



# AGENDA REPORT

## COMMUNITY DEVELOPMENT DEPARTMENT

**DATE:** September 8, 2020

**TO:** Mayor Butt and Members of the City Council

**FROM:** Lina Velasco, Community Development Director  
Shasa Curl, Deputy City Manager, Economic Development  
Carlos Privat, Senior Assistant City Attorney  
Laura Snideman, City Manager

**SUBJECT:** DISPOSITION AND DEVELOPMENT AGREEMENT, SUBSEQUENT ENVIRONMENTAL IMPACT REPORT (SEIR), MITIGATION MONITORING AND REPORTING PROGRAM, CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) FINDINGS OF FACT, STATEMENT OF OVERRIDING CONSIDERATIONS, GENERAL PLAN MAP AND TEXT AMENDMENTS, ZONING AMENDMENT, MASTER PLANNED AREA PLAN, DEVELOPMENT AGREEMENT, VESTING TENTATIVE TRACT MAP, CONDITIONAL USE PERMIT, AND MAJOR DESIGN REVIEW FOR THE POINT MOLATE MIXED-USE DEVELOPMENT PROJECT (PLN20-057)

## STATEMENT OF THE ISSUE:

The Point Molate Mixed Use Development Project proposes a mixed-use community that includes the following components: open space, rehabilitation and adaptive re-use of the contributing structures of the Winehaven Historic District, commercial development, and residential development. The Project Site is owned by the City of Richmond (City) and portions of the Project Site are proposed to be sold to the applicant (Winehaven Legacy LLC) as part of a Disposition and Development Agreement (DDA) with the City. The Project entitlements include a General Plan Amendment, Zoning Amendment, Design Guidelines, including a Master Planned Area Plan and Historic Conservation Plan, Vesting Tentative Tract Map, Conditional Use Permit, and Major Design Review of the Design Guidelines. The Project approvals also include a Development Agreement.

## **RECOMMENDED ACTIONS:**

HOLD a public hearing and ADOPT a Resolution certifying the Final Subsequent Environmental Impact Report (SEIR) and adopting a Mitigation Monitoring and Reporting Program (MMRP), California Environmental Quality Act (CEQA) Findings of Facts and Statement of Overriding Considerations; Approving a General Plan map and text amendments; approving a Conditional Use Permit for a Shoreline Park in the –S Overlay Zone; approving a Vesting Tentative Tract Map; approving Design Guidelines with a Historic Conservation Plan and Master Planned Area District Plan; approving a Major Design Review for Design Guidelines; and approving a Disposition and Development Agreement with Winehaven Legacy LLC; and

INTRODUCE an Ordinance Rezoning the Project Site to a Point Molate Planned Area District (PM-PAD) with –H, Historic District Overlay for the Winehaven Historic District; and an Ordinance approving a Development Agreement.

## **FINANCIAL IMPACTS:**

The proposed actions include approval of a Disposition and Development Agreement (DDA) with Winehaven Legacy LLC which sets the terms of the sale of the development areas of Point Molate, including purchase price. The purchase price will be at a minimum of \$45 million, with the City splitting Net Revenue 50/50 with Guidiville Rancheria of California Tribe and Upstream Point Molate LLC (“Plaintiffs”) pursuant to the November 21, 2019 Amended Judgment of the United States District Court, Northern District of California, Oakland Division, on claims between the Plaintiffs and the City (Case No. CV 12-1326 YGR) (the “Amended Judgment”).

In addition, the applicant has prepared a Fiscal and Economic Impact Analysis (FIA) for the Project. The Report finds estimated General Fund annual revenues are anticipated to exceed estimated annual costs under each development period – approximately \$1.3 to \$1.4 million after the completion of initial development, and between \$5 to \$9 million at buildout, depending on the final number of units (expressed in 2019 dollars). The [FIA](#) was peer reviewed by the City’s economic consultant, BAE Urban Economics, whom prepared a [Memorandum](#) concurring with the finding that the Project will be fiscally positive to the City of Richmond. The FIA methodology and approach uses projected real estate values, estimated new sales taxes from new residents and the commercial development, the City of Richmond’s tax rate structure and its fiscal year 2019-20 budget, and as well as input from the City to estimate Fire and Police Service Costs; therefore, the actual tax revenues and service costs may vary when construction commences and the units are sold. The transaction structure requires the developer and special assessments on the future development to pay the on-going maintenance costs of all project parks, open space, and infrastructure, with the exception of the maintenance of the rebuilt Stenmark Drive and the public safety building. The City has no obligation for any capital improvement cost associated with the Project.

## **BACKGROUND:**

In July 2018, the Council approved a two-step process for selection of a master developer for the Point Molate site. The initial Request for Qualifications (RFQ), which was released on July 20, 2018, sought general qualifications of interested master developers. The RFQ included detailed information regarding community input on land use visioning for the Point Molate site, for which the City had engaged a consultant to conduct public outreach and obtain public input.

The City received eight responses to the RFQ. The original Point Molate Master Developer RFP was issued on October 26, 2018. A modified RFP was issued on December 13, 2018. The City received four responses to the Modified RFP. The four respondents presented their proposals for development of Point Molate at a Special Meeting of the City Council on February 12, 2019.

Following the presentations, in April 2019, the City Council approved an Exclusive Right to Negotiate (ERN) agreement with Winehaven Legacy LLC initiating negotiation of a DDA to serve as Master Developer of the Point Molate site.

## **DISCUSSION:**

The Project Site is bounded by the San Francisco Bay (Bay) to the west, open space parcels to the north and south, and the Chevron®-Richmond Refinery to the east, with the 480-foot hillsides of Potrero Ridge separating the refinery from the Project Site.

