

**From:** [Anabel](#)  
**To:** [DRBcomments](#)  
**Subject:** Pt Molate Plan  
**Date:** Monday, July 20, 2020 4:31:21 PM

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Hello! My name is Anne FitzMedrud, and I'm writing in support of the Community Plan for Pt Molate. I live in San Pablo, but we lived in Richmond on Barrett and my youngest child attends Washington Elementary in Pt Richmond.

I support the Community Plan because I support having open space, protecting the natural plants & wildlife along our coast, and preserving historical and sacred sites. I also find it heartbreaking that the city might even consider damaging even more of its land on behalf of industry when so much has been already contaminated, affecting the children and the community, many of whom don't have the resources to protect themselves or clean up the mess we already have.

Thank you!  
Anne FitzMedrud

**From:** [jim\\_hite](#)  
**To:** [DRBcomments](#)  
**Subject:** Public Comments Agenda Item #5, Pt. Molate Mixed Use Development Project  
**Date:** Tuesday, July 21, 2020 10:33:38 AM

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My name is Jim Hite, Richmond resident and former member of the Pt. Molate Citizens Advisory Committee. I ask the Design Review Board to shelve any decision regarding Sun Cal's proposed housing scheme for Pt. Molate. Sun Cal's plan is nebulous and incomplete. At the very least, please wait for a Final and Certified Environmental Impact Report. Also, as a member of the PMCAC, I was involved in implementing a very neutral survey created by UC graduate students to get a sense of what Richmond residents wanted to see out at Pt. Molate. Over 200 surveys were completed by residents throughout Richmond. The majority of survey respondents wanted Pt. Molate to be developed for cultural and recreational activities including the restoration of Wine Haven for culture, art, boutique style shops and restaurants. Of all those 217 folks surveyed, only 8 people envisioned private housing at Pt. Molate. Thank you.

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Thank you!  
Anne FitzMedrud

# CHEASTY, CHEASTY & MALEK, LLP

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July 20, 2020

Chair Jonathan Livingston,  
Board Members Kimberly Butt, Brian Carter,  
Jessica Fine, Michael Hannah, Macy Leung, Karlyn Neel  
Richmond Design Review Board  
City of Richmond  
450. Civic Center Plaza  
Richmond, CA 94804

Re: Item 5  
Point Molate Mixed Use Development Project (PLN20-057)  
My Client: Citizens for East Shore Parks

Dear Chair Livingston and Members of the Board:

Thank you for the opportunity to address some comments to you about this proposed development at Point Molate. I am one of the lawyers representing Citizens for East Shore Parks.

I join in the comments of Mr. La Force of the Sierra Club and by Mr. Flashman who wrote you on behalf of SPRAWLDEF, Point Molate Alliance, Citizens for East Shore Parks and Richmond residents. I adopt their comments.

I wanted to bring forward another point. It almost never happens that we get a real "do over" in life. You are presented one in Richmond. Right now, for no cost, Richmond has the opportunity to use this land at Point Molate, a former Navy refueling depot, in the way that will benefit the entire community people, that will make this special spot a regional attraction, that will showcase how much Richmond has to offer.

People can spend their whole lives in public service and never get the chance that you are now presented. You have the opportunity to make a world class decision - preserve habitat, create recreational space and provide a magnificent benefit to the people of Richmond, while complying with the Richmond General Plan. Nowhere in the history of discussions of Point Molate was there a desire to do what you are being asked to approve - turn Point Molate into luxury housing, privatizing it for the benefit of a few at the expense of the rest of Richmond.

As Richmond's General Plan states, Richmond seeks to promote housing along corridors for urban infill, corridors where there exists infrastructure and a population that can be

better served by infill housing. The project before you is just the opposite. The proposed development represents the worst in urban design and planning. Despite their best efforts the project's proponents cannot obscure that this proposal is not the urban infill they contend. It is not within Richmond's guidelines for special consideration for such infill. It lacks all the infrastructure and it is not located in any dense urban area. To the contrary this is a sprawl site. The vague illustrations you have been given, along with the request that you approve this application before receiving the full comments and the full responses to the EIR, make a mockery of how a planning process should work.

There are many locations for housing in Richmond, locations crying out for infill housing. Real progress needs to be made on those. At Point Molate there is a need for refurbishing and building in the historical area at Winehaven and a need for open space and park land outside Winehaven. But instead you are asked to ignore all the questions you have been asking and to approve what will be amounts to a suburban sprawl development in an area of high fire danger, right next to a refinery.

The purpose of an EIR is to understand how a project works in a setting and how it will affect the community before it is built. This dovetails with the work of the Design Review Board – whose mission is to ensure a project meets the design and use guidelines in the statutes and General Plan of Richmond before it is approved. There are too many faults in this proposal to list here, but I point out a simple and major one – the lack of specificity. There is no clear presentation of the design, placement, number of the buildings; and there is a dearth of information on grading and compliance with open space requirements and road design. These faults alone make it impossible for the Design Review Board to act on this proposal. Without all this information, EIR results included, you and this Board are simply being asked to approve the project without the grounds for the proper findings. The Design Review Board is being pushed to act arbitrarily, capriciously and outside the scope of its required review and judgment.

The City has put much pressure on you to act immediately, but put little pressure on itself to do its job properly. Why has the developer been unwilling to provide the correct and full information? Why hasn't the City required all that in advance of bringing all this before you for approval? The mayor and some of his developer supporters see this as a chance to make a lot of money. But for you this is the chance to do something great for Richmond. Do not be stampeded into making bad decisions because of political pressure. Do the right thing. Do a magnificent thing for Richmond.

When your grandchildren and great grandchildren look back at how Point Molate became such a stellar location they will look back at the courage you displayed and they will admire your foresight in protecting this magnificent location.

Thank you very much for your time and consideration.

Sincerely,



Robert Cheasty  
Attorney for Citizens for East Shore Parks

**From:** [charles.smith](#)  
**To:** [DRBcomments](#)  
**Subject:** Letter to the Design Review Board on Point Molate Mixed use Development Project!  
**Date:** Monday, July 20, 2020 9:05:11 PM

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Chair Jonathan Livingston,  
Board Members Kimberly Butt, Brian Carter, Jessica  
Fine, Michael Hannah, Macy Leung, Karlyn Neel  
Richmond Design Review Board  
City of Richmond  
450 Civic Center Plaza  
Richmond, CA 94804

Re: Item 5, Point Molate Mixed-Use Development  
Project (PLN20-057)

If naturalist and preservationist John Muir were alive today he would be leading the movement to save Point Molate. He would not have had far to travel; his home and monument are in Martinez, California. His spirit remains in the hearts and minds of all those who appreciate and endeavor to preserve natural resources.

Point Molate, on the Richmond shoreline, is one of the areas Muir would have fought the hardest to preserve. He would have understood the importance of the eelgrass beds directly off the Point Molate shoreline. As was his style, he would explain to the public how vital those eelgrass beds are as nurseries for endangered species. Changing the natural runoff from the hills above the shoreline will kill the eelgrass and its inhabitants. The significance of this will be devastating.

Muir would have stood by the narrow roadside and told everyone walking by about the surrounding hills that are the homes of mammals, birds, reptiles, and insects as well as endangered plants. These creatures lost their original homes as the Richmond shoreline was developed building expensive housing, a yacht harbor, and Knox Miller Park.

The natural life at Point Molate is only one of three major reasons why housing should not be built at Point Molate.

Currently, the Richmond City Council has proposed high-end housing that would be built directly below the Chevron refinery. Above the proposed houses sit massive jet fuel and crude oil tanks. These tanks and pipelines follow the ridge above the proposed housing, overlooking the only road entering and exiting the entirety of the Point San Pablo Peninsula. Because Chevron uses the tanks and pipes for gravity-flow production, they will not agree to remove them.

If Richmond allows housing immediately below the Chevron refinery, the City will be thumbing its nose at the biggest taxpayer in Richmond's history. Should Chevron pack up and leave, the City would be bankrupt. Chevron has supported more non-profits in Richmond and donated more monies to various causes than any corporation or business in Richmond. Putting Chevron in an untenable position is no way to treat one of the founding members of the City. Nor is it responsible to endanger the lives of unsuspecting new

residents and their children.

Should there be a fire, an explosion, a gas or chemical leak, **all things that have happened in Richmond in recent years**, how would the proposed residents escape the danger? There is only one way in and one way out of Point Molate, I-580. **Richmond has, for years tried and failed to create additional routes for egress and access.** It is impossible due to the geography and the proximity of the interstate and the refinery.

