

**PLANNING COMMISSION MEETING**  
**COUNCIL CHAMBERS, RICHMOND CITY HALL**  
1401 Marina Way South, Richmond, CA  
August 3, 2006  
7:00 p.m.

**COMMISSION MEMBERS**

Virginia Finlay, Chair	Vice Chair Stephen A. Williams
Ludmyrna Lopez, Secretary	Zachary Harris
Nagaraja Rao	Vicki L. Winston
Jeff Lee	Vacant
Vacant	

The meeting was called to order by **Chair Finlay** at 7:08 p.m.

**Vice Chair Williams** led in the Pledge of Allegiance.

**ROLL CALL**

**Present:** Chair Finlay, Vice Chair Williams, Secretary Lopez and Commissioners, Harris, Lee, Rao, and Winston

**Absent:** None

**INTRODUCTIONS**

**Staff Present:** Tanya Boyce, Lina Velasco, Lori Reese-Brown, Janet Harbin, City Attorney Everett Jenkins, Mary Renfrow, Assistant City Attorney; Richard Mitchell, Planning Director, Steve Duran.

**Chair Finlay** gave an overview of the procedures for speaker registration and public hearing functions and procedures. She said any decision approved may be appealed in writing to the City Clerk by Monday, August 14, 2006 by 5:00 p.m.

**MINUTES** – There were no minutes for approval.

**CONSENT CALENDAR**

**Chair Finlay** noted the Consent Calendar consisted of Items 4, 5, and 6.

**Commissioner Winston** requested moving Item 2 to the Consent Calendar.

**ACTION:** It was **M/S (Winston/Rao)** to add Item 2 to the Consent Calendar; unanimously approved.

**Commissioner Harris** referred to Item 6, page 2 of the staff report, and said the floor area ratio in the staff report was stated as a minimum of 0.25; however, it should be referenced as a maximum of 0.25.

**Chair Finlay** noted the recommendation also included return to the DRB as opposed to the Planning Director and she questioned why this needed to occur. **Secretary Lopez** noted the DRB recommended it come back to them with the landscape plan to review landscaping and fencing materials.

**Chair Finlay** requested Item 6 be removed from the Consent Calendar for discussion.

**ACTION: It was M/S (Harris/Rao) to adopt the Consent Calendar consisting of Item 2, 4, and 5 as amended; unanimously approved.**

**Brown Act** – There were no speakers.

**Consent Items Approved:**

2. **CU 1102797 – Live/Work Units at 431 First Street** -PUBLIC HEARING to consider conversion of a vacant industrial building to 11 live/work units at 431 First Street (APN 538-042-029). M-2, Light Industrial District. MSH Properties, owner/applicant. Tentative Recommendation: Hold Over to 10/5/2006.
4. **CU 1102830 – Landscape Contractor’s Yard at 3655 Collins Avenue** - PUBLIC HEARING to consider a Conditional Use Permit application to operate a landscape contractor’s yard on a portion of the site located at 3655 Collins Avenue (APN 408-060-012). The proposed project includes site improvements such as landscaping and paving; however, no new building construction is proposed as part of this project. M-2, Light Industrial Zoning District. William Diel, applicant. Tentative Recommendation: Conditional Approval.
5. **V 1102991 – Variance For Lot Width And Lot Size at 300 Block of 32<sup>nd</sup> Street** - PUBLIC HEARING to consider a Variance for minimum lot width and lot size for the purpose of constructing a 1, 780 square feet single-family residence (IHI home design “25-B”) on the unimproved lot located between 320 and 300 32<sup>nd</sup> Street (APN 516-182-021). MFR-3, High Density Residential District. Romi Mayder, owner; Armando Mancini, applicant. Tentative Recommendation: Withdrawn By Staff.

**Items Discussed:**

**Chair Finlay** recommended and the Commission approved, hearing Items 5 and 6 and to proceed with Item 3.

3. **CU 1103051 – Daycare Center at 2856 Garvin Avenue** - PUBLIC HEARING to consider establishment of a daycare center in an existing home at 2856 Garvin Avenue (APN 528-280-008). SFR-3, Single Family Residential District. LaRhonda Martin, owner/applicant. Tentative Recommendation: Conditional Approval.

**Tanya Boyce** gave the staff report, described the request, hours of operation and request for approval up to 50 children. She noted some concerns have been raised by the neighborhood council and staff proposed the capacity not exceed 35 students, that no more than 12 students be allowed to play in the outdoor area at any one time, no outdoor play be allowed after 5:00 p.m., that the school be responsible for maintaining landscaping and that the owner legalize the

second dwelling unit located in the rear yard. An additional letter was presented to the Commission, as well as before and after pictures of the center.

The public hearing was opened.

LaRhonda Martin, applicant, discussed her desire to open a Montessori school in Richmond, described her teaching experience with the City of Richmond, said she felt the location would not pose traffic problems, discussed gardening projects for children offered by the neighbor next door, discussed the benefit of having people visible in the neighborhood all day, and social and academic benefits for the children.

**Commissioner Harris** questioned the daily staff of 5 teachers, and Ms. Martin noted they try to have a 1-7 ratio and in that total of 5 were also assistant teachers, or 2 head teachers and 3 assistants.

**Commissioner Rao** questioned if all Montessori schools were known as day care centers, and Ms. Martin said the Department of Social Services licensed day care centers and this would be considered a day care center, discussed licensing and safety standards for the children during operating hours.

**Commissioner Rao** confirmed with Ms. Martin the neighborhood council had approved the center.

**Secretary Lopez** questioned peak traffic hours, and Ms. Martin said it varied, that they have children between the ages of 2-5 years old and at no time were there more than 5 parents picking up children at any one time. She discussed the placement of cones during drop off times and the parent handbook information.

**Commissioner Rao** confirmed Montessori schools did not need certification from the unified school district. He questioned the reason neighbors had opposition and Ms. Martin said it mostly had to do with traffic; however, she felt traffic was minimal.

**Chair Finlay** referred to a letter received this date from a resident in opposition, voicing parking, traffic and busyness of the street as issues. She questioned the placement of cones and neighborhood parking. Ms. Martin said their driveway accommodated two parking spaces, as well as a neighbor's driveway which could also be used.

Public Comments:

Shantina Clark, voiced support for the day care center, felt more Montessori schools were needed in urban neighborhoods for underprivileged children, said she worked with Ms. Martin and felt she was a great teacher.

D'Neen Perkins, voiced support for the day care center, said she had a 2 year old, felt the opportunity of her daughter going to a Montessori school would be great and for underprivileged children and praised Ms. Martin as a teacher.

Sam Davis Jackson, pastor and father of LaRhonda Martin, said he supported his daughter's request, felt the property had been improved and knew the school would be a success.

Debra Thompson, supported the day care center, felt the idea was a blessing, felt she had more than enough teachers for the number of children attending the school and knew it would be a success.

Michael Lu, introduced his father, David Lu, who lives two houses from the proposed day care center, voiced concerns with noise and traffic on Garvin Avenue, and was worried about the true enforcement of limiting children to 12 during outside play.

Connie Pekedis, said she lives 4 houses down from the proposed center and across the street, voiced concern for the safety of the children because of the busyness of the street, voiced concerns of people driving in excess of 30-40 mph, said her next door neighbor had an unauthorized day care center at their home with children coming and going all day, with people parking at different times, said it was disruptive, felt the Montessori education for children was important but she was concerned with traffic and criminal activities on Garvin Avenue.

**Commissioner Harris** questioned whether there was a crosswalk at 28<sup>th</sup> or 29<sup>th</sup> Street, and Ms. Pekedis said there was a 4-way stop sign at 28<sup>th</sup> Street but no crosswalk, and the next one was at 34<sup>th</sup> Street.

Ms. Martin, applicant, noted the number of children in the yard at any time would be 5; 2 children with 2-3 teachers. She said there was also nap time during the day and normally, the older children were those who go outside more often. She said the school would be held inside the building and in the back yard, said she has run this type of operation in very busy areas and never had any fatalities, and felt there was enough parking.

**Ms. Boyce** said with conditions added including the circulation plan and drop off/pick up policy contained in the handbooks given to staff and the parents, as well as other safety precautions taken by the applicant, the use was appropriate and staff was recommending conditional approval. She said she has been to the site and felt there was no parking impact to the neighborhood.

**Secretary Lopez** questioned whether there were multi-unit structures nearby, and **Ms. Boyce** said there were none on the block; however, staff said there was a nearby playground which could be used for some outdoor activities as well as a nearby elementary school.

**Secretary Lopez** asked if the City had signage requirements for the type of operation, and **Ms. Boyce** said there were no requirements per the zoning ordinance; however, if the Commission wanted to condition a "children on site" sign in the area, it could be posted. She also noted that because there were 12 children not living at the site, this prompted the need for a conditional use permit.

