

MINUTES APPROVED AT THE DRB MEETING ON MARCH 22, 2023

DESIGN REVIEW BOARD REGULAR MEETING

Richmond, CA 94804

February 22, 2023

6:00 P.M.

All Participation Via Teleconference

Due to the coronavirus (COVID-19) pandemic, Contra Costa County and Governor Gavin Newsom had issued multiple orders requiring sheltering in place, social distancing, and reduction of person-to-person contact. Accordingly, Governor Newsom had issued executive orders that allowed cities to hold public meetings via teleconferencing. Due to the shelter in place orders, all City of Richmond staff, members of the Design Review Board (DRB), and members of the public participated via teleconference. Public comment was confined to items on the agenda and limited to the specific methods identified on the agenda.

BOARD MEMBERS

Kimberly Butt
Marcus L. Christeson
Leah Marthinsen

Brian Carter
Michelle Hook

Vice Chair Brian Carter called the regular meeting to order at 6:05 P.M.

ROLL CALL

Present: Chair Brian Carter, Vice Chair Marcus Christeson, and Boardmembers Kimberly Butt and Leah Marthinsen

Absent: Boardmember Michelle Hook

INTRODUCTIONS

Staff Present: Planners Lina Velasco, Hector Rojas, Juliet Avila, Andrea Villarroel, and Marytonae Sanchez; and James Atencio from the City Attorney's Office

MEETING PROCEDURES

Hector Rojas identified the meeting procedures, the format of the web-based meeting and the public's ability to speak during the meeting.

PUBLIC FORUM:

LISA JOHNSON, Richmond, referred to the construction of the new Loop Sewer Lift Station at the corner of Brickyard Cove Road and Dornan Drive, stated the intersection had now been completely changed with no input from the public or the DRB, and requested that the situation be addressed as soon as possible given the dangerous sharp turn and blind spots. She noted that the public had repeatedly begged City staff to address public ingress and egress issues in the area where there were only two routes. She emphasized that the intersection was unsafe and

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public input should be sought as soon as possible to move forward from both a design, safety, and function standpoint.

CORDELL HINDLER, Richmond, requested that all projects submitted to the DRB be considered first by the applicable neighborhood council to allow comment. He also noted the terms of some Boardmembers would soon expire and he hoped they would be reappointed.

PHILLIP ROSENTHAL, Richmond, also referred to the construction of the new Loop Sewer Lift Station, stated he had a near accident at Marina Bay Road and Dornan Drive and suggested that the construction had created a dangerous situation. He stated that Point Richmond had a Neighborhood Council and a design review committee and reminded the DRB that the City worked for the taxpayers and should stop tearing up the Point Richmond neighborhood without residents' permission. He urged the City to work with developers and not for developers.

APPROVAL OF MINUTES: January 25, 2023

ACTION: It was M/S/C (Christeson/Butt) to approve the minutes of the January 25, 2023 meeting, as submitted; approved by a voice vote: 4-0 (Ayes: Butt, Christeson, Marthinsen and Carter; Noes: None; Abstain: None; Absent: Hook.)

APPROVAL OF AGENDA: No changes

CITY COUNCIL LIAISON REPORT: None

CONSENT CALENDAR

1. CC PLN22-400	RYSE HEALING COURTYARD
Description	PUBLIC HEARING TO CONSIDER A DESIGN REVIEW PERMIT TO CONSTRUCT A HEALING COURTYARD INCLUDING FIVE POD STRUCTURES AND LANDSCAPING ON A VACANT LOT.
Location	3927 BISSELL AVENUE
APN	517-320-020
Zoning	CM-3, COMMERCIAL MIXED-USE, COMMERCIAL DISTRICT
Owner/Applicant	RYSE INC.
Staff Contact	ANDREA VILLARROEL, MARYTONAE SANCHEZ
	Recommendation: CONDITIONAL APPROVAL

Andrea Villarroel identified the meeting procedures, the format of the web-based meeting and the public's ability to speak during the meeting.

No written comments were submitted, or oral comments made, by any member of the public.

ACTION: It was M/S/C (Carter/Marthinsen) to approve PLN22-400, RYSE Healing Courtyard, subject to the four Findings and Statements of Fact with eight Conditions of Approval; approved by a voice vote: 4-0 (Ayes: Butt, Christeson, Marthinsen and Carter; Noes: None; Abstain: None; Absent: Hook.)

APPEAL DATE

The appeal date for actions taken by the Board at this meeting will be no later than 5:00 P.M. on Monday, March 6, 2023.

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PUBLIC HEARINGS

2. PLN21-444	BRICKYARD COVE RESIDENTIAL
Description	PUBLIC HEARING TO CONSIDER A RECOMMENDATION TO THE PLANNING COMMISSION OF A MAJOR DESIGN REVIEW TO CONSTRUCT NINETEEN, 3-STORY TOWNHOME BUILDINGS, CONSISTING OF 94 UNITS, A COMMUNITY BUILDING AND ASSOCIATED IMPROVEMENTS, AND A DENSITY BONUS FOR THE PURPOSE OF OBTAINING WAIVERS TO CERTAIN DEVELOPMENT STANDARDS, INCLUDING BUILDING HEIGHT, SETBACKS, UPPER STORY MASSING, AND OPEN SPACE. THE PROJECT ALSO INCLUDES A VESTING TENTATIVE MAP TO SUBDIVIDE THE EXISTING 5.9-ACRE PARCEL OF LAND INTO 23 PARCELS. 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 ON THE PROJECT WEBSITE. https://www.ci.richmond.ca.us/4349/Brickyard-Cove-Residential-Project
Location	VACANT LOT ON NORTH SIDE OF BRICKYARD COVE ROAD, BETWEEN SEACLIFF ESTATES AND BRICKYARD LANDING
APN	560-340-043 AND 560-340-039
Zoning	RM-1, MULTIFAMILY RESIDENTIAL, PA PLANNED AREA
Owner	PACIFIC GAS & ELECTRIC CO
Applicant	REPUBLIC BRICKYARD LLC
Staff Contact	ANDREA VILLARROEL Recommendation: RECOMMENDATION TO THE PLANNING COMMISSION

Andrea Villarroel presented the staff report dated March 9, 2023 and identified the site located between Seacliff Estates and Brickyard Landing with two vacant parcels; one parcel formerly a 5.9-acre PG&E natural gas tank site. A Major Design Review approval was being sought for 94 residential units ranging from 1,380 to 1,735 square feet in three-story townhomes, along with a 4,600 square foot residential community building that included a clubroom, fitness room, pool, spa, barbeques, and game tables. The project would also include a privately owned and maintained street, landscape improvements including a small playground and public art and improvements to the existing Bay Trail that would include additional landscaping, seating areas and a historical plaque. The project had been proposed under Density Bonus Law.

Ms. Villarroel explained how the project qualified under Density Bonus Law, described the qualifications that allowed projects under State Density Bonus Law, and stated that incentives or concessions entitled the development to receive unlimited waivers or reductions in parking requirements that would not result in a project being inconsistent with applicable objective standards, no additional report or study may be required and the City could deny a waiver only if it could make specific written findings.

With respect to the details of the project, Ms. Villarroel described the style as featured cementitious-shingle siding, horizontal siding, plaster with reglets and shingle roofing in four color

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scheme combinations of browns, blues, greens, greys, and tans for the 19 buildings in natural earth and sea tones to reflect the surrounding area. The site plan was characterized by a curved spine street and angled buildings. The landscape plan contained native and low water use plants to reflect the coastal character of the site and the space between the property line and the new development would be planted with a variety of trees and shrubs to soften the appearance of retaining walls. The lighting would include post fixtures, wall mounted lights and bollard fixtures. The entryway would integrate the existing sections of the Bay Trail and house an entry monument surrounded by terraced planting, a retaining wall and bio treatment, and the exterior common area outside of the clubhouse would provide year-round amenities to residents with a small playground, swimming pool and lounge seating.

Ms. Villarroel reported that a total of 68,100 cubic yards of fill material would be imported to the site with an estimated 5,238 truck trips over a five-month period, or up to 153 trucks per day scheduled to handle the fill beginning from I-580, exiting Canal Boulevard and traveling via Seacliff Drive to Brickyard Cove Road. Hours of construction and traffic would be limited to weekdays 7:00 A.M. to 6:00 P.M., and louder activities would be limited to weekdays 8:00 A.M. to 5:00 P.M. Construction could not exceed the threshold established by the Bay Area Air Quality Management District (BAAQMD).