Should there be an earthquake, anything and everything could happen: fires, landslides, a blocked road, a tsunami, and no exit.

The residents of Richmond had successfully defended Point Molate when outsiders wanted to build an Indian casino there. It was a long and hard-fought battle that went from Richmond to Martinez to Sacramento to Washington, DC. Finally, Richmond residents voted out the casino supporting Council members. Unfortunately, Mayor Butt did not get the message although he sat on the Council at the time. With his new power as Mayor, he has once again brought in a developer against the wishes of the residents of Richmond and environmentalists across the state.

Please bring common sense and integrity to the question before you. If this development is built, I can assure you the dangers I have listed will not be on the sellers' brochures.

Please, don't allow yourself to be a party to this disaster just waiting to happen.

Sincerely,

Charles T. Smith

Resident of Richmond since 1972

561 Dimm St.

Richmond, CA



73 Belvedere Avenue  
Richmond, CA 94801  
Phone/Fax 510-235-2835  
[tracbaytrail@earthlink.net](mailto:tracbaytrail@earthlink.net)

July 20, 2020

Via Email to City of Richmond Design Review Board:

SUBJECT: Point Molate Mixed-Use Project

Dear Chair Livingston and Members of DRB,

TRAC, the Trails for Richmond Action Committee, appreciates the DRB's good efforts to ensure that the Point Molate Mixed-Use Project will be one that benefits the City of Richmond and its residents, as well as visitors from elsewhere in the Bay Area. To that end, TRAC would like to recommend the following conditions of approval for your recommendation to the Planning Commission.

**Phasing:** We strongly support Staff Recommendation #6 condition for the Vesting Tentative Map stating:

"The Bay Trail: and Shoreline Park facilities shall be substantially constructed as part of the initial development phase prior to issuance of first condition of occupancy."

**Land Use & Open Space Findings:** The Staff Report's following required Findings and Statements of Fact can't be made for the PA Plan for so long as Suncal persists with the ploy to define as public open space pocket parks and neighborhood parks within private residential areas:

**Finding B. The subject site is physically suitable for the type and intensity of the land use being proposed** Statement of Fact: "... the DRB notes that the development would be restricted to no more than 30% of the above water project area and approximately 70% of the site would be reserved as open space." (page 8 of Staff Report)

**Finding F.5. The proposed development in demonstratively superior to the development that could occur Item 5. Provision of Open Space** with Statement of Fact "The Project sets aside approximately seventy percent (70%) of the above-water Project Site as open space and recreational areas. .... The open spaces .... include: public parks serving residents and visitors and may serve as key access points to the hillside and conservation area." (pages 9 - 10 of Staff Report)

Parcelization Dwg. C3.0 of the proposed Vesting Tentative Map dated 5/4/20 shows that Suncal is attempting to designate the following 11 acres of land within Development Areas as public Open Space:

Development Parcels 1 - 13:	10.40 acres
Parcel M1 Stenmark Drive	<u>0.58</u>
Total	10.98

Considering these Neighborhood and Local Parks shown on the Open Space and Parks Illustrative on page 2-27 of Section 2.0 Community Design Guidelines as public open space conflicts with the Reuse Plan, which states "The framework for the Plan is the open space, which connects all the development areas" (emphasis added), rather than tot lots and such within development areas. The attached Figure 6 from the Reuse Plan shows clearly that park and open space lands are outside of development areas.

Moreover, pocket and neighborhood parks would be controlled by a HOA and would not qualify as Open Space under RMC 15.04.206.010, because they are not “publicly owned lands” and will not be “set aside as permanent open space”.

To remedy this problem, TRAC requests that the DRB adopt the following Conditions of Approval:

PM-PAD Definitions Sect. 1.030 C.1. shall be revised to read: The PM-PAD requires that seventy (70) percent of the above-water land in the PM-PAD area be open space and is referred to herein as the PM-PAD Open Space. The PM-PAD Open Space consists only of areas, other than street rights-of-ways, public utility facilities and stormwater handling and treatment features, in the PMOS, PMPR, and PMPR- S subdistricts.

The following Definition shall be added to the Design Guidelines Glossary: **PM-PAD Open Space** PM-PAD Open Space consists only of areas, other than street rights-of-ways, public utility facilities and stormwater handling and treatment features, in the PMOS, PMPR, and PMPR- S subdistricts.

PM-PAD Zoning Map Attachment 2 shall be revised to provide at least 193.2 acres in total of PMPR, PMPR-S & PMOS lands.

Design Guidelines shall be revised to eliminate all references to Compact Parks, Neighborhood Parks and Pocket Parks as Open Space for purposes of the 70% PM-PAD Open Space requirement, e.g. on pages 1-3, 2-25 & 2-27.

**Consolidation of Shoreline Park Parcels:** TRAC supports Staff Recommendation 1.c. Lot Parcelization condition, but recommends adding the following underlined language for clarity: “The Vesting Tentative Map shall show Parcels E, J, K and L as portrayed on Dwg. C3.0 dated 5/4/20 as one parcel.”

**Parking for Open Space and Shoreline Park Lands:** The Public Trailheads and Parking map on page 5-23 of the Design Guidelines shows a total of 218 park and open space public parking spaces, comprising 74 shoreline park, 39 open space trailheads and 105 on-street parking spaces at the Promenade. This falls far short of the 713 spaces at 307-acre Miller/Knox Regional Shoreline, which has 1.05 miles of shoreline compared to Point Molate’s 1.5 miles (238 developed parking spaces plus room for an additional 475 cars along Dornan Drive). Ratio-ing on open space acreage suggests that Point Molate will need 455 parking spaces for shoreline park and open space visitors. Therefore, TRAC suggests the following conditions of approval:

1. At least 455 public parking spaces for motor vehicles shall be provided for public access to Shoreline Park and Open Space lands.
2. PM-PAD Section 1.060.F.2 shall be amended as follows: Public Access and Public Access Staging Areas. In compliance with Sections 15.04.306.050.B and 15.04.306.050.C, park and recreation areas in the PMPR-S subdistrict must be publicly accessible and at least two public access staging areas must be included in the PMPR-S subdistrict or the adjacent PMPR subdistrict. (new language underlined)

Attached for convenient reference is a Summary List of Conditions recommended by TRAC.

Sincerely,



Bruce Beyaert, TRAC Chair

Attachments:

Summary List of Conditions of Approval Recommended by TRAC  
Point Molate Reuse Plan Fig. 6 Land Use Areas

## **Summary List of Conditions of Approval Recommended by TRAC**

1. **Phasing:** “The Bay Trail: and Shoreline Park facilities shall be substantially constructed as part of the initial development phase prior to issuance of first condition of occupancy.”

### **2. Land Use & Open Space:**

a. PM-PAD Definitions Sect. 1.030 C.1. shall be revised to read: The PM-PAD requires that seventy (70) percent of the above-water land in the PM-PAD area be open space and is referred to herein as the PM-PAD Open Space. The PM-PAD Open Space consists only of areas, other than street rights-of-ways, public utility facilities and stormwater handling and treatment features, in the PMOS, PMPR, and PMPR- S subdistricts.

b. The following Definition shall be added to the Design Guidelines Glossary: **PM-PAD Open Space** PM-PAD Open Space consists only of areas, other than street rights-of-ways, public utility facilities and stormwater handling and treatment features, in the PMOS, PMPR, and PMPR- S subdistricts.

c. PM-PAD Zoning Map Attachment 2 shall be revised to provide at least 193.2 acres in total of PMPR, PMPR-S & PMOS lands.

d. Design Guidelines shall be revised to eliminate all references to Compact Parks, Neighborhood Parks and Pocket Parks as Open Space for purposes of the 70% PM-PAD Open Space requirement, e.g. on pages 1-3, 2-25 & 2-27.