**Commissioner Harris** suggested requesting the engineering department investigate the need for a crosswalk, as well as the need for signage.

**Commissioner Rao** questioned fencing, and **Ms. Boyce** explained there was a side yard concrete area for bicycling, no fenced-in lawn area in the front yard; however, there was a landscaped area behind the fence with a lawn.

**Secretary Lopez** questioned whether the site would be located on a list that designated where children were, and questioned whether Megan's Law applied at the site. **Ms. Boyce** said she was unaware of the City maintaining such a list. Ms. Martin said typically, the State identifies

whether there are nearby past offenders in the area. The licensee would be notified that they would not be able to have that number of children at the location due to past offenders being located in the area.

**Chair Finlay** felt this was a disclosure issue and not an enforcement issue.

The public hearing was closed.

**Commissioner Harris** said according to Condition 7, he asked that a sentence be added to clarify it further; that the establishment will be a day care center with more than 6 students, which makes an occupancy permit required, and "The building shall be considered and need occupancy per the California Building Code".

**Secretary Lopez** requested signage be added to indicate "children present in the vicinity" and **Commissioner Winston** noted there was already a condition that indicates the applicant could not install a sign.

ACTION: It was M/S (Harris/Winston) to concur with the findings and staff report and approve **CU 1103051** subject to conditions 1-8, with the stated amendment to condition 7; unanimously approved.

**6. V 1100467 – Variance For Omega Pacific Building at 618 South 8<sup>th</sup> Street** - PUBLIC HEARING to consider a Variance and Negative Declaration for the construction of a ±19,040 square feet retail/office building on a 55,012 square feet parcel located at 618 South 8<sup>th</sup> Street (APN 550-272-004, -017,-019 & -024). C-2, General Commercial District. Todd Lewis, owner; Marcy Wong, applicant. Tentative Recommendation: Conditional Approval.

**Lori Reese-Brown** described the project, said the applicant requests to expand the building for office and commercial use for the sale of electrical fixtures which would reduce area blight and provide a safe working environment for employees, said the DRB was impressed with the design but wanted the landscape plan to return to them for approval, that currently the maximum FAR was .25 and the applicant was requesting to increase it to .40, or a 15% increase.

**Chair Finlay** said she removed the item for discussion, agreed it was a huge improvement, but was distressed that Conditions 10-13 and 17 should have been in the original submittal and completed and not needing to be returned to the DRB. The items included such things as building elevation plans, proposed fence setback, landscaping designs, parking spaces, and lighting fixture plans. **Commissioner Winston** agreed.

**Richard Mitchell** said staff was in the process of reviewing design review procedures, felt there were reasons for some conditions to return, but agreed projects should be finalized prior to coming to the Planning Commission.

The public hearing was opened.

Todd Lewis, owner, said they were an electrical supply firm specializing in lighting large corporate high profile facilities. He noted they submitted landscape plans, a very comprehensive lighting plan, said the project was of high quality, they have experienced challenge in dealing with the City's design process, and thanked Ms. Reese-Brown for moving the project along.

**Lori Reese-Brown** noted she attended the DRB meeting wherein the plans did show lighting, landscaping, and signage; however, the DRB did not feel they were adequate, asked for changes and more detail, and requested it return to them again.

**Commissioner Harris** noted he did not have the lighting plans, said on July 26 the DRB approved a set of plans and questioned if they were the same plans. **Ms. Reese-Brown** said they were the same plans, but the DRB asked that the applicant return with a separate plan for the landscaping and lighting, and enhance them.

Public Comments:

Ivy Lewis, Omega Pacific, said her family moved to Richmond in 1935, they were asking the Planning Commission to approve the project, felt the project would be a big improvement for the community, said the neighborhood council was in favor of it, said the proposed fence was an important part of the project due to theft of plants, and asked that the Commission approve the project.

Florence Reid-Randall, aunt of Todd Lewis, said his nephew was not trying to build a nursery, said his plans were beautiful, the project would enhance Richmond, noted problems with people stealing the plants and later reselling them, and asked for the project's approval.

Rhonda Harris, President of the Santa Fe Neighborhood Council, was in favor of the project, said it would enhance the area, felt there was work that needed to be done with the DRB, but asked that the Planning Commission move forward with the project.

**Commissioner Winston** asked that Condition 12 can be changed to read, "Prior to the issuance of a building permit, the applicant shall submit to the Planning Director and/or designee a landscape plan that included one tree for every four parking space, landscape vegetation planting within five feet of the front entrance, and a fence color other than black."

**Lori Reese-Brown** noted staff's recommendation was that the Commission concur with the recommended variance findings 1-5 and attached DRB findings 1-4 and approve V 1100467 subject to the 17 conditions.

The public hearing was closed.

**ACTION:** It was M/S (Winston/Williams) that the Planning Commission concur with the variance findings 1-5, Design Review Board findings 1-4 and approve **V110467** subject to the 17 conditions with the change that Condition numbers 10-17 include language that indicates that the submittal of the requested items and plans be submitted to the Planning Director or his designee, that Condition 13 be amended to read, "parking spaces are to be depicted at 9 x 18 feet" (Harris amendment); and that Condition 12 be revised to read, "prior to issuance of a building permit, the applicant shall submit a landscaped plan to the Planning Director or his designee that that includes one tree for every four parking space, landscape vegetation planting within five feet of the front entrance, and a fence color other than black;" unanimously approved.

- 1. EID/TM/GPA/RZ 1101112 – Point Richmond Shores at Dornan Drive and Brickyard Cove Road** - PUBLIC HEARING to consider the Point Richmond Shores project, also known as Terminal One, proposed by Toll Brothers, consisting of an Environmental Impact Report (EIR) with Mitigation Monitoring and Reporting Program; a General Plan Amendment; Rezoning to Planned Area District; Vesting Tentative Map; and, Design

Review. The project site is located at Dornan Drive and Brickyard Cove Road and is proposed for construction of the following: a) approximately 330 residential condominium units contained within two-5 story buildings constructed over a parking podium; and, b) an approximately 1.9-acre public park. C-C, Coastline Commercial Zoning District. Redevelopment Agency, owner; Toll Brothers, applicant. Tentative Recommendation: Conditional Approval.

**Richard Mitchell, Planning and Building Director**, noted present were many staff and consultants in response to discussions at the DRC on Monday night where questions and subsequent communications had come out relating to a variety of things such as historical preservation, Bay Trail issues, sewage capacity, and there were a number of meetings with no final consensus reached between the community and the developer regarding design.

**Commissioner Harris** said a lot of documents had been received over the last few days regarding information in the EIR and some have not been incorporated into the EIR. He questioned what the best way was to have additional items incorporated into the project record if they will be referenced as amendments or errata to the EIR. **Mr. Mitchell** said items could be read into the record so long as the items did not represent a substantial change in any condition.

**City Attorney Everett Jenkins** said if it did constitute a substantial change, additional time may be requested and could be taken into consideration.

**Mary Harbin** described the project, stating the plan included 330 residential condominium units within 2, 5-story buildings, constructed over a parking podium, with a 1.9 acre public park along the waterfront. She said Toll Bros. began the project in 2004, noted square footages ranged from 1083 to 2148 square feet in size, the applicant would pay inclusionary housing fees or could choose to build some affordable housing within their development, heights range from 71 feet to 74 feet above grade, setbacks vary, and circulation would be through the project and onto Ferry Point Way, with access also from Brickyard Cove Road which runs along the upper part of the site.

She said the Design Review Board reviewed the project and provided conditions. The Redevelopment Agency provided historical information to the Commission as well as remediation information for the site for the hearing. The environmental document considered demolition of the Terminal One Building which was potentially a historic resource. The study for the environmental document said that the resource had no historic significance because it had been used in WWII for manufacturing, warehousing and distribution over the years and had changed substantially over the years.

**Ms. Harbin** noted a letter was presented by Toll Bros.' attorney relating to issues that came up at the DRC meeting on Monday night, a letter from LSA was received about issues relating to the consistency of the project with the General Plan, and Mr. Ben Helber, applicant, Toll Bros. was present who would make a presentation.

**Commissioner Harris** said revisions were proposed to Exhibits B, C and D regarding resolution for the EIR document, Tentative Parcel Map and DRB conditions. He did not recognize all changes and asked for an explanation.

**Ms. Harbin** said changes were made to Exhibit B, pages 5 and 10. She said on page 5, 3<sup>rd</sup> bullet item from the last, "The proposed project has been designed as a development with multi-

family housing to fulfill General Plan goal of providing a diversity of housing unit types for City residents.” On page 10, Mitigation, Item D, Mitigation under the item had been changed to reflect what was in one of the other resolutions and goes into more detail about what the noise impact mitigation measures would be, such as a construction noise management plan specifying hours of construction.

Regarding Exhibit C and D, there were problems with the title of the resolutions which were corrected. On Exhibit D, the dates at the end of the resolution were also changed because it referred to a date back in April.

