

RESOLUTION NO. 18-17

**RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF RICHMOND RECOMMENDING APPROVAL TO THE CITY COUNCIL OF A VESTING TENTATIVE MAP, DESIGN REVIEW PERMIT, AND MAJOR AMENDMENT TO A PLANNED AREA PLAN (PLN16-401) TO INCREASE THE NUMBER OF RESIDENTIAL UNITS FROM 150 TO 190, AND INCREASE BUILDING HEIGHTS ABOVE 35 FEET FOR THE MIRAFLORES FOR-SALE HOUSING DEVELOPMENT.**

**WHEREAS**, Miraflores Community Devco, LLC., on behalf of the property owner, the Successor Agency to the former Richmond Community Redevelopment Agency (collectively, the "applicant"), requests approval of a Vesting Tentative Parcel, Design Review Permit, and a Major Amendment to a Planned Area Plan to increase the total number of residential units from 150 to 190 and increase building heights above 35 feet for the Miraflores For-Sale Housing Project ("Project") at a site bounded by South 45th Street to the west, Wall Avenue to the south, Interstate 80 to the east, and the BART tracks to the north (APNs 513-321-001, 513-321-003, 513-330-001 through -003, 513-330-005 through -007, and -012 through-014). ("subject site"), and

**WHEREAS**, the Vesting Tentative Map is subject to the provisions of California Government Code Sections 66410-66499.58, known as the Subdivision Map Act and Series 700 of the Richmond Municipal Code known as the Richmond Subdivision Ordinance; and

**WHEREAS**, the Planning Commission has reviewed the Vesting Tentative Map for conformance with the Subdivision Map Act, Subdivision Ordinance and all other applicable regulations of the Municipal Code; and

**WHEREAS**, on February 14, 2018, at a public hearing the Design Review Board reviewed the Design Review permit and Major Amendment to Planned Area Plan, and voted to recommend approval to the City Planning Commission, subject to conditions; and

**WHEREAS**, the Planning Commission has reviewed the Vesting Tentative Map, Design Review Permit, and Major Amendment to a Planned Area Plan for conformance with the Subdivision and Zoning Ordinance and all other applicable regulations of the Richmond Municipal Code; and

**WHEREAS**, the City certified an Environmental Impact Report (EIR) (SCH# 2007082154) for the Miraflores project in December 2009, including adopting a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program. The proposed Project is a modification of the original for sale project evaluated in the EIR. The development program analyzed in the EIR assumed a project of up to 226 for-sale market rate residences and 110 affordable rental units for seniors. The proposed density of 190 residential units and development characteristics are consistent with the analysis performed in the original EIR. Therefore, the Mitigation Monitoring and Reporting Program remain applicable and are incorporated into this proposed development (see Attachment 1).

**WHEREAS**, the Planning Commission has conducted a properly noticed public hearing pursuant to California Government Code Section 65090 and has duly considered all written and verbal testimony presented before or during the hearing, including the agenda report dated April 19, 2018; and

**WHEREAS**, on the basis of the application, plans, materials, and testimony submitted at or before the public hearing, the Planning Commission makes the following findings with statements of fact to support the findings as required by California Government Code Section 66474 for recommending approval of the Vesting Tentative Map, Design Review findings per Section 15.04.805 of the Zoning

Ordinance, and Major Amendment to a Planned Area Plan findings per Section 15.04.810 of the Zoning Ordinance:

**VESTING TENTATIVE MAP FINDINGS (Section 15.04.702.100):**

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1. **Consistency.** The proposed subdivision, together with the provisions for its design and improvement, is consistent with the General Plan, any applicable specific plan, the Zoning Ordinance, and other applicable provisions of the City's Municipal Code.

Statement of Fact: The site is located in a Medium Density Residential designation under the General Plan and Zoning Ordinance. The zoning district and the General Plan enable subdivisions of this type of development. The proposed subdivision will result in 190 residential condominium units on a 8.17 acre parcel.

2. **Physically Suitable.** The site is physically suitable for the type of development and the proposed density of the development.

Statement of Fact: The site is physically suitable for a residential development. The subject property is considered a large site (8.17-acre) and the proposed 22 lots with a total of 190 condominium units are consistent with the surrounding area. The proposed lots, open space, and other improvements are of appropriate size as set forth by the Zoning District in which the subject site is located. The subject property is located adjacent to an urbanized area where existing drainage, sewer, water and improvements are available. The first phase of the Miraflores Development, the 80-unit senior housing development is currently under construction.

