

**PLANNING COMMISSION REGULAR MEETING  
COUNCIL CHAMBERS, RICHMOND CITY HALL**  
450 Civic Center Drive, Richmond, CA  
August 20, 2015  
6:30 p.m.

**COMMISSION MEMBERS**

Sheryl Lane, Chair	Marilyn Langlois, Vice Chair
Nancy Baer	Andrew Butt
Ben Choi	Jeffrey Kilbreth
Marilyn Langlois	Jen Loy

The regular meeting was called to order by Chair Lane at 6:32 p.m.

Chair Lane led in the Pledge of Allegiance.

**ROLL CALL**

**Present:** Chair Sheryl Lane; Vice Chair Marilyn Langlois; Secretary Ben Choi; Commissioners Nancy Baer, Andrew Butt and Jen Loy

**Absent:** Commissioner Jeffrey Kilbreth

**INTRODUCTIONS**

**Staff Present:** Planning Staff: Lina Velasco, Jonelyn Whales, Richard Mitchell and Assistant City Attorney Rachel Sommovilla

**MINUTES** - None

**AGENDA**

Chair Lane provided an overview of meeting procedures for speaker registration, public comment and public hearing functions. She said items approved by the Commission may be appealed in writing to the City Clerk by Monday, August 31, 2015, by 5:00 p.m. and as needed, announced the appeal process after each affected item.

**CONSENT CALENDAR**

Chair Lane stated currently the Consent Calendar consists of Item 1. She stated this item is being held over to September 17<sup>th</sup> instead of September 3<sup>rd</sup> due to the Commission meeting date being changed because of quorum issues. She asked if Commissioners, public or staff wished to remove the item and there were no requests.

**ACTION: It was M/S/C (Baer/Butt) to approve Consent Calendar Item 1; which carried unanimously by the following vote: 6-0-1 (Ayes: Baer, Butt, Choi, Langlois, Loy and Lane; Noes: None; Absent: Kilbreth).**

**Items Approved on the Consent Calendar:**

1. **PLN15-368: Upgrade Alcohol License For A Restaurant and Night Club** - PUBLIC HEARING to consider a Conditional Use Permit to upgrade an existing on-sale beer and wine license (type 41) to an on-sale general license (type 47) at an existing restaurant, and to establish a night club use at 3288 Pierce Street, 105 (APN: 510-060-006). C-3, Regional Commercial District. 3254 Pierce Street Associates, owner; Jose Lara, applicant; Planner: Hector Lopez; Tentative Recommendation: Hold Over To 9/17/2015.

### **Brown Act – Public Forum**

HERK SCHUSTEFF said at the last Commission meeting, the CUP for the Canyon Oaks II proposal was extended and he voiced concern regarding the 4 oversized lots. However, he learned that EBRPD is intending to use the road as a staging area for equestrian use, which is great news. The 32 homes in the flat area below will most likely be sold to a developer and he hoped the lots could be developed so as not to remove trees. He said he was available to tour the area and asked those interested to visit his website, at [www.herkart.com](http://www.herkart.com). He stated that Clark Road sold recently for \$4 million and there are plenty of areas that could be built reasonably without disturbing the upper areas.

CORDELL HINDLER, Richmond, stated that the 7-Eleven is a nuisance with loitering, and he asked that the CUP return to the Commission's agenda on September 17<sup>th</sup>. The Richmore Village Neighborhood Association members oppose the store due to more crime and ask that something replace the store.

### **NEW ITEM**

2. **PLN12-248: Richmond Livable Corridors Form-Based Code** - PUBLIC HEARING to consider a recommendation to the City Council of the draft Rezoning Map for the Richmond Livable Corridors Form-Based Code (FBC). Once adopted, the FBC transect zone map will replace the current zoning and applicable zoning regulations for the properties within the boundaries of the FBC. The draft FBC, Architectural, and Sustainability Guidelines previously recommended for approval are available for review at the Richmond Main Library, Planning Division and on the City's website at [www.ci.richmond.ca.us/livablecorridors](http://www.ci.richmond.ca.us/livablecorridors). City of Richmond, applicant; Planner: Lina Velasco; Tentative Recommendation: Recommend Approval to City Council.