**Commissioner Harris** said the DRC met on July 31, 2006 to discuss the item. There were many questions, concerns, inconsistencies, and incompleteness found in the EIR, and due to these the Committee did not feel comfortable in making a recommendation to accept the items. The DRC had a vote of 3-1 with Commissioner Finlay voting no on recommending adoption of an EIR. Because the adoption of the EIR is a component of the recommendation of accepting the General Plan Amendment and ordinance accepting the zoning code, there were similar 3-1 votes on those items. Because the Committee did not know about the impacts of how the questions regarding the EIR were going to be answered and impacts they would have on the Tentative Parcel Map and Design Review conditions, they voted 4-0 to not recommend approval of both items.

**Chair Finlay** questioned the course of action taken by the DRC and **Mr. Jenkins** confirmed it was the correct course of action, as the EIR was the underlying document upon which the project is based.

**Commissioner Winston** said she had questions on the land disposition agreement which was received by Commissioners on Monday, and **Mr. Jenkins** noted he understood that the agreement had not yet been prepared for the project. **Commissioner Winston** said that in the EIR, it mentions that one of the requested approvals would be the land disposition agreement amendment, which was before the Commission and questioned whether the Tentative Parcel Map approval process was inter-connected with the agreement, and **Mr. Jenkins** noted it was not on the agenda. **Ms. Harbin** said the agreement was delivered by the Redevelopment Agency.

**Steve Duran, Community Economic Development Director and Executive Director of the Redevelopment Agency** noted the packet received was at the request of one or more Commissioners as background information and not something on the agenda for this hearing. **City Attorney Jenkins** said the document should be made available to those interested in the project and **Commissioner Winston** felt it had a bearing on the final disposition of the Final EIR.

**Commissioner Winston** referred to the development team as presented by Toll Bros., said LSA was on their project team and questioned a conflict of interest. **Mr. Duran** noted LSA was an environmental consultant. **Mr. Jenkins** noted the work they were doing was for the City. **Mr. Duran** said LSA was also the consultant most familiar with the site and was one of the firms the City uses for environmental consulting.

**Commissioner Winston** said the agreement discusses the project was to be similar to the Villas at Dublin, and **Mr. Duran** noted the project as presented tonight varied from the concept plan chosen to by an RFP process by the Council and Agency Board mainly because of the design review process and input from the community.

**Commissioner Winston** said based on what started and where it ended up with the project, it seemed that some of the reasons given for the changes or evolution of the project into a higher density project were because of the need to include more parkland. She said there was a huge Miller Knox Shoreline Park next door and if it were originally envisioned to incorporate a 1.9 acre park which then evolved into increasing density, she was not sure if this was a good reason to have it pushed back. She said she had just received a memo from the City of Richmond Engineer stating that Ferry Point Road was not going to be considered public access; that this was just for the routing of people living on site, yet having the road in the agreement was also the reason why density was increased. She felt there was a circular argument, said the development had gone from 21 units per net buildable acres maximum to a much denser development for reasons unclear to her.

**Mr. Duran** said when moving into a podium structure, the project became a more expensive construction. When moving the units back away from the shoreline to accommodate the shoreline road, bay trail, and BCDC's desire for a larger park and more public access to the shoreline, the excavation became greater and the construction type were both more expensive.

**Chair Finlay** noted the verbiage in Attachment I indicated that Ferry Point Way was being proposed by the developer as a private street and it would be maintained by a homeowner's group. Through-traffic should not be led to believe that this is a public thoroughfare. **Mr. Duran** said if it were a public thoroughfare, the roads and sidewalks would need to be made to City standards, although the public has access and is encouraged to have access to use the park, which was the distinction. He said the Agency was trying to achieve traffic calming measures on the loop road and did not want a major boulevard going along the shoreline.

**Commissioner Rao** referred to Resolution No. 6 and Exhibits B, C and D, and confirmed the public had access to these documents. **Ms. Harbin** said they would have been available upon request and changes made to the documents were fairly minor.

Ben Helber, Toll Bros., presented the project stating it had many attributes; community input, development of vacant under-utilized land, ground field redevelopment, creation of urban infill, creation of open space, connection to the Bay Trail and fiscal benefits to the City. He discussed the community input process, review and approval by the Design Review Board, Bay Conservation Development Commission DRB, and mediation with the Mayor and City Manager. He noted the land was deemed to be in blighted condition by the Redevelopment Agency, was a Brownfield site currently undergoing remediation, he described open space, circulation and bay trail benefits, parkland maintained at no cost to the City, described fiscal benefits including the \$13 million land sale, development fees of \$3.42 million, affordable housing in-lieu fees of \$4.8 million, for a total of \$21 million. He discussed the \$1.37 million annually to the Agency for 30 years, with affordable set aside of \$600,000 annually, transfer tax, sales and utility taxes for a total of \$2.27 million to the City annually, for a total benefit of nearly \$90 million over the next 30 years, and said it would increase the buying capacity of the City by \$22.5 million.

Mr. Helber displayed a 3-D animation and described the project as a luxury complex, with meeting facilities, gym, pool, significant views, park land, public access roads which would incorporate views currently obstructed and stamped concrete. He said Toll Bros. was requesting five revisions to the five conditions of approval in a design review resolution. Condition 7: Setbacks on the street rather than the property line; Condition 16: Determine 8 foot deep setbacks satisfy the off-set requirements; Condition 17: Do **not require deletion an inch above the portal, (not sure exactly what he said on this Condition 17)** as they believe this

was unwarranted; Condition 18: Do not require cutback of the short legs of the building of the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> floors of 90 feet; and Condition 19: Do not require cutback of the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> floors of the long legs by 25 feet.

Mr. Helber said Toll Bros. participated in mediation led by the City Manager despite achieving the setbacks requested by the CCCPR neighborhood group and the compromise plan was rejected. Toll Bros. was still prepared to go forward with the plan. He said redevelopment of the blighted site, creation of significant public park land, open space opportunities and fiscal benefits to the City would result from the development of the site.

He noted some questions were raised at Monday's DRC hearing on the adequacy of the EIR and its treatment by the project's consistency with the Richmond General Plan. LSA submitted a letter clarifying the scope of CEQA and adequacy of the EIR, as well as Toll Bros. addressing issues of proposed high density residential designation, consistency with the applicable General Plan policies addressing issues such as affordable housing, the Bay Trail and sewer capacity, consistency with the project's special features overlay or SFO District, and Toll Bros. believes all issues were adequately addressed in the EIR and could clarify any questions.

**Commissioner Harris** said at the June 1<sup>st</sup> meeting, one item discussed relative to providing a Bay Trail link on the north side of the property was whether or not Brickyard Cove Road was going to be abandoned and dedicated as an easement, remain as a road, and he wanted clarity on the issue. Mr. Helber said Toll Bros. had never proposed to abandon Brickyard Cove Road; the proposal was exactly what was laid out in the vesting Tentative Map. The shoreline road would be owned by the HOA and maintained by the HOA, but as shown in the plans, a public access easement would be granted over that. Anyone who wants to drive over the road may do so and it will appear like a normal road. Brickyard Cove Road to the north of the project would also be available to anyone wanting to drive down it as well.

**Secretary Lopez** referred to Brickyard Cove Road and asked how wide the road was proposed, and Mr. Helber said it would remain the exact width it was today, and he could remember if it was at 22 or 25 feet wide.

**Commissioner Harris** referred to the color scheme of the project, said he commutes to San Francisco and was able to look over to the project site from the Bay Bridge. He said one cannot see the Brickyard Landing Condominium developments because they are hidden by shadows of the cove. He felt the project would be more visible and questioned if the color scheme could blend better into the hillside.

Davey Bonbard, design architect, said they selected the colors based on their attempt to address a nautical theme, but were open to any color scheme suggested. He confirmed the current color scheme included a slate grey for the body of the building, that the overall façade of the building was more than 50% glass due to view orientation, with white trim and a grey metal roof.

**Commissioner Williams** questioned the TRAC communication, and Mr. Helber distributed copies to the Commission, dated September 9<sup>th</sup> to BCDC, and noted it was prior to the September 12<sup>th</sup> hearing of the BCDC DRB who approved the project.

Alicia Greer, Attorney for Toll Bros., was introduced by Ben Helber, to answer any questions of the Commission.

**Commissioner Harris** questioned the sewer issue and asked for a summary of the overall sewer system and impacts that might be presented by the project.

Ryan Johnson, Villa Water North America, contractor for the City of Richmond, said there was more than adequate capacity in the plant, or 17 mgd. He said secondary clarification is one of the main process, it could be a limiting factor due to the volume of the clarifiers, but was not directly related.