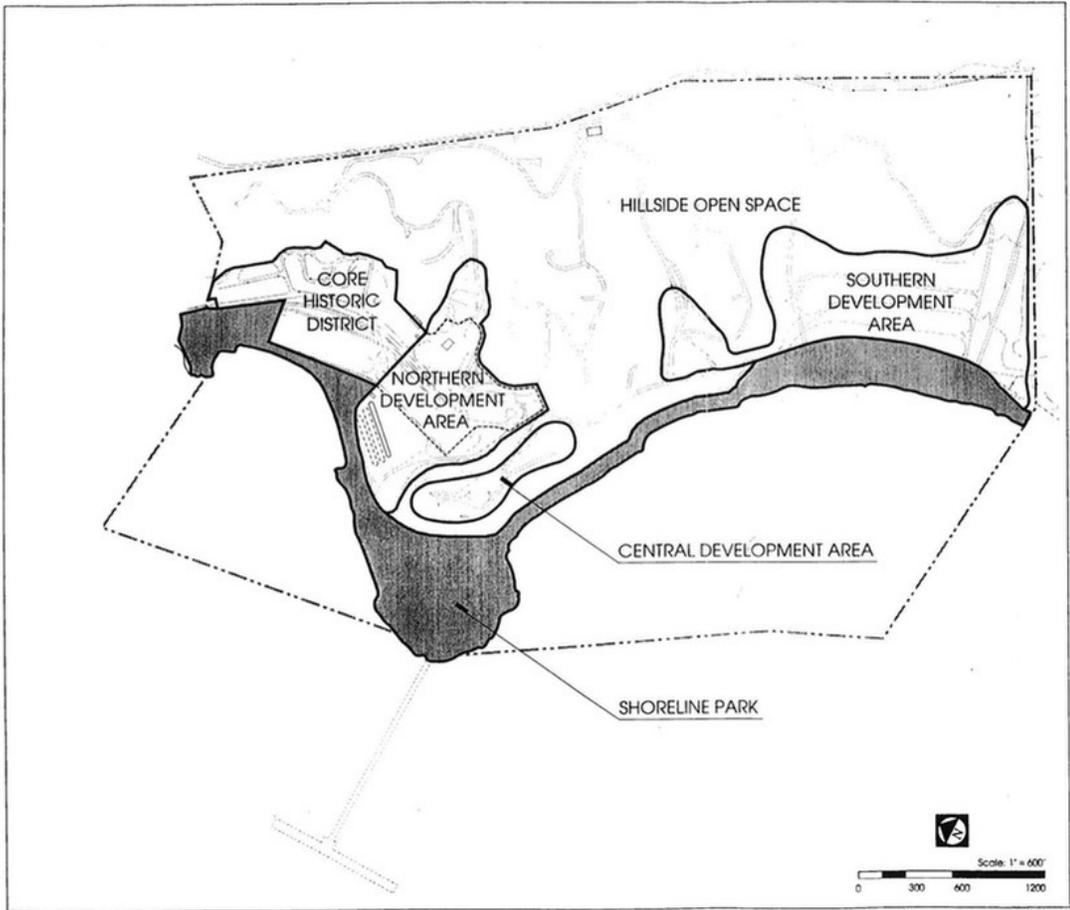
3. **Consolidation of Shoreline Park Parcels:** For clarity, the Staff Report’s recommended condition 1.c. shall be amended by adding the following underlined language: “The Vesting Tentative Map shall show Parcels E, J, K and L as portrayed on Dwg. C3.0 dated 5/4/20 as one parcel.”

### **4. Parking for Open Space and Shoreline Park Lands:**

a. At least 455 public parking spaces for motor vehicles shall be provided for public access to Shoreline Park and Open Space lands.

b. PM-PAD Section 1.060.F.2 shall be amended as follows: Public Access and Public Access Staging Areas. In compliance with Sections 15.04.306.050.B and 15.04.306.050.C, park and recreation areas in the PMPR-S subdistrict must be publicly accessible and at least two public access staging areas must be included in the PMPR-S subdistrict or the adjacent PMPR subdistrict. (new language underlined)

July 20, 2020



**POINT MOLATE REUSE PLAN**  
 City of Richmond

Figure 6:  
 Land Use Areas

- Development Area
- - - - Historic District Boundary in Northern Development Area

Law Offices of  
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July 20, 2020

Design Review Board  
City of Richmond  
450 Civic Center Plaza  
Richmond, CA 94804

Re: Agenda Item 5: Point Molate Mixed use Development Project (PLN20-057)

Dear Chairman Livingston and Board Members:

I am writing as one of the attorneys representing SPRAWLDEF, the Point Molate Alliance, and Citizens for East Shore State Parks, as well as the Plaintiffs in the case *SPRAWLDEF et al. v. City of Richmond et al.* (N. Calif. Dist. case #18-CV-03918-YGR) to comment on the Board's review of the above-referenced project.

First, we want to acknowledge the Board's efforts thus far to give this project the detailed scrutiny a project of this magnitude and importance deserves. You have shown by your diligence that you take seriously your charge under your oath of office to independently review the materials provided and use your independent judgment to reach your decisions.

Your charge is a critical one. You need to determine whether the project meets the requirements for City approval, notably that it:

1. be consistent with the City's General Plan (including the Point Molate Reuse Plan),
2. satisfy the City's requirements for a Planned Area zoning, including the necessary findings.
3. comply with the City's applicable design guidelines.

City Planning Staff has provided you a set of proposed recommended findings, which it asks you accept as given. You need not, *and should not*, simply rubber stamp staff's suggested recommendations. You have, in the past, been critical of the lack of the information needed to allow you to make an intelligent and informed decision. That is both your right and your duty. You should allow yourselves the time for thoughtful consideration and not allow yourselves to be bullied into approving anything that you are not entirely comfortable with as reflecting your full consideration and discussion and your independent judgment as City officials.

Staff is, we are sure, being heavily pressured by the Mayor and the City Manager to get this project approved quickly. Staff may point to the amended judgment that the City and the former casino project developers, who sued the City, have jointly requested the Federal District Court to enter to settle that lawsuit. It is by no means the result of a federal judge making determinations on legal issues. Staff may tell you that it sets mandatory timelines that must be met. However, those timelines and that judgment itself are subject to change. More than once, the parties to that case have agreed to push back the timelines. They should be willing to do so again. You have a duty to scrutinize the project carefully before reaching a decision. If the current timeline interferes with that duty, the judge handling the case has made it clear that she has the authority and will not hesitate to amend the timelines if she feels it appropriate.

You should especially apply your independent judgment to determining whether the project is consistent with the General Plan's Goals and Policies. This very emphatically should not be taken as a given. Does the amount of open space comport with the open space requirements as set forth in the General Plan and specifically the Base Reuse Plan? Does the amount of acreage represented as devoted to various uses in the project plans comport with the actual amount of usable space identified in those plans? Are the many policies governing open space and other aspects of the General Plan being followed – particularly those that are both clear and mandatory? The City does not have the discretion to ignore clear and mandatory General Plan Policies. They must be fully complied with, and inconsistency with even one clear and mandatory General Plan policy not only allows, but mandates rejection of the project.

Indeed, as you may know, the very validity of the amended judgment that was entered in federal court has been called into question as being violative of state planning law, and is being reviewed by that very same federal judge. Consequently, the judgment should in no sense be considered written in stone.

In addition, the City has yet to release its responses to comments on the Draft Subsequent Environmental Impact Report (DSEIR) on this project. Staff may tell you that the DSEIR is not your concern – that it only concerns the Planning Commission and City Council. If they have told you that, they are wrong. The recommendations you need to make on findings include questions that can only be answered after considering the information contained in that EIR, including comments received and responses provided to those comments.

Only when you have been provided all that information can you properly address whether, for example, the project site is suitable for the type and intensity of land uses being proposed, as well as whether it will be compatible with existing and planned uses in the surrounding area (including protection of natural resources, animal and plant species, and open space, cultural, religious, and recreational uses). Your recommended findings must also take into account the very important question of whether the toxic substances remaining on the site from prior military uses have been adequately addressed so that the public's health and safety are protected.

You should also pay special attention to the alternatives section of the DSEIR and the comments and responses on alternatives. If, in your independent judgment, one of the project alternatives is feasible and makes better design sense than the proposed project, that should be part of your findings.

You are also tasked with Major Design Review of the Project. That goes well beyond just reviewing whether the project is consistent with the City's proposed design guidelines. Your review must also consider the color shape, and architectural design of buildings, as well as their size, height, placement and configuration in relation to the existing buildings and uses on the project site.

In addition, design review needs to address whether the project, as proposed, fits well with the uses proposed within the project, as well as other uses in the vicinity. For example, do the proposed structures mesh well with the open space, conservation, and recreational uses that will be proposed for the 70% open space designated under the project? How usable will that open space be? (Open space with a 50% slope is not usable open space!) Should setbacks between residences even be considered open space? What about utility structures such as water tanks and sewage treatment facilities, or, for that matter, roadways, their shoulders, and parking lots?

In addition, design review includes considering the landscaping of the site; not just the plantings proposed but also the proposed grading. You should consider, for

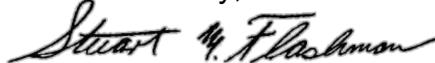
example, whether the type of wholesale grading of the hillsides proposed for the project site respects the site's natural topography, existing landscape, and natural environmental resources.