Senior Planner Lina Velasco gave the staff report, stating the Commission directed staff to hold an additional community meeting to discuss the mapping related to the Form-Based Code. Staff is seeking the Commission's recommendation for the map to be forwarded to the City Council for future consideration for adoption. A presentation will be given and will provide an overview of the project background, goals, discussion of the map revisions made in response to public comments and staff will close the presentation with staff's recommendation and next steps.

Ms. Velasco summarized that the City's goal in formulating a Form-Based Code as follows: "The Form-Based Code can preserve what residents love about the physical character of their community, ensuring that future development is in harmony with existing context or facilitating varying degrees of change. Either way, the main purpose of a Form-Based Code is to proactively regulate the physical form and character of a new development so the community gets what it wants rather than reacting to those elements of each development proposal on a piece-meal basis or not at all."

Ms. Velasco said with this, the City is regulating the types of places they are trying to create and this builds off of the transect zones identified in the General Plan. It is a different approach but the City spent a lot of time walking neighborhoods to identify their existing context and character to facilitate the regulations and standards to ensure proper development based on that vision.

Ms. Velasco provided a brief overview of the partnership project which began in 2009 with funding from the Richmond Community Redevelopment Agency. A grant was received in 2010 to extend it to other commercial corridors, initiated outreach in 2012 holding neighborhood charrettes, and as a result, a charrette summary document was published for comment and presented to the Commission for feedback. This document served as the vision for the coding. From there, staff developed standards and regulations including a new rezoning or transect map which was published for comment in 2013. Less than 20 comments were received which were incorporated. A final draft document was released in 2014.

Following that process, staff initiated the public input and adoption process. Architectural and sustainability guidelines will be included which was requested by a subcommittee of the DRB, and their recommendation is being forwarded to the City Council for consideration.

On March 19<sup>th</sup> staff presented the draft Form-Based Code and mapping to the Planning Commission and the Commission recommended adoption of the regulations, but directed staff to hold an additional community meeting to discuss the map and return back for a recommendation.

After extensive outreach was conducted, staff held the well-attended community mapping meeting in June. She displayed the original map from March and described specific comments received which led to mapping of the existing single-family and multi-family districts, given concerns heard from residents. Based on feedback received, Ms. Velasco said the first change to the mapping is located at the northern section of San Pablo Avenue near Glen Avenue. The change is specific to two parcels and involves the front half of the parcel zoned T-4 Main Street and the back side as T-4 Neighborhood. There is opportunity to implement one type of development on the site and staff is recommending it be changed to T-4 Main Street Open which is consistent with zoning of other parcels.

The second change is located at the corner of McLaughlin and Barrett Avenues with T-5 Main Street zoning at the corner of San Pablo and Barrett Avenues. A half block was included as T-4 Main Street open and then transitioned to a T-4 Neighborhood. Feedback heard was to make this whole block one zone. Staff is therefore recommending that that block be transitioned to T-4 Neighborhood.

The third change is located at the corner of Nevin Avenue and Second Street where there is an existing industrial use. Public comment was received and a couple of blocks were removed based on those comments. The General Plan shows the area as Live/Work and the Form-Based Code was looking at it as more residential. Staff is recommending eliminating the northeast parcel from the Form-Based Code and allowing the current SFR-3 zoning and allow the existing non-conforming use on the site. When kicking off the zoning update, the City will specifically deal with this property. She noted that staff report does not show this change and it is being presented this evening.

Ms. Velasco said she believes there are still concerns about reduction and certain standards such as parking requirements, but generally the feedback received was that the map was better situated as a transition for the time being. Staff is therefore recommending that the Planning Commission adopt the resolution recommending adoption of the revised map with the additional edit to eliminate the property at the northeast corner of Nevin Avenue and Second Street.

In terms of next steps, if the Planning Commission makes a recommendation this evening, the Form-Based Code, the map, the architectural standards and sustainability guidelines would all be presented to the City Council at a study session and followed up with adoption proceedings.

Vice Chair Langlois thanked Ms. Velasco for the outreach efforts. She referred to the first recommendation which is located at the north end of San Pablo Avenue and she asked and confirmed it is north of McBride Avenue.