**Commissioner Harris** confirmed with Mr. Johnson that the dry weather influent into the plant was approximately 67 million gallons a day, and at times there have been issues relative to violations for heavy inflows during heavy rain events, which was typical of other plants around the state. Mr. Johnson said there are maintenance issues that are being attended to; however, this was a separate issue in talking about capacity at the plant for the project's situation of adding more flow.

**Commissioner Harris** said there were a few lift stations in the area and confirmed with Mr. Johnson there were no INI issues in that area, so there would be no plant issues; however, the collections system would need to be evaluated and assessed for pump station capacity and performance.

**Commissioner Rao** noted a study needed to be conducted but confirmed with Mr. Johnson that ultimately the performance of the plant would not be drastically affected. However, the performance of the collection system would need to be looked at and evaluated.

**Chair Finlay** noted there were mitigating conditions regarding wastewater and collection system and she questioned whether these would be handled. Ms. Greer said yes, according to their environmental consultant and the Public Works Department, they found the applicant would be paying certain impact fees and implementation of conditions would be adequate for the development. She said they would pay the fee prior to the issuance of building permits and conditions of approval would need to be fully implemented prior to the certificate of occupancy.

#### Public Comments:

Michael Davenport, supported the project, felt it would be financially beneficial, and supported Toll Bros.

Donald Brown, supported the project.

Wayne Wilson Ellis, said he must commute 100 miles round trip to work, supported the closeness of the project and felt it would provide prevailing wages and require apprentices.

Douglas Emerson, supported the project, wanted to be placed on a prevailing wage project closer to where he currently lives, and said he could learn from it as an apprentice.

Johnny Boone, supported the project, said he was a journeyman and felt it would help apprentices come into the construction trade, and felt the project would enhance the area and get people off the street.

John Ziesenhenné, Chamber of Commerce, said many people in the audience were present at the City Council meeting, thanked the Commission for their professional conduct, said the Chamber supported the project, said he was in favor of the project, felt Toll Bros. was a good

developer, they would bring in money and jobs to the City and broaden the tax base for the City and urged the Commission's support.

Ethan Veneklasen, East Bay Workforce Housing Coalition, Vice President of the Contra Costa Council, discussed the project's benefit in promoting workforce housing in the east bay, hoped for a balanced supply of housing in the east bay, cited statistics of those able to afford various housing levels, said the project would provide high density housing, provides a mixture of unit sizes, reuses an under utilized site, and felt the project was consistent with the Council's intent to provide high density housing along the waterfront, and it is rare thing when business and labor are standing together to support a project.

Rhonda Harris, said Toll Bros. agreed to provide contractor alliances an opportunity for employment in Richmond, and she wants to ensure local residents and businesses are hired, and supported the project.

Alicia Guerra, Morrison & Forester, on behalf of Toll Bros., said the information submitted by Toll Bros. and LSA was simply a roadmap to tell you where in the EIR questions that arose in the DRC meeting were actually addressed. It does not constitute new information or new analysis so there is no need to amend the EIR. All information presented as testimony tonight is part of the administrative record in support of the Commission's decision as to whether or not to certify the EIR. Regarding the LDA and LDA amendment, the EIR identifies as a potential intended use of the EIR for the possible need for an amendment to the LDA. The LDA had already been approved several years ago by the RDA and City Council as a property owner decision. So, there are no decisions related to the LDA because it was already done and because there are no amendments before the Commission; those would go to the Redevelopment Agency Board and Council if and when they arose. She said the LDA amendment establishes a minimum project expectation, or the site plan for the development of the project. It gave Toll Bros. the right to come in and file an application and start the entitlement process which included a General Plan amendment before the Commission this evening.

Howard N. Ellman, Attorney for Concerned Citizens, San Francisco, said he has made repeated requests of the City in writing to receive copies of documents and had not had the request accommodated on a regular basis. They support the comments made in writing, referred to the bay keepers in the West County Toxic Coalition, submitted was a 4 inch stack of violation notices with respect to the sewer plant. They gave notice they would file a federal court case under the Clean Water Act on July 14, 2005 and filed it on September 21, 2005. The final EIR came out in October and there was no reference in the final EIR that a lawsuit alleging that the City had the worst record of violations of the Clean Water Act in connection with the management of its wastewater treatment plant. He said there were problems relating to infiltration and inflow, when it rains there were serious problems and this was a public health hazard. There was no discussion of a long-term mitigation plan for the problem in the EIR. He felt the EIR was grossly inadequate on that point and it affects the San Francisco Bay and just one of many instances is the fact that the project purports itself to be a transit-oriented project because people could walk 1.5 miles to a bus stop.

Jonathan Livingston, said he took issue with Mr. Helber's accusation that the DRB unanimously approved the project, said there were 35 conditions attached to the project, felt there were 5 left which were being contested and felt the residents should know that the project the DRB approved was no where near what was being proposed to the Commission. He said there was no public road that goes around the outside which was used for circulation, there was no massing articulation of the façade, the majority had supported a project of some sort, but felt it

should made better. The DRB made this fact clear and he wanted the Commission to hold Toll Bros. to a higher standard than what was being seen tonight.

Scott McElhinney, said it was the purpose of corporations to maximize their profits for themselves and their shareholders and we need city government to look after its residents. He asked the Commission not to waive the conditions, not to change the zoning ordinance, and not amend the General Plan. He felt if this were done, the City would be making a mockery of the General Plan and telling those who developed the General Plan that they did all the work in vain.

Paul Murphy, opposed to the project, felt the police department could not currently protect its residents and by increasing the population, it would be horrible. He felt the city streets were not designed for the added numbers of people, the sewer system could not handle it, and asked the Commission to request Toll Bros. scale back or return to Los Angeles.

Page Poulos, opposed to the project, felt the EIR as presented was woefully inadequate, the road proposed did not meet the City's basic standards, felt opportunity for jobs was a very "soft" word, cited crime issues, and questioned what percentage of the contractors working on the project would be based in Richmond.

Beverly Galloway, member of the CCPR group, felt it was easy to get lost in the detail in discussions, felt the project was an unbelievably beautiful site and it deserves the best project possible. There are views, waterfront, and felt the project could be so much better. She felt a roadway entrance to a community along the shoreline was what was wanted, a shoreline accessible to the public, the project stacked back into the hills and stepped down, and this was not what was presently proposed.

John Glover, felt jobs, open space, opportunity for the City to make money from the project, and economic development were all important, but he felt this was not the project as currently constituted and questioned who the Redevelopment Director for the City worked for.

Barbara Bream, President of the Richmond Environmental Defense Fund and active member of the North Richmond Open Space Shore Alliance, urged the Commission not to give any consideration to making any change to the General Plan, particularly when it was being revised. She felt the developer would not meet the conditions and permits with regard to environmental impact and mitigation.

Kirk Wallis, said he regularly builds projects similar to these throughout the bay area and they were typically located next to BART stations or transit oriented types of facilities. He did not oppose development on the site and said he did support the economic impacts to the City.

Suellen Barnett, said she lives at Brickyard Landing, was not opposed to development, but urged everyone to listen to the density and height of the project.

Daniel Cooper, San Francisco Bay Keeper and West County Toxics Coalition, said they submitted comment letters on 30 May and 5 July, said he was surprised by the current process, said there would be 250 gallons per day coming out of the peninsula once the project was built out, the current lift stations and collection systems piping was inadequate to handle the sewage and that fact that it would be studied some time in the future was an inappropriate deferral of environmental analysis and inconsistent with CEQA, which now had been confirmed. He said they also heard discussions regarding mitigations in the EIR regarding the collection system. He

said there are no mitigations in the EIR relating to the collection system; the only thing discussed was the connection fee paid, which would not fix the collection system now or in the future, and added the additional flow would only worsen the problem. He noted there was a comment that the impact fee would go only to this project, pump stations or pipes coming out of the peninsula, which he had not seen in any documents relating to their litigation or relating to the EIR, and his understanding was that the money would go into the general fund for the collection system and not address the specific project. Also, once the project was fully occupied, it would be a condition that the system would be fully functional before that happened, which was also not identified in the EIR. He felt the EIR as drafted was inadequate, it needs to be re-circulated, the issues need to be dealt with, and he felt the case would not be settled with the City.

Nancy Strauch, TRAC, said there was a comment that the project was consistent with the EIR in regard to the Bay Trail, which was absolutely incorrect. The General Plan states that one needs to provide public routes for non-motorized circulation that compliment the City's circulation plan and implementation program, and the City requires all new developments provide public access where there is a local or regional trail, e.g. where a Bay Trail was planned. She said there is a bay trail around the outside of the project but the developer has not met the requirements to meet the regional trail, as it needs to connect to Brickyard Landing. She also felt there was no evidence in the EIR on much of what Toll Bros. stated.

**Commissioner Rao** said he read TRAC's letter of September 9, 2005 wherein TRAC was very satisfied and questioned what had changed. Ms. Strauch said the comment went to BCDC who has no jurisdiction for trails in the rear. She said TRAC was very happy that the trail was placed along the bay after BCDC required them to change the location, and said this was never an issue for them.