3. **No Environmental Damage.** The proposed subdivision, together with the provisions for its design and improvement, are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat, unless an Environmental Impact Report (EIR) was prepared and a finding was made that specific economic, social, or other considerations make the mitigation measures or project alternatives infeasible, pursuant to Section 21081(a)(3) of the Public Resources Code.

Statement of Fact: The City certified an Environmental Impact Report (EIR) (SCH# 2007082154) for the Miraflores project in December 2009, including adopting a Statement of Overriding Considerations and a Mitigation Monitoring and Reporting Program. The proposed Project is a modification of the original for sale project evaluated in the EIR. Therefore, the Mitigation Monitoring and Reporting Program are still applicable and will be incorporated into this proposed development. This will ensure that the project will not substantially cause an environmental adverse impact of overriding considerations and will comply with the adopted MMRP.

4. **Public Health Problems.** The proposed subdivision, together with the provisions for its design and improvement, is not likely to cause serious public health problems.

Statement of Fact: The design of the land division is not likely to cause any serious public health problems because the project conforms to the City Subdivision Ordinance. Any future development will be constructed to meet all applicable building and safety codes.

5. **No Conflict with Easements.** The proposed subdivision, together with the provisions for its design and improvement, will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision. The City may approve a map if it finds that alternate easements for access or for use will be provided and that these easements will be substantially equivalent to ones previously acquired by the public.

Statement of Fact: The design of the land division and the type of proposed improvements for the development will not conflict with easements acquired by the public at large because all existing easements will be conveyed, such as the private easement for access.

6. **Availability of Water.** Water will be available and sufficient to serve a proposed subdivision with more than 500 dwelling units in accordance with Section 66473.7 of the Subdivision Map Act.

Statement of Fact: The project has been reviewed by EBMUD and determined that water will be available to serve the project. The proposed project will include 190 units which is below the 500 unit threshold.

**DESIGN REVIEW FINDINGS (Section 15.04.805):**

- A. The General Plan and any applicable specific plans;

Staff Statement: The proposed project complies with all applicable development standards in the Richmond Zoning Ordinance and the General Plan. The Medium Density General Plan designation for the subject property is specifically intended to enable this type of development as proposed by the applicant. The project is also consistent with the General Plan Land Use Goal LU-A and Land Use Policy LU-I as the proposed project will enhance the value of the area, and will be constructed in conformance with the Richmond Zoning Ordinance and California Building Codes.

- B. Any applicable design guidelines;

Staff Statement: There are no applicable design guidelines in this neighborhood aside from design criteria in D below..

- C. Any approved tentative map, Use Permit, Variance, or other planning or zoning approval that the project required; and

Staff Statement: The project requires a Major Amendment to a Planned Area Plan and must be approved by the City Council. The change will include an increase in units from 150 to 190 and an increase in building heights from 35 feet to 50 feet.

- D. The design review criteria in Section 15.04.805.04.

The project must satisfy these criteria to the extent they apply.	Criteria Met?
A. The overall design of the project, including its scale, massing, site plan, exterior design, and landscaping, reflects design integrity and the relationship of form and function in a coherent manner.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
B. The project design evidences a sense of place and consideration of scale, mass, height, building siting, and privacy in a neighborhood and community context; does not overwhelm or adversely impact adjoining properties; and respects prevailing setbacks and the scale and heights of neighboring buildings and how they relate to the street.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
C. The project has integrated sun/shadow considerations into building and landscape design to provide for human comfort and not create heat islands with large expanses of unshaded paving.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
D. The project design is appropriate to the function of the project and will provide an attractive and comfortable environment for occupants, visitors, the surrounding neighborhood, and the Richmond community at large.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
E. The project's design elements, materials, signage, and landscaping are internally consistent, fully integrated with one another, and applied in a manner that is visually consistent with the proposed architectural design.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>

F. The project contributes to the creation of an attractive and visually interesting built environment that includes a variety of building styles and designs with well-articulated structures that present varied building façades, rooflines, and building heights within a unifying context, compatible with the surrounding neighborhood.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
G. The project design does not substantially limit public views and vistas from public parks and publicly owned open space.	N/A <input checked="" type="checkbox"/>
H. Parking areas are designed and developed to buffer surrounding land uses, minimize stormwater run-off, and provide shade for internal walkways.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
I. Lighting and lighting fixtures are designed to complement buildings, be of appropriate scale, provide adequate light over walkways and parking areas to create a sense of pedestrian safety, and avoid creating glare.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
J. The proposed building design and landscaping supports public safety and security by allowing for surveillance of the street by people inside buildings and elsewhere on the site.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
K. Landscaping is designed to be compatible with and enhance the architectural character of the buildings on site. Proposed planting materials avoid conflicts with views, lighting, and signage.	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
L. The project's design supports the community's energy conservation efforts.	N/A <input checked="" type="checkbox"/>