Ms. Villarroel stated the geotechnical report prepared for the project by Cornerstone Earth Group dated April 25, 2022 recommended residential structures supported by post-tensioned concrete mat foundations on natural soil or engineered fill material; retaining walls may be supported on drilled, cast-in-place, straight-shaft friction piers, with at least ten feet below the lowest adjacent grade, except for shallow bedrock conditions, and imported soil for fill material to be inorganic with Plasticity Index of 23 or less and contain no recycled asphalt concrete when used within habitable building areas. All recommendations in the geotechnical report would be incorporated as a condition of approval.

Ms. Villarroel also reported that the public had provided key recommendations to consider focusing on maintaining and fixing the roads first; issues with flooding and traffic control were a major concern in Point Richmond; access for emergency vehicles, residents and neighbors were of high priority with the amount of soil being brought to the site; concerns regarding dust storms and instability to earthquakes due to the increased grade; and the public urged consideration as to how the project would affect the lighting, views, noise levels, and health of both residents and neighbors. The public had also asked to consider the project's impacts in conjunction with the other projects occurring in Point Richmond; the cost of living for potential residents of the site affected by affordability, car reliance, lack of services and public transportation; a preference for an Environmental Impact Report (EIR) prior to any other decision being made on the site; and the retaining walls and amount of green space in the new development were a concern for neighbors who wanted to see other uses and proper infrastructure.

ELIZABETH JOHNSON, Senior Project Manager, First Carbon Solutions, which had prepared the environmental documentation for the project, explained that under Section 15168 of the California Environmental Quality Act (CEQA) Guidelines, no subsequent environmental document was required where the activity was properly examined in a prior certified EIR, such as the General Plan EIR. As the lead agency, the City of Richmond was required to incorporate feasible mitigation measures and alternatives developed in the Program EIR in later activities in the program. She identified the factors to consider in making the determination of consistency of the later activity that included among others the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and covered infrastructure as addressed in the General Plan EIR. Prior mitigation measures from the General

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Plan EIR that applied to the projects had been highlighted in the report.

Ms. Johnson stated the proposed project would also qualify for CEQA streamlining pursuant to CEQA Guidelines Section 15183 and she identified the factors that allowed that application. The proposed project had been found to be in conformance with the analysis and conclusions of the General Plan EIR based on no new significant effects peculiar to the proposed project or its site. Ms. Johnson advised that there were no new significant effects that had not previously been evaluated in the General Plan EIR, no new significant off-site or cumulative impacts that had not been analyzed in the General Plan EIR, and no adverse impacts that were more severe than those previously identified in the General Plan EIR. As such the proposed project was within the scope of the General Plan and the General Plan EIR and no further CEQA documentation was required.

Ms. Johnson identified the technical studies that had been conducted in support of the Environmental Checklist to come to the conclusions that had been provided. She described the questions asked by the community and the responses in the report under worst case scenarios that the environmental analysis had addressed such as health concerns from air quality impacts during grading and construction, the Health Risk Assessment that had been prepared for the proposed project, construction traffic, site structure stability and landslide potential, and road surface conditions.

Ms. Villarroel stated the City had hired Douglas Herring & Associates to review the Consistency Checklist and believed that the Brickyard Cove Consistency Checklist sufficiently supported the case that the project had been encompassed by the analysis presented in the General Plan EIR. She recommended that the DRB consider the proposal and recommend the application to the Planning Commission for approval.

Vice Chair Christeson referred to the nine waivers requested for the project and did not see justifications for the waivers in the staff report. He questioned whether the 63,700 cubic yards of fill on the site could be used to flatten the site and whether that design would meet the applicant's requirements. He saw no evidence that the applicant would be precluded from constructing the project at the permitted density without waivers and he wanted to see something of an alternate design that did not use fill. He also stated the Housing Accountability Act (HAA) definition of housing for moderate income meant 100 percent in Sections 50093 and 65008, and ten percent would not qualify. He therefore asked the City to have the City Attorney verify that situation.

Vice Chair Christeson referred to the staff report Part D and disagreed with the staff assessment. For Parts A and B, he stated that 35 feet was the maximum height allowed and 86 feet had been proposed, and he did not think it met the requirement without overwhelming or adversely impacting adjoining properties. He believed it impacted the adjoining properties in several ways due to the overall height of 86 feet with 25 to 27-foot retaining walls on either side, which were significant impacts. He stated therefore that the staff General Plan statement should say something about the criterion being conditionally satisfied and it needed to be clarified that the staff statement should say it was not just criterion satisfied but that it was satisfied with all the exceptions. He reiterated that there was no substantial documentation that the project could be built without the exceptions and he asked what the project would look like with the elimination of all nine exceptions.

Lina Velasco, Director of Community Development, explained that State Density Bonus Law had changed multiple times since the current ordinance had been adopted and it was not currently compliant with State Bonus Density Law. The law required a Conditional Use Permit for projects

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that were not for Planned Area Districts (PA) and prohibited the City from making density bonuses discretionary. The City was obligated to approve density bonuses when requested, and there had been recent case law in regards to documentation and support of requested waivers. She stated the State Legislature was making multiple amendments annually where staff was having to adjust its procedures because the state was restricting local control and local discretion related to housing projects. Planners were therefore constrained and a lot of the work was having to be done with legal advice to ensure compliance with state law.

BARBARA KAUTZ, an attorney with Goldfarb & Lipman LLP, stated she dealt primarily with new housing laws. She confirmed that for many years the Legislature had changed the Density Bonus Law, and in terms of the issue for justification of waivers there was a case last year (Bankers Hill 150 v. City of San Diego) and the key holding in that case was that so long as a housing development project was eligible for a density bonus by having enough affordable units, and the ten percent affordable moderate income units that had been proposed were sufficient to qualify the project for a density bonus, a city may not apply any development standard that would preclude construction of the project as designed. In that case, a waiver must be given for the project as designed unless a city could make one of three findings: a specific adverse impact on health or safety based on a written standard and the impact for health and safety could not be mitigated; what was requested violated federal law or state law or had an adverse impact on a project in the California Historic Register; and unless a city could make one of those findings it had to approve the project as designed. As a consequence, the courts viewed that a waiver had to be given for a project as designed.

Ms. Velasco explained that moderate rate income was considered to be up to 120 percent of the Area Median Income for Contra Costa County.

Ms. Kautz added that there were two different laws. The Density Bonus Law where the project just needed ten percent of moderate income units and the definition of moderate income in that case was 120 percent of the Area Median Income. The second law that applied was the HAA, which divided projects into two groups; projects considered for lower moderate income households which had to have at least 20 percent low income or 100 percent moderate income, although the subject project did not qualify under that act, but any housing project that included residential units was considered a housing development project covered by other provisions of the HAA whether or not it had affordable units at all. Under those provisions, if the project complied with all objective standards - and the HAA stated if a project was entitled to waivers that was considered to be complying with all of a city's objective standards - a city could only deny the request or reduce the density if the health and safety finding could be made.

Ms. Kautz stated when the Legislature started adopting the laws in 2017, language had been added that their role in adopting the laws was to make it much more difficult for cities to turn down or deny projects to reduce the density of the projects or to make them infeasible. She stated every year the laws were made tighter and tighter and cities had less and less discretion in terms of review of housing development projects and local control had been removed.

Chair Carter verified that no low or very low income units had been proposed and he asked if that was why no concessions had been requested, to which Ms. Kautz clarified that waivers and concessions were different and the developer in this case would be entitled to one incentive due to the number of units proposed, and with incentives it would have to be shown that the incentive would result in the reduction of development costs and there was a limit of one. Waivers could be unlimited and they would be waivers of development standards such as height, setback, floor area and the like.

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The DRB objected to the lack of control and questioned reasons to review the project at all.

Boardmember Marthinsen asked about the differences between design features and issues related to density and asked about guidance between the two, to which Ms. Kautz stated that case law indicated that developers were entitled to waivers to the project as designed, and while suggestions could be offered to developers and conditions of approval could be applied that would not reduce density or essentially deny the project. If applicants insisted on the requested waivers they would be entitled to them.

Ms. Kautz urged the members of the DRB to discuss with the applicant their questions related to the amount of fill that had been proposed, the height of the fill, the design features and the density. She reiterated that the State Legislature had made it difficult to actually deny a project.