Commissioner Baer said she appreciates the additional outreach meeting conducted, as well. She asked staff to explain the third revision.

Ms. Velasco explained that the property owner came to the first Planning Commission meeting in March and raised several concerns about his existing non-conforming use and rezoning of his property that occurred in 1997. Eliminating them from the Form-Based Code does not resolve their issue because their current zoning is still SFR-3, so their light industrial use is still non-conforming. At this point, it is not necessary to include it and can be undertaken at a later time as part of the more comprehensive zoning update or there may be some other interim land use. For the most part, all other lots next to this use are residential. Stakeholder meetings are being conducted by the consultant hired to do the zoning ordinance update with this particular property owner to determine whether his issue can be resolved.

Chair Lane opened the public comment period.

Public Comments:

CORDELL HINDLER, Richmond, Park Plaza Neighborhood Association member, said neighborhood feedback he heard from was that parking will be an inconvenience, property values will not increase, and he supported adoption of the revised map.

MICHAEL EISENMENGER, McLaughlin Avenue, thanked staff and the Commission for their revised mapping and zoning, but was surprised it was changed so much Citywide; however, focusing in a more targeted fashion is a way to get to where the City wants to be and was very impressed with the Form-Based Code. He referred to the book and said T-4 Main Street where T-4 Main Street is adjacent to T-5 N, T-4 N, or T-3 N, the rear setback was discussed as being reverted back to the original 10 feet in the General Plan. However, the document still has it at 5 feet and it has not been updated, which he requested be done.

GARLAND ELLIS, Vice President, RANC, said while the map presenting does not include the Annex in the Form-Based Code several members of the Planning Commission and the DRB have wished the area was included and also for many projects in their area, they handed out information for the Form-Based Code to applicants and developers trying to get them to conform to those standards even though they are different standards. Should this concept be carried forward to south San Pablo Avenue, RANC would want as many public meetings as the City has had for Central Richmond and not just one or two. He said many residents have not

attended any of the meetings. They also have been engaged in the San Pablo Specific Plan with the City of El Cerrito and that plan has flip-flopped many times. Therefore, he asked that the City involve the entire RANC area. He said they have specifications for their lots which are very different than north San Pablo Avenue and they would want the same recommendations for community meetings and outreach.

Chair Lane asked staff to summarize staff's recommendation. Ms. Velasco said staff's recommendation is that Planning Commission adopt the resolution recommending adoption of the revised map to the City Council, with the additional edit to eliminate the property at the northeast corner of Nevin Avenue and Second Street.

Commissioner Butt said since it was brought up, if and when the City or Planning Commission decided to expand the map and the applicability of the Form-Based Code, he asked what process would be undertaken.

Ms. Velasco said currently the Council has authorized a contract with a consultant to do the comprehensive zoning update. The City is current holding stakeholder interviews beginning next week where various groups will be represented. As part of that process, modules will be given, as well as open houses prior to the start of Commission meetings. A series of study sessions will also be held with focused targeted communications or presentations to various neighborhood groups. As part of that process, staff will present various maps which may include rezoning various sites which will either bring them into conformance with the General Plan or into compliance with state law.

The public hearing was closed.

**ACTION: It was M/S/C (Butt/Langlois) to adopt the resolution recommending adoption of the revised map to the City Council, with the additional edit to eliminate the property at the northeast corner of Nevin Avenue and Second Street; which carried unanimously by the following vote: 6-0-1 (Ayes: Baer, Butt, Choi, Langlois, Loy and Lane; Noes: None; Absent: Kilbreth).**

### **STUDY SESSION ITEM**

- 3. PLN15-141: Creek Ordinance - STUDY SESSION** to review potential Zoning Text Amendments to Section 15.04.510 of the Richmond Municipal Code to regulate development adjacent to creeks and establish requirements for creek improvements for development projects. City of Richmond, applicant; Planner: Jonelyn Whales.

Senior Planner Jonelyn Whales gave the staff report, stating the Commission will discuss preservation of creeks and she gave a PowerPoint presentation. She clarified with the Commission that they received 8 attachments to the staff report.