*Staff Statement (A, B, D, E, and F): The site has a unique shape. The proposed design effectively provides a well-balanced composition in terms of placement of elements creating a rhythm along the street façade and reducing the massing. Landscape is proposed throughout the site, particularly along the Greenbelt. In context of the surrounding area, the proposed development would enhance the integrity and aesthetic quality of the area. Given that conditions of approval will be incorporated, the design will be further enhanced. Overall, the project updates the appearance of a property that has been underutilized. The proposed design embraces building styles that are harmonious and any potential adverse impacts to the adjacent and surrounding properties associated with the project, such as views and privacy would not be significant.*

*Staff Statement (C): The project has been designed to integrate the impact of sun/shadow into building and landscape design to provide for human comfort and not create heat islands with large expanses of unshaded paving.*

*Staff Statement (I and J): Condition of approval No.6 will ensure lighting and lighting fixtures are designed to avoid creating glare. The proposed building design supports public safety and security by allowing for surveillance of the street by people inside buildings and elsewhere on the site.*

**PLANNED ARE PLAN FINDINGS (Section 15.04.810):**

A. The proposed development is consistent with the General Plan, including the height, density, and intensity limitations that apply unless these limitations are to be amended.

Staff Statement: The original PA designated the parcel as a Medium Density Residential site. Subsequently, in 2012 a General Plan update was adopted. Under the 2030 General Plan, the project site allows a density of up to 40 dwelling units per acre. The proposed density of 190 residential units is approximately 23 dwelling unit per acre below the maximum allowed density. The 2030 General Plan also

provides flexibility as it relates to building heights. If a project is part of an approved Planned Area District with a Medium Density designation and an appropriate environmental analysis is prepared, increases in heights can be approved.

B. The subject site is physically suitable for the type and intensity of the land use being proposed.

Staff Statement: See response A above.

C. Adequate transportation facilities and public services, as defined in the General Plan and in the design standards established in the Subdivision Regulations that exist or will be provided in accordance with the conditions of Planned Area Plan approval to serve the proposed development; and the approval of the proposed development will not result in a reduction of transportation service for all modes of travel or public services so as to be a detriment to public health, safety, or welfare.

Staff Statement: The site is located less than half a mile away from the El Cerrito del Norte BART Station and is adequately served by public transportation on Cutting Boulevard. In addition, a bicycle and pedestrian trail will be provided, which will connect to the Greenbelt along the northern edge of the site. There are adequate transportation facilities and public services near the project site as defined in the General Plan and the design standards in the City's subdivision regulations that will be provided in accordance with the conditions of the Planned Area Plan approval.

D. The proposed development will not have a substantial adverse effect on surrounding land uses and will be compatible with the existing and planned land use character of the surrounding area;

Staff Statement: The project is designed to be compatible with the surrounding neighborhood and the adopted Mitigation Monitoring and Reporting Program will be added as a condition to ensure that the project will not substantially cause an adverse environmental impact.

E. The development generally complies with applicable design guidelines; and

Staff Statement: The proposed development has been approved by the Design Review Board and determined that as currently proposed meets all applicable design guidelines (see Design review findings D above).

F. The proposed development is demonstratively superior to the development that could occur under the standards applicable to the underlying base district, and will achieve superior community design, environmental preservation and/or substantial public benefit. In making this determination, the following factors will be considered:

- a. Appropriateness of the use(s) at the proposed location.
- b. The mix of uses, housing types, and housing price levels.
- c. Provision of units affordable to persons and families of low and moderate income or to lower income households.
- d. Provision of infrastructure improvements.
- e. Provision of open space.
- f. Compatibility of uses within the development area.
- g. Creativity in design and use of land.
- h. Quality of design, and adequacy of light and air to the interior spaces of the buildings.
- i. Overall contribution to the enhancement of neighborhood character and the environment of Richmond in the long term.

Staff Statement: Each proposed building provides a well-balanced composition in terms of placement of architectural elements creating a rhythm along the street façade and reducing the massing. Landscape is proposed throughout the site, particularly along the Greenbelt. In context of the surrounding area, the

proposed development would enhance the integrity and aesthetic quality of the area. The PA plan will result in a superior urban design in comparison with the development under the base zoning district regulations that would apply if the plan were not approved. The overall design is consistent throughout the site while meeting the objective to enhance neighborhood character and the environment of Richmond in the long term.