Approximately 136 acres of the approximately 412-acre Project Site are submerged in the Bay, leaving approximately 276 acres above water. The Project Site is approximately 1.5 miles north of Interstate 580 and the Richmond-San Rafael Bridge, and has direct freeway access via Stenmark Drive. The Project Site also contains the Winehaven Historic District and the Point Molate Beach Park.

The Project includes a mixed-use community. The Project entitlements include a General Plan Amendment, Zoning Amendment, Design Guidelines, Vesting Tentative Tract Map, Development Agreement, Conditional Use Permit, and Major Design Review, described below. The Project will also include a DDA, which shall be considered and approved by the City Council, also described below.

### **Master Planned Area Plan Proposal for the Project**

As part of the project entitlements, the Project includes a Zoning Amendment to a PM-PAD, which requires preparation of a Plan Area Plan. The PM-PAD zoning is intended to facilitate “orderly development of larger sites in the City consistent with the General Plan, especially where a particular mix of uses or character is desired that can best be achieved through an integrated development plan.” (Richmond Municipal Code, § 15.04.810.010.) The Applicant has submitted a Master PA Plan, and this Master PA Plan will guide the future development of individual projects for the Project Site.

Although not required by the Municipal Code, to address the complexity of the Site, the Applicant also submitted Design Guidelines to guide the future development of individual projects within the Project Site. The Master PA Plan is included as Chapter 2 of the Design Guidelines, which also contains chapters providing an introduction, architectural guidelines, historic district guidelines (the Historic Conservation Plan), and landscape guidelines. The PM-PAD approval, together with the accompanying Design Guidelines and Master PA Plan, are part of the initial legislative (high-level policy) approvals submitted for this Project for the City Council approval. Future projects within the PAD plan areas would come back to the City for a Development Plan review and small-lot subdivision map approval process to determine if the project-level applications are consistent with the City Council approvals, including the PA District zoning, the Master PA Plan, and the rest of the Design Guidelines, and the SEIR.

The Project identifies eight Planning Areas (Planning Areas A through H) within the Project Site that could be developed with the proposed mixed-use community. Potential developable areas within the Planning Areas (referred to herein as Development Areas) would be limited to approximately 30 percent of the total above-water Project Site area (approximately 82.74 acres) by the Project's entitlements. Development within the Winehaven Historic District would include rehabilitation and adaptive reuse of the existing contributing structures of the District, as well as new construction. The Project proposes to rehabilitate all of the contributors to the Historic District per the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings.

The PA District for the Project Site defines its development capacity as follows:

- A. Residential Capacity: up to 2,040 residential units in eight Planning Areas as follows:
  - 1. Planning Areas A and B: 408 new units
  - 2. Planning Area C: 168 new units
  - 3. Planning Area D: 66 new units
  - 4. Planning Area E: 300 new units
  - 5. Planning Areas F, G, and H: up to 625 new units and up to 473 units in the existing historic buildings

The PA District allows up to a 20 percent increase in the residential development capacity of any planning area as long as the total number of residential dwelling units in the PA District do not exceed 2,040.

- B. Historic District: The development capacity in Planning Areas F, G, and H, which comprise the Winehaven Historic District, can be in the range of (1) 1,098 residential units and up to 40,000 square feet of general commercial space and (2) 318 residential units with up to 624,572 square feet of general commercial space; or (3) anything in between on the basis that each residential unit is interchangeable with 750 square feet of general commercial space, up to 780

units.

C. Commercial Capacity:

1. Planning Areas F, G, and H: The PA District allows up to 624,572 square feet of general commercial space (which can include neighborhood-serving commercial spaces), of which up to 40,000 square feet can be high-trip commercial uses, such as regional-serving retail and restaurant uses.
2. Planning Areas A and E: The PA District allows up to 15,000 square feet of neighborhood-serving commercial spaces.

D. Cultural and Civic Capacity: Planning Areas D, E, and F permit up to 10,000 new square feet of buildings for cultural and/or civic uses. Cultural and civic uses also are permitted in other planning areas as per the proposed PA District zoning. Up to 5,000 square feet can be refurbished (or if necessary constructed) in Planning Area E for a building to serve water transit uses.

Approximately 70 percent of the Project Site above-water (approximately 193 acres) would remain as publicly accessible parks and natural open space, including miles of hiking and biking trails. The Project will increase shoreline access by extending and improving the existing shoreline park and contribute towards the completion of some segments of the Bay Trail. The Project also would include new roads to serve the development within the Site, including widening Stenmark Drive from the Project Site to the I-580 ramps and construction of utility and infrastructure needed to support the Project.

### **Refined Project Proposal**

Since publication of the Draft SEIR, and in response to comments from the public, Historic Preservation Commission, and Design Review Board, the applicant has submitted a project application with minor refinements to the Modified Project analyzed in the Draft SEIR, proposing a mixed-use community that would include the following components and refinements:

- Approximately 1,452 residential units.
- Approximately 374,573 square feet of rehabilitated existing, historic structures and approximately 250,000 square feet of new construction for mixed-use development.
  - Out of this square footage, the Project includes approximately 423,774 square feet of commercial uses, including up to 40,000 square feet of regional retail, and 383,774 square feet of Office/R&D and/or Live/Work space.
- Approximately 15,000 square feet of neighborhood retail is proposed outside the Winehaven Historic District.