Ms. Velasco explained in response to Boardmember Marthinsen as to how the moderate income units would be kept in that range that in regards to this project there would be two options. If a rental product, there would be lower income units and if a for-sale product, the moderate income rate units would be built. Given the request for the density bonus and the requirement under the Inclusionary Housing Ordinance to provide those units on site, if a for-sale product there would need to be regulatory agreements recorded against the title of the property and every time the property was resold there would have to be assurance that the person purchasing the unit would qualify under the definition of a moderate rate household. There were guidelines in that regard. If a rental product, the tenant would have to be screened before occupying the unit to ensure compliance. Even if the project was phased, the percentage required would have to be built in with each phase of the project.

Boardmember Butt asked if there was a designated body in the City to ensure compliance and Ms. Velasco stated that assignment was currently with the Housing Division, which was limited in terms of staffing but there were regulatory agreements on various projects throughout the City that the City currently regulated. She highlighted the City's current regulatory agreements managed through the title to the properties involved and noted that the title companies would reach out to the City with resales. The City would utilize contract services for resale and rental units to ensure compliance.

Ms. Kautz clarified that for rentals the regulatory agreement had a term of 55 years while for density bonus and inclusionary units for-sale units had a term of 45 years. If a city did not have its own Inclusionary Ordinance under Density Bonus Law the units were only affordable until the first sale. Every time a unit sold, a city would re-record the agreement and the 45-year period would start over again. Both types of units would therefore remain affordable for some time.

Boardmember Butt spoke to the environmental review and asked for clarification of the DRB's purview in terms of commenting on the environmental review document.

City Attorney James Atencio advised that the Planning Commission would decide the environmental review and the DRB had not commented on the adequacy of CEQA documents in the past. The CEQA document included as part of the packet was open to comment since it was part of the packet but the DRB would not make any findings. The DRB's role in this case was to make a recommendation to the Planning Commission.

Ms. Velasco explained that the DRB's role in this case would be to make recommendation to the Planning Commission to approve with conditions, to approve as recommended by staff, or to

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include other statements or decisions. She verified that the public had made comments on the Consistency Checklist, which while not subject to a 30-day comment period had been made available in January 2023 when the item had been listed on the agenda, had been posted online and notices had been mailed out and were part of the current DRB packet. The staff presentation had identified the points raised and the areas of interest in the public comments that had been received. The peer review had begun shortly after the study session when the public had requested an EIR and the Final Published Consistency Checklist had been peer-reviewed and found to be consistent with the practices of the profession.

Chair Carter asked if a condition to modify a waiver such as requiring the height to be lowered would be in violation of the density bonus, to which Ms. Kautz stated that would be on the periphery of case law.

Chair Carter opened the public hearing.

MELISSA DURKIN, Senior Vice President of Development, Republic Urban Properties, San Jose, the Project Applicant, introduced the project team and presented a slideshow of the proposed new housing development. She stated they had spent over a year working with the DRB Subcommittee and had outreach to community members and community groups to address and incorporate feedback regarding the project. Significant changes had been made to the site plan and architecture and the soil import had been reduced by 23 percent.

Ms. Durkin explained that the site had previously been used by PG&E and had been put up for sale. A majority of the hillside had been removed to accommodate PG&E's natural gas tank and the proposal would restore a natural slope to construct 94 units of housing. The project was consistent with the existing General Plan and zoning designation. The project, as earlier described, would provide 19 three-story residential buildings and a recreational facility. The three-story buildings would be 38 feet tall measured from finished grade. Under State Density Bonus Law, ten percent of units would be for moderate income households and all of the waivers would cover deviations to the RM-1 Zoning District but no additional density would be pursued. The project proposal would be consistent and cohesive with the surrounding neighborhood.

A study session in September 2022 had provided feedback from the DRB in terms of the site plan, grading, architecture and landscaping and Ms. Durkin stated that all those comments had been addressed. She described the changes as curved streets and angled buildings, a hinge to the building and crosswalks to reduce retaining walls to create a project organic in shape that blended in with the natural hillside. The City's parking requirements had been exceeded and additional parking had been provided as requested, the architecture had evolved, simplified materials had been incorporated, muted earth tone colors had been provided and the front-end entries had been emphasized. Roof lines and pitches had been lowered, cross glass railings had been incorporated and there was less emphasis on the window trim. Bronze windows had been included, front doors would be in wood tones as opposed to bright colors, entries had been accentuated with metal awnings as opposed to just the traditional composite roof, exterior AC units had been eliminated and replaced with wall-mounted units just inside the buildings, and more earth taupes and browns with blues and greens had been incorporated to blend in with the Bay environment. She presented the various color palettes and pointed out there had not been additional changes to the building massing other than the incorporation of a secondary color and the return of horizontal siding.

Ms. Durkin provided exhibits to illustrate the various buildings and pointed out the architectural features of each along with changes to the setbacks in the building fronting Brickyard Cove Road

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with additional private open space to allow views of the Bay. She also highlighted the recreation building. With respect to the grading, she stated significant import was required to help restore the natural hillside slope while adding stability and creating more usable area for the development. If just building on the flat portion of the site, six to eight buildings would be lost in the back of the project, and without it 35 to 40 units would be lost. It would also provide a significant buffer between the new residences and contaminated soil from the previous uses. While the original proposal included 120,000 cubic yards of soil that had been reduced to 88,000 cubic yards and the current proposal was for 68,000 cubic yards, a 23 percent reduction from the previous plan. She did not believe the import could be further reduced without losing units because lowering the slope would result in more walls and more retention at the back of the site where there were already three very tall ten-foot tall walls. Increasing the height of the walls was not recommended and the street slope had already been maximized based upon fire truck accessibility requirements.

Boardmember Marthinsen verified that the units would be all electric and Ms. Johnson stated that all units would be all electric, have solar panels and be electric vehicle (EV) charger ready in the garages.

Boardmember Butt asked about the landscape design and retaining walls.

SHAWN TAYLOR, Project Manager, HMM, Landscape Architecture, stated that as requested by the Board the landscape proposed for the project would tie into the surrounding native landscape with muhlenbergia, festuca, a few other species to give the organic look with boulders and added ceanothus for hillside stabilization and a hillside look. Another change was to change out the perimeter trees that separated the project from the neighboring project with lower growing trees, utilizing a trident maple that would not ever reach 30 feet in height and California buckeyes, a shorter tree given view concerns. For materiality, the retaining walls would have a decorative CMU block wall look with caps in earthtone colors to blend in with the hillside, terraced when possible, three ten-foot high retaining walls in the back and terraced in the front where there would also be signage based on the wall design with terraced plantings. An emergency vehicle access (EVA) area would allow a fire truck to turn around and the CMU wall in that area would mimic the organic stone, boulders and rock found on a California hillside with a Gabion bench, an update from the last iteration.

DAVID TERHUNE, RJA, Ruggeri-Jensen Azar, in response to Boardmember Butt as to whether the 23 percent reduction of soil import had allowed a reduction of any of the retaining walls, stated that initially there had been six figures worth of import and the walls in the back were much less impactful than they were now. Based on feedback from everyone, the grades had been pushed down in elevation to the extent that the walls in the rear were five or six-foot walls and by pushing the grade down the site plan had ten-foot high walls in the back. Similarly, by lowering the site the walls on the Brickyard Landing side had also decreased and were six and eight-foot walls, all in response to previous comments.

Vice Chair Christeson asked how the height of the buildings compared to the existing homes, and Ms. Durkin provided some illustrations of the proposed units situated next to the adjacent developments in which the Vice Chair noted that the views offered showed overall that the proposed units were lower than the existing units of the adjacent developments on either side.

JOHNNY CHUNG, Project Architect, Bassenian | Lagoni, confirmed that the building height would be 38 feet in height from the finished floor

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Vice Chair Christeson verified that trees had been proposed to be planted between the subject development and the adjacent developments and he asked about the swale, and Mr. Terhune explained there was an existing wall that was 15 to 30 feet tall and the subject development would bury some of the wall to increase the stabilization. At the top of the wall a swale collected runoff from the adjacent properties that would remain untouched.

Vice Chair Christeson liked the view that clarified the height of the proposal and how it fit in with the surrounding developments.

Boardmember Marthinsen asked about the stormwater treatment on site, and Mr. Terhune stated that bioswales were being treated at the bottom of the site in the grassy areas between the lowermost buildings, the clubhouse and the existing trail. All runoff from the hillside would be captured by on-site storm drains and routed out the spine road to the treatment areas. Everything was being treated on-site.

Boardmember Butt asked about cross section drawings and sections were shown to show the adjacent units as 1, 2 or 3 feet higher than the proposed units in a worst-case situation and showed how the height of the adjacent existing structures got a lot higher than the subject development continuing up the hill. Other exhibits were shown to illustrate the drainage plan and collection points to be directed to the bio-retention areas. Still other exhibits were displayed to provide the details of the retaining walls and V-ditches for drainage purposes. Hydrology calculations would be submitted with the improvement plans.