**NOW, THEREFORE BE IT RESOLVED that the Planning Commission does hereby recommend to the City Council approval off the Vesting Tentative Map, Design Review Permit, and Major Amendment to Plan Area Plan as set forth in Exhibit A (PLN16-401), subject to the following conditions of approval:**

1. Substantial Conformance: The project shall be completed in substantial conformance with the Project Plans in Exhibit D, submitted to and received by the Richmond Planning and Building Services Department on March 15, 2018, except as may be modified by the conditions of approval for the project.
2. Environmental Mitigation Monitoring and Reporting Program: The project shall incorporate all the mitigation measures set forth in the Adopted Mitigation Monitoring and Reporting Program.
3. Conditions of Approval on Plans: All conditions of approval shall be written on the first or second page of the construction plans submitted for review and approval, along with annotations by the applicant of where the Design Review conditions have been met on the drawing set. These conditions of approval shall be on, at all times, all grading and construction plans kept on the project site.
4. Responsibility to Inform: The applicant shall be responsible for informing all subcontractors, consultants engineers, or other business entities providing services related to the project of their responsibilities to comply with all pertinent requirements herein, in the City of Richmond Municipal Code, including the requirement that a business license be obtained by all entities doing business in the City as well as hours of operation requirements in the City.
5. Changes to Design: Prior written approval from the Planning and Building Services Department Director or his/her designee shall be received by the applicants before any minor changes are made to the site design, grade, building design, building colors or materials, or related design elements. Major changes shall be subject to review by the Design Review Board or Planning Commission at the Planning and Building Services Director's discretion.
6. Exterior Lighting: Prior to issuance of any building permit, the applicant shall demonstrate that all exterior lighting has been designed and located so that all direct light is confined to the property and is satisfactory to the Planning and Building Services Director or his/her designee. Lighting shall be indirect (up or down with alabaster lens or with alabaster color lens) with a maximum 3000K if LED.
7. Private Open Space: Balconies proposed on 11-plex and 12-plex buildings on the third floor level shall be at least 60 square feet with a minimum dimension of 6 feet at any point.
8. Sidewalk: Parking stalls located next to the northern sidewalk on Ohio Avenue shall be removed to allow the widening of the sidewalk to at least 14 feet for pedestrian and bicycle users.
9. Garage Doors: A different type of garage door shall be provided for buildings 13 and 14 facing South 47<sup>th</sup> Street. The garage doors shall include a row of windows or another decorative element to further improve the overall design. The garage door design shall be submitted for review and approval to the Planning and Building Services Director or his/her designee.

10. Articulation of Garages: Garages located on 9-plex, 11-plex, and 12-plex buildings shall be further articulated as depicted on the attached drawing (Attachment #1). The intent of these sketches is to modulate and reduce the mass and bulk of the garage door plane on these long buildings. The intent of the DRB was to encourage a pushing out of the doors and facades. In some cases, single doors and in other cases two doors. The door faces were to extend vertically where possible onto the second floor and to the plate level. This modification shall be submitted for review and approval to the Planning and Building Services Director or his/her designee.
11. Building Mass Reduction: The roof ridges for 11-plex and 12-plex buildings on the western side of South 47th Street shall be broken down to reduce the building mass.
12. Gates and Fencing: The applicant and the Park Plaza neighborhood council shall determine the location of gates and fences.
13. Gutters: All round gutters shall be 6½ inch round GSM mounted on a 2x6 fascia.
14. Concrete Stairs: All concrete stairs shall have a darker concrete color, which shall match the hardscape concrete color and texture.
15. Concrete Work: All concrete flat work, sidewalks and driveways shall have one pound of lamp black per yard to slightly darken the finish.
16. Maintenance: The permittee, shall, at all times, keep the property in good order. This includes repair and maintenance of all structures, fences, signs, walks, driveways, painting, etc. as may be necessary to preserve a high quality environment. All landscaped areas shall be maintained free of litter, debris and weeds. All plantings shall be permanently maintained in a healthy growing condition, and whenever necessary, replaced with equivalent planting materials to ensure continued conformance with approved plans. Every sign shall be kept up and maintained in a secure and safe condition. Signs shall be kept free of rust, corrosion, peeling paint, cracks, fading and other surface deterioration.
17. Stormwater Management During Construction: During construction activities, the applicant shall reduce or prevent to the maximum extent practicable the direct or indirect discharge of any dust or pollutant into the storm drain system utilizing best management practices contained in the California Storm Water Best Management Practices Handbook for Construction Activities. Construction activities include, but are not limited to: watering operations; roadwork and paving operations; concrete and painting; structure construction and painting; construction material storage and handling; construction waste/debris storage and disposal; and, construction equipment/vehicle cleaning, maintenance and fueling operations. The project sponsor is also responsible for training all contractors and subcontractors on the best management practices identified in the California Storm Water Best Management Practices Handbook for Construction Activities which shall be made available by the project sponsor at the pre-construct meeting of the project.
18. Encroachment Permit Required: All work within the public right-of-way, including but not limited to utilities and grading, shall be explicitly noted with the building plans. The applicant shall obtain all necessary encroachment permits from the City of Richmond Public Works Department prior to issuance of building permits for all work and construction encroach within or over the public right-of-way, including, but not limited to, balconies, fire ladders, outdoor restaurant seating, bike racks, water meters, backflow devices, signs and curb/gutter/sidewalk improvements. Easements, subject to the approval of the City Council, shall be required for any structural features extending on, over, and or under any public right of way.
19. Design Review Permit Expiration: Design Review Permit approval shall expire two years from the