- Approximately 10,000 square feet for an onsite joint fire station and police substation and/or other community service uses.
- Approximately 70 percent of the total above-water Project Site area would remain as open space, including recreational areas, parks, trails (including an approximately 1.5-mile portion of the San Francisco Bay Trail along the shoreline), vista overlooks, and other similar spaces that are open to the public.
- Updating an existing building to act as a terminal on the existing pier that may be accessible to water transit options, such as ferries, water shuttles, and/or water taxis.
- New roads to serve the development within the Project Site; additionally, widening Stenmark Drive from the Project Site to I-580 Ramps.
- Utilities and infrastructure improvements that would be required to serve the new development.

As part of subsequent entitlements for the Project and the Development Plan review process, future projects within the PA District shall be reviewed by the Zoning Administrator (The Community Development Director or their designee acts as the Zoning Administrator.) for conformity with the illustrative land use master plan approved by the City Council, consisting of up to 1,452 residential units (up to 510 units in Planning Areas F, G, and H) and up to 453,774 square feet of non-residential uses. A deviation from the illustrative master plan that nevertheless falls within the mix and envelope of land uses evaluated in the SEIR and the Development Capacity defined in section 1.020 of the Project's proposed PA District zoning can be approved as a minor program amendment by the Zoning Administrator. Major amendments to the PA District or the Master PA Plan require additional City Council review and approval

### **General Plan Amendment**

The Project includes a request for a General Plan Amendment (GPA) to change the land use classifications of the Project Site from Hillside Residential, Medium Density Residential, Parks and Recreation, Business/Light Industrial, and Open Space to a combination of Low-Density Residential, Medium Density Residential, Medium Intensity Mixed-Use (Community Nodes and Gateways), Parks and Recreation, and Open Space. In addition to the land use classification change, the applicant is proposing General Plan text amendments to:

- a. Amend the Medium Density Residential land use classification to allow a base density less than 10 du/ac with approval of a Planned Area District.
- b. Amend for the Medium Intensity Mixed-Use (Community Nodes and Gateways) land use classification to allow a floor area ratio (FAR) of up to 2.5 in the Winehaven District and heights greater than 55 feet as part of a Planned Area district. This land use classification would be allowed to include low-rise residential, residential-only, or commercial-only development with approval of a Planned Area District.
- c. Edits to the San Pablo Peninsula Area (CA-13) description to account for the proposed land use changes and development vision of the Project.
- d. Changes to the corresponding map to create consistency throughout the General

Plan. Specifically, Figures 3.2, 3.4, 3.6 and Maps 3.2a, 3.2b, 3.15, and 12.6 are proposed to be amended to account for the Project.

The applicant asserts that the GPA proposed is needed to ensure the successful redevelopment of the Project Site consistent with the Design Guidelines for the PA District. Specifically, an increase in the FAR for the Winehaven District is needed to have flexibility to allow for an extra interior floor or complementary additions to ensure the financial feasibility of the adaptive reuse of Buildings 1 and 6. Overall, the height increases would also allow for a lower development footprint to preserve open space and view corridors, while also providing for architectural variety and making development economically viable. The GPA will allow for low-rise residential only development for the reuse of historic cottages in the Winehaven District if there is no market demand for commercial uses at the time of its redevelopment. Several of the proposed map amendments and text amendments descriptions are needed to retain internal consistency with other elements of the General Plan resulting from the proposed land use classification changes.

The redevelopment of the Project Site would also contribute towards meeting the City's housing, economic development, brownfield redevelopment, historic preservation, and parks and open space goals including, but not limited to:

1. Developing a mixed-use development project that will have a positive fiscal impact on the City's annual budget by generating income to the City's general fund.
2. Making a significant contribution to the City's efforts to address its fair share of allocation of regional housing need, as projected by the Association of Bay Area Governments in its Regional Housing Need Plan.
3. Maximizing new residential opportunities to accommodate forecasted population growth within the City of Richmond.
4. Providing compact development patterns that preserve open space and addresses the topographic and biological constraints of the property as described in the General Plan.
5. Redeveloping the Project Site to contribute to the reuse of a former brownfield site for housing and economic development purposes.

### ***General Plan Consistency***

The Project is consistent with the General Plan vision, which identifies the San Pablo Peninsula Area as a Change Area district that would provide for a unique mix of uses, including commercial, residential and open space that serves the entire community

The following list highlights a selection of the General Plan goals and policies that the Project supports or accomplishes:

- The Project would encourage the sensitive integration of built and natural environment to develop a high quality experience. (Goal LU 4).

- The Project would meet future housing needs within City limits through redevelopment of a brownfield site with mixed-use construction offering a range of housing types. (Goal LU6, Policy LU6.1).
- The Project would provide a high standard of design and planning, and construction of new facilities, infrastructure and services. By furthering the remediation of the Project Site and implementing several sustainability measures, the Project will promote a planning approach that supports a sustainable and healthy community, and reduces impacts on the environment. (Goal LU 6 & CN6).
- The Project achieves a higher standard for housing design, exceeds current green building standards, and pedestrian friendly design. (Policy LU 6.5 & Goal CF3).
- The Project has a planting and landscaping plan that is consistent with the San Francisco Bay Conservation and Development Commissions' Landscape Guide for the San Francisco Bay. (Goal PR3).
- The Project would encourage the creation of tourist-serving amenities in key areas, such as Point Molate, and promote economic development in the City while providing opportunities for interpretation, education and recreations. (Policy LU 3.3).
- The Project expands the City's multi-modal circulation system by funding a portion of the Bay Trail, having complete streets, widening Stenmark Drive from the Project Site to I-580 Ramps, adding a bike lane on Stenmark between the freeway and the Project site, providing sidewalks along Stenmark, offering a commute shuttle, and providing water taxi service. (Goals CR 1, CR 2 & EC 2).
- The Project would fund the maintenance of its streets and circulation system and add safe routes for pedestrians and cyclists where none exist. (Goal CR 3).
- The Project would implement a transportation demand management program to reduce trips by 20 percent, include onsite stormwater capture and treatment facilities (LID features), and would include new, sustainable technology, including electric vehicle chargers and solar panels. (Goal CR 5).
- The Project would implement restoration efforts and manage invasive species on the Project Site by implementing a Vegetation Management Plan and Open Space Plan. (Goal CN 1.)
- The Project would conserve and retain approximately 70 percent of the Project Site as parks and open space, most of which would be natural open space with public trails, but also would enhance and enlarge the shoreline park. (Goal CN 2).
- The Project would create an appealing place to live and work with effective public safety, including constructing a new fire station and police substation. (Goal ED 1).
- The Project would provide numerous high-quality construction jobs that pay prevailing wage and would comply with the City's First Hire policy. (Goals ED 2 & ED 3).
- The Project would promote sustainable development patterns by creating a mixed-use community, retrofitting existing buildings, constructing streetscape