Dennis Surtees, referred to the conditions Toll Bros. wishes to waive, said he lives across from the project, the stepping back of the project was important to them, and doing this would not cost Toll Bros. more money. Regarding the road, the rest of Brickyard Cove Road was wide and he felt that what would remain would be meager. He felt there was an awkward turn from Dornan Drive into Brickyard Cove Road and asked for an adequate road to go around the project to support the number of residents. One proponent said he lived in Danville and Mr. Surtees questioned how many projects of this sort Danville had approved.

Jerry Feagley, said he has a real estate office ¼ mile from the proposed project, that he has jogged around Brickyard Cove since 1974 and at that time there were a total of 9 homes. He welcomes new housing; however, he did not welcome high density housing that does not take full advantage of blending the scenic overlay district. He strongly supported the DRB conditions of approval, encouraged the Commission to make the perimeter road as a main circulation and public road, and felt the Commission should protect and preserve the City's quality of life.

Joan Morris, passed on speaking.

David Mitchinna, believed that the design changes suggested by the Coalition were definite improvements and should be incorporated along with a size reduction to satisfy the existing zoning. If there should eventually be the consideration of revising the density regulations for the site, he felt there should be attention to the substantial increase of population already imposed by Sea Cliff Estates and the likelihood of further burdens on the fragile infrastructure of this confined areas threatened by building at the PG&E site and Sea Cliff Marina.

Edward Durbin, opposed to the project as designed, was in favor of development of Point Richmond Shores, felt the community has spoken, that 600 people signed a petition opposing the design and asked the Commission to implement what the community wants.

George R. Coles, referred to the City of Richmond signs, "City of Pride and Progress", and asked why the project had to be built in the nicest property available on the bay.

Rosemarie A. Petitpas, urged the Commission to pay particular heed by what has been said by others against the project, particularly in regard to the health and sewage problem, unmerited increase in units and asked the Commission not to amend the General Plan.

Tom Brichta, agreed the project should move forward, but it should be more aesthetic to the area. He felt the sewer system and roads should be improved, felt Sea Cliff Way was a very dangerous road, and asked the Commission to take into account the 3,000 additional residents in the future who would be moving into new developments in the area.

Angela Hinckley, concurred with all comments made, but felt optimum property taxes could be achieved by quality and not necessarily quantity.

John Knox, felt the project if built across the landscape would be very disheartening, was appalled by the comments from the Chamber of Commerce, felt the City should not just allow the first project that came along and build on such a beautiful piece of land. He felt the project would resemble a Brooklyn tenement, it would be overcrowded, dense, and the wrong development in the wrong place. He felt jobs could be secured by local residents with other projects and noted he would definitely read the EIR more thoroughly.

Chris Curtis, felt the community of over 600 people feel the project was mediocre and the 8 people who want jobs could get those jobs on a good project. He said he was getting tired of the spin, deceptions, and half truths that Toll Bros. was weaving about how they've worked so diligently with the community when in fact they've only appeared in meetings where they were required to, and no one in the room felt "reached out to". He felt the project had been imposed on residents and it was unwise on Toll Bros' part to proceed in this way. He noted the EIR is adequate only because it states it is adequate, said it compares a 230 unit project to their plan of 100 more units and concludes that traffic impacts, air quality, noise, hazardous materials all would be greater, and impacts to utilities and infrastructure would be greater as well. So, he felt it was ridiculous and made a mockery of the entire CEQA system. He was disgusted with it and felt it was worthless.

Grace Bodle, supported the Concerned Citizens Coalition, opposed any amendment to the General Plan until a comprehensive study with community input was made of the entire Brickyard Cove area, including KB Homes property and the Sea Cliff Marina.

Kenneth Crowe, said he was against the project.

Phyllis B. Patridge, said she was 100 years old, felt Terminal One would probably last that long, asked to have something built worth working toward, and was opposed to the project.

Lee Huo, Bay Trail Project, Oakland, said there have been many representations of the Bay Trail, they appreciate the trail proposed along the shoreline, continue to have concerns that the Class I commuter road on the southern side of Brickyard Cove Road was not a part of the project, and the connection for the Bay Trail from Point Richmond Shores project to the Sea Cliff

Estates project was not a part of the project. He said the project proposes to implement the Bay Trail at the last phase of the project rather than the first phase. Similarly, they were concerned with comments at the DRC meeting in that the findings in the EIR analysis on the impacts of the bay trail and recreation were not adequate. He said they were concerned that the project was not consistent in the EIR with adopted bay trail plan and alignment through the project area and outside of it, and as a result, the General Plan policies were not being complied with in terms of the analysis. They were also concerned that the analysis did not detail the cumulative impacts of the project with Sea Cliff Estates and Sea Cliff Marina projects in term of the bay trail and the demand for the bay trail in the area. They were also concerned with the adequacy of the EIR and its analysis and findings for the intensification of uses in the area with the General Plan amendments being proposed, which essentially takes the designations in the area from recreation lands and water related commerce to high density residential and water related commerce. They also felt the three previous components in the bay trail needed to be included in the project and would resolve their concerns with the adequacy of the EIR.

Eric Arens, Richmond Yacht Club, asked Toll Bros. to send someone over to speak to their Board of Directors a year ago and they did. He said they presented a plan which was different from what it was now; their buildings are too close to their property line and club, and they feel the density was too high.

Andrea Glerum, said there were many valid issues, but having a bus stop a mile away did not constitute access to transportation. She asked how was it that a request from 600 citizens representing 500 households in the community asking to have input on the matter had been systematically ignored. They support development and prevailing wage projects, but they ask that Toll Bros. listen to some input from those who live and will remain in the community long after Toll Bros. leaves. Their goal was to ensure that the project built would be one that reflects the character and spirit of their unique and valuable shoreline. None of the changes to date had been in response to community input, they do not agree with a compromised plan in mediation with the City, and asked that the right project get built.

Dan Robert Seifers, said according to his calculations there was a 7% fee established if Toll Bros. does not provide inclusionary housing which was based on the cost of the building. He felt the figure came out to nearly \$10 million and questioned why Toll Bros. was only paying \$4.8 million.

**Mr. Mitchell** noted the fee was complex and agreed to research Mr. Seifers' question.

#### **EXTEND MEETING**

**ACTION:** It was M/S (Harris/Winston) to extend the meeting to 12:00 a.m.; unanimously approved.

Ben Helber, Toll Bros., said the Draft EIR adequately analyzes the sanitary sewer capacity under existing and cumulative scenarios on page 20 and he read it from the document. Regarding how Ferry Point Way worked, he said it would be no different than the existing Brickyard Cove alignment where substantial portions were privately owned with public access easements over them currently.

**Commissioner Rao** said many citizens say their concerns were not addressed and asked for an explanation of from Toll Bros.

Mr. Helber said they have worked on the project 2.5 years, submitted revised site plans in direct response to concerns, said each evolution of the project had moved the project back to the north and provided additional shoreline park and open space. He said they provided a continuous loop road bay trail and pushed the project as far north as possible up to two feet from the boundary line. He said the plan was five stories which their plan was. Their plan has indirect use—our plan has direct and indirect use. Their plan has no terracing; our plan incorporates end terracing as appropriate. They have gone through mediation with the City Manager and their plan was rejected. They have done everything they can to get a site plan and project everyone would love, and the majority would say it is a jewel for Richmond along the shoreline and would provide tremendous financial benefit.

Rebuttal:

A speaker representing opposition said nothing could better illustrate the failure of communication than Mr. Helber's statement. Their complaint is that the sewer system was broken and there is overwhelming outside evidence of this. The EIR is supposed to be the informational document that gives the Commission and public the relevant information to base a decision on, and a basis to fashion mitigation measures. They have overwhelming evidence that the system does not work because it cannot handle the volume of effluent that gets to it in normal regular operation. By enhancing that flow by 330 units, it is unknown how much it would cost or how long it would take to fix the problem.

**Janet Harbin** said in the staff report there was a summation of the sanitary sewer capacity and a discussion of LSA's clarification on the issue. She noted the City was involved in a lawsuit currently on the sewer capacity and there were certain things that could not be discussed. She said the project has been reviewed for adverse environmental impacts, quality of design and conformance with the City's zoning ordinance and General Plan. There were no significant impacts that could not be mitigated coming out of the EIR document, and staff did anticipate any significant impacts that could not be mitigated with the measures incorporated in the project and those contained in conditions of approval in the specific resolutions.