In terms of whether the project complies with the applicable design guidelines. You should consider whether the Draft Design Guidelines prepared by the City's consultants (dated May 4, 2020) are adequate and acceptable to you. If not, you should make appropriate modifications and amendments. After all, it is you, not the City's consultants, who represent the citizens of Richmond.

You also should insist that you be provided the actual design of the project – not merely an “illustrative model.” While some of your members may prefer to limit your discussion to details of design, such as door colors or design of garage doors, there are much larger design issues at stake here – the overall design of the project and whether it fits with the project site. This project would be located at Point Molate, perhaps the most prominent location on the Richmond shoreline; a site with important historic, cultural, and religious values. You should consider whether the proposed project is the proper use for this unique Richmond resource.

Your charge as the Design Review Board is not merely to tinker around the edges or “prettify” the developer's designs. You are charged under your oaths of office to use your independent professional judgment to evaluate the design of the project and determine whether this request for a Planned Area approval is appropriate. We hope and expect that the city will respect the dignity of your task by allowing you the time and information you need to do that task well.

Most sincerely,

A handwritten signature in black ink that reads "Stuart M. Flashman". The signature is written in a cursive, flowing style.

Stuart M. Flashman



**San Francisco Bay Chapter**

Serving Alameda, Contra Costa, Marin and San Francisco Counties

REPLY TO: 802 Balra Drive  
El Cerrito, CA 94530

July 19, 2020

**VIA EMAIL ONLY**

Jonathan Livingston, Chair  
Kimberly Butt, Brian Carter, Jessica Fine  
Michael Hannah, Macy Leung, and Karlyn Neel  
Members  
Richmond Design Review Board  
Community Development  
450 Civic Center Plaza, 2<sup>nd</sup> Floor  
Richmond, CA 94804

Re: Agenda Item 5-PLN20-057 Point Molate Mixed-Use Development

Dear Chair Livingston and Members Butt, Carter, Fine, Hannah, Leung, and Neel:

The Sierra Club makes the following comments on your consideration of the Point Molate Proposal. These comments will focus on some key major issues. The Sierra Club joins in the comments that others may have, especially those that go into greater detail about aspects of the proposal.

**Timeline for Consideration**

The Sierra Club is very concerned that you are being told that you must make your decisions now even if you do not feel you have sufficient information or documentation because there is a supposed deadline for the City to grant approvals for the project based on the purported Settlement Agreement entered into between the City and Upstream Point Molate and the Guidiville Tribe (Upstream/Tribe). You should be aware that the Sierra Club among many organizations and Richmond residents maintain that this Settlement Agreement or what the City Attorney may refer to as an “Amended

Judgment,” is illegal and in violation of California planning law. There is a lawsuit challenging this Settlement Agreement as valid. While the Sierra Club is not a party to this lawsuit, it supports the lawsuit and also maintains that this purported Settlement Agreement is illegal.

The City Attorney likes to couch the Settlement Agreement as a “Judgment” and will claim that it was amended and thus is legal, hence the characterization of it as the “Amended Judgment.” It is as purported settlement agreement that the parties call a judgment for purposes related to having the court retain jurisdiction over it. It is not a judgment where the judge or jury heard evidence and then made a decision. In sum, it is just a Settlement Agreement.

As voluntary settlement agreement it can be modified by the parties. Indeed, the parties have twice extended the time frame in which certain actions or decisions had to be made. Thus, they can modify it again to extend the dates for decisions to be made, assuming it is legal. In fact, Upstream/Tribe have already twice voluntarily extended the dates for approvals from an original date in December 2019 to September 30, 2020. If they have to, they could extend it again.

Moreover, if the Petitioners in the legal case prevail and the Court finds that the Settlement Agreement is invalid, then the City has to start from the beginning in terms of planning for Point Molate.

Furthermore, the separate agreement between the City and SunCal in the form of an Exclusive Right to Negotiate (ERN) can also be extended by the parties. Indeed, the City and SunCal have extended the ERN three times already. It, too, can be extended yet again.

You can thus inform the city staff that you need further information or documentation before making your decisions. You should not be railroaded into making decisions that you do not feel you should be making or which would be based on inadequate information or documentation.

### **The Board Lacks Sufficient Documentation Upon Which to Base Its Decisions**

The Staff Report provides that this Board is to make certain decisions and findings, but those decisions and findings require knowledge of and review of the Subsequent Environmental Impact Report (SEIR) for the project including the Response to Comments. The Staff Report states that the Response to Comments will not be available until July 24, 2020. Nor is the Final SEIR (FSEIR) even made public yet. If the Board

makes findings and decisions without the necessary information and documentation for their support, then those decisions and findings would be legally arbitrary and capricious and would lack any rational basis, and thus illegal.

By way of example, the Staff Report under Required Findings, Section D provides that while the DRB is not making a finding, nevertheless, it is making a “note” that “adding residential, commercial, and open space uses to the Project Site would not adversely affect the surrounding industrial uses...” That determination requires reference to the FSEIR and also to the Response to Comments. You have no information or documentation to support that statement, and any such statement would be legally insufficient and invalid.

Similarly, there is no basis for the DRB to make a recommendation or finding under Required Findings, Section F that “[T]he 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 public benefit.” For such a finding or recommendation to be made, the DRB would need to review the FEIR and Response to Comments.

Moreover, the DRB should be aware that the Draft SEIR concluded that the Community Plan that Save Point Molate, Citizens for East Shore Parks, SPRAWLDEF, Sierra Club, and others prepared was found to “Environmentally Superior” to the Proposed Alternative. Consequently, the Board’s decision that the proposed development is “demonstratively superior” in terms of “environmental...benefit lacks any support in the record to justify that finding.

Further examples will be provided by other commentators. The Sierra Club letter simply wants to make it clear that the DRB cannot proceed without having received and reviewed the proposed FSEIR and the Response to Comments. It cannot make its decisions in a vacuum or in ignorance of the information that is contained in the FEIR.

## **Recommendation**

Therefore, Sierra Club urges the DRB to continue its hearing and consideration on this matter until such time as it has the required environmental documentation and other information before it and with sufficient time for the DRB to analyze the FSEIR and Response to comments.

Sincerely yours,

*Norman La Force*

Norman La Force, Legal Chair  
San Francisco Bay Chapter

**From:** [Rodney Wilson](#)  
**To:** [DRBcomments](#)  
**Subject:** Point Molate plans  
**Date:** Saturday, July 18, 2020 10:10:04 AM

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Please do not make adjustments to the plan for Point Molate that is already consistent with Richmond's General Plan and the regional move towards protecting Open property and keeping them accessible to the greater public.

People in Richmond, especially young people, already have limited access to open spaces and nature. The social, emotional, and psychological benefits of these spaces can not be overemphasized. Do not bend to the economic demands that will benefit a small amount of people while harming the entire area.

-Rodney Wilson

Sent from my iPhone

**From:** [ellesin](#)  
**To:** [DRBcomments](#)  
**Subject:** Pt Molate--please reject the plan from SunCal  
**Date:** Monday, July 20, 2020 10:40:02 AM

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 Dear Design Review Board,

My name is Rev. Leela Sinha, and I am a resident of Richmond, living in North and East. When I moved here, I was delighted to discover the care and thoughtfulness put into public use and access of outdoor space, and the attention to both ecology and indigenous history.

The current plan on the table from SunCal is awful. It disregards most of what we know about ecology, about indigenous spaces, and most importantly, about the wishes of the people here who crafted the Community Plan.

Please, as representatives of the will of the people and as stewards of the resources of our community, do not allow your decision to be rushed, and do not approve such an overreaching plan. This does not address the most urgent needs of our community in any way, and instead of uniting us as a city, it will divide us with anger and resentment on many levels.

Thank you for your consideration on this most important matter.

Best wishes,

Rev. Leela Sinha  
Richmond, CA

**From:** [Regina Gilligan](#)  
**To:** [DRBcomments](#)  
**Subject:** Pt Molate  
**Date:** Monday, July 20, 2020 12:03:40 PM

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Design Review Board,

Let me lend my voice to the citizens of Richmond who ask for a clear understanding of what is at stake at Point Molate. Environmental, financial, cultural and recreational issues are being not adequately reviewed in the rush to push through this development plan. The people already made a Community plan. We need a new EIR. Challenge the reasons this deal with a SoCal developer (who failed with the proposed casino deal 10 years ago ) who at that time produced a limited Environmental Impact Review specifically tuned to the failed casino plan . The EIR report is inadequate and outdated. A new EIR needs to review the impact of 1200 + condos to this natural area. The land was given to the people of Richmond and back door deals are not part of the democratic process. The original report gives 70% of the land as open space and now reduced to a murky 40% and we need to know exactly where this open space for the people is located. In the highest reaches of the property? where housing is impractical?