Chair Carter referred to the natural gunite walls shown for the rear of the property, described them as handsome and asked if more of those walls could be considered for some of the high walls adjacent to the existing properties.

REYAD KATWAN, Chief Operating Officer (COO) and Construction Manager, Republic Urban Properties, San Jose, referred to the earth stone type of walls with a geogrid fabric that would be part of the structure similar to the adjacent property, earhtone in color, split face block with a geogrid fabric installed with the grading tied into the wall so that the wall would become part of the fill and the earthwork structure, the most efficient way of providing terracing walls. He stated the back condition was different in that it was a cut situation and soil nails would be used to key in and hold the wall. Planting would be provided to cover the wall that would likely not be noticed in the future. He suggested the other application might not be feasible for the back scenario given that it was a different technique and the walls in the back were higher.

Chair Carter verified that the Building Code would determine whether or not any of the retaining walls would need fall protection, and it was noted that the walls on the adjacent development did not have fall protection because they were not in public areas.

Mr. Taylor verified there were areas where 42-inch clear view metal fencing would be required for guardrail protection. He stated that the fencing had not yet been speced in the plans.

Ms. Durkin clarified in response to the Chair that the AC units would go on the inside of the units with likely one per level, and Mr. Katwan stated that a VTech unit would be used and had been used in other locations where the units would not have to be on the outside.

A five-minute break was taken at 8:17 P.M. The DRB reconvened at 8:24 P.M. with all members initially shown as present and absent.

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PUBLIC COMMENTS OPENED

Andrea Villarroel identified the meeting procedures, the format of the web-based meeting and the public's ability to speak during the meeting. Each speaker was given two minutes to speak during the public hearing, with five minutes allowed for Jeff Vines since some members of the public had ceded their time to him.

JEFF VINES, Chairman of the Brickyard Landing Community Affairs Committee, and speaking for himself and the Board, spoke to Density Bonus Law and suggested that some verification was required to be presented to justify any waivers. Speaking to the proposed fill, he suggested that the developer could build a 94-unit development plan without the full amount of the requested fill. He presented a photo of the site and stated the flat area took up two thirds of the site and he suggested that the development could be built, as proposed, on that flat level with some increase in elevation farther up the hill which would require more retaining walls. He suggested that waiver was not required. As such, he requested that the DRB deny the applicant's request for the fill. Density Bonus Law allowed waivers only if the applicant would otherwise be prevented from developing the site, which was not the case in this situation.

Mr. Vines requested that a new EIR be required for the development given the amount of fill that would be moved. The BAAQMD guidelines stipulated that movement of anything more than 10,000 cubic yards of dirt was significant. The proposal was for 13 times that amount, which mandated a full and independent EIR. He referred to the landslides and evacuations that had occurred at Seacliff Estates which highlighted a clear example of what could happen with fill. He suggested there could be settlement of nine inches or more when fill was used. He also referred to health and safety issues and the number of trucks that would be required for five to six months to move the amount of fill that had been proposed and the impact to adjacent residents, particularly those of Brickyard Landing occupied predominately by seniors, who would be impacted by diesel fumes, dirt and dust. There would also be impacts to normal traffic flow and any emergency would create a serious concern. He suggested the fill would dramatically impact adjacent owners by increasing the height of buildings to 65 feet over the existing land level. He presented a graphic to show how the proposed units would impact views and stated the staff report had not mentioned that impact.

Mr. Vines urged the DRB to comply with City Council regulation 129-08 established November 18, 2008 to help solve train crossing issues and traffic problems. He suggested the development could be built without the fill by using the existing site with minimal cut and fill over the level areas.

Several speakers ceded their time to Mr. Vines to allow him to make additional comments.

Mr. Vines asked the DRB to stipulate that no balconies would be allowed on either the west or east side of any of the buildings to ensure the privacy of adjacent neighbors, all plans and designs to include the depiction of proposed solar panels, and the design of retaining walls to be approved by the adjacent Seacliff Estates and Brickyard Landing developments.

KYLE SWARENS on behalf of Carpenters Union Local #152 strongly supported the Brickyard Cove Multifamily LLC, spoke in favor of the project for the benefit of the 3,000 plus members in the region to allow an opportunity to work on the project making livable wages and to receive healthcare. He referred to some of the comments related to a reduction of landfill, noted that the applicant had addressed comments related to landscaping, buildings that would not overpower the surrounding area and building height, and had listened to the community. Given the housing

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crises, he stressed the need for housing and the partnerships involved. He asked the DRB to recommend approval of the project to the Planning Commission.

DAVE BLECKINGER, a resident of Seacliff Estates, stated his concern related to his view of the property and noted that the first and second floors of his home would lose 80 percent of the existing view. He urged the developer to show a plan with grading in the six to eight percent range for the first 450 to 500 feet of the spine road and then the rest of the road to be 15 to 20 percent except at the intersections. He had made that suggestion to the developer who had claimed that the slope had been made 15 percent lower down in the development to raise the amount of fill and to raise the property. His proposal would lower the properties in the middle, dramatically reduce the fill, reduce impacts to views and reduce the number of trucks moving fill. He supported 30-foot trees on the site and asked for that to be shown in the plans.

STEVE CHAMBERLAIN, Richmond, speaking as a member of the Board for the Brickyard Cove Homeowner's Association No. 1 and on behalf of the four other Brickyard Cove community organizations and commercial property including Brickyard Landing, Seacliff Estates, Brickyard Cove Homeowner's Association No. 2 and Boardwalk Marina, a total of 561 dwellings, 106,000 feet of commercial space and 285 boat slips comprising all of the properties that legally and financially tied to Brickyard Cove Road that the proposed project fronted on.

Mr. Chamberlain described Brickyard Cove Road as a dedicated and unaccepted public road, and each development had made a substantial financial commitment for the maintenance of the road and the proposed project must contribute its fair share to the cost of creating the road. Brickyard Cove Road was currently privately owned and maintained and had been for 18 years since the satisfaction of the condition of acceptance by the City of Richmond. He stated it was time for the City to accept the dedication of Brickyard Cove Road in that the community had shouldered the burden of the public-serving road for a regional park for far too long.

EILEEN LEWIS stated that the proposal had greatly improved over the first proposal. She referred to global climate change and stated that could no longer be ignored given the dramatic climate changes in the area of higher winds, which would blow any dirt brought in by truck or reused and cause huge problems for people who did not have air conditioning and who opened their windows for fresh air. She urged the DRB to put serious restrictions on wind-propelled particles on any proposal approved to avoid causing dramatic respiratory damage to residents.

ROBERT KISH referred to the staff report which had indicated that "under the recent court decision (Bankers Hill 150 v. City of San Diego), the City must grant all waivers that enabled the project to be built as designed." He stated that assessment was a result of that case and not the holding of it. The holding was the legal principle to be drawn from the decision of the court and the court stated its holding at several points, especially in its analysis where under Density Bonus Law, "a city must offer a waiver or reduction of development standards that would have the effect of physically precluding the construction of a development at the density with the required incentives permitted by the Density Bonus Law." He noted the developer was entitled to waivers only where the failure to grant them would physically preclude construction and the reason the referenced case was granted to build the project, as designed, was because the project could only achieve the allowed density and produce the expected number of affordable housing units that was built, as designed, and that was the outcome for that case for those parties in that particular set of facts and circumstances and that result was not a holding. The developer had not stated that the desired density could not be achieved unless all the waivers were granted, particularly the one related to maximum height, and had proceeded under the City of Richmond's alternative density bonus procedures where he was required to produce a description of any

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proposed waivers of development standards or other zoning requirements and why they were necessary. If the DRB agreed, he asked it to consider the alternate findings he had submitted with his written statement.

DON SMITH spoke to hillside stability, road destruction and waste management and referenced the instability issues related to the adjacent property and the 68,000 cubic yards of fill that had been proposed. He stated it was important that the city procure an independent engineering analysis of the fill and the hillside stability. The destruction of the road was evident and the trucks associated with the soil import would further worsen that condition. With respect to waste management, he referred to several days of overwhelming noxious odors from the treatment plant at the bottom of the hill and he asked the DRB to consider the effect 94 new units would have on that plant and the adjacent residents.