Staff recommendation was to adopt the resolution certifying the FEIR as adequate to support approval of the design review permit and the vesting Tentative Map and adopt the mitigation and monitoring program in Exhibit B for the Point Richmond Shores project as revised. Staff's next recommendation was to adopt the resolution conditionally approving vesting Tentative Parcel Map in Exhibit C for the Point Richmond Shores project as revised, adopt the Resolution conditionally approving Design Review permit in Exhibit D for the Point Richmond Shore project as revised, and adopt the resolution recommending the City Council certify the Final EIR and approve a proposed amendment to the General Plan in Exhibit E for the Point Richmond Shores project, adopt the resolution recommending to the City Council certification of the Final EIR and adoption of the ordinance amending the zoning code in Exhibit F for the Point Richmond Shores project.

**City Attorney Everett Jenkins** said he believed the EIR in the matter was completed around February of 2006 or prior to the settlement discussions being concluded. In attachment number 9 in the packet, a letter from the lawyers for Clean Water dated May 30, 2006, it addresses the EIR, there has not been any information withheld with regard to the CEQA process of the EIR during the course of litigation settlement discussions, and the litigation was in the process of being resolved.

**Commissioner Rao** asked how the current lawsuit affected the project if the Commission moved forward with it. **City Attorney Jenkins** said the City Council has been taking actions over the last two months to address the problem and acknowledges there are problems with the sewer collection system. Last week, the Council approved the issuance of bonds to address the issue in the amount of \$40 million. In June, the Council approved an 8% rate increase for sewer service. He said a new project was not likely to impact that as greatly as what is already in existence in antiquated portions of the city.

**Chair Finlay** noted that on July 25<sup>th</sup>, the City adopted a sewer retrofit point of sale ordinance as well as a timeframe ordinance which requires that the laterals from homes that feed into the mains be repaired and brought up to code within certain timeframes, and the City is trying to resolve these issues.

**City Attorney Jenkins** said some of the concerns of the public he felt were legitimate about receiving documentation in order to have full public discussion; however, this could be determined by the Commission as to whether the issue needed further discussion, as he had little information as to the full extent of the significance of the issue.

**Commissioner Winston** felt that pulling all of the information together was important because of being consistent with the General Plan. She said to have the agreement not relevant seemed bizarre because as a Commission, they try to guide projects and uses of the land in such a way that it meets the original vision for the City of Richmond. She felt nothing she received to date has changed her mind about the adequacy of the EIR. She reviewed the guidelines for implementing CEQA and felt it was clear that for certifying a final EIR, it should provide sufficient information and reviewed in light of what was reasonably feasible, and that was why she brought up some of the LDA issues she felt might be relevant.

ACTION: It was M/S (Winston/Rao) to close the public hearing; unanimously approved.

**Commissioner Winston** moved that the Planning Commission reject the resolution in Exhibit B to certify the final EIR and find that the EIR is inadequate to support the approval of the design review permit and the vesting Tentative Map; reject the mitigation and monitoring program and it is based on the Planning Commission being unable to make the following findings: A.2., A.4., C5.b.

She reviewed her reasons for why she was unable to make the findings:

A.2: She believed that as far as general goals #1, the EIR fails to address the affordable portion of the goal, a variety of dwelling types, prices affordable to all segments of the population. It has been said that while there are in-lieu fees, however, she felt that since this was the number one goal of the General Plan, there should have been some mention of prices affordable to all segments. Regardless of the mention of this in the housing element, she felt admission of any analyses of this goal is inadequacy of the FEIR.

Regarding land use elements for goals LU-A and LU-A-1, form and appearance, page 42, 43 and 48 of the EIR: There are definitions missing, analyses missing and points that because they are missed, the Commission does not have an opportunity to even have any mitigation of the impacts mentioned or covered in that section of it.

The FEIR does not include in what way aesthetics are achieved by the proposal of the high density residential project. It does not say anything other than it achieves the aesthetics.

Stating the belief that the project is better than what currently exists, it inadequately addresses the impacts. She felt it was clear that any project would be better than a blighted area, but this does not mean that it meets this particular land use element goal.

High Density Residential, pages 42 and 48: She believed that the FEIR had a circular argument describing the project's relationship to the policy; however, the policy is used for conformance to the proposed amendment to the General Plan. So, they did not compare the project's relationship to what the existing current General Plan text incorporates about this particular density.

The goal LU-G, form and appearance, pages 43 and 44: The FEIR fails to address in what way the project protects and enhances the area's natural resources. The Shoreline Park was meant to provide public access to the waterfront, not enhance the natural resources and the EIR missed this point completely and therefore listed it as no impact.

Goal LU-K, residential areas, pages 43 and 48: The Commission talked a lot about the two various opinions concerning the existing sewer system and utility capabilities and not withstanding the results of the city's recent inquiries and opinions and the various other opinions, she felt the conclusions drawn by the FEIR were apparently not based on any empirical data collected or analysis performed and no potential conflicts with the General Plan land use goal were identified--Therefore, no mitigation.

Guideline 1, shoreline areas, pages 44 and 48: The FEIR failed to address the appropriate level of development in shoreline areas and the relationship with the proposed project to the guideline which is meant to establish a pleasing setting to protect natural resources that are irreplaceable.

Additionally, the "how and to what degree the proposed project protects the natural integrity of the bay shoreline" is omitted and apparently left to subjective speculation.

Guideline 5, West shoreline, pages 44 and 48: The FEIR fails to address the proposed project's conflict with the guideline which is meant to ensure that the project retain a village character at the shoreline, and in fact, in the LDA, it actually talked about a village character, and this was the goal, and this was why they mentioned the project in Dublin.

Regarding circulation elements, Policy CIR-B.3 and Guideline 5, shoreline areas, pages 44 and 48: The FEIR fails to address ensuring that new or existing developments are interconnected relative to the Bay Trail. Rather, the FEIR statements regarding the project's relationship to and potential conflicts with the element and the guidelines of the General Plan are limited solely to the construction of the trail within the confines of the proposed project only. Without regard to the existing development, in fact, the current applicant specifically rejects interconnecting the Bay Trail with Sea Cliff Estates and Brickyard Cove to this project and the FEIR failed to get this interconnected relationship and made the assumption that because there is a Bay Trail within the project, that these guidelines of the circulation element had been met.

Community Facilities Element, on pages 45 and 48, Policy CF-A.8, Recreation and Park facilities: The FEIR failed to address the proposed project relationship to the policy which states, "collaborate with regional county and other local public agencies and with non-profit and private groups to develop urban trail systems. Again the FEIR statements regarding the project's relationship to and potential conflicts with this element and the policy in the General Plan are limited solely to construction of the trail within the confines of the proposed project.

Regarding the City's zoning ordinance, discussion was held on Monday regarding the Special Features Overlay #1 potential conflict on page 49, and she has yet to receive an updated copy of the Special Features Overlay. The pages are sorely out of date. She said neither the public nor the Planning Commission was provided a copy of the current SFO District 1 language. The FEIR's description of the SFO #1 regulations in the potential conflicts section erroneously and inadequately characterize the Richmond Zoning Ordinance description, lacking an accurate and adequate comparison between SFO #1 requirements in the proposed project's relationship; the FEIR is deemed inadequate if not inaccurate in assessment of impacts and the provisions for subsequent mitigation measures.

The FEIR states on page 49, number 2, Consistency: That amending the zoning designation from CC to Planned Area would allow for greater flexibility and building height and more open space. The FEIR, however, fails to state that the CC 35 foot height restrictions are allowed to be amended in the SFO #1 regulations by Planning Commission actions. The citing of potential for more open space in a PA district, while appearing to be factual on the surface, again fails to take into account potential height restriction amendments that are available under the SFO #1 and a PA plan is very appropriate for this site. However, the PA District plan really significantly removes this to points from Brickyard Cove Road and Dornan Drive, which is inconsistent directly with the SFO #1 regulation #3, preservation of Brickyard Cove as a water body of interest. The SFO #1 prevails over any other zoning regulations including a PA District and the FEIR fails to accurately and adequately describe the impacts of the project as it relates to this regulation, and therefore fails to designate the impact as significant. And, mitigation measures were not included to render the impacts as less than significant.

Regarding the Redevelopment Plan on page 50: The FEIR fails to present any information regarding the impact of the proposed project to the following objective of the redevelopment plan for Project Area 11-A, "to provide sound and attractive housing of proper economic base and proportion." There is no discussion of proper proportion; only the furtherment of the City's achievement of economic objectives. The FEIR fails to discuss or mention relationship of the project to this redevelopment plan objective and lists no conflicts.

San Francisco Bay Trail Plan, Trail Alignment Policy #11, FEIR pages 54 and 55: The FEIR mentions several times "a planned segment" of the Bay Trail that would extend along Brickyard Cove Road. This incomplete section is shown on page 209, figure VK-1 of the FEIR. The FEIR inaccurately and misleadingly states that the project's relationship to the trail alignment policy 11 is the linkage to the Bay Trail. The FEIR states, "no potential conflicts with the San Francisco Bay Trail Plan policies" and states "the project is consistent with the plan" again citing existing proposed and "planned trails." These statements would lead the reviewers of the EIR to believe that the trail alignment policy 11 which states connections to other trails should be actively sought, in particular, opportunities should be explored for trail connections. By including a planned trail in the project description, the FEIR misstates the impact of the policy. This inaccuracy results in no corresponding mitigation measures to offset the project not complying with the trail alignment Policy 11.