improvements, parks, and other critical services such as a shuttle to the BART station. (Goal EC 4).

## **Planned Area (PA) District Rezone**

### ***Planned Area Plan (Master Plan) Proposal for the Project***

As discussed above, the Project entitlements include a Zoning Amendment to a PA District, which requires preparation of a PA Plan. The purpose of the PA District is to facilitate orderly development of larger sites consistent with the General Plan, where a mix of uses or character is desired that can best be achieved through an integrated development plan. In order to be considered for a Planned Area District Zoning Amendment, the site shall be a minimum of 2 acres. The subject site is 412 acres, with approximately 276 acres are above water. Of those 276 acres, development would be limited to 30 percent of the total acreage. The remaining 70 percent would be retained as open space or park area.

The proposed Design Guidelines, including the Master PA Master Plan, are attached as Exhibit E. Other standards such as minimum lot size, setbacks, building height limits, and other development standards and similar regulations are in the PA District zoning text, attached as Appendix C to the Design Guidelines. The PA District proposes eight subdistricts, including a subdistrict for the Winehaven Historic District, a subdistrict for the shoreline park, and a subdistrict for the hillside open space. Maximum building heights would vary by subdistrict and are further guides by the Design Guidelines, but would generally range from 35 feet to 105 feet depending on the sub district area within the Planned Area Plan. Therefore, the PA District is consistent with the General Plan height requirements discussed above, if the General Plan amendment is approved. The development standards that would guide future development of each subdistrict are in PA District section 1.060 and are further refined by the Design Guidelines (see Exhibit E).

## **H, Historic District Overlay and Historic Conservation Plan**

Article 15.04.303 *Historic Districts and Landmarks Overlay Districts* of the Richmond Municipal Code specifies the purpose and regulations that serve as Richmond's Historic Preservation Ordinance and implement General Plan goals and policies related to historic preservation. When the H- and L-Overlay zones were created and assigned in 2016, Point Molate was marked as an L-overlay when it should have been identified as an -H overlay zone.

As part of the applications for the Project, the applicant is proposing to Rezone the Winehaven Historic District from an -L, Landmark, Overlay, to an -H, Historic District, Overlay with the adoption of a Historic Conservation Plan (Chapter 4 of the Design Guidelines [Exhibit E]) for the portions of the Project proposed within the Winehaven Historic District. The Historic Conservation Plan would be adopted by the resolution approving the Design Guidelines, separately from an Ordinance approving an -H, Historic District, Overlay.

### ***Historic Preservation Commission Recommendation***

Public hearings to consider the -H, Overlay and Historic Conservation Plan were held at the June 25, 2020 and July 14, 2020 Historic Preservation Commission (HPC) meetings. The HPC voted on June 25, 2020 to unanimously (with one absent) recommend approval of the -H, Overlay to the City Council, based upon their recommended findings, and voted to recommend approval of the Historic Conservation Plan (Section 4 of the Design Guidelines) at their hearing on July 14, 2020

### **Conditional Use Permit in the -S, Shoreline Overlay**

Per RMC Section 15.04.306.010, the purpose of the -S Shoreline Overlay District is to implement General Plan policies on shoreline protection and public access. More specifically, this overlay district is intended to ensure that any allowable development of the shoreline and tideland areas will protect water quality, wildlife habitats, and native or naturalized vegetation and, where appropriate, provide public access to and enjoyment of the shoreline.

The applicant would maintain the existing -S, Shoreline Overlay over the 100 foot shoreline band. In addition, the applicant is seeking a conditional use permit to allow for the extension and improvement of the shoreline park. The -S Overlay requires any use to obtain a conditional use permit to ensure appropriate protections for habitat, water quality, and public access.

### **Vesting Tentative Tract Map**

The applicant is proposing to subdivide the existing site into approximately 44 development parcels, seven open space parcels, three right-of-way dedication parcels, two water parcels, and one utility parcels. The large development parcels would be further subdivided as part of future development proposals. A master association for all residential and commercial owners would be formed to perform and fund the ongoing management, accounting, operation, insurance, maintenance, repair and replacement of any and all private roadways, landscaping, recreation and open space, and other common areas and facilities within the Project.

### ***Conformance with Zoning Ordinance***

The developed portion of the proposed subdivision would be located in a PA District, with an -H, Historic Overlay over the Winehaven Historic District and maintaining the existing -S, Shoreline Overlay for the 100-foot shoreline band. The PA District specifies the minimum lot size, if any, and development standards for future development of the resulting development parcels. The Design Guidelines provide additional guidance regarding the infrastructure improvements, permissible development, and landscaping. Future development projects must be consistent with the PA District and substantially conform to the Design Guidelines, including the Master PA Plan. Therefore, the

proposed subdivision is consistent with the Zoning Ordinance.