Ms. Whales stated many Richmond creeks have been undergrounded over the years and tonight the Commission's discussion will focus on preserving those creeks and channels. Staff is hoping the Commission will assist with definitions of creek improvements for development projects. Staff can define creeks based on other jurisdictions; however, they are attempting to implement all goals and actions of the General Plan and something specific to the City of Richmond.

Ms. Whales briefly discussed the many purposes and goals of a creek ordinance, provided an overview of the current City status noting that staff conducted research and found no real definition or classification in the current zoning ordinance. One reference is included in Section 15.04.840.060 which is under performance standards, entitled "Creeks, Streams, and Riparian Corridors". It states building setbacks from the top of bank of all creeks, streams, riparian corridors identified in the Richmond General Plan shall be required as determined by the Department of Fish and Game standards. A reference was also located on the engineering website, under stormwater management which is a diagram that talks about creek maintenance and how to enhance a creek if a property owner abuts it.

She indicated that on October 21, 2015 the City Council adopted Resolution 91-2014 which mirrored what the General Plan states as far as implementing policies pertaining to development of parcels with creeks. Therefore, she would like the Commission to focus on a creek's definition and those found were listed in the Commission packet. Occasionally, earthquakes and flooding will alter creek networks.

Ms. Whales noted the following definitions were found:

- The U.S. Supreme Court based on a decision in 2001 with the Town of San Anselmo, which states, "A creek is a natural watercourse, a channel used by watering passing down as a collective body or stream in those seasons of the year and at times when streams of the region are accustomed to flow."
- U.S. Army Corps of Engineers defines a creek as a wetland, which is a type of creek, noting, "It currently must have water, the presence of water at least at some time of the year for it to be defined as a creek and the soils do not have to have oxygen due to the extended period of submergence underwater, and adaptive plants or vegetation that has adapted to the wetland conditions."
- The State defines a creek as a "Watercourse that carries water from either permanent or natural source, either intermittently or continuously in a defined channel. This can be a continuous swell, depression or culvert that was placed in the general historical area of where once a creek was." The State Regional Water Quality Control Board regulate creeks in the state and they also administer the state listing of endangered species, as well.
- The California Department of Fish and Wildlife regulates all work in the channels and the riparian corridors. Most property owners, if building any type of structure adjacent to a channel that fell under the watercourse definition for the state would have to obtain a lake or streambed alteration permit, especially if it impacts fish or wildlife in the area. Staff also found many permits are obtained before going to the local municipality, given time factors and costs to the applicant or property owner.

In focusing on Richmond and its vicinity, she displayed all watershed maps of the area shown in blue and discussed the following creeks: 1) Refugio Creek; 2) Pinole Creek; 3) Garrity Creek; 4) Rheem Creek; 5) San Pablo Creek; 6) Wildcat Creek; and 7) Baxter Creek. Unfortunately, there is no link to the Cerrito Creek as there is not enough information on this creek. However, it is listed as a creek in the map's listing.

In reviewing the definition of a creek, there were several advisory boards and community groups which were part of the General Plan update process and they specified certain goals and actions for creek preservation, and these are listed in the staff report. In undergoing the comprehensive zoning update, development standards and land use guidelines will be developed within this process. From the time the Council adopted the creek protection ordinance, staff has been reviewing surrounding cities that had creek ordinances, and she referred to the matrix in Attachment 6 which shows those communities surveyed.

Staff also discussed the matter with non-profit organizations, Friends of the Creek, an urban Resources Restoration group which have been helpful in terms of their restoration efforts. Staff assembled the information and reviewed the City's current zoning ordinance and determined use types or creek protection overlay zones be established along with definitions. Staff found Section 15.04.510; the Resource Management Overlay District regulations would be a perfect area to include a creek overlay protection zone. This would require staff to insert a section to include a purpose, administration of such a zone, requirements, responsible enforcement parties, site constraints, exceptions and permits. Ms. Whales then displayed samples of creek naturalization projects and said Attachment 7 includes samples of local ordinances.

Interviews have been conducted of City staff to identify any shortcomings with their ordinances for creek overlay zones. Ms. Whales found that rather than giving an arbitrary distance from the top of bank or the middle of the creek itself, they found they had more trouble enforcing it without actually having a hydrologist go out and survey the creek.