Existing General Plan zoning alternative: The FEIR fails to adequately assess Alternative C; the regulations under the special features overlay #1 are not included, thereby understating the density available for this alternative. This omission contributes to the incorrect assessment of the economic feasibility of Alternative C although it is listed as the superior environmental alternative.

**Chair Finlay** confirmed with **Commissioner Winston** that the Commission should only consider Item 1 under her motion; however, the findings were comprehensive and it would be appropriate to incorporate 1, 4 and 5 since **Commissioner Winston** said she did deal with the General Plan Amendment and with her concerns about the zoning ordinance.

**Commissioner Winston** moved that the Planning Commission reject Resolution, Exhibit E, recommending the City Council certify the Final EIR and deny the proposed amendment to the General Plan for the Point Richmond Shores project, which is based on an assumption; that the Planning Commission by this action, rejects certification of the project FEIR and additionally, the Planning Commission is unable to make the following findings, which is Section 2, GPA finding C; the proposed General Plan amendment provides continuing and internal consistency with the General Plan Land Use Element, Circulation Element, etc. and Section 3.

**Commissioner Winston** felt regarding Exhibit F, the motion should be that the Resolution be withdrawn or rejected. **Chair Finlay** felt rejected was the proper action. **Commissioner Winston** said also, the failure of the FEIR to adequately evaluate the impacts of the zoning ordinance and code amendments, therefore, the Planning Commission is unable to make findings for Section 2.B and Section 3.

**Chair Finlay** requested a friendly amendment that on Item 1; to recommend against adoption of the revised Resolution in Exhibit B, and **Commissioner Winston** accepted the amendment.

**Commissioner Harris** felt that a couple of conditions were also inadequately addressed not covered by **Commissioner Winston** and requested adding an amendment to her motion. He referred to the appendices of the EIR, page A-49, Measure 16A, and said discussion during all meetings was inadequate and should be included in the record.

**Commissioner Harris** referred to 15G, page A-49, Transportation, he felt the discussion given was inadequate and needed more elaboration included in the report.

Regarding cultural resources, page 267 of the General Plan document, he felt at the very least, it should be acknowledged that there was some opposing view that was put forth. Also, issues were discussed regarding preservation as well as Toll Bros. incorporating some historic artifacts of the existing facility, which should be incorporated into the record. He felt it should be removed from the "less than significant impact" as currently stated.

**Commissioner Winston** summarized and confirmed with Commissioner Harris that amendment to her motion would include the fact that the discussion on Measure 16A was inadequate in the Appendix regarding the sewer system, page A-49 through A-59; that the FEIR failed to adequately discuss the impacts and subsequent mitigation. On page A-49, 15G, Transportation, there was inadequate discussion and elaboration on various alternatives that could be provided regarding transportation. And, lastly, on page 267, the document should incorporate a full discussion on cultural resources regardless of whether or not the project would preserve historic artifacts.

**Commissioner Harris** suggested a continuance be held in order for items to be addressed. He said also, by rejection, an appeal may be filed and there may be no further input available.

**Commissioner Winston** suggested the Commission provide direction on the Tentative Parcel Map and the Design Review permit and felt a decision should be made. **Chair Finlay** confirmed this would be taken over by the City Council.

**City Attorney Jenkins** said it appeared that since all items were on the agenda as one, if the Commission decided to take action, it would be concluded, it would be appealed to the Council as a whole, and would be taken out of the Commission's hands.

**Chair Finlay** agreed and said the Commission was making recommending to the City Council; that the item would be taken out of the Commission's hands and would go to the City Council for ratification.

**City Attorney Jenkins** felt the advice that would be most appropriate, especially in light of the complexity of the entire matter, is that it be referred back to staff and it be brought back with what should be discussed later on. But also, that it be finalized and put in a full fashion so it is clear what is being talked about and actually what the implications were.

**Commissioner Winston** said she did not want it taken out of the Planning Commission's hands at this point and confirmed with the City Attorney that five items on an agenda could return for consideration, and asked what the implications of any one of those votes might have. **City Attorney Jenkins** said it was still not clear whether or not voting on the FEIR had any relationship to the other elements, especially if it were appealed.

**Chair Finlay** said if the motion is made to go forward, it leaves the Planning Commission as a recommendation and goes to the City Council. She said if Commissioner Winston chooses not to make the motion, then she would ask for a vote to rescind closing the public hearing and then request a vote to continue the public hearing to give staff an opportunity to re-craft the staff report and to re-craft the findings to support the staff report. She felt ultimately, it would still be a recommendation, but it would be a better crafted recommendation at that point.

**Commissioner Winston** said she still had comments regarding the tentative parcel map and the design review permit as well, and wanted to voice these comments tonight.

ACTION: It was M/S (Winston/Rao) to rescind the prior motion to close the public hearing; unanimously approved.

ACTION: It was M/S (Rao/Lee) to continue the public hearing; unanimously approved.

#### **EXTEND MEETING**

ACTION: It was M/S (Winston/Harris) to extend the meeting to 1:00 a.m.; Vote: 6-1 (Rao voted no)

**Commissioner Lee** noted that in the visual impact section, it talks about property visible from numerous points of public view including trails, points in the Miller Knox Regional Park or distant views from the Richmond San Rafael Bridge, but there is one specific view which is completely omitted and is easy to observe. He said it is pictured in the lobby of the Mayor's entrance BE-3, which is an aerial view from the park lands from behind the project, in which case the ridgeline that one sees as one looks down on the proposed project from the parklands behind or the park directly behind, is directly affected. He felt this was an omission that everyone could understand, which was an example of what the Commission is looking at in terms of deficiency of the EIR as originally submitted.

Alicia Guerra, Morrison & Forester, on behalf of Toll Bros., she said there is a view from the park which was in the EIR. She referred to page 218 of the Draft EIR, Figure 5.L.11.A, View C,

and the following page of 11.B, which showed the project in it. **Commissioner Lee** disagreed and said her reference was not a view from the park and referred again to the picture in the lobby of the Mayor's entrance.

**Chair Finlay** said she has been concerned about the timeliness of getting through all of the information. The information given as part of the LDA was an extension to the contract for Toll Bros. to perform, and the deadline for the performance for Toll Bros. was extended to October 1, 2006. She said putting this back to staff now meant the item would not be brought back to the Commission until September 7<sup>th</sup>. She felt August 24 would not give staff the time to respond to the information being received and she would not support this date to continue the hearing to. She felt it did have legal consequences for Toll Bros. and the City which needed to be stated.

She felt there were contractual obligations the City and Toll Bros. entered into, and part of what would need to occur during the interim was to request that the Council approve another extension to the LDA.

**Chair Finlay** said with all of the information that has come across regarding the project, the key points that all attorneys seem to agree upon is the reasoning of what is reasonably feasible and the fact there may be inconsistencies within a project with the General Plan. She felt there was nothing perfect and everything has trade-off's. Also, the Commission can look at the same information and, depending upon the prism that the information is viewed through, one can either agree that the questions raised have been satisfied or the explanation is not agreeable to. She was trying to say that this is a viable approach and one that could be respected. When the vote to not recommend final certification was done in the DRC, it was based on those principals that she voted against. She felt that "it seemed reasonably feasible" and "inconsistent with the General Plan within a project" have gotten lost, and she understands how staff made their recommendations and felt many of the questions have been answered.

**Commissioner Winston** said she felt the responses received after Monday's meeting were more or less a "just because" type of response, and she differed. What concerns her about the tentative parcel map is that by going with changing the land use designation, the City has had projects in the past where tentative parcel maps have been approved and they come back with another project with threats of going back to the approved parcel map, which might even be worse.

She finds that the project is too dense for the shoreline area regardless of what Redevelopment has said about the need for a high density shoreline project. She felt it misses the point, that no one was crying out for a high quality development at the site, but more for something that fits on the bay. She was concerned that the Commission was in a spot if they make findings and do not approve the Tentative Parcel Map because they feels there is a better alternative with lower density.

**Chair Finlay** confirmed she was correct in the action when making a recommendation to the City Council; that the Commission has mapping authority, but it is appealable to the City Council. She confirmed the Commission was certifying adequacy on Item 1, that Items 2 and 3 were Commission authority; and Items 4 and 5 were recommendations and are appealable to the City Council.

**Commissioner Winston** questioned whether a rejection of the proposed Tentative Parcel Map by the Commission, if appealed, could be inevitably be approved, as it was supported by the General Plan amendment.

