noted staff used the most current modeling. Commissioner Brubaker inquired if the proposed mitigations are current mitigation standards or where they from the General Plan. Ms. Johnson answered they were a combination. Mr. Noah Tanski, FirstCarbon Solutions, added that the model used was available and active when the General Plan EIR was drafted. Staff used the most updated iteration of that model when analyzing the project. With respect to the mitigation measures in the General Plan EIR, the environmental document for the project implemented the BAAQMD's most recent version of mitigation measures. Commissioner Brubaker asked if the technical studies done for the Environmental Checklist were similar to the technical studies done for an EIR. Mr. Tanski confirmed they are the same. Commissioner Brubaker addressed the comments regarding mitigations and how they are enforced. He asked what assurance did the community have those mitigations would be enforced. Ms. Velasco mentioned that a fee had been added to the Master Fee Schedule that required consultants to support City staff with enforcement and verification of mitigation measures during construction and operation measures.

Chair Tucker asked how the applicant planned to contain the dust in the project. Mr. Katwan explained the dirt would be hauled in by bottom dump trucks that dumped the dirt at a close level to the ground. Also, a significant amount of water was needed to compact the soil and water trucks would be on site to water the site as many times as needed to keep dust levels down. Chair Tucker asked if regular street cleaning will occur. Mr. Katwan noted the access was required to be one-way and the entire road would be kept clean at all times during hauling operations. He noted the trucks, even though they are diesel, do follow all state air quality standards. Chair Tucker wanted a condition that street cleaning would occur from the property site to Canal Drive. He assumed the fire and police department had reviewed the project and deemed it safe. Ms. Velasco answered they reviewed the Tentative Map. They will review the final map, subdivision improvement drawings and construction plans upon approval. Chair Tucker asked if the project was required to work with the train operators to minimize traffic build-ups and blockages. Ms. Velasco commented it had not been discussed but believed it was something that could be discussed with the railroad operators. Chair Tucker invited the applicant to provide further details regarding the number of units for sale versus the number of units for rent. Mr. Katwan restated it was a for-sale project and there would be no rental units. Chair Tucker asked if the affordable housing units were to be for sale and then lived in or for sale and then be allowed to be rented out. Mr. Katwan answered for sale and lived in and those units would be deed restricted. Chair Tucker asked if the union labor was a complete project partnership. Mr. Katwan answered the site work would be done by union workers and there was a partnership with the Carpenter's Union.

Commissioner Brubaker asked if the Commission could impose a condition that gates would be prohibited. Ms. Velasco did not foresee an issue with placing that type of condition on the project and the General Plan did have policies prohibiting gates be installed.

Chair Tucker wanted to know what disability access was proposed for the project. Ms. Durkin remarked that five units were proposed to be accessible and that was a requirement of the State Code. Ms. Velasco added the Building Code required a path of travel from the nearest right of way that was Americans with Disabilities Act (ADA) compliant. Chair Tucker acknowledged the

challenge of knowing if the project was the right design and in the right location. He mentioned this was the start of other conversations that would shape the project further. He asked how many hearings were allowed for the project per the Housing Accountability Act. Ms. Velasco said the project had gone through three hearings and was allowed up to five hearings. She understood that any appeal hearings would count towards the five hearing limit and Ms. Lee confirmed that is correct. She summarized again what the parameters the Commission was held to with respect to the waivers and denial or approval of the project.

**ACTION: It was M/S/C (Tucker, Agarwal) to adopt Item number PLN21-444 and adopt Resolution 23-04 approving Density Bonus Waivers, a Major Design Review, and a Vesting Tentative Map for Brickyard Cove residential project subject to Conditions of Approval as stated by DRB, staff and Planning Commission's three additional conditions that the street be cleaned between the site entrance to the entrance off the freeway where mud or dirt is visible, that there be coordination on emergency egress with police and fire and that staff and the applicant coordinate with the railroad to minimize blockages during the construction period, which carried by the following vote: 4-0-1-1 (Ayes: Tucker, Brubaker, Soofiani, Agarwal; Noes: None; Absent: Loy; Recused: Harrison).**

Chair Tucker remarked that the item could be appealed by the date stated at the beginning of the meeting. He encouraged the developer to be as transparent as possible with the neighbors and the community.

### **COMMISSION BUSINESS**

**3. Reports of Officers, Commissioners and Staff** – Ms. Velasco announced that the Mayor's Office will soon begin appointing new Members to the Commission. She invited the Commission to share thoughts or recommendations on the hybrid meeting format used during the meeting.

Commissioner Brubaker appreciated Ms. Velasco's presentation and encouraged staff to provide a thorough presentation in the future.

**4. Adjournment** - The meeting was adjourned at 9:42 p.m. to the next regular meeting on May 4, 2023.