In conclusion, Ms. Whales said staff is asking for direction from the Planning Commission to move forward with next steps to develop a comprehensive and effective ordinance or mirror what the state and federal agencies currently does and have project developers and the public weigh in on it. She cited the many assets of creeks and the City wants to recognize the value of creek preservation and enhancement. Ultimately this will improve environmental qualities, increase property values and preserve public health and safety. Regarding next steps, staff is seeking suggestions for creek protection and preservation efforts to pursue.

Chair Lane asked for questions of staff.

Commissioner Baer said she is very interested in the discussion and improving the quality of the City's creeks. She referred to the email received from the RANC talking about the relationship between creeks and wetlands and concern about preserving the wetlands and including that issue in this discussion. She asked if the wetlands issue is covered by something else in the General Plan and asked if it should be considered as part of creek definition.

Ms. Whales said yes; wetlands would fall under action goals within the General Plan as all waterways are interconnected as part of creeks.

Director of Planning and Building Richard Mitchell added that there are delineated wetlands that are currently identified in the overlay and he thinks the specifics in this matter are to deal only with creeks, and those buried or channeled getting to the wetlands. He said the City is clear about wetlands, but there is uncertainty about creeks that originate in the hills and some of which have been buried over time. He said staff is seeking to determine policies that would permit daylighting them and dealing with the treatment of existing edges. Staff will, however, look into this and provide further clarification.

Commissioner Butt supported the advancement of creek identification and referred to the setbacks matrix on page 7 of the staff report. In looking at what other cities have done, they have an all-encompassing setback from the middle or from the edge of the bank which applies globally. He said the transects from T-4 Main Street and T-6 Core, the setbacks are less and less and he was curious as to why this recommendation is there and whether it came from discussion from other cities.

Mr. Mitchell referred to Attachment 8 and what are seen are various slopes. He noted that the consultant will advise on this, but at the top there is a slope of 2 feet over 1 foot. In this case of the slope, no engineering is required and it must be restored to a natural area. In the case of a 1 foot to 1 foot slope which is steeper, this attempts to suggest that as one gets deeper into the built environment, ways to naturalize a creek must be determined and implemented. The idea is to come up with a standard that could be applied within the built environment.

Commissioner Butt asked further how far staff went in reviewing current best practices for creek restoration in dense urban areas, as it seems by definition creeks become culverted given slopes along banks.

Chair Lane opened the public comment period.

Public Comments:

CORDELL HINDLER, Richmond, said he lives near a creek and supports moving forward with staff's recommendation to move forward for a creek ordinance.

JOSHUA BRADT, Richmond, said his watershed is the San Pablo Watershed and is the Vice Chair of the California Urban Streams Partnership and part of the Urban Creeks Council. He worked on many streams and watersheds in Richmond for years and participated with the City of Berkeley's Creek Task Force which revamped their ordinance in 2005. He said the matter is a big and important undertaking and he supports the City's efforts.

Regarding lessons learned, he said the creek policy overlay zone is a great idea as long as it is based on the definition of a creek and not blue lines that already exist on maps, given changes over time and outdated USGS mapping. Berkeley has a good GIS layer and he would encourage Richmond to do the same.

Regarding definitions, he did not see a definition of "restoration" although there was a "rehabilitation" definition. He thinks the creek restoration ordinance approach needs to be based on geomorphic analysis which looks at creeks as a dynamic system that moves over time and the City is helping it get to a stable place without using concrete and trying to straight-jacket them. He greatly appreciates that the setback zone starts at the top of bank rather than in the middle of a creek. The way the sample is worded might be difficult to determine because it speaks to a historic high water mark for the edge. He supports a setback based on a formula tied to the existing slope and getting to the more stable slope and then adding another "x" number of feet. As a creek advocate, the more set back can be provided the better, and he proposed 30 feet as ideal.