### ***Conformance with the Subdivision Ordinance and Subdivision Map Act***

A Tentative Subdivision Map is required for subdivisions resulting in five or more parcels. The project's Tentative Subdivision Map is shown in Exhibit F. The Vesting Tentative Tract Map has been reviewed for compliance with application provisions of the City's Subdivision Ordinance (RMC 15.04.700, et seq.) and Government Code Section 66474, and determined that it satisfies the requirements of the Richmond Subdivision Ordinance and the Subdivision Map Act. A Vesting Tentative Tract Map is processed in the same manner as a tentative subdivision map; however, if approved, it confers a vested right to proceed with development in substantial compliance with ordinances, policies, and standards described in Government Code Section 66474.2. in effect at the time the application was deemed complete. Conditions related to the Vesting Tentative Tract Map and Design Guidelines are included in Exhibit H.

### **Major Design Review**

Pursuant to RMC Section 15.04.810.030.B.2, a PA Plan is subject to Major Design Review by the Design Review Board (DRB) before the PA Plan is reviewed by the Planning Commission. As noted above, due to the complexity of the Project Site, the applicant submitted Design Guidelines that included a Master PA Plan rather than just a PA Plan. The Project's Design Guidelines are the product of an iterative process, with the Project applicant engaging both the public and the DRB (through the City's design review process). Several working sessions with a subcommittee of the DRB were held for the purpose of providing the Project applicant with preliminary input on the Project design. Several study sessions were also held with the DRB to receive feedback from the DRB and the public on the proposed design of Project and the Design Guidelines, including the Master PA Plan.

### ***Design Review Board Recommendation***

Public hearings to consider the Project design were held on July 8 and July 22, 2020. At the conclusion of the July 22, 2020 hearing, the DRB unanimously recommended approval of the Design Guidelines with additional conditions on the Design Guidelines and also provided recommendations and proposed conditions to the Planning Commission for the PA District zoning based upon recommended findings of fact.

### **Development Agreement**

As part of the Project, the City Council is considering a DDA (discussed in detail below) between the Applicant and the City to transfer ownership of development parcels on the Project Site to the Applicant. In addition, the Applicant has proposed to enter into a statutory Development Agreement (DA) with the City for this Project. The DA allows the Applicant and the City to negotiate customized vested rights by contract for development of the Project Site. The DA proposes to "freeze" zoning, planning, and

certain fees applicable for the Project Site, as well as the existing laws and ordinances for a specified period of time as vested rights for the Project Site. In exchange for the vested rights, the Applicant agrees to provide additional financial and other concessions and public benefits beyond the Project's obligations under the conditions of approval, mitigation measures under CEQA, and the Mitigation Fee Act, etc. A draft DA is attached as Exhibit G of this Staff Report.

Key deal points of the draft DA are as follows:

1. **Term:** The draft DA includes a 15-year term with an automatic 5-year extension if the Applicant completes the construction of Phase 1 of the Project within 10 years. The Applicant can request additional extension of the DA, which is subject to further discretionary approval by the City. See Section 1.3.2 of the draft DA. The Parties rights and obligations may also be extended under the draft DA's force majeure clause in Section 11.2.
2. **Vested Elements:** With approval of the entitlements and execution of the DA, the Applicant will become vested in the permitted uses and development capacities set forth in the PA District, as well as Applicable Rules and Project Approvals (among other vested elements), all subject to the conditions, terms, restrictions, and requirements imposed in those approvals and for subsequent discretionary actions.
3. **Subsequent Approvals:** The Project includes subsequent discretionary approvals (e.g., small-lot vesting tentative parcel maps, development plan review, certificate of appropriateness, etc. outlined in Section 1.4.9 of the draft DA).
4. **Public Benefits:** Sections 2.1 and 2.2 of the Draft DA include a list of public benefits that the Applicant is required to provide, many of which already appear in the proposed DDA. This includes constructing a new joint fire station/police substation; providing a variety of housing types, including 67 onsite affordable housing units (additional in lieu fees will be required as part of the Project); construction and/or contribution of funds toward the construction of the Bay Trail within the Project Site, as well as from I-580 to the Project Site boundary; construction of trails through hillside open space; rehabilitation of all of the contributing historic buildings in the Winehaven District; payment of prevailing wage to construction workers; environmental remediation of the Project Site; and maintenance of the open spaces and parks, which would be open to the public. The draft DA includes additional public benefits such as the formation of the Master HOA, pre-closing services, park enhancements, funding for civil and cultural uses, and stormwater facilities maintenance.
5. **Future Rules and Standards:** The draft DA limits the City's discretion to adopt and apply future rules and standards to the Project to certain extent. Section 3.4 of the draft DA addresses which future rules and standards can apply to the Project and Section 3.6.5 addresses the conditions applicable to future approvals.
6. **Impact Fees:** The draft DA freezes impact fees and assessments subject to annual increases based on the Employment Cost Index (ECI) escalator. However, the draft DA authorizes the City to reassess and apply new fees and

assessments to later phase vertical improvements after 7 years following the commencement of construction of the First Site Improvement Phase. See Section 3.6.3 and Exhibit D of the draft DA.