The Community plan opens the beaches to everyone, gives sports fields to the community, protects the bay from construction run-off. The questions of who pays for building a sewage plant, for bringing water in and who pays for fire and police stations to the area, many infrastructure concerns have not been adequately addressed. People of Richmond need to know who is paying and what will be the revenues, and another real concern is who bears financial responsibility for any fires from the highly flammable Chevron tanks directly behind this proposed development. Please consider the environment, that we are in the midst of an uncertain pandemic and not the time to make sweeping changes that will forever impact the bay and Richmond community.

thank you,

Regina Gilligan, Richmond resident

# CHEASTY, CHEASTY & MALEK, LLP

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BERKELEY, CA 94707

Robert C. Cheasty  
Azadeh Malek

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July 20, 2020

Chair Jonathan Livingston,  
Board Members Kimberly Butt, Brian Carter,  
Jessica Fine, Michael Hannah, Macy Leung, Karlyn Neel  
Richmond Design Review Board  
City of Richmond  
450. Civic Center Plaza  
Richmond, CA 94804

Re: Item 5  
Point Molate Mixed Use Development Project (PLN20-057)  
My Client: Citizens for East Shore Parks

Dear Chair Livingston and Members of the Board:

Thank you for the opportunity to address some comments to you about this proposed development at Point Molate. I am one of the lawyers representing Citizens for East Shore Parks.

I join in the comments of Mr. La Force of the Sierra Club and by Mr. Flashman who wrote you on behalf of SPRAWLDEF, Point Molate Alliance, Citizens for East Shore Parks and Richmond residents. I adopt their comments.

I wanted to bring forward another point. It almost never happens that we get a real "do over" in life. You are presented one in Richmond. Right now, for no cost, Richmond has the opportunity to use this land at Point Molate, a former Navy refueling depot, in the way that will benefit the entire community people, that will make this special spot a regional attraction, that will showcase how much Richmond has to offer.

People can spend their whole lives in public service and never get the chance that you are now presented. You have the opportunity to make a world class decision - preserve habitat, create recreational space and provide a magnificent benefit to the people of Richmond, while complying with the Richmond General Plan. Nowhere in the history of discussions of Point Molate was there a desire to do what you are being asked to approve - turn Point Molate into luxury housing, privatizing it for the benefit of a few at the expense of the rest of Richmond.

As Richmond's General Plan states, Richmond seeks to promote housing along corridors for urban infill, corridors where there exists infrastructure and a population that can be

better served by infill housing. The project before you is just the opposite. The proposed development represents the worst in urban design and planning. Despite their best efforts the project's proponents cannot obscure that this proposal is not the urban infill they contend. It is not within Richmond's guidelines for special consideration for such infill. It lacks all the infrastructure and it is not located in any dense urban area. To the contrary this is a sprawl site. The vague illustrations you have been given, along with the request that you approve this application before receiving the full comments and the full responses to the EIR, make a mockery of how a planning process should work.

There are many locations for housing in Richmond, locations crying out for infill housing. Real progress needs to be made on those. At Point Molate there is a need for refurbishing and building in the historical area at Winehaven and a need for open space and park land outside Winehaven. But instead you are asked to ignore all the questions you have been asking and to approve what will be amounts to a suburban sprawl development in an area of high fire danger, right next to a refinery.

The purpose of an EIR is to understand how a project works in a setting and how it will affect the community before it is built. This dovetails with the work of the Design Review Board – whose mission is to ensure a project meets the design and use guidelines in the statutes and General Plan of Richmond before it is approved. There are too many faults in this proposal to list here, but I point out a simple and major one – the lack of specificity. There is no clear presentation of the design, placement, number of the buildings; and there is a dearth of information on grading and compliance with open space requirements and road design. These faults alone make it impossible for the Design Review Board to act on this proposal. Without all this information, EIR results included, you and this Board are simply being asked to approve the project without the grounds for the proper findings. The Design Review Board is being pushed to act arbitrarily, capriciously and outside the scope of its required review and judgment.

The City has put much pressure on you to act immediately, but put little pressure on itself to do its job properly. Why has the developer been unwilling to provide the correct and full information? Why hasn't the City required all that in advance of bringing all this before you for approval? The mayor and some of his developer supporters see this as a chance to make a lot of money. But for you this is the chance to do something great for Richmond. Do not be stampeded into making bad decisions because of political pressure. Do the right thing. Do a magnificent thing for Richmond.

When your grandchildren and great grandchildren look back at how Point Molate became such a stellar location they will look back at the courage you displayed and they will admire your foresight in protecting this magnificent location.

Thank you very much for your time and consideration.

Sincerely,



Robert Cheasty  
Attorney for Citizens for East Shore Parks

**From:** [charles.smith](#)  
**To:** [DRBcomments](#)  
**Subject:** Letter to the Design Review Board on Point Molate Mixed use Development Project!  
**Date:** Monday, July 20, 2020 9:05:11 PM

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Chair Jonathan Livingston,  
Board Members Kimberly Butt, Brian Carter, Jessica  
Fine, Michael Hannah, Macy Leung, Karlyn Neel  
Richmond Design Review Board  
City of Richmond  
450 Civic Center Plaza  
Richmond, CA 94804

Re: Item 5, Point Molate Mixed-Use Development  
Project (PLN20-057)

If naturalist and preservationist John Muir were alive today he would be leading the movement to save Point Molate. He would not have had far to travel; his home and monument are in Martinez, California. His spirit remains in the hearts and minds of all those who appreciate and endeavor to preserve natural resources.

Point Molate, on the Richmond shoreline, is one of the areas Muir would have fought the hardest to preserve. He would have understood the importance of the eelgrass beds directly off the Point Molate shoreline. As was his style, he would explain to the public how vital those eelgrass beds are as nurseries for endangered species. Changing the natural runoff from the hills above the shoreline will kill the eelgrass and its inhabitants. The significance of this will be devastating.

Muir would have stood by the narrow roadside and told everyone walking by about the surrounding hills that are the homes of mammals, birds, reptiles, and insects as well as endangered plants. These creatures lost their original homes as the Richmond shoreline was developed building expensive housing, a yacht harbor, and Knox Miller Park.

The natural life at Point Molate is only one of three major reasons why housing should not be built at Point Molate.

Currently, the Richmond City Council has proposed high-end housing that would be built directly below the Chevron refinery. Above the proposed houses sit massive jet fuel and crude oil tanks. These tanks and pipelines follow the ridge above the proposed housing, overlooking the only road entering and exiting the entirety of the Point San Pablo Peninsula. Because Chevron uses the tanks and pipes for gravity-flow production, they will not agree to remove them.

If Richmond allows housing immediately below the Chevron refinery, the City will be thumbing its nose at the biggest taxpayer in Richmond's history. Should Chevron pack up and leave, the City would be bankrupt. Chevron has supported more non-profits in Richmond and donated more monies to various causes than any corporation or business in Richmond. Putting Chevron in an untenable position is no way to treat one of the founding members of the City. Nor is it responsible to endanger the lives of unsuspecting new

residents and their children.

Should there be a fire, an explosion, a gas or chemical leak, **all things that have happened in Richmond in recent years**, how would the proposed residents escape the danger? There is only one way in and one way out of Point Molate, I-580. **Richmond has, for years tried and failed to create additional routes for egress and access.** It is impossible due to the geography and the proximity of the interstate and the refinery.

Should there be an earthquake, anything and everything could happen: fires, landslides, a blocked road, a tsunami, and no exit.

The residents of Richmond had successfully defended Point Molate when outsiders wanted to build an Indian casino there. It was a long and hard-fought battle that went from Richmond to Martinez to Sacramento to Washington, DC. Finally, Richmond residents voted out the casino supporting Council members. Unfortunately, Mayor Butt did not get the message although he sat on the Council at the time. With his new power as Mayor, he has once again brought in a developer against the wishes of the residents of Richmond and environmentalists across the state.

Please bring common sense and integrity to the question before you. If this development is built, I can assure you the dangers I have listed will not be on the sellers' brochures.

Please, don't allow yourself to be a party to this disaster just waiting to happen.