**Chair Finlay** felt if **Commissioner Winston** wanted the Tentative Map to conform with the original zoning to consider for the next hearing, this could be requested of staff, and **Commissioner Winston** said she was looking for a project that conforms with the current General Plan and zoning ordinance.

**City Attorney Jenkins** felt one way to deal with this was through CEQA; hold a discussion concerning the General Plan amendment before the discussion concerning the Tentative Map at the next meeting so that the sequencing could indicate whether or not to move onto the next discussion.

**Commissioner Winston** referred to Section 1, Item 5 that states “no significant adverse impacts on the environment”, and felt the General Plan was the superior environmental plan, that by going back to the original document, her reasoning is based on a more appropriate use. She felt that the Commission could not make the findings 3A of consistency with the General Plan, and there were questions regarding Section 1, Item 4 regarding the discharge of waste, and Section 1, Item 5.

**Secretary Lopez** felt there was a lot of variance in terms of what the General Plan allowed for and could support, and there could be a difference of opinion in terms of what the direction is.

**Commissioner Winston** felt also that it appeared that based on an updated copy of the zoning ordinance, the number may not be 191 if all it takes is a conditional use permit to increase the height, which could change the look and feel of the project, size, and economic feasibility which was never explored.

**Chair Finlay** confirmed with staff that the change of the height does not change the density; however, **Commissioner Winston** said, for instance, the applicant could change the whole project to have larger units in one area on the higher edge in portions. She also noted there were updated pages of items she could not even discuss because she did not have the information available.

**Chair Finlay** questioned Commissioners how they felt about Item 3, Exhibit D, and the relative attachments 1, 4 and 5. **Commissioner Winston** said she had problems with matching up the various conditions and matching up the numbers now; however, she felt generally that she was pleased with Attachment 4 and the DRB recommendations, but it was difficult to understand Item 5 due to the applicant not providing an explanation on why they were not feasible to do.

**City Attorney Jenkins** said the applicant has made a presentation regarding the application. The Commission was attempting to re-design the project and this was of concern to him. He felt the concerns could be raised, directed to staff, and then staff should have an opportunity to consult with the applicant and bring the application back with staff work.

**Commissioner Winston** felt the Commission had met several times, provided information and guidance at a previous meeting and an alternative was brought forward. Some items did not come to the Commission where the applicant and City Attorney responded to contained in attachment #6, the July 19 letter to Toll Bros. and response letter.

**Chair Finlay** felt when the Commission returned in September, Toll Bros. has the option to say that no matter what staff has done to support what the Planning Commission wishes to do, Toll Bros. will want to vote on what was submitted and has the right to do so.

**Commissioner Winston** felt worried by up and down votes because of the position it places the Commission in the future of being unable to perhaps condition or otherwise have input into something that may be appealed. **Chair Finlay** said whatever the Commission does could be appealed anyway.

**City Attorney Jenkins** suggested referring the item back to staff, comments could still be received on the project, and staff could return next month. **Commissioner Winston** wanted to state publicly that she did not feel that, regardless of the amount of time this has been in the hands of Redevelopment and the applicant to put something together, the actual time the Commission has had and that the public has had to provide input has been woefully short. She felt Toll Bros. most likely felt victimized by the public process, but felt everyone was just getting started on what was needed at the site.

**Chair Finlay** referred to Exhibit D, said the Commission would not be hearing it tonight, but they needed to give staff direction. She felt the Commission could not correlate Exhibit D's conditions with Attachment 4 conditions and with the Toll Bros. conditions because they are all numbered differently. Regarding Attachment 4, page 1-3, Site Plan:

Delete Item #1.

Delete Item #2.

Make Item #3 the new item #1.

Make Item #4 the new Item #2.

Make Item #5 the new Item #3.

Delete Item #6.

Delete Item #7.

Make Item #8 the new Item #4.

Make Item #9 the new Item #5.

Make Item #10 the new Item #6.

Make Item #11 the new Item #7.

Make Item #12 the new Item #8.

Make Item #13 the new Item #9.

Make Item #14 the new Item #10.

Delete Item #15.

Make Item #16 the new Item #11.

Delete Item #17.

Make Item #18 the new Item #12.

Make Item #19 the new Item #13.

Make Item #20 the new Item #14.

Make Item #21 the new Item #15.

Make Item #22 the new Item #16.

Make Item #23 the new Item #17.

Make Item #24 the new Item #18.

Make Item #25 the new Item #19.

Delete Item #26.

Make Item #27 the new Item #20.

Make Item #28 the new Item #21.

Make Item #29 the new Item #22.

Make Item #30 the new Item #23.

Make Item #31 the new Item #24.

Make Item #32 the new Item #25.

Make Item #33 the new Item #26.  
Make Item #34 the new Item #27.  
Make Item #35 the new Item #28.  
Change the condition regarding discretionary approvals; that they should go to the Planning Director and/or their designee, and not the DRB.  
The supplemental staff report, page 2:  
Make Item #9 the new Item #7.  
Make Item #17 the new Item #16.  
Make Item #18 the new Item #17.  
Make Item #19 the new Item #18.  
Make Item #20 the new Item #19.  
Make Item #22 the new Item #21.  
Make Item #28 the new Item #27.

On page 4, top:

Make Item #9 the new Item #7.  
Make Item #17 the new Item #15.

Make Item #18 the new Item #17.  
Make Item #19 the new Item #18.  
Make Item #20 the new Item #19.  
Make Item #22 the new Item #21.  
Make Item #28 the new Item #27.  
Make Item #5 the new Item #3.  
Make Item #6 the new Item #4.  
Make Item #10 the new Item #8.

On Page 5:

Make Item #12 the new Item #10.  
Item #14 is not mentioned anywhere and it got dropped. She requested knowing where it went and to have it reconsidered.  
Make Item #21 the new Item #20.

On Page 6:

**Chair Finlay** referred to Items #1 through #6, and said an issue that came up with the DRB and opined upon by the City's Attorney is that Toll Bros. wanted to add or modify conditions regarding items that were better left to the Planning Commission or the City Engineers' judgment, relating to streets, parking, widths, etc. She agrees with the City Attorney's opinion in that they are not under the jurisdiction or purview of the DRB but under the purview of the Planning Commission. If the Commission does review a different project, she requested the Planning Commission to be aware of the conditions and give them consideration.

Make Item #8 to read to be sent to the Planning Director and/or his designee.

On Page 8, Recommendation #1:

Make Item #6 the new Item #4.  
Make Item #10 the new Item #8.

Make Item #12 the new Item #10.  
Make Item #21 the new Item #20.  
Regarding Item #2, modify Condition #14, which was dropped from page 5.

On Toll Bros. Position Summary:

**Chair Finlay** said she would not deal with the condition numbers that Toll Bros. was not contesting. She requested making a change on page 1:

Make Item #5 the new Item #3.  
Make Item #6 the new Item #4.  
Make Item #9 the new Item #7.  
Make Item #10 the new Item #8.  
Condition 14 is missing.  
Make Item #17 the new Item #16.  
Make Item #18 the new Item #17.  
Make Item #19 the new Item #18.  
Make Item #20 the new Item #19.  
Make Item #21 the new Item #20.  
Make Item #22 the new Item #21.  
Make Item #28 the new Item #27.  
Change Item #32 to read, Planning Director and/or their designee.

**Chair Finlay** noted that the public hearing should be continued to September 7, 2006. **Commissioner Winston** questioned whether another DRC meeting would be held and **Ms. Harbin** felt it was not needed.

ACTION: It was M/S (Winston/Harris) to continue the public hearing to September 7, 2006 Planning Commission; unanimously approved.

## COMMISSION BUSINESS

### 7. Reports of Officers, Commissioners and Staff

**Richard Mitchell** said staff would update the Commission on the General Plan at the next meeting, dependent upon time.

**Secretary Lopez** reported this Saturday, August 5<sup>th</sup>, the Plan Van would be on 23<sup>rd</sup> and Grant Streets from 11:00 a.m. to 2:00 p.m., and she welcomed everyone to attend to discuss the City's future vision.

**Commissioner Lee** said it was an honor to be a member of the Commission.

**Chair Finlay** noted the Commission has been asked to have a study session on two or three items on August 24<sup>th</sup> and the majority of Commissioners confirmed they would be available that date. **Ms. Harbin** noted the study session would be held for the Forest Green project EIR.

**Mr. Duran** noted there was a joint meeting scheduled to discuss the Civic Center on August 15<sup>th</sup> at 6:00 p.m. and asked Commissioners to place the meeting on their calendars.

**Chair Finlay** noted she asked staff to prepare for the Commission copies of the updates to the new General Plan, which were received in the packet, and she thanked staff. She also attended the General Plan planning session at City Hall and there were 50 people in attendance. She was interested in updates from the Redevelopment Agency and suggested a tour be provided of Redevelopment projects underway.

The meeting was adjourned at 12:53 a.m.

---