7. **Fee Credits:** In exchange for building certain public infrastructure improvements as part of the Project, the Applicant is seeking certain fee credits (subject to the City's Fee Credit Policy) for common infrastructure and improvements constructed by the developers (including Police, Fire, and Parks). Section 3.6.4 of the draft DA addresses these fee credits for the Project (e.g., Fire, Parks, Police, Sewer, Stormwater, Traffic).
8. **Community Facilities District ("CFD"):** The draft DA will set forth the base terms for the establishment one or more Mello Roos CFDs to finance the construction of certain public improvements along with the maintenance of facilities and provision of services. Section 4.5 of the draft DA includes key provisions governing the establishment and operation of the CFD.

### **Planning Commission Recommendation**

The Planning Commission held a meeting on August 6, 2020 to receive a presentation on the Final SEIR. A public hearing was also held on August 17 to consider making a recommendation to the City Council on the: Certification of the Final SEIR and adoption of an MMRP and CEQA Findings of Fact and a Statement of Overriding Considerations, and approval (or disapproval) of the various project entitlements. The public hearing was continued to August 20, 2020. At the conclusion of the public hearing, the Planning Commission voted (4-1) to recommend Certification of the Final SEIR and adoption of the MMRP and CEQA Findings of Fact and a Statement of Overriding Considerations; approval of the General Plan text and map amendments; approval of Rezoning the project site to PA District with an –H, Historic district overlay over the Winehaven Historic District; approval of a Development Agreement; approval of a Large-Lot Vesting Tentative Tract Map; approval of a Conditional Use Permit for a Shoreline Park in –S Overlay Zone; and approval of a Major Design Review for the Master PA Plan and the Point Molate Design Guidelines, subject to conditions.

The Planning Commission recommendation included modifying certain DRB-recommended conditions of approval and adding new conditions. Specifically, the Planning Commission recommendations modified conditions 3.b, 15, 16-21, 63 (as shown in strikethrough and underline in Exhibit H), and proposed to add new conditions 69-71. The Planning Commission also recommended that staff carefully review the Trails for Richmond Action Committee (TRAC) comment letter dated August 20, 2020 to study what language could be integrated into final documents to be considered by the City Council. Based on direct consultations with TRAC following the Planning Commission hearing, language regarding construction timing, financial contributions, and public access for the Bay Trail was added to Development Agreement, entitlements, and other documents, as follows:

- Revisions to the Development Agreement (Section 2.1.3.1) correcting estimated costs related to construction of the onsite Bay Trail and setting mandatory timing

- for reimbursements to the City;
- Revisions to Condition of Approval 6.a requiring that the onsite Bay Trail and Shoreline Park shall be substantially constructed and available for public access as part of the initial development phase, subject to certain exceptions in the City's discretion (e.g, construction, environmental conditions, or public health and safety); and
- Revisions to the Phasing Plans referenced in the Vesting Tentative Map (Figure C4.0) and Disposition and Development Agreement Schedule of Performance and Exhibits 2.5.2-A, 2.5.2-B, and 2.5.2-C.

The Planning Commission also encouraged the applicant and staff to continue to work with the East Bay Regional Park District (EBRPD) to address certain requests made regarding expanding the shoreline park and creating more contiguous open space.

New conditions of approval 73 and 74 are proposed to memorialize proposals made to the EBRPD to address their requests.

## **DISPOSITION AND DEVELOPMENT AGREEMENT**

A Copy of the Draft DDA is attached as Exhibit G to the Resolution in Attachment 1. Defined terms below are as used and defined in the DDA. Some of the key DDA deal points include:

- **Project.** The proposed Point Molate Mixed Use Development Project (Project) will include the following components: open space, rehabilitation and adaptive re-use of the contributing structures of the Winehaven Historic District, commercial development, and residential development, including various on and off-site amenities. The amenities to be constructed include a portion of the Bay Trail as provided in the Development Agreement.
- **Project Phasing.** The Project will be constructed in two phases. The Police and Fire Station, all Offsite Improvements, the Master Infrastructure required for the Historic District, and Required Onsite Affordable Units are required to be constructed within the First Phase. The phasing for the Master Infrastructure and Master Amenities is shown on DDA Exhibits 2.5.2A, 2.2.5B and 2.6.2A and 2.2.6B.
- **Developer; Historic Core Developer; Other Assignees.** The Developer is Winehaven Legacy LLC, a SunCal affiliate. The DDA contemplates that Developer will make partial assignments of DDA rights and obligations with respect to (i) the rehabilitation of the Winehaven Historic District; and (2) the construction of various residential communities, which are referred to as "Vertical Improvements." The DDA pre-approves Orton as the Historic District Developer, and contains approval standards for all other assignees under the DDA, including for Merchant Builders who the Developer anticipates will complete the Vertical Improvements. Accordingly, the entire property will be transferred to Developer, and we anticipate the Historic District will be immediately transferred to Orton

(unless Developer proposes and gains approval for a different Historic Core assignee, based on criteria set forth in the DDA).