Sincerely,

Charles T. Smith

Resident of Richmond since 1972

561 Dimm St.

Richmond, CA



73 Belvedere Avenue  
Richmond, CA 94801  
Phone/Fax 510-235-2835  
[tracbaytrail@earthlink.net](mailto:tracbaytrail@earthlink.net)

July 20, 2020

Via Email to City of Richmond Design Review Board:

SUBJECT: Point Molate Mixed-Use Project

Dear Chair Livingston and Members of DRB,

TRAC, the Trails for Richmond Action Committee, appreciates the DRB's good efforts to ensure that the Point Molate Mixed-Use Project will be one that benefits the City of Richmond and its residents, as well as visitors from elsewhere in the Bay Area. To that end, TRAC would like to recommend the following conditions of approval for your recommendation to the Planning Commission.

**Phasing:** We strongly support Staff Recommendation #6 condition for the Vesting Tentative Map stating:

"The Bay Trail: and Shoreline Park facilities shall be substantially constructed as part of the initial development phase prior to issuance of first condition of occupancy."

**Land Use & Open Space Findings:** The Staff Report's following required Findings and Statements of Fact can't be made for the PA Plan for so long as Suncal persists with the ploy to define as public open space pocket parks and neighborhood parks within private residential areas:

**Finding B. The subject site is physically suitable for the type and intensity of the land use being proposed** Statement of Fact: "... the DRB notes that the development would be restricted to no more than 30% of the above water project area and approximately 70% of the site would be reserved as open space." (page 8 of Staff Report)

**Finding F.5. The proposed development in demonstratively superior to the development that could occur Item 5. Provision of Open Space** with Statement of Fact "The Project sets aside approximately seventy percent (70%) of the above-water Project Site as open space and recreational areas. .... The open spaces .... include: public parks serving residents and visitors and may serve as key access points to the hillside and conservation area." (pages 9 - 10 of Staff Report)

Parcelization Dwg. C3.0 of the proposed Vesting Tentative Map dated 5/4/20 shows that Suncal is attempting to designate the following 11 acres of land within Development Areas as public Open Space:

Development Parcels 1 - 13:	10.40 acres
Parcel M1 Stenmark Drive	<u>0.58</u>
Total	10.98

Considering these Neighborhood and Local Parks shown on the Open Space and Parks Illustrative on page 2-27 of Section 2.0 Community Design Guidelines as public open space conflicts with the Reuse Plan, which states "The framework for the Plan is the open space, which connects all the development areas" (emphasis added), rather than tot lots and such within development areas. The attached Figure 6 from the Reuse Plan shows clearly that park and open space lands are outside of development areas.

Moreover, pocket and neighborhood parks would be controlled by a HOA and would not qualify as Open Space under RMC 15.04.206.010, because they are not “publicly owned lands” and will not be “set aside as permanent open space”.

To remedy this problem, TRAC requests that the DRB adopt the following Conditions of Approval:

PM-PAD Definitions Sect. 1.030 C.1. shall be revised to read: The PM-PAD requires that seventy (70) percent of the above-water land in the PM-PAD area be open space and is referred to herein as the PM-PAD Open Space. The PM-PAD Open Space consists only of areas, other than street rights-of-ways, public utility facilities and stormwater handling and treatment features, in the PMOS, PMPR, and PMPR- S subdistricts.

The following Definition shall be added to the Design Guidelines Glossary: **PM-PAD Open Space** PM-PAD Open Space consists only of areas, other than street rights-of-ways, public utility facilities and stormwater handling and treatment features, in the PMOS, PMPR, and PMPR- S subdistricts.

PM-PAD Zoning Map Attachment 2 shall be revised to provide at least 193.2 acres in total of PMPR, PMPR-S & PMOS lands.

Design Guidelines shall be revised to eliminate all references to Compact Parks, Neighborhood Parks and Pocket Parks as Open Space for purposes of the 70% PM-PAD Open Space requirement, e.g. on pages 1-3, 2-25 & 2-27.

**Consolidation of Shoreline Park Parcels:** TRAC supports Staff Recommendation 1.c. Lot Parcelization condition, but recommends adding the following underlined language for clarity: “The Vesting Tentative Map shall show Parcels E, J, K and L as portrayed on Dwg. C3.0 dated 5/4/20 as one parcel.”

**Parking for Open Space and Shoreline Park Lands:** The Public Trailheads and Parking map on page 5-23 of the Design Guidelines shows a total of 218 park and open space public parking spaces, comprising 74 shoreline park, 39 open space trailheads and 105 on-street parking spaces at the Promenade. This falls far short of the 713 spaces at 307-acre Miller/Knox Regional Shoreline, which has 1.05 miles of shoreline compared to Point Molate’s 1.5 miles (238 developed parking spaces plus room for an additional 475 cars along Dornan Drive). Ratio-ing on open space acreage suggests that Point Molate will need 455 parking spaces for shoreline park and open space visitors. Therefore, TRAC suggests the following conditions of approval:

1. At least 455 public parking spaces for motor vehicles shall be provided for public access to Shoreline Park and Open Space lands.
2. PM-PAD Section 1.060.F.2 shall be amended as follows: Public Access and Public Access Staging Areas. In compliance with Sections 15.04.306.050.B and 15.04.306.050.C, park and recreation areas in the PMPR-S subdistrict must be publicly accessible and at least two public access staging areas must be included in the PMPR-S subdistrict or the adjacent PMPR subdistrict. (new language underlined)

Attached for convenient reference is a Summary List of Conditions recommended by TRAC.

Sincerely,



Bruce Beyaert, TRAC Chair

Attachments:

Summary List of Conditions of Approval Recommended by TRAC  
Point Molate Reuse Plan Fig. 6 Land Use Areas

## **Summary List of Conditions of Approval Recommended by TRAC**

1. **Phasing:** “The Bay Trail: and Shoreline Park facilities shall be substantially constructed as part of the initial development phase prior to issuance of first condition of occupancy.”

### **2. Land Use & Open Space:**

a. PM-PAD Definitions Sect. 1.030 C.1. shall be revised to read: The PM-PAD requires that seventy (70) percent of the above-water land in the PM-PAD area be open space and is referred to herein as the PM-PAD Open Space. The PM-PAD Open Space consists only of areas, other than street rights-of-ways, public utility facilities and stormwater handling and treatment features, in the PMOS, PMPR, and PMPR- S subdistricts.

b. The following Definition shall be added to the Design Guidelines Glossary: **PM-PAD Open Space** PM-PAD Open Space consists only of areas, other than street rights-of-ways, public utility facilities and stormwater handling and treatment features, in the PMOS, PMPR, and PMPR- S subdistricts.

c. PM-PAD Zoning Map Attachment 2 shall be revised to provide at least 193.2 acres in total of PMPR, PMPR-S & PMOS lands.

d. Design Guidelines shall be revised to eliminate all references to Compact Parks, Neighborhood Parks and Pocket Parks as Open Space for purposes of the 70% PM-PAD Open Space requirement, e.g. on pages 1-3, 2-25 & 2-27.

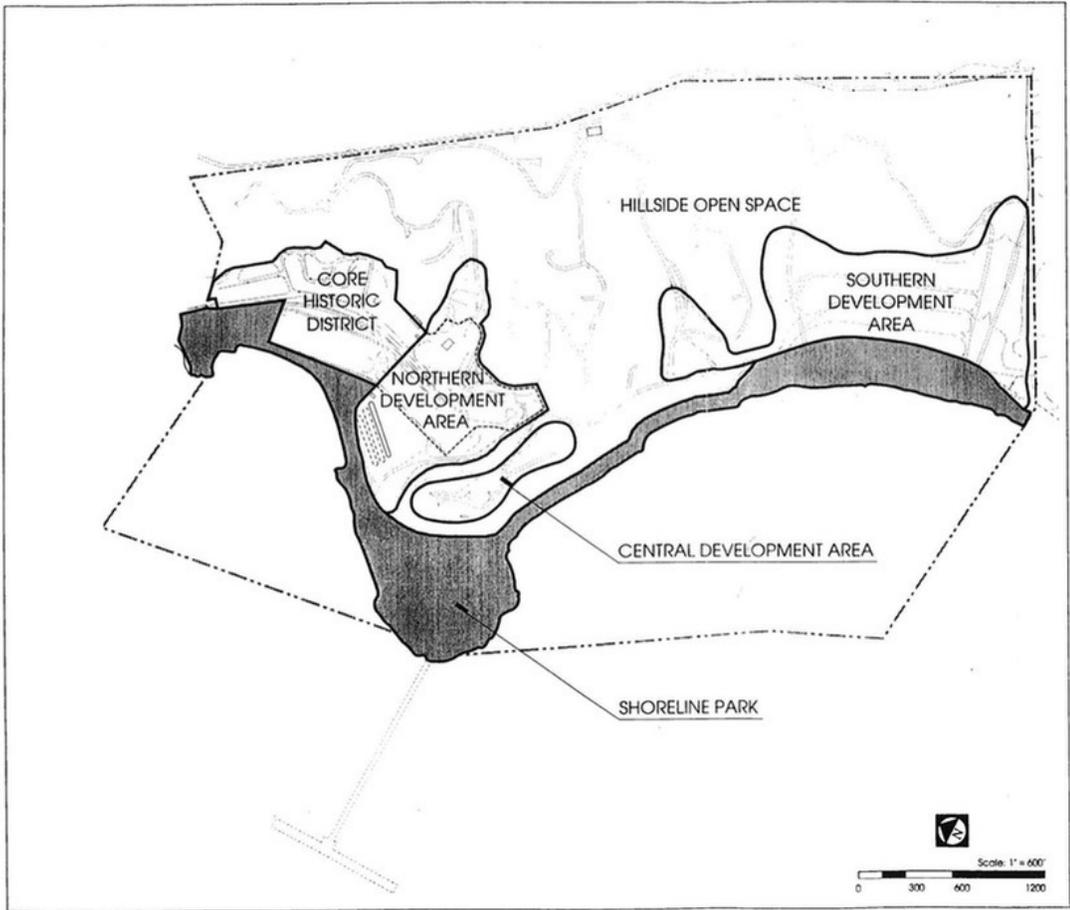
3. **Consolidation of Shoreline Park Parcels:** For clarity, the Staff Report’s recommended condition 1.c. shall be amended by adding the following underlined language: “The Vesting Tentative Map shall show Parcels E, J, K and L as portrayed on Dwg. C3.0 dated 5/4/20 as one parcel.”