ANN RILEY, San Francisco Bay Water Regional Quality Control Board (SFBWRQCB), said they have worked closely with Lynn Scarpo and City staff over time on creeks in Richmond and have given best practices workshops for homeowners along creeks. She is also involved in writing

permits, as their agency and the Department of Fish and Wildlife have permitting authority. She is thrilled Richmond is proposing a creek ordinance, as the City is one of the few in the East Bay without an ordinance.

Regarding having clear definitions for creeks, Ms. Riley said she was impressed with the staff report comments and said their Board likes the City of Berkeley's definition the best. The way the State looks at creeks is anything with a bed and bank. It could be completely dry most of the year, lined in concrete, or could be a culvert, so there is already a state regulatory overlay which is fairly intensive in terms of being protective of these waterways.

Ms. Riley then distributed documents to staff which include an excerpt on how to write ordinances for setbacks and buffers from Shute Mihaly & Weinberg, LLC law firm and performance standards for bank stabilization from the SFBWRQCB moving towards the idea of more natural streams which results in more stable streams. She added that their agency has a 40-minute PowerPoint on basic do's and don'ts for managing streams and she agreed to forward staff the documents via email.

ROBERT JOYCE, El Sobrante, said he lives next to Garrity Creek and has been taking care of it since 1990 from what he learned from working on trails and wetlands. He thinks creeks need to have some kind of body to watch over them and not cast it off to a miscellaneous group or someone with a particular restoration interest. He noted that Garrity Creek has various invasive species which give the area fantastic wildlife and if those species are removed and replaced with something else, it would remove current wildlife and he asked to leave creeks as natural as possible.

GARLAND ELLIS, RANC Vice President, said they have a creek in their area and the Commission heard about it when they debated the Central Avenue project where several documents were not included in tonight's report, which include the County's ordinance, an agreement signed by the City of Richmond and other cities held by U.C. Berkeley, and the ordinances in El Cerrito that somewhat affect the portion of the creek that went through Richmond. He said they had a creek or stream that flowed from a known water source, but there were other waterways labeled as "drainage" because it could have been fed by street run-off or an unidentified spring. Even though both carried water, the City did not want to treat them the same and he asked that both of these should be specified in the ordinance. The standard should be the same regardless of whether something is determined to be drainage or a creek.

Mr. Ellis also asked the Commission to consider the width, depth, determine a ratio for a setback, flow rate during worst winters, current bank stability and consider creek courses when daylighting one. He said the City is considering Form-Based Codes in addressing many creeks, but there are many areas where this does not yet apply and this should be addressed now and not in the future. In addition, the City has setbacks but the size of a building should be determined which is by a creek, as all of its weight has an impact on the waterway and in diverting flows. There is inadequate area in some cases in the City and this should be addressed when there is development or any other changes.

Mr. Ellis asked that the City also identify who is responsible for maintaining creeks and what agencies should be involved. He also said 35 years ago the City allowed a development to go in on San Pablo Creek. A covered road was put over it and within the last year, millions of dollars were spent because it was not originally engineered correctly.

MARY SELVA, RANC President, spoke about their involvement with the shoreline area, stating Baxter Creek flows through the South Shoreline area and the 40 foot setback requirements on page 6 do not seem adequate for this open space area. She said it is a sensitive and fragile area with lots of bird species including rare and endangered, federally protected species. She would agree that this should be provided for urban creeks but not for creeks along the South Shoreline. As history, RANC worked to reduce 2/3 of heavy industrial shoreline, allowing zoning and light industrial, public use and open space from Central Avenue up to Marina Bay which was a major accomplishment for them. They were the only neighborhood council to work on establishing the Pt. Isabel Regional Shoreline Park, Battery Bay Peninsula Clean-up, the Bay Shoreline Trail Central Avenue up to Marina Bay portion, and Hoffman Marsh preservation. The Richmond Annex mural is placed across I-80 Carlson Boulevard which has a shoreline and bird theme painted on it representing the many years of hard work they accomplished for the South Shoreline.

Therefore, RANC wants to have a buffer zone there and if the ordinance applies to just urban areas, they would not have a problem with it. If it includes the South Shoreline area RANC would not recommend including it in the ordinance.