- **Timing; Schedule of Performance.** Developer is required to comply with Schedule of Performance set forth in Exhibit 2.3.1-A and Exhibit 2.3.1-B. Subject to force majeure and to future revisions approved by the City Manager, this schedule generally requires Developer to start construction of Phase 1 within 12 months after Closing (i.e., by May 21, 2023, assuming Closing occurs on the Outside Closing Date) and to complete Phase 1 within 36 months after commencement (i.e., by May 21, 2026). Phase 2 must be started within 12 months after the completion of Phase 1, and Phase 2 must be completed within 36 after commencement.
- **Purchase Price.** \$45 million. The Developer is also obligated to pay \$25,000 per unit for each Residential Unit in excess of 1,260 constructed at the Project at the time a Building Permit is issued for any such excess Residential Unit.
- **Closing.** The transfer of the Property to Developer will occur on or before May 21, 2022, which is the Outside Closing Date.
- **On-site Affordable Housing.** Developer must construct at least 67 affordable units on-site. The City's Inclusionary Ordinance requires more than 67 units on-site units based on the actual unit count and affordability levels provided. Developer may meet those additional requirements either by providing additional on-site units or paying the required in lieu fees.
- **Project Labor Agreement.** Developer has entered into Project Labor Agreements with unions for the carpenters, plumbers and steamfitters, sheet metal workers, sprinkler fitters and electricians.
- **Community Benefits.** Community benefits will include, preservation and adaptive reuse of Winehaven Historic District, improved public waterfront access, beach park, open space, and Bay Trail enhancement, open space preservation of approximately 70 percent of site, pedestrian and bike friendly community design, and compliance with public art, local hire, ban the box, and living wage requirements.
- **Project Approvals.** Developer is required to obtain all Project Approvals, namely all entitlements.
- **Financing Plans; Payment of On-Going Maintenance.** Developer will be required to provide Project Financing Plans and evidence of availability of funds. The DDA contemplates formation of two CFDs: one for construction of eligible public improvements, and one for maintenance of infrastructure. Upon completion of the Master Infrastructure and Off-Site Improvements, the City will be responsible for maintenance of Stenmark Drive, and the Developer will be responsible for all other maintenance, either under the maintenance CFD or the various HOAs. No changes in the Master Financing Plan or any subsequent Financing Plan will be allowed if the change would result in a negative fiscal impact on the City's general fund.
- **Payment & Performance Bonds; Guaranty.** Developer will provide either a guaranty or a performance and payment bonds for the Site Improvement Work prior to commencement of construction of each phase of the Master

Infrastructure, Off-Site Improvements and the Master Developer Amenities. Vertical Improvements will not require payment and performance bonds if an acceptable guaranty is provided or if the City Manager determines the applicable Merchant Builder is sufficiently capitalized.

- **Weatherization of Historic Resources; Site Security.** Developer is required to perform stabilization work on the Historic Resources prior to Closing. Developer is also required to engage a security firm to provide site security prior to Closing. These obligations commence upon execution of the DDA, and will be at no cost to the City.
- **Hazardous Materials.** Developer will complete all hazardous materials remediation to the satisfaction of the Regional Water Quality Control Board (RWQCB) and any other agencies with jurisdiction, both with respect to the property transferred to Developer and the surrounding Site. This will be at no cost to the City.
- **City Repurchase Remedy for Construction Related Default (by Phase).** If Developer fails to commence construction of any phase of the Project as and when required under the DDA or if there is a material default under the DDA (and Developer fails to cure such default within the applicable cure period), the City has the right, at its option, to repurchase the Property. The Repurchase Right terminates with respect to any portion of the Property for which a Certificate of Construction Phase Completion has been issued by the City.

## **ENVIRONMENTAL REVIEW:**

On July 12, 2019, the City issued a Notice of Preparation (NOP) to the public, local, State, and federal agencies, and other known interested parties for a 30-day public and agency review period, in accordance with the California Environmental Quality Act (“CEQA”) Guidelines (14 California Code of Regulations [CCR] section 15000 et seq. “CEQA Guidelines”) Section 15802. The purpose of the NOP was to provide notification that an SEIR for the Modified Project was being prepared, and to solicit public and agency input on the scope and content of the document. The City also held a scoping meeting for the SEIR on July 29, 2019 at the City Council Chambers. Comments from agencies and the public provided at the scoping meeting and in written comments submitted in response to the NOP are included within Draft SEIR, Appendix B. Significant issues raised during the scoping process are summarized in Section 1.4.3 of the Draft SEIR.

The Draft SEIR was made available for public review and distributed to applicable local and state agencies for a period beginning on February 21, 2020 and closing on April 30, 2020. This public comment period was initially set to end on April 6, 2020. The comment period was extended several times due to COVID-19 and ultimately closed on April 30, 2020, allowing the public and agencies a total of 70 days to submit comments.

The City published the Final SEIR, including Response to Comments, on July 24, 2020. The Response to Comments address all timely submitted public comments raising significant environmental issues regarding the Draft SEIR. The Final SEIR also included

revisions to the Draft EIR and a supplemental analysis on the Refined Project, all of which were in response to public comments as well as further input from the Historic Preservation Commission, Design Review Board, and other public agencies.

None of the comments received on the Draft SEIR or other refinements to the Project or SEIR constitute significant new information warranting recirculation of the Draft SEIR. For example, there are no new significant impacts or substantial increase in the severity of impacts, nor are there any feasible project alternatives or mitigation measures that are considerably different from those analyzed in the Draft SEIR that the applicant has refused to implement. In addition, the Draft SEIR was not so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. Therefore, recirculation is not required pursuant to Section 15088.5(a) of the CEQA Guidelines.

### ***Summary of Revisions to the Draft SEIR***

Revisions to the Draft SEIR included both (1) revisions made in response to comments on the Draft SEIR as well as (2) staff-initiated text changes to correct inconsistencies, to add information or clarification, where appropriate, and to provide updated information where applicable. None of the revisions or corrections substantially change the analysis and conclusions presented in the Draft SEIR. Revisions to the Draft SEIR, which are detailed in the Response to Comments document, were summarized in the Planning Commission Agenda Report dated August 6, 2020.