### **4. Parking for Open Space and Shoreline Park Lands:**

a. At least 455 public parking spaces for motor vehicles shall be provided for public access to Shoreline Park and Open Space lands.

b. PM-PAD Section 1.060.F.2 shall be amended as follows: Public Access and Public Access Staging Areas. In compliance with Sections 15.04.306.050.B and 15.04.306.050.C, park and recreation areas in the PMPR-S subdistrict must be publicly accessible and at least two public access staging areas must be included in the PMPR-S subdistrict or the adjacent PMPR subdistrict. (new language underlined)

July 20, 2020



**POINT MOLATE REUSE PLAN**  
 City of Richmond

Figure 6:  
 Land Use Areas

- Development Area
- - - - Historic District Boundary in Northern Development Area

Law Offices of  
**Stuart M. Flashman**  
5626 Ocean View Drive  
Oakland, CA 94618-1533  
(510) 652-5373 (voice & FAX)  
e-mail: [stu@stufash.com](mailto:stu@stufash.com)

July 20, 2020

Design Review Board  
City of Richmond  
450 Civic Center Plaza  
Richmond, CA 94804

Re: Agenda Item 5: Point Molate Mixed use Development Project (PLN20-057)

Dear Chairman Livingston and Board Members:

I am writing as one of the attorneys representing SPRAWLDEF, the Point Molate Alliance, and Citizens for East Shore State Parks, as well as the Plaintiffs in the case *SPRAWLDEF et al. v. City of Richmond et al.* (N. Calif. Dist. case #18-CV-03918-YGR) to comment on the Board's review of the above-referenced project.

First, we want to acknowledge the Board's efforts thus far to give this project the detailed scrutiny a project of this magnitude and importance deserves. You have shown by your diligence that you take seriously your charge under your oath of office to independently review the materials provided and use your independent judgment to reach your decisions.

Your charge is a critical one. You need to determine whether the project meets the requirements for City approval, notably that it:

1. be consistent with the City's General Plan (including the Point Molate Reuse Plan),
2. satisfy the City's requirements for a Planned Area zoning, including the necessary findings.
3. comply with the City's applicable design guidelines.

City Planning Staff has provided you a set of proposed recommended findings, which it asks you accept as given. You need not, *and should not*, simply rubber stamp staff's suggested recommendations. You have, in the past, been critical of the lack of the information needed to allow you to make an intelligent and informed decision. That is both your right and your duty. You should allow yourselves the time for thoughtful consideration and not allow yourselves to be bullied into approving anything that you are not entirely comfortable with as reflecting your full consideration and discussion and your independent judgment as City officials.

Staff is, we are sure, being heavily pressured by the Mayor and the City Manager to get this project approved quickly. Staff may point to the amended judgment that the City and the former casino project developers, who sued the City, have jointly requested the Federal District Court to enter to settle that lawsuit. It is by no means the result of a federal judge making determinations on legal issues. Staff may tell you that it sets mandatory timelines that must be met. However, those timelines and that judgment itself are subject to change. More than once, the parties to that case have agreed to push back the timelines. They should be willing to do so again. You have a duty to scrutinize the project carefully before reaching a decision. If the current timeline interferes with that duty, the judge handling the case has made it clear that she has the authority and will not hesitate to amend the timelines if she feels it appropriate.

You should especially apply your independent judgment to determining whether the project is consistent with the General Plan's Goals and Policies. This very emphatically should not be taken as a given. Does the amount of open space comport with the open space requirements as set forth in the General Plan and specifically the Base Reuse Plan? Does the amount of acreage represented as devoted to various uses in the project plans comport with the actual amount of usable space identified in those plans? Are the many policies governing open space and other aspects of the General Plan being followed – particularly those that are both clear and mandatory? The City does not have the discretion to ignore clear and mandatory General Plan Policies. They must be fully complied with, and inconsistency with even one clear and mandatory General Plan policy not only allows, but mandates rejection of the project.

Indeed, as you may know, the very validity of the amended judgment that was entered in federal court has been called into question as being violative of state planning law, and is being reviewed by that very same federal judge. Consequently, the judgment should in no sense be considered written in stone.

In addition, the City has yet to release its responses to comments on the Draft Subsequent Environmental Impact Report (DSEIR) on this project. Staff may tell you that the DSEIR is not your concern – that it only concerns the Planning Commission and City Council. If they have told you that, they are wrong. The recommendations you need to make on findings include questions that can only be answered after considering the information contained in that EIR, including comments received and responses provided to those comments.

Only when you have been provided all that information can you properly address whether, for example, the project site is suitable for the type and intensity of land uses being proposed, as well as whether it will be compatible with existing and planned uses in the surrounding area (including protection of natural resources, animal and plant species, and open space, cultural, religious, and recreational uses). Your recommended findings must also take into account the very important question of whether the toxic substances remaining on the site from prior military uses have been adequately addressed so that the public's health and safety are protected.

You should also pay special attention to the alternatives section of the DSEIR and the comments and responses on alternatives. If, in your independent judgment, one of the project alternatives is feasible and makes better design sense than the proposed project, that should be part of your findings.

You are also tasked with Major Design Review of the Project. That goes well beyond just reviewing whether the project is consistent with the City's proposed design guidelines. Your review must also consider the color shape, and architectural design of buildings, as well as their size, height, placement and configuration in relation to the existing buildings and uses on the project site.

In addition, design review needs to address whether the project, as proposed, fits well with the uses proposed within the project, as well as other uses in the vicinity. For example, do the proposed structures mesh well with the open space, conservation, and recreational uses that will be proposed for the 70% open space designated under the project? How usable will that open space be? (Open space with a 50% slope is not usable open space!) Should setbacks between residences even be considered open space? What about utility structures such as water tanks and sewage treatment facilities, or, for that matter, roadways, their shoulders, and parking lots?

In addition, design review includes considering the landscaping of the site; not just the plantings proposed but also the proposed grading. You should consider, for

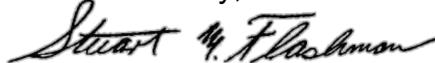
example, whether the type of wholesale grading of the hillsides proposed for the project site respects the site's natural topography, existing landscape, and natural environmental resources.

In terms of whether the project complies with the applicable design guidelines. You should consider whether the Draft Design Guidelines prepared by the City's consultants (dated May 4, 2020) are adequate and acceptable to you. If not, you should make appropriate modifications and amendments. After all, it is you, not the City's consultants, who represent the citizens of Richmond.

You also should insist that you be provided the actual design of the project – not merely an “illustrative model.” While some of your members may prefer to limit your discussion to details of design, such as door colors or design of garage doors, there are much larger design issues at stake here – the overall design of the project and whether it fits with the project site. This project would be located at Point Molate, perhaps the most prominent location on the Richmond shoreline; a site with important historic, cultural, and religious values. You should consider whether the proposed project is the proper use for this unique Richmond resource.