IDA ABELSON, a Brickyard Landing resident who lived adjacent to the project site, expressed concern for the impacts of importing 68,000 cubic yards of fill would have on her health and that of her neighbors, who would not be able to open their windows because of dust, truck fumes and noise. Brickyard Landing homes had no air conditioning or air filtration systems and residents would have no ability to have fresh air in their homes during the construction period, which was a health risk. She suggested there was no need to increase the site level to the height requested by the developer. She stated the community had asked the developer numerous times to erect story poles, which had not been done, to show the actual height of the proposed buildings on the top of the fill.

PAT ARMER stated she had also opposed the amount of fill that had been proposed and the estimated 153 truckloads that would daily move that fill equating to one every three minutes. She expressed concern for the dust accumulation that currently occurred when doors were open and she objected to the impacts that would be associated with the transport of the fill. She agreed with the recommendation that there be no decks or windows on the east or west sides of the development given the close proximity of adjacent developments. She also asked about the parking and asked where cars would be parked if not parked in garages, and asked about the VTech units for the air conditioning and the amount of noise that could be generated by the air conditioners even if they were mounted on the inside.

BRIAN LOUIS referred to the proposed fill and noted that he had forwarded a letter to Chair Carter that had been written on September 22, 2022 stating that the fill (Item 4 from the Project Manager) which served as a buffer between the residents and subsurface contamination was a factor in the determination of no unacceptable risk and no further action necessary, although the fill had not been required or had its thickness been specified. He stated the project should be built but without the fill in that having all the trucks and imported fill was not necessary. Contrary to the staff report, he stated the project would have a significant adverse impact on the community. He noted that a copy of the no further action letter had also been provided to the DRB.

RICHARD RASTALL, Brickyard Landing, spoke to the grading and stated the amount of earth to be moved was enormous and would average 14 feet over the entire property. He suggested the proposal did not reflect the natural slope of the land which sloped downward from east to west and the Brickyard Landing side was quite a bit lower. He added the contour was continuous along the boundary fence between PG&E and Brickyard Landing and any of the retaining walls would change the current grade and were elevated above the current grade, the effect of which was to create a cliff. He asked the DRB to recommend to the Planning Commission that any development be done without drastic alterations to the elevations along the boundary wall and he reiterated that many of the questions could be easily answered if story poles had been installed

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to show the elevation of the ground and the elevation of buildings. He asked the DRB to require the developer to install story poles.

KATRINKA RUK, Council of Business & Industries, offered support for the staff recommendation and asked that the developers continue to work with the community, City, DRB and staff to create a residential project that blend in with the current planning and zoning for the area. She understood the developers and staff had been working with the DRB since August 2021 and had responded to many of the requests such as changes to the architecture and design, added natural vegetation, exceeded the parking requirements, reduced soil import by 23 percent and had committed to meet all City construction safety requirements. In addition, the project conformed to the existing zoning and density and included solar panels, EV charging stations and enlarged the Bay Trail and during construction the applicant would work with the unions and provide needed jobs to the area. She asked the DRB to approve the project and move the project on to the Planning Commission.

LISA JOHNSON, Richmond, a Seacliff homeowner, opposed the project and requested that the project not be recommended to the Planning Commission. She asked the DRB to protect the health, safety and welfare of the community, and support responsible development. She asked the DRB to review the project through the same lens as those who lived in the area. She noted there were differing and valid legal opinions related to the project, and the developer had switched from a PA to an RM1 zoning district to use a density bonus and a General Plan EIR inappropriately to evade a proper EIR which would have required an alternative project without providing any evidence of the need for significant fill. She therefore questioned whether the requirements had been met for the requested waivers.

Ms. Johnson stated she had provided by email two separate legal analyses from Holland & Knight LLP and Meyers Nave, and stated a city or county did not have to waive or reduce development standards that would cause a public, health or safety problem; an environmental problem for which there was no method to satisfactorily mitigate or avoid the specific adverse impact; harm historical property or would be contrary to law. She stated the proposed project would violate three of those four requirements. She had summarized those in an email, stated that could be avoided without infill, and suggested that the proposal was in violation of CEQA.

BETH CONKLIN referred to the staff report and disagreed with the statement that the City must grant all waivers to enable the project to be built as designed. She noted the developer was entitled to only one waiver given its intention to sell ten percent of its units as affordable housing and not the unlimited number of waivers as stated in the staff report, and there was no evidence in the staff report as to why waivers were needed. She referred to the proposed import of soil and the number of trucks required to do that and the resulting dust, noise and traffic in that not doing so may affect the numbers of units to be built with no justification of an obscenely amount of fill. The community had continuously spoken out about the planned cut and fill. She urged the DRB to listen to the people and that an EIR be prepared to address the concerns, particularly given the recent instability of the hillside directly adjacent to the subject project and that mitigations be imposed to ensure the health and safety of adjacent residents and assure new residents that building on such an amount of fill would be seismically stable.

ACTION: It was M/S/C (Carter/Christeson) to extend the public hearing to 9:30 P.M.; approved by voice vote: 4-0 (Ayes: Butt, Christeson, Marthinsen and Carter; Noes: None; Abstain: None; Absent: Hook.)

ROD SATRE, Richmond, Chair of the Point Richmond Land Use Design Review Committee

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(LUDRC), had submitted to the DRB and City staff a critique of various issues. He referred specifically to what the Cornerstone Group had actually said, which was to expect sheetrock walls to crack and tile floors to fail, which would be a continuing problem for the houses because of the height of the fill involved in that there would be hydro compression. He noted there had been a whole development in Southern California that had been torn down because of hydro compression and over time, 10 to 30 years later the Cornerstone Report expected to have expansion of three quarters of an inch and compression of nine inches. In that case, the structure would ultimately fail and an unsafe condition would be created and would effectively turn into a slum. He urged the DRB to consider what the project could be well into the future.

SHAWN REES, a local resident, carpenter and father, supported the Brickyard Cove Residential project given that Richmond needed more housing, specifically for growing families such as his. He explained that the cost for rent had increased to the point that he could barely afford the gas to get to work every day; he currently had a two-hour daily commute each way which was not only expensive but time consuming. By pushing the project through and more after it, the City would be able to help its residents with increased housing, which would improve the quality of life with more time spent with family and with tax dollars spent locally. He stated the project would help its citizens during construction and for years after, and improve the overall look of the area with colorful and attractive architectural elements with homes in a size that would be perfect for families and would provide ample parking. He stated the housing shortage was real for working people and every new home would make a difference for at least one family.

ANDRE CASTENOVA, Richmond, a carpenter, was proud to hear of the agreement with the Carpenters Union, and as a minority he stated the minority community needed more housing in that more and more of his brothers and sisters had been getting priced out of the Bay Area and the homeless on the streets of Richmond were moving out of town and even out of the state because of a lack of housing.

Mr. Castenova was pleased that the applicant had reached out to the City and had listened to its requests and while not all requirements may have been met, he stated the applicants had tried their best to meet all needs. He urged the DRB to approve the Brickyard Cove Residential project to be able to move one step closer to breaking ground for more housing in Richmond.

MARCY MILLER, a Brickyard resident, stated she lived in the 1200 building, the lower east building of Brickyard and that building would be in the shadow of the new development. She had many concerns and had requested story poles so that the public could see what the development would look like. She was concerned that the retaining walls would not be able to hold back the sea of mud and water as it flowed down the hill during rainy season and she requested an updated EIR. Additionally, she was concerned about the roads and the impact of emergencies noting that a prior fire at Miller/Knox Park had closed Dornan Drive which had left only Seacliff Drive as the only entrance and exit to the area. She expressed concern that the estimated 153 trucks per day would impose significant impacts and she urged the DRB not to approve the request for imported fill.

JONATHAN LIVINGSTON, Richmond, former Chair of the DRB, stated in 2022 the DRB had heard the item and had worked with the architect to come up with an appropriate hillside kit of parts related to massing, colors, and materials that was intended to blend into the hillside environment and complement the Brickyard Landing development. Everyone had agreed, he understood the DRB had been satisfied, and the only minor adjustments at that time were the saturation of the color and/or adding a muted sage green and taupe colors to blend into the hillside. The architecture had now changed and seemed to look at the individual buildings as if

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they were alone and lined up on some flat urban landscape, and the architect was altering the materials to help differentiate the massing as if it were some flat side view as a lone building, although this was not the context the community would see. The intent of the 2022 DRB direction was to encourage the overall development to blend into the hillside and not call attention to the individual buildings with an array of colors in a mishmash of horizontal Hardie Board mixes with shingles, both with different colors. The direction of the Board was to play off the architectural success of Brickyard Landing in terms of one material and color. In his opinion, the current plan had reversed that direction and was heading in the wrong direction. He urged the Board to advise the applicant to return to the older massing and colors that had previously been carefully considered.