### ***Revisions made to the Final SEIR and MMRP***

The Final SEIR errata pages and Revised MMRP are summarized below:

- Mitigation measures have been revised in the MMRP ensure consistency with the SEIR and address Planning Commission recommendations regarding MM 4.13-6.
- Minor formatting changes, correction of minor typographical errors, and removal of redundant language (e.g., in Mitigation Measure 4.13-18) in the MMRP.
- Added citations in footer and delete in-text references of citations in MMRP.
- The City recently determined that a portion of the local offset project (the co-generation plant) identified in the Greenhouse Gas Reduction Plan (GGRP) included in Attachment 8 of the Response to Comment document has already been funded and partially constructed. Thus, the GHG reduction from only the heat capture portion of the offset project will be funded by the Applicant. The GGRP and the SEIR has been revised to correct the greenhouse gas emissions reduction from the local offset project from 1,409 MT CO<sub>2</sub>e per year to 595 MT CO<sub>2</sub>e per year.
- Certain public comments requested use of renewable diesel in construction equipment and use of LED lights for streetlights, traffic lights, and lighting in public areas. But the availability of renewable diesel cannot be guaranteed during the entire period of construction. In response, the Applicant will revise the GGRP to require the use of renewable diesel, if available. The installation of streetlights,

public area lighting and traffic lights in the City is under the purview of the Public Works Department, and no additional GHG emission reductions can be achieved from these measures. In response to the comments, the GGRP will nevertheless incorporate the following additional measures: use of LED traffic lights, public area lighting and street lights that will be installed by the Applicant.

- Revised references to homeowners association and commercial association in mitigation measures to refer to “homeowners association, commercial association and/or Master association,” to ensure a responsible party for those mitigation measures.
- Input from the Confederated Villages of Lisjan (Ohlone) tribe is included in the cultural mitigation measures. City staff will continue working with the tribe regarding specific handling protocols for unanticipated discoveries.

Since publication of the Response to Comments document on July 24, 2020 and the Planning Commission recommendation on August 20, 2020, the City has continued to receive public comments on the SEIR. In response to the additional comments received, the City has prepared a technical memorandum (see Exhibit I of Attachment I) addressing the comments raised.

Again, none of the refinements identified above or comments reviewed by staff identified any new significant impacts or resulted in any substantial increase in the severity of impacts, nor do the refinements include feasible project alternatives or mitigation measures that are considerably different from those analyzed in the Draft SEIR that the applicant has refused to implement. Therefore, the refinements do not trigger recirculation pursuant to Section 15088.5(a) of the CEQA Guidelines.

#### **GENERAL PLAN AMENDMENT, ZONING AMENDMENT, DEVELOPMENT AGREEMENT, VESTING TENTATIVE TRACT MAP, CONDITIONAL USE PERMIT, AND DESIGN REVIEW FINDINGS:**

The City Council must adopt certain findings in approving the proposed General Plan Amendment, Zoning Amendment to Planning Area District and -H, Overlay, Design Guidelines (including the Master Planned Area Plan and Historic Conservation Plan), Vesting Tentative Map, Conditional Use Permit for the shoreline park in the existing S-Overlay area, Development Agreement, and Major Design Review Permit for the Design Guidelines. Statements of fact supporting the required findings are contained in the draft Resolution and Ordinances. The recommended conditions of approval are included in the Resolution.

#### **CONCLUSION:**

The proposed General Plan Amendments and Zoning Amendments would enable the successful redevelopment of the Point Molate Site with a mixed-use development that would provide for the preservation and enhancement of approximately 70 percent of the Project Site as open space, a new economic base for the City, and much needed housing and jobs for the City and Bay Area region.

Staff recommends the City Council adopt a Resolution certifying the Final SEIR and adopting a Mitigation Monitoring and Reporting Program (MMRP), CEQA Findings of Facts and Statement of Overriding Considerations; approving a General Plan map and text amendments; approving a Conditional Use Permit for a Shoreline Park in –S Overlay Zone; approving a Vesting Tentative Tract Map; approving a Major Design Review for Design Guidelines with a Historic Conservation Plan and Master Planned Area District Plan; and approving the Disposition and Development Agreement with Winehaven Legacy LLC and introduce an Ordinance Rezoning the Project Site to Planned Area District with –H, Historic District Overlay for the Winehaven Historic District; and introduce an Ordinance approving the Development Agreement.

**ATTACHMENTS:**

Attachment 1: Resolution certifying the Final SEIR and adopting a Mitigation Monitoring and Reporting Program (MMRP), CEQA Findings of Facts and Statement of Overriding Considerations; Approving a General Plan map and text amendments; approving Design Guidelines with a Historic Conservation Plan and Planned Area District Plan; approving a Conditional Use Permit for a Shoreline Park in –S Overlay Zone; approving a Vesting Tentative Tract Map; approving a Major Design Review for Design Guidelines; and approving a Disposition and Development Agreement with Winehaven Legacy LLC

Exhibit A: Final Subsequent Environmental Impact Report, consisting of the Draft Subsequent Environmental Impact Report, Response to Comments, and Errata to Final SEIR

Exhibit B: CEQA Findings and Statement of Overriding Considerations

Exhibit C: Mitigation Monitoring and Reporting Program

Exhibit D: General Plan Amendment

Exhibit E: Design Guidelines with Master PA Plan, Historic Conservation Plan, and Other Sections

Exhibit F: Vesting Tentative Tract Map

Exhibit G: Disposition and Development Agreement

Exhibit H: Conditions of Approval

Exhibit I: Technical Memorandum regarding Late Comments on SEIR

Attachment 2: Ordinance Rezoning the project site to PA, Planned Area District with –H, Historic District Overlay for the Winehaven Historic District

Exhibit A: Zoning Amendment

Exhibit B: Point Molate Design Guidelines

Attachment 3: Ordinance approving a Development Agreement

Exhibit A: Development Agreement