date of final approval, unless made permanent by the issuance of building permits and the commencement of construction. If the use(s) or structure(s) approved by this action is not established within such period of time, this approval shall be terminated and shall thereafter be null and void, unless the applicant or owner applies for an extension of time prior to expiration of the Design Review Permit approval.

20. Indemnification: The applicant agrees, on behalf of itself, its successor in interest and assigns, to defend, indemnify, and hold harmless the City, its Council, Planning Commission, advisory boards, officers, employees, consultants and agents (hereinafter "City") from any claim, action or proceeding (hereinafter "Proceeding") brought against the City to attack, set aside, void or annul the City's actions regarding any development or land use permit, application, license, denial, approval or authorization, including, but not limited to, variances, use permits, developments plans, specific plans, general plan amendments, zoning amendments, approvals and certifications pursuant to the California Environmental Quality Act, and/or any mitigation monitoring program, or brought against the City due to acts or omissions in any way connected to the applicant's project, but excluding any approvals governed by California Government Code Section 66474.9. This indemnification shall include, but not be limited to, damages, fees and/or costs awarded against the City, if any, and costs of suit, attorneys fees and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by applicant or City. If applicant is required to defend the City as set forth above, the City shall retain the right to select the counsel who shall defend the City.

#### VESTING TENTATIVE MAP

21. The applicant shall prepare a declaration of covenants, conditions and restrictions (CC&Rs) which shall be recorded and apply to each owner of a commercial condominium unit within the project. The CC&Rs shall be subject to the approval of the Zoning Administrator and City Attorney and shall be recorded at, or prior to, the time of final map approval, and shall include all applicable conditions of approval and requirements of the city. The CC&Rs shall, at a minimum, provide:
- a. That any amendment to the CC&Rs related to the conditions of approval or other requirements of this chapter may not be approved without prior consent of the city;
  - b. That there shall be an entity created (e.g., a property or homeowners' association) which shall be financially responsible for and shall provide for the effective establishment, operation, management, use, repair and maintenance of all common areas and facilities;
  - c. A provision containing pertinent information regarding the conveyance of units and the assignment of parking, an estimate of any initial assessment fees anticipated for maintenance of common areas and facilities, and an indication of appropriate responsibilities for maintenance of all utility lines and services for each unit;
  - d. A provision addressing the payment of water, utilities, gas and electricity by the homeowner or through the association;
  - e. A provision requiring that any owner who rents his or her condominium unit shall utilize a professional property management company to manage the rental unit or that there exists a property owners' association which is responsible for management of the common areas and enforcement of the CC&Rs.
22. Property Owners' Association. Prior to the approval of a parcel or final map, a property owners' association or similar entity shall be formed for any condominium project. The association shall, at a minimum, provide for the administration, management and maintenance of all common areas, including landscaping, drive aisles and parking areas, maintenance of the exterior of all buildings,



the collection of dues, payment of public utilities not billed separately to each unit, and enforcement of standards within the project.

**I CERTIFY**, that the foregoing resolution was adopted by the Planning Commission of the City of Richmond, California, at a regular meeting held on April 19, 2018.

AYES:

NOES:

ABSTENTIONS:

ABSENT:

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MARYLIN LANGLOIS  
CHAIR

Approved as to form:

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JAMES ATENCIO  
ASSISTANT CITY ATTORNEY