CLARK BOUIN, Richmond, stated he had submitted a letter to members of the DRB. He explained that Brickyard Landing was comprised of primarily elderly residents and he was very concerned about the development of the subject property given the amount of fill involved. He suggested that by the time all the fill had been dumped, graded, compacted, regraded and excavated the lungs of adjacent residents would have suffered from the exhaust particles. In terms of fire and safety, the mitigations that the City had agreed to such as the railroad grade crossing blockages in 2008 had not been enforced and as a result there were frequent traffic blockages on Canal, Cutting Boulevard, and other streets. Drainage and soil stability was also a major concern. Brickyard Landing had invested in a network of drainage channels on the hillside above and while he knew that internal drainage had been planned there was nothing about protecting the hillside above the subject development. He stated the DRB had a responsibility to ensure that projects like this did not undermine the health, safety and property of the City's current residents and he asked the DRB to address those issues before recommending approval of the project.

JOHN GULLETT, a Brickyard Cove resident, acknowledged the comments, agreed with most of them, and supported union housing and union labor. His concern related to health and safety. As a physician, he stated the particulate matter that would fill the air as a result of the imported soil and the chronic respiratory conditions that would get started or aggravated was a concern. Dr. Gullett urged the DRB to refuse to accept the project without conditions and suggested it could be built with conditions that no fill be allowed and that the grossly unstable hillside be addressed. He ceded the rest of his time to Brickyard Cove residents.

STEVE HARRIS, Richmond, a carpenter and father supported the Brickyard Cove Residential project due to the housing shortage that was very real for working class people. The increases in rent were creating more homeless and leaving others to live hours away. Richmond was in need of housing and after having to commute for hours he understood the lack of family time and money spent on gas. He stated housing would provide a better quality of life with less commute and more family time. The project would allow not only the development of more housing but allow community members to spend locally which would bring more economic vibrance to Richmond. With housing opportunities and good paying jobs, the project could allow for an overall better quality of life for the community and provide economic benefits for years to come. It would also improve the appearance of the area, the design contours of the hillside would make it look more natural, and every home built would help the community thrive.

James Atencio, City Attorney's Office, advised that according to DRB procedures, the applicant was allowed two minutes to make rebuttal comments.

Ms. Durkin asked David Terhune to speak to the issue of importing soil to the site, which appeared to be the public's issue of greatest concern.

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Mr. Terhune responded to the question in the public comments as to whether the first 400 to 500-foot length of the center spine road could be flattened out. He stated the road was only 650 feet long so if flattening out the first 600 feet essentially the entire road would be flattened out because the upper 100 to 150 feet of the road was a fire department turnaround. If flattening that road the site would basically be flattened as shown in the presentation from Jeff Vines, which would have a cut at the rear of the site. At that location the existing elevation was at 125 feet whereas the flat bottom portion was around 15 feet. Even accounting for road slope and trying to do a 2:1 slope would require 30-foot retaining walls that would be three 30-foot tall retaining walls on the back of the property over 90 feet in total, and two 30-foot tall walls on the Seacliff side, which would create a very dangerous scenario for the stability of those walls and was not a viable option. The only way to make those grades would be to eliminate the units.

Boardmember Marthinsen appreciated the explanation about the grading of the units as configured but asked if other configurations had been considered in the early planning phases of the project.

Ms. Durkin stated that the early phases had considered a different product type, something similar to Brickyard Landing where there had been a street that snaked up the site to maximize views and had also looked at more of a podium-type product. Given the market, the proposed product type was preferred and appeared to be more compatible with the existing units. The applicant had also decided to move forward with a for-sale product that was also important to many members of the community and had been selected moving forward.

Boardmember Butt referred to the analyses on other types of product for the site and noted that when the project had initially been submitted to the DRB the applicant had already settled on the product type; a single-family shared wall product. She recognized the applicant had tried to work with the DRB's prior comments. She referred to the rear elevations and verified with the applicant some of the notations on the plans for a window and a decorative panel. A discussion developed on the color for that decorative panel, which it was noted would be opaque to allow light to come in without allowing views through, and as part of that discussion the DRB considered whether or not to reduce the size of that window without the panel.

Boardmember Butt noted the larger issue was the fill and grading and whether there was something that could be done to mitigate the amount of fill to be used. She asked if there had ever been any study of the north side of the project being lower than the south side, and Mr. Terhune stated it had been done that way to keep the flow of those private alleys to the center spine road so that the overland release for a storm condition could be contained on site. If setting the westerly buildings lower than the spine road and lower than the easterly building, the overland release path would now be on to the neighboring property and that was to be avoided.

With regards to the fill, Mr. Katwan stated that when dropping the elevation and reducing the amount of import fill the consequences were for higher walls, specifically in the back, and that was the only way it could be done and keep the unit count. He stated they did not want to import more dirt than necessary but were doing it as the only way to get the plan to work and to yield the count needed to make the project feasible. With respect to story poles, with the amount of fill involved it would be impossible to build the very high story poles although they had been able to model using technology to show what it would look like from different perspectives without having to put a pole 60 feet up in the air. With respect to specific geotechnical issues, the project would use one of the best geotechnical firms that had an amazing track record and had taken everything into consideration and would not have the settlement and the issues some of the neighbors had

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raised. The design would take all of that into account. There would not be a failed community. He had over 40 years grading experience and none of the projects he had worked on had failed in any way. He added that the soil would be put back and filled in better than Mother Nature could fill it in.

Boardmember Butt asked if there was a minimum amount of fill that needed to go over contaminated soil. She wanted the fill to be reduced as much as possible.

Mr. Katwan stated the site had been mitigated to a certain standard but for a housing project it had to be capped. He stated the specific numbers just to the minimum amount required for the cap could be provided to the DRB. He also noted that the actual site was about eight feet below Brickyard Cove Road and was really a hole right now, and putting in the fill would help stabilize and buttress the very steep slope in the back. He would provide that information to the DRB.

Mr. Katwan added that their calculations had used the worst-case scenario of 13 yards per load and anticipated based on other projects to place about 2,000 yards a day, which accounted for the 153 loads per day. If done continuously there would be 34 actual days of hauling, which could be spread out or done quickly to get it over with. At a minimum they needed 2,000 yards a day. He stated there would be no need for five to six months of hauling and the project would follow all the rules to ensure worker safety and resident safety and would do that work consistent with BAAQMD regulations.

Mr. Katwan added that dust would not be flying around. The natural topography prior to the PG&E excavation for the natural gas tank showed the natural topography as significantly higher than where it currently was and they were only going a few feet beyond the initial topography to create the site.

ACTION: It was M/S/C (Carter/Butt) to extend the public hearing to 10:15 P.M.; approved by voice vote: 4-0 (Ayes: Butt, Christeson, Marthinsen and Carter; Noes: None; Abstain: None; Absent: Hook.)

Another public comment had been requested.

PHILLIP ROSENTHAL, Richmond, stated the LUDRC, a subgroup of the Point Richmond Neighborhood Council which included architects and experienced land use developers, had just voted unanimously to oppose the project for the same reasons that had been expressed through the public comments at a meeting just adjourned. The general membership of the community of Point Richmond had unanimously voted to support the LUDRC and encouraged the DRB to revisit the project. He would memorialize that vote in a letter to City staff

Chair Carter asked if the change in tree size on the west side had been memorialized in the plans, and Mr. Taylor stated that had been done for both sides of the project with trees at a maximum of 30 feet in height using trident maples and California buckeyes.

In response to Chair Carter with respect to the cross slopes in the east/west direction, Mr. Terhune stated that the overland release that would discharge on the west side could not be channeled back down to the bioswales. He referred to the once per century storm events and stated in order to protect against the large storms the site had been designed to contain all the runoff so that none of the adjacent neighbors would be affected. The entire site drained to the center spine

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road and the retaining walls would only pick up the tributary area between the edge of the building and the property line, some 29 feet or so in some certain areas. He added that the hillside slope runoff was less significant than the runoff from the roofs and the roads. For the uppermost hillside, there were four levels of ditches and four levels of storm drain systems, each one with multiple inlets to protect that area and the hydrology of the onsite flow patterns would be contained on site, which was why the buildings had been set as they had versus terracing them east to west.

Mr. Terhune added that the engineering standard for the overland release assumed that the storm system did not work so tilting the whole site to the west would mean that all the water would go to the west.