MARTHA BERTHELSEN thanked the Commission for taking up this issue, stating she lives in El Sobrante near San Pablo Creek and works in Richmond with the Watershed Project. Their goal is to educate children and adults about the benefits of creeks and of taking care of them. She feels creeks in urban settings are a very important point of contact for urban kids in the natural environment. Regarding the creek definition, she encouraged the Commission to consider the most encompassing view and to include the idea that culverts that were placed in areas of a historic creek should also be considered creeks.

In terms of the setback matrix, Ms. Berthelsen wanted to better understand the City's goals. Rather than to codify and acknowledge the existing urban environment, she would expect an ordinance like this to move more towards what would be ideal and what they would like to see in the future. Presumably, the ordinance will not require anyone to take down existing buildings but it would instead apply to new buildings or renovations, or anytime there is an opportunity to provide creeks with more space, and she thinks the setbacks listed are very inadequate in her view. There are multiple benefits to providing creeks with more space. The climate is changing and creeks need to be given more room to accommodate flows. It can also provide benefits in terms of recreation, bringing wildlife into the City and it serves many of the goals in the General Plan and resolution. She also called out the importance of having vegetated swales, rain gardens or other features that help to filter water before it gets to creeks.

Commissioner Butt asked Ms. Riley from SFBWRQCB to return to the microphone and said several speakers have alluded to the best practices relative to setback and proposals where waterways narrow in urban areas and he asked Ms. Riley to speak to this.

Ms. Riley said the City's ordinance has a section called Performance Standards which is a good way to organize thinking and what performance standards are selected for public health and safety. There is the erosion issue, 2 to 1 bank slopes or greater, and it would be easy to argue that a setback is needed for such a bank slope, as there is a close nexus between that and public health and safety. There are also flood issues as the other major public health and safety issue. Again, the setback will assist in this area and there is a direct nexus. She said there are other performance issues in that there are endangered fish in Wildcat Creek, steelhead and rainbow trout and the City probably would want another overlay for Wildcat Creek that

addresses the particular needs for this very valuable fish. This will involve canopy shade, having the right kind of vegetation near the channel and basic channel stability.

Ms. Riley said putting rip-rap gabions, geo-cells and articulated concrete blocks in channels end up destabilizing the creek channels. SFBWRQCB used to permit those and went and looked back at all of the failures and they no longer permit these because of the fact they create erosion up and down the street, will take out a neighbor's bank on the other side of the creek, and it is important to embrace new technology such as soil bio-engineering. She has provided some performance standards to staff that the Army Corps of Engineers use and the Natural Resources Conservation Service that shows what kinds of soil bio-engineering systems should be used under certain situations. The good news is because of the timing of the proposed ordinance there is a lot of science to back up what is the right thing to do.

Commissioner Butt asked and confirmed that these performance standards could be adopted as part of the City's ordinance and the draft ordinance is headed this way.

Commissioner Butt asked that aside from potential development goals, he asked Ms. Riley if she thinks it is better to apply a global setback to the creek ordinance and if so, what would she suggest.

Ms. Riley said she does not think it is good to set a global setback, as political backlash can be created from this and problems with the ordinance. She would review the different parts of creek systems and watersheds, talk about how the South Shoreline would have a separate overlay, ensure the City looks at new development and redevelopment differently than existing development, and use methods to prevent erosion for certain built up areas. Therefore, she thinks the City should gear its objectives by the different parts of the City and in its watersheds.

Ms. Riley said she would also ask that an overlay be in place for Wildcat Creek because of the endangered species issues. She noted the Wildcat/San Pablo Creek Watershed Council has been successful in restoring the creek corridor from the Bay and it is trying to acquire properties in the cities of San Pablo and Richmond to do the right thing, and they are taking a redevelopment approach on this.

Vice Chair Langlois thanked Ms. Whales for her presentation and speakers for their comments. She would love for staff to work with the three speakers with expertise on this. She appreciates the speaker who is maintaining Garrity Creek as well, noting that one component is for property owners to maintain creeks. She supported the definition which is close to the City of Berkeley's definition. One speaker suggested having a definition for restoration which she supported.