Your charge as the Design Review Board is not merely to tinker around the edges or “prettify” the developer's designs. You are charged under your oaths of office to use your independent professional judgment to evaluate the design of the project and determine whether this request for a Planned Area approval is appropriate. We hope and expect that the city will respect the dignity of your task by allowing you the time and information you need to do that task well.

Most sincerely,

A handwritten signature in black ink that reads "Stuart M. Flashman". The signature is written in a cursive, flowing style.

Stuart M. Flashman



**San Francisco Bay Chapter**

Serving Alameda, Contra Costa, Marin and San Francisco Counties

REPLY TO: 802 Balra Drive  
El Cerrito, CA 94530

July 19, 2020

**VIA EMAIL ONLY**

Jonathan Livingston, Chair  
Kimberly Butt, Brian Carter, Jessica Fine  
Michael Hannah, Macy Leung, and Karlyn Neel  
Members  
Richmond Design Review Board  
Community Development  
450 Civic Center Plaza, 2<sup>nd</sup> Floor  
Richmond, CA 94804

Re: Agenda Item 5-PLN20-057 Point Molate Mixed-Use Development

Dear Chair Livingston and Members Butt, Carter, Fine, Hannah, Leung, and Neel:

The Sierra Club makes the following comments on your consideration of the Point Molate Proposal. These comments will focus on some key major issues. The Sierra Club joins in the comments that others may have, especially those that go into greater detail about aspects of the proposal.

**Timeline for Consideration**

The Sierra Club is very concerned that you are being told that you must make your decisions now even if you do not feel you have sufficient information or documentation because there is a supposed deadline for the City to grant approvals for the project based on the purported Settlement Agreement entered into between the City and Upstream Point Molate and the Guidiville Tribe (Upstream/Tribe). You should be aware that the Sierra Club among many organizations and Richmond residents maintain that this Settlement Agreement or what the City Attorney may refer to as an “Amended

Judgment,” is illegal and in violation of California planning law. There is a lawsuit challenging this Settlement Agreement as valid. While the Sierra Club is not a party to this lawsuit, it supports the lawsuit and also maintains that this purported Settlement Agreement is illegal.

The City Attorney likes to couch the Settlement Agreement as a “Judgment” and will claim that it was amended and thus is legal, hence the characterization of it as the “Amended Judgment.” It is as purported settlement agreement that the parties call a judgment for purposes related to having the court retain jurisdiction over it. It is not a judgment where the judge or jury heard evidence and then made a decision. In sum, it is just a Settlement Agreement.

As voluntary settlement agreement it can be modified by the parties. Indeed, the parties have twice extended the time frame in which certain actions or decisions had to be made. Thus, they can modify it again to extend the dates for decisions to be made, assuming it is legal. In fact, Upstream/Tribe have already twice voluntarily extended the dates for approvals from an original date in December 2019 to September 30, 2020. If they have to, they could extend it again.

Moreover, if the Petitioners in the legal case prevail and the Court finds that the Settlement Agreement is invalid, then the City has to start from the beginning in terms of planning for Point Molate.

Furthermore, the separate agreement between the City and SunCal in the form of an Exclusive Right to Negotiate (ERN) can also be extended by the parties. Indeed, the City and SunCal have extended the ERN three times already. It, too, can be extended yet again.

You can thus inform the city staff that you need further information or documentation before making your decisions. You should not be railroaded into making decisions that you do not feel you should be making or which would be based on inadequate information or documentation.

### **The Board Lacks Sufficient Documentation Upon Which to Base Its Decisions**

The Staff Report provides that this Board is to make certain decisions and findings, but those decisions and findings require knowledge of and review of the Subsequent Environmental Impact Report (SEIR) for the project including the Response to Comments. The Staff Report states that the Response to Comments will not be available until July 24, 2020. Nor is the Final SEIR (FSEIR) even made public yet. If the Board

makes findings and decisions without the necessary information and documentation for their support, then those decisions and findings would be legally arbitrary and capricious and would lack any rational basis, and thus illegal.

By way of example, the Staff Report under Required Findings, Section D provides that while the DRB is not making a finding, nevertheless, it is making a “note” that “adding residential, commercial, and open space uses to the Project Site would not adversely affect the surrounding industrial uses...” That determination requires reference to the FSEIR and also to the Response to Comments. You have no information or documentation to support that statement, and any such statement would be legally insufficient and invalid.

Similarly, there is no basis for the DRB to make a recommendation or finding under Required Findings, Section F that “[T]he 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 public benefit.” For such a finding or recommendation to be made, the DRB would need to review the FEIR and Response to Comments.

Moreover, the DRB should be aware that the Draft SEIR concluded that the Community Plan that Save Point Molate, Citizens for East Shore Parks, SPRAWLDEF, Sierra Club, and others prepared was found to “Environmentally Superior” to the Proposed Alternative. Consequently, the Board’s decision that the proposed development is “demonstratively superior” in terms of “environmental...benefit lacks any support in the record to justify that finding.

Further examples will be provided by other commentators. The Sierra Club letter simply wants to make it clear that the DRB cannot proceed without having received and reviewed the proposed FSEIR and the Response to Comments. It cannot make its decisions in a vacuum or in ignorance of the information that is contained in the FEIR.

## **Recommendation**

Therefore, Sierra Club urges the DRB to continue its hearing and consideration on this matter until such time as it has the required environmental documentation and other information before it and with sufficient time for the DRB to analyze the FSEIR and Response to comments.

Sincerely yours,

*Norman La Force*

Norman La Force, Legal Chair  
San Francisco Bay Chapter

**From:** [Rodney Wilson](#)  
**To:** [DRBcomments](#)  
**Subject:** Point Molate plans  
**Date:** Saturday, July 18, 2020 10:10:04 AM

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Please do not make adjustments to the plan for Point Molate that is already consistent with Richmond's General Plan and the regional move towards protecting Open property and keeping them accessible to the greater public.

People in Richmond, especially young people, already have limited access to open spaces and nature. The social, emotional, and psychological benefits of these spaces can not be overemphasized. Do not bend to the economic demands that will benefit a small amount of people while harming the entire area.

-Rodney Wilson

Sent from my iPhone

**From:** [ellesin](#)  
**To:** [DRBcomments](#)  
**Subject:** Pt Molate--please reject the plan from SunCal  
**Date:** Monday, July 20, 2020 10:40:02 AM

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 Dear Design Review Board,

My name is Rev. Leela Sinha, and I am a resident of Richmond, living in North and East. When I moved here, I was delighted to discover the care and thoughtfulness put into public use and access of outdoor space, and the attention to both ecology and indigenous history.

The current plan on the table from SunCal is awful. It disregards most of what we know about ecology, about indigenous spaces, and most importantly, about the wishes of the people here who crafted the Community Plan.

Please, as representatives of the will of the people and as stewards of the resources of our community, do not allow your decision to be rushed, and do not approve such an overreaching plan. This does not address the most urgent needs of our community in any way, and instead of uniting us as a city, it will divide us with anger and resentment on many levels.

Thank you for your consideration on this most important matter.

Best wishes,

Rev. Leela Sinha  
Richmond, CA

**From:** [Regina Gilligan](#)  
**To:** [DRBcomments](#)  
**Subject:** Pt Molate  
**Date:** Monday, July 20, 2020 12:03:40 PM

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Design Review Board,

Let me lend my voice to the citizens of Richmond who ask for a clear understanding of what is at stake at Point Molate. Environmental, financial, cultural and recreational issues are being not adequately reviewed in the rush to push through this development plan. The people already made a Community plan. We need a new EIR. Challenge the reasons this deal with a SoCal developer (who failed with the proposed casino deal 10 years ago ) who at that time produced a limited Environmental Impact Review specifically tuned to the failed casino plan . The EIR report is inadequate and outdated. A new EIR needs to review the impact of 1200 + condos to this natural area. The land was given to the people of Richmond and back door deals are not part of the democratic process. The original report gives 70% of the land as open space and now reduced to a murky 40% and we need to know exactly where this open space for the people is located. In the highest reaches of the property? where housing is impractical?

The Community plan opens the beaches to everyone, gives sports fields to the community, protects the bay from construction run-off. The questions of who pays for building a sewage plant, for bringing water in and who pays for fire and police stations to the area, many infrastructure concerns have not been adequately addressed. People of Richmond need to know who is paying and what will be the revenues, and another real concern is who bears financial responsibility for any fires from the highly flammable Chevron tanks directly behind this proposed development. Please consider the environment, that we are in the midst of an uncertain pandemic and not the time to make sweeping changes that will forever impact the bay and Richmond community.

thank you,

Regina Gilligan, Richmond resident