Chair Carter commented that the applicant had done a remarkable job reducing 120,000 cubic yards of fill down to 68,000 cubic yards, and he asked why there had originally been so much more dirt, to which Mr. Katwan explained that they balanced out the height of the wall and the amount of dirt needed and at the rear of the property there were now three ten-foot high walls with slope in between and they did not want to have the high walls in the back. It would be better to meet grade as close as possible, which was what they had tried to do.

Mr. Katwan emphasized that three walls at ten feet high was the maximum they would want to go based on the geotechnical engineer's recommendations and there was no desire to chance a failure and they wanted to build something with assurance that would not happen.

Chair Carter referred to the public comments about decks on the east and west sides of the project and Mr. Chung displayed a plan view to show the decks placed in the fronts.

Mr. Katwan stated there would be no decks on the side that peered into the neighboring properties. The decks would be placed in the front. The intention was for views to the Bay and beyond and anything close would be reconfigured to address potential privacy issues.

On the discussion of the decks, Ms. Durkin stated there had previously been more decks but many had been eliminated since the last iteration. Mr. Terhune added they could ensure that there were no decks on either the east or west sides that would impact the privacy of neighboring units. The few decks that were pointed out that faced the east or west sides were placed 80 to 100 feet away from any neighboring building and there were tall trees in some of those areas.

In response to Chair Carter as to ways to mitigate the potential for hydro compression, Mr. Katwan explained that they would not have the hydro compaction issues experienced in very large fills. The fills would be significantly smaller and most consolidation would occur during the first year or so when the fill was installed, and they would make sure that they surcharged and allowed the soil to consolidate prior to building foundations. Construction and occupation would start from the front back with the smaller fills and by the time they get to the back a lot of that consolidation would have occurred and placing the fill and sub drainage would alleviate those concerns.

MARA RUFFATTO, Cornerstone Group, noted that some of the fill was smaller so with less fill there would be less hydro compression, and after a certain amount of fill it would be compacted as best as possible to reduce as much settlement as possible. She stated the values presented in their report were kind of a maximum worst-case based on studies and they did not expect the nine inches of compression to necessarily happen, although it would happen over time. The other thing to consider was that the type and the size of the building would not create a differential settlement, which was where there would be a lot more issues with respect to utility settlements. She added that the entire pad would settle to whatever extent it was going to settle and be uniform

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so the post-tension map foundations that Cornerstone had recommended would be able to also handle that settlement.

Char Carter had looked at the colors and finishes and the attempt to balance contemporary with more of the traditional building components. He liked the introduction of the blues since people would be viewing the buildings from both the north and the south and if in the community the views would be over the blueish water of the Bay and offer a nice connection, was appropriate and fit within the context.

On the question of whether or not to leave the public hearing open and whether or not that would count as one of the limited hearings on the application, Ms. Velasco advised that if the item was continued, even if the public hearing was left open and continued to a future meeting, it would be considered as an additional hearing.

Ms. Durkin noted that she and her team had waited months for the hearing and she asked for a recommendation at this meeting and if there was a desire to discuss the architecture more that could be done as a subcommittee and not as a public hearing. She also asked if the remaining concerns related to the architecture and if the meeting was continued whether that continuance could be limited to the architecture.

Mr. Atencio advised that after the item moved on from the DRB there would be a consulting kind of meeting between a subcommittee of the DRB and the applicant prior to the Planning Commission meeting. He wanted it to be clear that would then have gone from the DRB's purview to the Planning Commission. Members of the DRB could try to work with the applicant to modify the project prior to the Planning Commission hearing but the subcommittee meeting would not have discretion prior to the Planning Commission meeting.

Boardmember Marthinsen noted that the major question was whether or not the basic premise of the plan could be approved and she was not certain another discussion about the architecture would be helpful at this point. She was more convinced by the architecture than by the premise of the plan. She understood the applicant had been responsive to those components but she remained unconvinced of the basic premise.

Ms. Velasco suggested the intent of the subcommittee or any additional review would have to be identified and any refinements to components that needed to be made could be summarized where the application could be conditionally approved.

Boardmember Butt suggested the biggest issue was whether or not the project worked for the site and she suggested the grading could be reevaluated and refined. In terms of architecture, she suggested a lot of moves had been made where the applicant had responded to concerns from the DRB, and her concern was that much of it had been taken from the two adjacent projects and had been "smashed" together. She supported something more holistic, suggested that more color could be brought in with the use of vertical stripes. Ultimately, she suggested the issue was the overall fill.

Mr. Atencio clarified that if the DRB did not recommend approval of the project the Planning Commission would still make a determination and vote.

Ms. Durkin commented that they had demonstrated that everything to reduce the import had been done and lowering the site more would make the condition even worse at the back of the site where there were already significant retaining walls.

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Boardmember Marthinsen agreed that with the current design the mitigation measures were probably the best that could be done with the configuration of buildings and when finally in place she suggested the plans would likely be great. She suggested the issue was the massive investment in soils moving, a huge carbon footprint and a huge issue and she asked why the site conditions were being contorted to fit the unit type and the DRB had not seen anything different. She noted, for instance, that the site should have a different housing product and handle the grading in a way that would result in less impact. She had not seen the process to get to the current situation and she wanted to see the earlier studies.

Mr. Katwan explained that there had been quite a bit of work done earlier on with other members of the DRB which had driven the discussion in this direction. He commented that the other iterations just didn't fit and it was more of a higher density product that sat at the bottom and had a five to six story podium-like structure that did not work for the site. The process had channeled them in this direction and they were working to make the community fit within the two existing projects.

Ms. Durkin did not know if the taller podium structures were consistent with the General Plan or even if it might not have been financially feasible to build. The applicant had invested a significant amount of time and money on the product type because they believed this would be the best fit for the location and a project that could actually get under construction.

Vice Chair Christeson suggested that a 94-unit project might not be possible for the site and if cutting the number of units down everything would be cut down.

Mr. Katwan agreed but stated it was difficult to make the project feasible at 94 units and losing any units would be catastrophic to the project. He stated they wanted more units and were allowed more units as confirmed by Ms. Velasco where the zoning allowed 10 to 40 units per acre. He stated the number of units proposed would be the optimum amount possible and make it fit within the environment. It bridged the two communities and they had meandered streets, hinged the units so they did not look like big masses and had done incredible things to respond to what the DRB had requested in the past. He would be happy to continue to improve the product, as promised, but had contractual obligations to the land sellers and needed to move forward to the Planning Commission.

Chair Carter identified the actions that could be taken by the DRB at this time to close the public hearing, continue the public hearing or move into a bit more discussion as to whether or not to vote to recommend approval or denial to the Planning Commission.

Ms. Durkin requested that a vote be taken at this meeting.

Boardmember Marthinsen did not support a continuance of the meeting.

Vice Chair Christeson made a motion to call for a vote on the application.

ACTION: It was M/S/C (Christeson/Marthinsen) to close the public hearing; tied by a voice vote: 2-2 (Ayes: Christeson and Marthinsen; Noes: Butt and Carter; Abstain: None; Absent: Hook.)

As to how to proceed, Mr. Atencio stated the DRB could in one motion close the public hearing and call for the vote to recommend approval or denial of the application to the Planning Commission.

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Boardmember Butt did not remember considering different product types other than the proposed townhomes. She did not want to deny the project given the applicant's work to date.

Chair Carter expressed the need to be cognizant of the five meeting limit and did not want to put the Planning Commission or the City Council in a position where each could not rehear the project if needed. It seemed the public was most concerned with things outside of the DRB's purview such as the EIR and the condition of Brickyard Cove Road, and the DRB did not want to burn another meeting that might be more valuable to the Planning Commission. He asked Mr. Atencio if an independent legal review would be warranted in this case.

Mr. Atencio stated there had been a lot of discussion in the community about the issues. He emphasized that City legal counsel worked for staff and the City and offered objective opinions to make sure the City avoided litigation down the road. He did not disagree with anything he had heard in the legal arena.

Boardmember Marthinsen wanted to see the studies and wanted to suggest an option and be apprised of why it would not work given the crazy amount of fill and it was hard for her to believe that there were no alternatives. She had no problem with the density bonuses including for height but she had a problem with the amount of fill involved. If the applicant had considered alternatives she wanted to see that information.

Offering anecdotal information, Ms. Velasco commented that the Terminal 1 project was a podium design with tucked under parking with four to five stories and that project was infeasible. She referred to the 12th and Macdonald site and a number of other projects throughout the City, and stated the only podium projects that ended up penciling out were 100 percent affordable because of tax incentives and some sort of public financing. The City wanted to see the podium types too but with interest rates, market rates and construction costs she was not surprised the City was not seeing a big podium project in areas like downtown infill sites.