In terms of setbacks, Vice Chair Langlois said she can see the difficulty in starting the setback from the historical high water mark as opposed to the centerline of the channel which is easy to identify. One speaker mentioned the Central Avenue project and she believes the Commission was talking about measuring from the centerline of the channel and talking about a 30 foot setback. It seems that based on discussion and comments, for new construction or rebuilding of something, tearing down buildings does not make sense, but for new buildings it makes sense to give the creek as much space as possible. She would like to see those setbacks re-evaluated and find a good way to measure them to be as wide as they can. She thought the cities of El Cerrito and Berkeley have robust standards of 25 to 30 feet, as well as in taking consideration of slopes into account.

Vice Chair Langlois referred to the letter from RANC and said certainly the wetland area is well-established, but she referred to the wetland buffer zone. As the creek approaches the wetland, she asked at what point the City would have to stop allowing building in that buffer zone. She also asked if setbacks apply all the way up to the wetland or certain distances and supported working with those organizations and agencies that deal with this on best practices.

Commissioner Loy echoed comments and questions of Commissioners and said she would provide RANC with her email contact, as she did not receive the email.

Commissioner Baer said in adding to the idea of having a definition for restoration, she asked that there be various best practices like vegetative or bio-swales and raingardens included.

Commissioner Butt echoed Commissioners' comments and said it is exciting to see so many creek advocates present tonight. He referred to the concept of the creek overlay zone and supported this. In terms of a specific overlay zone for special creeks like Wildcat and San Pablo Creeks which are much wider and have migrating fish in them, he supported this. Regarding definitions, he thinks everything looks good, but said it was mentioned that Berkeley's definition was an excellent definition given there is inclusion of "the general historic location thereof when talking about a culverted creek" and he asked that this be added to Richmond's definition which would strengthen it. Under the definitions in the proposed creek ordinance for Richmond, Cerrito Creek is not mentioned and he asked to add this creek.

Lastly, regarding setbacks he generally agrees with what has been stated by several speakers and Vice Chair Langlois in that he thinks the preliminary proposed setbacks, particularly where they involve more urban areas, are adequate necessarily and should be thought through more given more input from groups for consensus on consistency of setbacks relative to those creeks.

Vice Chair Langlois referred to definitions and Attachment 7 which shows a draft definition of proposed guidelines. On page 5 of the staff report there is also a proposed definition which looks similar to Berkeley's, but they are not the same. Therefore, she supported the definition on page 5 as the more robust definition.

Chair Lane referred to the definitions on both Attachment 7 and page 5 of the staff report which states, "A creek does not include any part of an engineered structure developed for collection of storm or flood waters that does not follow the general historic course of the creek" and confirmed they were similar but Berkeley's is tighter.

Secretary Choi said as someone who lives in Marina Bay, he asked if the Meeker Slough fall into the definition of a creek. Commissioner Butt stated it is listed in the definitions which he read, in part.

Chair Lane clarified with Ms. Whales that next steps are that staff will take comments from the public and Commissioners and incorporate these into a draft ordinance. She asked for a timeline and Ms. Whales said it depends on communication with various agencies and drafting of the ordinance.

Chair Lane concluded the item and thanked staff for their comprehensive presentation.

## **COMMISSION BUSINESS**

**4. Reports of Officers, Commissioners and Staff**

Ms. Velasco asked that Commissions hold September 17<sup>th</sup> as the Planning Commission meeting, as the September 3<sup>rd</sup> meeting will be canceled, given quorum issues.

Vice Chair Langlois asked about scheduling and asked if it would be possible to hold the Commission meeting on September 24<sup>th</sup>. Ms. Velasco said the Chambers is being used by another board and staff has already reserved the 17<sup>th</sup>.

Vice Chair Langlois announced that Saturday is Our Power Festival in Richmond at 16<sup>th</sup> Street and the Greenway from 12 noon to 5PM. It is being put on by Richmond Environmental Justice Coalition, Asian Pacific Environmental Network with others helping out in an effort to learn about sustainable energy and how to use power to make Richmond what people want it to be.

Chair Lane announced that she will not be available to attend the September 17<sup>th</sup> meeting and Vice Chair Langlois will chair that meeting.

**5. Adjournment** - The meeting was adjourned at 8:12 p.m. to the next regular meeting on September 17, 2015.