When asked if there might be another alternative to develop the site, Ms. Velasco suggested that while there might be different ways to develop she had concept sketches frequently emailed to the Planning Department with significantly reduced development of the site to almost half the units and the question was whether the City wanted to see 47 single-family homes, which was a big issue with the Quarry Project, for a multifamily site and she did not want to get into the trend of encouraging less density. She stressed the tough housing market and explained that costs kept going up. At this point, the applicant was not willing to build another housing product.

Boardmember Marthinsen did not think the project would be bad when constructed but the process and impacts of getting it there was difficult for her to accept.

Boardmember Butt suggested that the applicant had made moves to improve the project but it went back to what they were struggling with and looking back to the study session when the amount of fill had been identified as a concern.

Chair Carter understood the environmental and health concerns and suggested there was some merit to restoring the natural topography of the site that had been so badly scarred by PG&E development. He stated the Planning Commission would be reviewing the project through the lens of the appropriateness of the project to its specific neighborhood.

Ms. Velasco stated if there were specific opinions on design and areas for the Planning Commission to consider to address the public concerns, while the DRB was not taking a position

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or making a condition about grading the DRB could recommend additional analysis by the Planning Commission or have the Commission consider the trajectory of alternatives for the site development and also provide areas that were more within its purview as it evaluated the project allowing the DRB to still provide an opinion around the design of the project.

Boardmember Marthinsen commented if there was nothing more that could be done at least there would be more housing for Richmond.

Chair Carter noted that one of the issues that Mr. Livingston had brought up was one of the previous iterations in 2022 that did not have the mix of lap siding with shingle siding and all the shingle siding was brown in response to the comments in support of Brickyard Landing. He asked whether the combination of the two siding types negatively impacted the appearance and whether the applicant should be pushed to do something closer to what had earlier been provided. He noted the applicant was trying to balance the traditional concept with the potential buyer base and taking cues from the market and using that to inform the proposal. He liked the more monolithic feel of having one siding type but did not think they all needed to be the same brown or shades of brown. He supported some blue worked in.

Boardmember Butt liked the metal awnings and the door tones that had previously been proposed. She had an issue where there was just blue volume sticking out and stated there should be a blue-toned building or a brown-toned building. She liked Waterline which had more subtle tones but having the massive vertical interruptions of the different color took away from fading into the hillside or having a Seaside Ranch style. She liked the red.

Boardmember Marthinsen liked the blue siding.

Vice Chair Christeson suggested that both looked pretty good. He supported a lighter color fixed in with a yellow with the accent in the doors with slightly different colors. He suggested the brown was stark and too dark for him and otherwise boring so a lighter green or yellow with the blue would look excellent in his view.

Boardmember Butt suggested what generally worked was having a lighter base with blues that complemented each other and that would be one building and then there would be a brown and then those colors would complement each other without trying to mix the two. She referred to Page 58 in the packet and suggested that the two developments on either side had been smashed together.

Chair Carter suggested a condition that each building utilize the same hue with different shades and Boardmember Butt suggested that each building should have a consistent color area zone scheme, referring to Waterline and the subtle and holistic appearance of the colors, desaturated without putting the blues and the browns together. She would feel more comfortable in general with a recommendation to encourage the applicant to find a way to pursue that.

ACTION: It was M/S/C (Carter/Butt) to extend the public hearing to 11:30 P.M.; approved by voice vote: 4-0 (Ayes: Butt, Christeson, Marthinsen and Carter; Noes: None; Abstain: None; Absent: Hook.)

Chair Carter doubted that the Planning Commission or the City Council would look at the colors or materials but would be looking at 90 percent of what the public had expressed and he asked if in trying to continue the meeting whether the DRB was doing a disservice to the City's boards and potentially the City's citizens to allow those two bodies to really talk about the issues that they

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wanted to talk about.

Boardmember Marthinsen wanted to add something in the recommendation on the record that the DRB retained significant reservations about the amount of fill and the quantity of public comments received on this topic. She urged the Planning Commission and the City Council to continue to evaluate alternative options for both.

The DRB discussed how to convey its concerns to the Planning Commission with respect to the fill and the color scheme. Vice Chair Christeson suggested the Planning Commission could be given the option of choosing the prior or current color scheme.

Boardmember Butt preferred to recommend approval of the application as opposed to a denial to make sure that the DRB could offer its recommendations for design conditions. She referred to Page 38 in the packet, stated she hated that elevation, and wanted to condition it away.

Chair Carter suggested a condition be added that each building have a single color hue with shades to be more muted and desaturated. He reiterated the DRB could do a disservice to the public if it did not give either the Planning Commission or the City Council enough latitude to have a second meeting to address concerns.

ACTION: It was M/S/C (Carter) [the second to the motion was neither audible nor identified on the recording] to close the public hearing; approved by voice vote: 4-0 (Ayes: Butt, Christeson, Marthinsen and Carter; Noes: None; Abstain: None; Absent: Hook.)

For purposes of clarity, Boardmember Butt noted that Condition 35 in the staff report was blank and Ms. Velasco advised that there was a total of 65 staff-recommended conditions and the numbering would be corrected.

On the discussion of potential additional conditions and with respect to recommended Condition 68, *The developer to use best efforts to reduce the amount of fill*, Mr. Atencio suggested that was not necessarily a condition. He recommended some sort of statement in the agenda report where the DRB could convey its statement(s) to the reviewing boards.

Ms. Velasco recommended a statement that while the DRB had recommended conditional approval of the design, it had significant reservations regarding the amount of import fill to the site for the dust impacts and access impacts to neighbors and recommended the review bodies review the issue further. She stated if the recommendation would be for best efforts to reduce the fill, the DRB could identify a number and the applicant would have to make the case to the reviewing bodies why that could not be done.

Chair Carter noted that the applicant had reduced the fill by 25 percent each time and had ultimately reduced it by 50 percent.

Chair Carter added that the DRB could recommend that the applicant reduce the fill by 25 percent and in the discussion and knowledge that the applicant might not be able to reduce the fill by that much just making the request for a reduction of fill would be on the record and the applicant would have to look at it again. By consensus, the DRB supported a condition for best efforts to reduce the fill without assigning a target number.

It was also recommended that the statement to the Planning Commission include a reminder to ensure that proper safety measures were in place for the neighborhood during construction.

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ACTION: It was M/S/C (Carter/Christeson) to recommend to the Planning Commission the approval of PLN21-444, Brickyard Cove Residential, subject to the four Findings and Statements of Fact with 65 Conditions of Approval with additional DRB conditions as follows: 66) Eliminate the opaque panels shown on the rear elevations where the bathrooms would be and instead make it a square window with a higher sill; 67) Each building to have a consistent hue with variations in shades and that the colors be consistent with what had been shown with a reduction of the saturation; 68) The applicant shall make best efforts to further reduce the amount of fill; and 69) All exposed metal shall be Kynar finish or be stainless or other non-corrosive stainless steel material appropriate for a marine environment; approved by a Roll Call vote: 4-0 (Ayes: Butt, Christeson, Marthinsen and Carter; Noes: None; Abstain: None; Absent: Hook.)

Boardmember Butt wanted to make sure that the statement would be presented to the Planning Commission and Ms. Velasco recognized the Commission's need to identify its strong reservations in regards to the foundational question about the environmental impacts of the import fill and a desire to see less import fill to accommodate the project. She stated that the report could elaborate on some of the public comments raised.

Boardmember Butt noted the extreme concern for the amount of fill and the right product type and density for the subject site in that the site itself would be better served with a podium type; Chair Carter stated the DRB had agreed there was no desire that the project be less dense; and Boardmember Marthinsen suggested that the level of density proposed could be higher and had been supported but there were concerns about the form.

Chair Carter referenced the efforts to do the right thing and balance the legal issues and the contextual issues and everything else working in conjunction with the Planning Commission and the City Council that would hear the concerns and had the purview over those concerns.

Board Business

A. Staff reports, requests, or announcements

Ms. Velasco reported that Andrea Villarroel would soon be leaving the employ of the City and she thanked her for her time and work. She added that the Planning Department was in the process of hiring and again thanked Ms. Villarroel for her service to the Richmond community and wished her well in her future endeavors.

B. Boardmember reports, requests, or announcements: None

Adjournment

The meeting was adjourned at 11:29 P.M. to the regular Design Review Board meeting on Wednesday, March 8, 2023.